



Commercial Rate Loan Facility General Conditions

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BOQ

Bank of Queensland Limited ABN 32 009 656 740

Commercial Rate Loan Facility General Conditions

About this facility agreement

This *facility agreement* is made up of a number of documents: the Facility Details, the Schedule, and these General Conditions. They should be read together. You should also carefully read any *securities*.

The meaning of words printed *like this* and some other key words are explained in these General Conditions.

Further terms and conditions which may be relevant to the use of your account may be found in the Business Lending Supplementary Terms and Conditions and the Business Banking Guide to Fees and Charges, each as amended from time to time. The most recent versions of these documents are available at www.boq.com.au or may be requested from us. Your use of any bank account or electronic banking service in connection with the *facility* will also be subject to the terms and conditions of that account or service.

The relevant provisions of the Code of Banking Practice may apply to this *facility agreement*. The Code of Banking Practice applies to banking services provided to customers who are individuals or small businesses, each as defined in it. We will comply with the Code of Banking Practice, where it applies to the banking services we provide to you.

Break costs may be payable if a *break cost event* is taken to have occurred on your *fixed rate commercial rate loan*, *variable rate commercial rate loan* or *interest capitalised commercial rate loan*. These General Conditions (together with the Business Banking Guide to Fees and Charges) provide details of when *break costs* may be payable and how they are calculated). Please read them carefully as break costs can be many thousands of dollars.

TABLE OF CONTENTS

How to obtain the <i>facility</i>	5
1. What must happen before you can use the <i>facility</i>	5
2. Conditions of use	6
3. Representation and warranties	7
What you must pay and when	8
4. What you must pay	8
5. <i>Reductions, special reductions</i> and other payments	8
6. Interest	9
7. <i>Variable commercial rate loan</i>	9
8. <i>Fixed commercial rate loan</i>	9
9. <i>Interest prepaid commercial rate loan</i>	10
10. <i>Interest capitalised variable commercial rate loan</i>	10
11. Switching <i>facility types</i>	11
12. <i>Interest period</i>	11
13. Establishing your accounts and accounting for transactions	12
Additional amounts you must pay	12
14. Fees and charges	12
15. <i>Costs</i>	13
16. <i>GST</i>	13
17. Other amounts	13
18. Repaying early	14
19. <i>Redraw</i>	14
20. <i>Break costs</i>	15
Undertakings	16
21. Undertakings	16
Default	17
22. When are you in default?	17
23. What can happen when you are in default	18
24. <i>Default rates</i> and <i>customer margin reviews</i>	19

Other matters	19
25. Reducing or cancelling the <i>facility limit</i>	19
26. <i>Facility</i> reviews and changes to your <i>customer margin</i>	20
Construction finance facilities.....	20
27. Our additional requirements if you have a <i>construction finance facility</i>	20
General.....	21
28. Dealing with rights under this <i>facility agreement</i>	21
29. Disclosure of information.....	22
30. Consents	23
31. Manager	23
32. Currency conversions	23
33. Setting off money	23
34. Multiple accounts.....	23
35. Our certificates	23
36. Prompt performance	23
37. How we may exercise our rights	23
38. Administrative matters.....	24
39. Changes	24
40. Compensation for unforeseen circumstances.....	24
41. Illegality or impossibility.....	25
42. If any part of this <i>facility agreement</i> is unenforceable	25
43. Your obligations and our rights are unaffected	25
44. Reinstatement of rights	25
45. Indemnities	26
46. Power of <i>attorney</i>	26
47. Trustee provisions	26
48. Insurance.....	27
49. Valuers, investigators and consultants	27
50. Other <i>security interests</i>	27
51. Consent to telephone recording.....	27
52. Notices and other communications	28

53.	Code of Banking Practice and other code or legislation	28
54.	Inconsistent law	29
55.	Governing law and serving documents	29
56.	Ending this <i>facility agreement</i>	29
57.	Further information	29
58.	Our advice	29
59.	Commissions.....	29
60.	<i>PPSA Law</i>	29
61.	Financial Markets Transactions	30
62.	Meaning of words.....	30
63.	Interpretation	34

How to obtain the *facility*

1. What must happen before you can use the *facility*

- 1.1 We will only allow you to use the *facility* (or any part of it) if the following conditions are either met, in a form and substance satisfactory to us, or waived by us:
- (a) the title to each *security property* (where relevant) is satisfactory to us;
 - (b) we are satisfied that you have an adequate and appropriate insurance policy for each *security property* (where relevant) for its full insurable value and the policy notes our interest;
 - (c) all searches, certificates, valuations, reports and consents we request relating to a *security property* have been provided, are satisfactory to us, and you have paid our costs incurred in obtaining them;
 - (d) we have received written certification from your accountant that your financial accounts are up to date and that you have complied with any accounting or reporting obligations you have, *including* your obligations in respect of GST;
 - (e) we have received evidence to our satisfaction that all relevant council, water and other rates, *taxes* or charges for each *security property* (where relevant) are paid up to date;
 - (f) we have received, executed by you, the Facility Details (including the Schedule), each *security*, and related documents (*such* as title documents and certificates of independent advice for guarantors);
 - (g) if you intend to use the *facility* for the purchase of any real property, we have received a copy of the contract of sale executed by the parties;
 - (h) if you are leasing any *security property*, you must provide us with a copy of the lease;
 - (i) you are not in default under this *facility agreement* (for example, you have paid all relevant fees and interest charges and have not given us any misleading financial or other information) and no *debtor/guarantor* is in default under or has withdrawn from any *security interest*;
 - (j) nothing has happened since you applied for the *facility* which has led to a significant adverse change in your financial circumstances or which we reasonably believe could lead to this;
 - (k) when a *guarantee* is being given as a *security*:
 - (i) we have confirmed that each guarantor has received a copy of this *facility agreement*, the *guarantee*, and all relevant documentation required to be provided under the Code of Banking Practice (where it applies) or legislation; and
 - (ii) if we have requested a certificate of independent legal advice, we have received a certificate for each guarantor from a solicitor who does not work for the firm of solicitors acting for you or the firm acting for us in relation to your *facility*;
 - (l) where you are a corporation, you have given us copies of the following documents, certified by one of your directors, or by your secretary, that the document is complete, correct and up to date:
 - (i) your certificate of incorporation; and
 - (ii) an extract of the minutes of your board of directors containing evidence of resolutions authorising you to execute this *facility agreement* and the *securities* and to perform your obligations under them;
 - (m) if you are entering this *facility agreement* as a trustee of a trust, you have given us a copy of the trust deed certified by you as being complete, correct and up to date and the terms of that trust deed are satisfactory to us;
 - (n) we have received to our satisfaction all other documentation or information we reasonably require and any other settlement requirement we specify has been complied with;
 - (o) you have paid up to date all fees specified in the Facility Details and all other amounts payable under this *facility agreement*;
 - (p) for a *construction finance facility*, you have done all the things required by clause 27;
 - (q) you have provided us with evidence that you have paid or will pay at settlement of your *facility* any debts we have informed you in writing that we require you to pay;

- (r) you have satisfied any special conditions stipulated in the Facility Details;
- (s) to the extent that they are relevant, you are complying with all other terms and conditions in this *facility agreement*;
- (t) we are satisfied that the representations and warranties in clause 3 are correct and not misleading at the date the *facility* is provided;
- (u) when your *facility* is to refinance an existing facility, you have given to us a written payout figure as at the *drawdown* date from your outgoing financier and at settlement of your facility we have received any releases of *security interests* that are required by us;
- (v) when any *security property* is, or is intended to be, the subject of any subdivision or amalgamation prior to settlement of your *facility*, you have given us 14 days written notification that the plans of subdivision or amalgamation, and the certificates of title, have been registered;
- (w) you have given us a statement pursuant to section 206 or 213 (as appropriate) of the Body Corporate and Community Management Act 1997 (or any comparable legislation) in respect of any *security property* that is part of a *shared scheme*;
- (x) when any *security property* is part of a shared scheme, the *governing body* has any insurance policy it is required to by law together with building unit cover over the whole of the building. We must be satisfied that any insurance is adequate;
- (y) we are satisfied with any additional enquiries we have made about you or any *security property*; and
- (z) we are satisfied with any credit reference check undertaken by us on a *debtor/guarantor*.
- 1.2 If you sign this *facility agreement* you will be bound by it. If you do not wish to proceed with your *facility* and you have not drawn down on the *facility* you may terminate the facility or this *facility agreement*. If you do so, we will require payment of all fees and charges incurred by us before termination, *including* the application fee.
- draw down the *facility limit* in one lump sum, unless we agree otherwise.
- 2.2 If you have a *variable commercial rate loan* or an interest capitalised *variable commercial rate loan*, you may draw down the *facility limit* by a series of drawdowns.
- 2.3 We require you to:
- (a) give us a minimum of 3 clear *business days* notice before any drawdown on the *facility*;
- (b) comply with any specific drawdown requirements specified in the Schedule; and
- (c) complete a *request notice* or any other document we may require from time to time. These forms and notices:
- (i) must be in the form we require from time to time;
- (ii) must be signed by an *authorised officer*; and
- (iii) are irrevocable.
- 2.4 You may only request a drawdown on the *facility limit* if:
- (a) the amount requested; and
- (b) the *total amount owing* on your *facility account*, including any advances previously drawn down by you,
- does not exceed the *facility limit* or reduced *facility limit*. If a drawdown is made and it does exceed the *facility limit* or *reduced facility limit* you must immediately pay to us the amount by which the *total amount owing* on your *facility account* exceeds the *facility limit* or *reduced facility limit*.
- 2.5 Whenever we receive a *request notice* we may:
- (a) provide the type of financial accommodation requested by you in the notice or request; or
- (b) provide any other type of financial accommodation we consider appropriate after consultation with you.
- We do not have to provide you with the type of financial accommodation requested by you. We can consent or refuse to provide any type of financial accommodation for any reason.
- 2.6 Unless we agree otherwise in writing, you may use the *facility* only for the purpose specified in the Schedule.

2. Conditions of use

- 2.1 If you have a *fixed commercial rate loan* or an *interest prepaid commercial rate loan*, you must

2.7 We need not allow you to use the *facility* unless:

- (a) the *facility* remains current and has not expired;
- (b) all representations, warranties and declarations made in this *facility agreement* remain correct and are not misleading;
- (c) you or a *debtor/guarantor* is not in default or in our reasonable opinion is not likely to be in default under an *arrangement with us*;
- (d) you have complied with all of your undertakings in this *facility agreement*;
- (e) we have received all other information and documentation we have requested;
- (f) your requested drawdown on the *facility* will not cause the *facility limit* or *reduced facility limit* to be exceeded; and
- (g) any *request notice* provided is in a form, and contains information, that meets our requirements.

2.8 We need not allow you to use the *facility* if the *interest period* will extend beyond the term.

2.9 Unless we agree otherwise, drawdowns under the *facility* will be credited to your *nominated account*.

- (e) your obligations under each *arrangement with us* to which you are a party are valid and binding and enforceable in accordance with their terms;
- (f) you benefit by entering into this *facility agreement* and the transactions contemplated by it;
- (g) all declarations made by you in each other *arrangement with us* are true and are not misleading;
- (h) you are not aware of any circumstances which may prevent you from repaying the *total amount owing* on any of your accounts in accordance with this *facility agreement*;
- (i) there are no reasonable grounds for you to suspect that you are in *insolvency*;
- (j) you are not in default (see clause 22) under this *facility agreement*, any *security interest*, or other agreement or undertaking to which you are a party, or any court order which binds you;
- (k) there is no pending or threatened legal proceeding affecting you or any of your assets before a court, authority, commission or arbitrator except those in which a decision against you (either alone or together with other decisions) would be insignificant;

3. Representation and warranties

3.1 You represent and warrant (except in relation to matters disclosed to us and accepted by us in writing) that:

- (a) neither you nor, if you are a corporation, any director or other *person*, breaches any law or any obligation to another *person* by signing any *arrangement with us* or entering transactions or performing obligations under them;
- (b) (if you are a corporation), you have been incorporated in accordance with the laws of the place of your incorporation and that you validly exist under those laws;
- (c) you have power to carry on your business and you are not in breach of any law or obligation;
- (d) you have in full force and effect the power and authorisations necessary for you to enter into this *facility agreement*, to comply with your obligations and exercise your rights under it, and allow this *facility agreement* to be enforced;

- (l) you have disclosed in writing to us all facts relating to you, this *facility agreement* and all things in connection with them which are material to the assessment of the nature and amount of risk undertaken by us in entering into any transaction relating to this *facility agreement* and doing anything in connection with this *facility agreement*;
- (m) all the information provided to us in connection with this *facility agreement* and the *securities* is true and is not misleading;
- (n) since the date any information was given to us relating to this *facility agreement*, there has been no change in your financial circumstances which may have a material adverse effect on your ability to meet your obligations under this *facility agreement*;
- (o) you have not withheld any information that might have caused us not to enter into any *arrangement with us*;
- (p) unless otherwise stated in this *facility agreement*, you are not signing any

arrangement with us as a trustee of any trust or settlement; and

- (q) except as expressly stated in the *facility agreement*, you have not entered into this *facility agreement* on the basis of any representations or warranties made by us or any *person* on our behalf.

3.2 You must tell us whenever anything happens which prevents you from repeating any one or more of the representations and warranties in clause 3.1 and you repeat these representations and warranties before:

- (a) we provide any amount to you under any *arrangement with us*;
- (b) you acknowledge that another agreement is to be an *arrangement with us*; and
- (c) you consent to us providing financial accommodation to another person which is guaranteed by you under an *arrangement with us*.

What you must pay and when

4. What you must pay

4.1 You must pay us:

- (a) the *total amount owing* on your *facility account* as stipulated in this *facility agreement*;
- (b) interest under the facility as stipulated in this *facility agreement*;
- (c) our fees and charges as stipulated in this *facility agreement*, government charges and those fees and charges stipulated in the Business Banking Guide to Fees and Charges;
- (d) our costs as stipulated in this *facility agreement* (including clause 15); and
- (e) any other money that you owe us under this *facility agreement* or any *security*.

4.2 In the absence of receipt of funds by any other payment method permitted by this *facility agreement*, you authorise us to automatically debit these amounts in accordance with this *facility agreement* to your *nominated account*, your *facility account* or any other account in your name held with us, or as agreed between you and us. You acknowledge that the terms and conditions applicable to your *nominated account* or

other account apply to all amounts debited to that account under this *facility*.

4.3 Failure to pay amounts that are debited to your *nominated account* in accordance with this *facility agreement* (for example, where those amounts overdraw your *nominated account* or exceed your available credit), will also continue to be a liability due and payable by you under this *facility agreement*.

4.4 Where an amount is to be debited in accordance with clause 4.2, you must ensure that there are sufficient funds (or sufficient available credit) in the account to be debited in order to pay the amount due. If there are insufficient funds or available credit in the account, we may at our discretion either:

- (a) overdraw your account by debiting the amount due; or
- (b) debit the amount due or any part of it to your *facility account*. If you are in default because we have debited your *facility account*, clauses 23 and 24 of this *facility agreement* will apply.

4.5 If we overdraw your account in the manner described in clause 4.4(a), we may at any time and at our discretion, subsequently reverse any debit (or any part of any debit) made to the *nominated account* and re-debit that amount to your *facility account* or any other account in your name held with us.

5. Reductions, *special reductions* and other payments

5.1 In the absence of default, you must pay the *total amount owing* on your *facility account* on or before the last day of the term. If you default, you must pay the *total amount owing* on your *facility account* on the date it becomes due for payment under clause 23. The *total amount owing* on your *facility account* may, at our discretion and upon it falling due and payable, be debited to your *nominated account* or retained in your *facility account*.

5.2 Subject to clause 5.3, you must make *reductions* or *special reductions* on the *reduction date* or *special reduction date* (as appropriate) regardless of whether:

- (a) the *facility limit* or *reduced facility limit* is fully drawn; or
- (b) the *reduction date* or *special reduction date* (as appropriate) is a *business day*.

- 5.3 Where:
- (a) the *facility limit* or *reduced facility limit* is not fully drawn; or
 - (b) early repayments have been made in accordance with clause 18,

and this has caused the *balance owing* on the *facility account* to be less than the amount of a *reduction* or *special reduction*, you must pay the *balance owing* on the *facility account* instead. The *facility limit* or *reduced facility limit* will still be reduced by the amount of the *reduction* or *special reduction*.

- 5.4 Payments made after a day ends may not be credited to an account until the next day.
- 5.5 Unless we agree otherwise, we may use any payment we receive under or in accordance with this *facility agreement* to reduce the *balance owing* on any of your accounts in any order we choose. If we are obliged by law or this *facility agreement* to pay the money in a particular way, then we will do so.
- 5.6 Unless you tell us otherwise, we may apply any payment we receive from you to any other facility you have with us. If we do this you must still make any payments due under this *facility agreement*.
- 5.7 Any *reductions* or *special reductions* will be automatically debited to your *nominated account*.
- 5.8 With the exception of *reductions* or *special reductions*, you may make any payments to us in any of the ways we tell you including by electronic transfer or by attending any of our branches.
- 5.9 If you make any *reductions*, *special reductions* or other payments by electronic transfer and we debit the relevant account when there are insufficient funds in it, then the electronic transfer may be reversed and you will be regarded as not having made the payment.
- 5.10 If this *facility agreement* does not otherwise specify the manner or time of payment of an amount owing under this *facility agreement* you must pay us that amount in the manner and when we ask for it.

6. Interest

- 6.1 Unless we agree otherwise, interest will be payable:
- (a) in respect of a *variable commercial rate loan*, an *interest capitalised variable commercial rate loan* or a *fixed commercial rate loan* – in arrears; or

- (b) in respect of an *interest prepaid commercial rate loan* – in advance.

- 6.2 You must pay us interest charges for each day on the *balance owing* on your *facility account* at the end of that day.
- 6.3 Interest charges for each day are calculated by applying the daily percentage rate to the *balance owing* on your *facility account* at the end of that day. The daily percentage rate is the *annual percentage rate* for that day divided by 365.
- 6.4 Interest is payable by you daily but is debited to your *nominated account* on each *interest payment date* unless your *facility type* is an *interest capitalised variable commercial rate loan* in which case interest is debited (that is, capitalised) to your *facility account*.

7. Variable commercial rate loan

- 7.1 The *annual percentage rate* for the first *interest period* under a *variable commercial rate loan* is determined as the sum of the *customer margin* and the *commercial rate loan base rate* at the first *drawdown date* under that *facility*. The *annual percentage rate* for each successive *interest period* is determined as the sum of the *customer margin* and the *commercial rate loan base rate* on the first day of that successive *interest period*. Although the *commercial rate loan base rate* is reset at the start of each *interest period*, the rate remains constant for the duration of that *interest period*. The *customer margin* may be varied by us (even during an *interest period*) pursuant to clause 24 or clause 26.
- 7.2 If you have switched your *facility type*, the *annual percentage rate* for the first *interest period* on or following the *variation date* is determined in accordance with clause 11.4.

8. Fixed commercial rate loan

- 8.1 You are only allowed one drawdown under a *fixed commercial rate loan*. The *annual percentage rate* for the first *interest period* is determined as the sum of the *customer margin* and the *commercial rate loan base rate* on the *drawdown date*. The *commercial rate loan base rate* remains constant for the duration of the *interest period*. The *customer margin* may be varied by us (even during an *interest period*) pursuant to clause 24 or clause 26.

- 8.2 At the end of the first *interest period* you may elect to maintain your *fixed commercial rate loan* by providing us with a *request notice*, at least 7 days prior to the end of the *interest period*, requesting a further *interest period* not exceeding the *term* of the *facility*. You may continue to make an election in accordance with this clause in each subsequent *interest period* until the *term* expires. The *annual percentage rate* for each *interest period* is determined as the sum of the *customer margin* and the *commercial rate loan base rate* on the first day of that *interest period*. Although the *annual percentage rate* is reset at the start of each *interest period*, the rate remains constant for the duration of that *interest period*.
- 8.3 If you fail to make an election in accordance with clause 8.2, at the end of the *interest period*, your *facility* will automatically convert from a *fixed commercial rate loan* to a *variable commercial rate loan* with an *interest period* of 1 month. These General Conditions, as they relate to a *variable commercial rate loan* will then apply. You may only switch back to a *fixed commercial rate loan* in accordance with clause 11.
- 8.4 If you have switched your *facility type*, the *annual percentage rate* for the first *interest period* on or following the *variation date* is determined in accordance with clause 11.4.

9. **Interest prepaid commercial rate loan**

- 9.1 You are only allowed one drawdown under an *interest prepaid commercial rate loan*. The *annual percentage rate* for the first *interest period* is determined as the sum of the *customer margin* and the *commercial rate loan base rate* on the *drawdown date*. The *annual percentage rate* remains constant for the duration of the *interest period*.
- 9.2 We will debit your *nominated account* with the *interest prepayment* on each *interest payment date*. To ensure that you have sufficient funds or sufficient available credit in your *nominated account* for the *interest prepayment* to be debited you may ask us on the *interest payment date* and we will tell you how much the *interest prepayment* will be. We can also provide an estimate of the *interest prepayment* before the *interest payment date* but this amount is subject to change.
- 9.3 You are not required to make any other principal or interest payments during an *interest period*.
- 9.4 At the end of an *interest period*, you may elect to continue to prepay your *facility* by providing us with a *request notice* at least 7 days prior to the end of

the *interest period*. The *annual percentage rate* for each successive *interest period* is determined as the sum of the *customer margin* and the *commercial rate loan base rate* in the first day of that successive *interest period*.

- 9.5 If you make an election in accordance with clause 9.4, we will debit your *nominated account* in accordance with clause 9.2.
- 9.6 If you fail to make an election in accordance with clause 9.4, at the end of the *interest period* your *facility* will automatically convert from an *interest prepaid commercial rate loan* to a *variable commercial rate loan* with an *interest period* of 1 month. These General Conditions, as they relate to a *variable commercial rate loan* will then apply. You may only switch back to an *interest prepaid commercial rate loan* in accordance with clause 11.
- 9.7 If you have switched your *facility type*, the *annual percentage rate* for the first *interest period* on or following the *variation date* is determined in accordance with clause 11.4.

10. **Interest capitalised variable commercial rate loan**

- 10.1 If you have an *interest capitalised variable commercial rate loan*, your *facility limit* includes the *interest capitalisation component* (specified in the Schedule) for interest accrued under the *facility*. Unless we agree otherwise, you must only use the *interest capitalisation component* for interest accrued under the *facility*.
- 10.2 The *annual percentage rate* for the first *interest period* under the *interest capitalised variable commercial rate loan* is determined as the sum of the *customer margin* and the *commercial rate loan base rate* at the first *drawdown date* under that *facility*. The *annual percentage rate* for each successive *interest period* until the *interest capitalisation component* is fully drawn, is determined as the sum of the *customer margin* and the *commercial rate loan base rate* on the first day of that successive *interest period*. Although the base rate is reset as the start of each *interest period*, the rate remains constant for the duration of that *interest period*.
- 10.3 Once the *interest capitalisation component* is fully drawn your *facility* will convert from an *interest capitalised variable commercial rate loan* to a *variable commercial rate loan* with the same *interest period*. These General Conditions, as they relate to a *variable commercial rate loan* will then apply, including clause 7.1 dealing with *annual percentage rates*. We do not have to notify you

when your facility converts to a *variable commercial rate loan*. If you ask us we will tell you how much of the *interest capitalisation component* has been drawn at any time.

11. Switching *facility types*

- 11.1 You may ask us to change the *facility type* (and consequently the *interest period*) for your *facility* at any time by providing us with a *request notice*.
- 11.2 If we agree to change your *facility type*, you may be required to pay us a switching fee. In addition, you may also be required to pay *break costs* in accordance with clause 20.
- 11.3 Any change to your *facility type* is separately agreed between us and you as a change to the terms of this *facility agreement*.
- 11.4 The *annual percentage rate* for the new *facility type* is the sum of the *customer margin* and the *commercial rate loan base rate* applicable on the *variation date* (or if there is no *balance owing* on your *facility account* on the *variation date*, on the first *drawdown date* on or following the *variation date*). You must then commence paying interest on the *interest payment date* for the new *facility type*.
- 11.5 A new *interest period* will commence on the *variation date* (or if there is no *balance owing* on your *facility account* on the *variation date*, on the first *drawdown date* on or following the *variation date*).
- 11.6 On and from the *variation date*, these General Conditions, as they relate to the *facility type* you have switched to, will then apply.

12. Interest period

- 12.1 If you have a *variable commercial rate loan*, your *interest period* is either 1 month, 2 months, 3 months or 6 months as stipulated in the Schedule. If you do not provide a *request notice* (as permitted by clause 12.6(a)), each subsequent *interest period* will be for the same period as the previous *interest period*.
- 12.2 If you have an *interest capitalised variable commercial rate loan*, your *interest period* is either 1 month, 2 months or 3 months as stipulated in the Schedule. If you do not provide a *request notice* (as permitted by clause 12.6(a)), each subsequent *interest period* will be for the same period as the previous *interest period*.

- 12.3 If you have a *fixed commercial rate loan* your first *interest period* is either 1 year, 2 years, 3 years, 4 years or 5 years as stipulated in the Schedule or as specified in the *request notice* for any *subsequent interest periods*.

- 12.4 If you have an *interest prepaid commercial rate loan* your *interest period* is 1 year for the first year and for each subsequent year in which you make an election under clause 9.4.

Changing your *interest period*

- 12.5 We may adjust the *interest period* at any time without your consent. For example, we may adjust the *interest period* so that it ends on *business day*, matches the end of the *term* or better aligns with your rollover or statement dates.
- 12.6 If you have a *variable commercial rate loan* or an *interest capitalised variable commercial rate loan*:
- (a) you may ask us to change the *interest period* at any time. You can make a request by providing us with a *request notice* at least 3 clear *business days* before you want the change to take effect;
 - (b) we can consent or refuse your request to change your *interest period* for any reason. For example, we need not allow you to change an *interest period* if the *interest period* is not due to expire; and
 - (c) if we agree to change your *interest period* then:
 - (i) the new *interest period* will either commence on the date specified in the request notice or at the end of the *interest period* stipulated in the request notice, as directed by you;
 - (ii) the new interest payment date will be the last day of the new *interest period*;
 - (iii) if the date of the change is not an *interest payment date* you may be required to pay *break costs* in accordance with clause 20; and
 - (iv) you may be required to pay us a switching fee.
- 12.7 In addition to your rights to select an *interest period* in accordance with clause 8.2, if you have a *fixed commercial rate loan*:
- (a) you may ask us to change the *interest period* prior to the expiration of your current *interest period* by providing us with a *request notice* at least 10 clear *business days* before you want the change to take effect;

- (b) we can consent or refuse your request to change your *interest period* for any reason. *For example*, we need not allow you to change an *interest period* if the *new interest period* exceeds the remaining term of the *facility*;
- (c) if we agree to change your *interest period* then;
 - (i) the new *interest period* will commence on the date you and we agree;
 - (ii) the *interest payment date* will be the same date in each month as the date of the change to the *interest period*;
 - (iii) the *annual percentage rate* for the new *interest period* will be calculated in accordance with clause 8.2;
 - (iv) you may be required to pay *break costs* in accordance with clause 20; and
 - (v) you may be required to pay us a switching fee.

13. Establishing your accounts and accounting for transactions

- 13.1 You agree to maintain at least one account with us as a *nominated account*.
- 13.2 We may assign any date we consider appropriate to a debit or credit of an account (except that, in the case of a debit, the date must not be earlier than the date on which the relevant transaction occurs).
- 13.3 We will credit payments to the relevant account as soon as practicable after we receive them. This is not necessarily the same day that you pay.
- 13.4 You will not be credited for any amount paid until we actually receive it. Whilst cheque proceeds will be credited to the relevant account they are subject to clearance. If a cheque is subsequently dishonoured the payment to which it relates will be treated as not having been paid.
- 13.5 We may subsequently adjust debits and credits, and the *balance owing* on any account, so as to accurately reflect the legal obligations of you and us (*for example*, because of an error or because a cheque is dishonoured). If we do this, we may make consequential changes (*including* to interest charges).

- 13.6 If a law requires you to deduct an amount in respect of taxes from a payment under an *arrangement with us* with the result that we would not actually receive on the due date the full amount provided for under the *arrangement with us*, then:
 - (a) you agree to deduct the amount for the *taxes* (and any further deduction applicable to any further payment due under paragraph (c) below);
 - (b) you agree to pay an amount equal to the amount deducted to the relevant authority in accordance with applicable law and give the original receipts to us; and
 - (c) if the amount deducted is in respect of *accountable taxes*, the amount payable is increased so that, after making the deduction and further deductions applicable to additional amounts payable under this clause, we are entitled to receive (at the time the payment is due) the amount we would have received if no deductions had been required.

Additional amounts you must pay

14. Fees and charges

- 14.1 You must pay us:
 - (a) all fees and charges stipulated in the Facility Details in the circumstances described in the Facility Details and any other changed or new fee or charge notified to you;
 - (b) an amount equal to any government charges and duties under this *facility agreement*, calculated in accordance with the relevant legislation. These are payable by you whether or not you are primarily liable for such charges and duties; and
 - (c) all fees and charges stipulated in the Business Banking Guide to Fees and Charges.

14.2 You authorise us to debit these fees and charges to your *nominated account* or in respect of the fees and charges payable before the *facility establishment date*, to any other account held in your name with us, as directed by you. We may do so on or after the date we pay them or the date they become due or payable by you or us. We do not have to tell you first.

15. Costs

15.1 You must pay us for:

- (a) our reasonable *costs*, and any *receiver's costs* and remuneration, in arranging, administering and terminating this *facility agreement*, any *security*, another *arrangement with us* and any transactional documentation in connection with them (*including* giving and considering consents, variations, discharges and releases, producing title documents, or enforcing, attempting to enforce or taking any other action in connection with our or any *receiver's* rights); and
- (b) all *taxes*, fees, and charges payable in connection with this *facility agreement*, any *security*, any other *arrangement with us* and any transactions under them and any interest, penalties, fines and expenses in connection with them.

15.2 You must pay us these amounts when we ask. We can also debit any of these amounts to any of your accounts even if we do not expressly ask you to pay us. We do not have to tell you first. However, we will provide you with details of such amounts upon request from you. These amounts are due and payable on the day they are debited.

16. GST

16.1 Unless otherwise expressly stated, all amounts referred to in this *facility agreement* do not include GST.

16.2 To the extent (if any) that GST is payable in respect of all or any part of a supply made by a party under or in connection with this *facility agreement* (including any indemnity or reimbursement amount), the consideration to be provided for that supply is increased by an amount equal to the GST payable by the supplying party.

17. Other amounts

17.1 You indemnify us against, and you must therefore pay us on demand for, liability, loss or costs

(*including* consequential or economic loss) we suffer or incur:

- (a) if you default under this *facility agreement* (in which case you will also be liable for any loss arising because we require payment of the *total amount owing* on your *facility account* earlier than its due date);
- (b) if you do not pay us the *total amount owing* on your *facility account*;
- (c) in connection with us or any person acting on our behalf exercising, or not exercising, rights under this *facility agreement*;
- (d) in connection with the *security property*, the monitoring of works or this *facility agreement*;
- (e) as a result of doing anything that we agree to do under any *facility at your request or consequent upon your default*;
- (f) in connection with finance which you request not being provided in accordance with your request for any reason (other than our default); or
- (g) under any indemnity we give a *controller* or administrator appointed:
 - (i) in respect of you or a guarantor providing a *security*; or
 - (ii) over any *security property*.

17.2 You must pay us an amount equal to any liability, loss or costs (*including* consequential or economic loss) of a kind referred to in clauses 17.1(a) to 17.1(f) suffered or incurred by:

- (a) any *receiver* or *attorney* appointed under this *facility agreement* or a *security*;
- (b) any of our employees, officers, agents, contractors or *authorised officers*; or
- (c) any other person such as a lessee, purchaser or occupier of the *security property* to whom we may have a liability in respect of the *security property*.

17.3 If a judgment, order or proof of debt in connection with the *total amount owing* on your *facility account* is expressed in a currency other than that in which the *total amount owing* is due, then you indemnify us against, and you must therefore pay us on demand for:

- (a) any difference arising from converting the

other currency, if the exchange rate we use for converting currency when we receive a payment in the other currency is less favourable to us than the exchange rate used for the purpose of the judgment, order or acceptance of proof of debt; and

- (b) the costs of conversion.

18. Repaying early

Variable commercial rate loan or interest capitalised variable commercial rate loan

18.1 If you have a *variable commercial rate loan* or an *interest capitalised variable commercial rate loan*, you may repay as much of the *balance owing* on your *facility account* as you choose on an *interest payment date*. If the payment is made on a day other than an *interest payment date*, *break costs* may apply.

18.2 You may only *redraw* any amount repaid early in accordance with clause 19.

Interest prepaid commercial rate loan

18.3 If you have an *interest prepaid commercial rate loan* you may repay as much of the *balance owing* on your *facility account* as you choose at any time during an *interest period* without penalty. However, if you wish to elect to make such a payment, no amount will be rebated to you in respect of interest that you have prepaid.

18.4 You may not *redraw* any amount repaid early while your *facility* is an *interest prepaid commercial rate loan*.

18.5 Upon:

- (a) you switching the *facility* to a *variable commercial rate loan* or an *interest capitalised variable commercial rate loan*, (in accordance with clause 11); or
- (b) automatic conversion of the *facility* to a *variable commercial rate loan* (in accordance with clause 9.6),

you may, subject to clause 19.10, *redraw* any amounts that were repaid early before the switch or conversion.

Fixed commercial rate loan

18.6 If you have a *fixed commercial rate loan* and you pay the *total amount owing* in full or in part on any day other than the last day of the *interest period*, *break costs* may apply.

18.7 You may not *redraw* any amount repaid early while your *facility* is a *fixed commercial rate loan*.

18.8 Upon:

- (a) you switching the *facility* to a *variable commercial rate loan* or an *interest capitalised variable commercial rate loan*, (in accordance with clause 11); or
- (b) automatic conversion of the *facility* to a *variable commercial rate* (in accordance with clause 8.3),

you may, subject to clause 19.10, *redraw* any amounts that were repaid early before the switch or conversion.

All facility types

18.9 You must continue to make any *reductions* or *special reductions* on the *reduction date* or *special reduction date* (as appropriate), despite any payment made in accordance with this clause 18.

19. Redraw

19.1 This clause only applies to amounts:

- (a) repaid early under a *variable commercial rate loan* or an *interest capitalised variable commercial rate loan*; and
- (b) repaid early in the circumstances described in clauses 18.5 or 18.8.

19.2 Subject to clause 19.1, if you have repaid amounts early under this *facility* (for example, if you have made an unscheduled payment), you may ask us to allow you to *redraw* any amount repaid early.

19.3 You may only ask to *redraw* up to the amount which results in the *balance owing* on your *facility account* being not more than the *facility limit* or reduced *facility limit*. If for whatever reason the amount you *redraw* exceeds this amount, you must repay the excess immediately.

19.4 You may request a *redraw* by providing us with a *request notice* at least 3 clear *business days* before you require the *redraw* amount. We can consent or refuse for any reason and you must still comply with the conditions for use in clause 2. If we consent, any amount *redrawn* becomes part of the *balance owing* on your *facility account*. The *annual percentage rate* applying to the *redraw* will be the *annual percentage rate* applying to the *interest period* current at the time of the *redraw*.

19.5 *Redrawn* money will only be made available to you by deposit into your *nominated account*.

- 19.6 Each time you *redraw* an amount you declare to us:
- (a) that you have not dealt with any *security* without our consent;
 - (b) that you are not, and any *debtor/guarantor* is not, in default under this *facility agreement* or any *security*; and
 - (c) that you are not relying on any statement or representation by us (*including* our employees) or our agents relating to the taxation effects of making the *redraw*. (You should take your own tax advice.)
- 19.7 We may impose fees and charges in connection with a *redraw* in accordance with this *facility agreement* and the Business Banking Guide to Fees and Charges.
- 19.8 You can find out what the minimum *redraw* amount is and how much you have available for *redraw* by calling us or asking at any branch.
- 19.9 We can end your rights to *redraw* under this *facility* at any time and without notice to you.
- 19.10 You cannot *redraw* a *reduction* or *special reduction*. However, you can use amounts available for *redraw* to pay a *reduction* or *special reduction*. To do this you must provide us with a *request notice* in accordance with clause 19.4, within sufficient time to enable the *redraw* to be deposited into your *nominated account* on or before the *reduction date* or *special reduction date*.
- (ii) change your *facility type* to another *facility type*; or
- (iii) change your *interest period* on any day prior to the expiration of your current *interest period*; or
- (c) you default on your *facility* during an *interest period*, in which case the *total amount owing* on your *facility account* becomes immediately due for payment.
- 20.2 We generally arrange our own funding position on the understanding that a *break cost event* will not occur. As a result, that funding position will change and we may make a loss from re-arranging our own funding if a *break cost event* occurs. The estimated amount of that loss will be passed on to you as *break costs*.
- 20.3 If a *break cost event* occurs and we calculate whether *break costs* may apply as a result of the event, you may be charged a *break cost* administration fee in addition to the amount of the *break costs* (if any).
- 20.4 To work out whether you need to pay us *break costs* we will use a formula. This formula is an estimate of our loss as a result of the *break cost event*.
- 20.5 The calculation does not necessarily reflect the actual transactions that we may enter into at the time the *break cost event* occurs. We manage our funding position on a portfolio basis. Therefore there will not necessarily be a specific transaction referable to your *facility*.
- 20.6 In general terms you will need to pay us a cost if our current wholesale interest rate for the remaining *interest period* is lower than the original wholesale interest rate (at the commencement of the *interest period*).
- 20.7 The wholesale interest rate is the rate at which we determine we can get fixed rate funds from the money market on the relevant day. The wholesale interest rate does not include any *customer margin*.

20. Break costs

- 20.1 A *break cost event* is taken to have occurred if:
- (a) you have a variable *commercial rate loan* or an *interest capitalised variable commercial rate loan* and you:
 - (i) pay the *total amount owing* on your *facility account* in full or in part on a day that is not an *interest payment date* or the last day of the *term*;
 - (ii) change your *facility type* on a day that is not an *interest payment date*; or
 - (iii) change your *interest period* on a day that is not an interest payment date;
 - (b) you have a *fixed commercial rate loan* and you:
 - (i) pay the *total amount owing* on your *facility account* in full or in part on any day other than the last day of the *interest period*;
- Among other things, the formula takes into account:
- (a) the wholesale interest rate that applied on the first day of the *interest period* in which the *break cost event* occurs (the original wholesale interest rate);
 - (b) the wholesale interest rate for the remaining part of the interest period, using rates which apply at the time the *break cost event* occurs (the current wholesale interest rate);

- (c) the amount of principal that was paid during your *interest period* or the amount of principal outstanding at the time the *break cost event* occurs;
- (d) the amount of any unpaid interest, fees and charges and any default interest which was debited to your accounts in respect of the *facility*;
- (e) the timing, dollar amount and frequency of any *reductions* or *special reductions* required under the *facility*; and
- (f) the remaining *interest period*.

20.8 The formula compares the value of the foregone payments at the original wholesale interest rate and at the current wholesale interest rate. The difference between these two values is adjusted to account for the time value of money.

20.9 When using this formula, we may assume the wholesale interest rate which applies on the date of calculation is the current rate on the date the *break cost event* occurs.

20.10 We will notify you of the amount of *break costs* calculated by us in accordance with the formula. The amount notified will constitute the *break costs* for the relevant *break costs event*. We will debit your *nominated account* with the *break cost* administration fee and the amount of the *break costs* (if any).

20.11 We will not pay you a benefit if the wholesale *interest rate* for the remaining *interest period* is higher than the original wholesale interest rate.

20.12 You can find out the amount of any *break costs* before causing a *break cost event* to occur by contacting us. You will not be charged a *break costs* administration fee for this unless a *break cost event* occurs.

Undertakings

21. Undertakings

Information

21.1 If you are not a corporation, you must supply us with the following information:

- (a) a copy of your tax return if requested by us; and
- (b) all financial information required by the special conditions (if any) in the Facility Details.

21.2 If you are a corporation, you must supply us with the following information:

- (a) a copy of your annual return and any notification of change of officeholders if requested by us;
- (b) details of any notice received from the Australian Securities and Investments Commission in connection with any offence or alleged offence, promptly after that notice is given and in any event within 5 *business days*;
- (c) (if you are listed on a stock exchange), a copy of each release or notice you give the stock exchange or any notice received from the stock exchange in connection with any offence or alleged offence, promptly after that notice is given to the stock exchange and in any event within 5 *business days*; and
- (d) all financial information required by the special conditions (if any) in the Facility Details.

21.3 If we ask, you undertake to supply us with any other information about or documents relating to:

- (a) any *arrangement with us*;
- (b) any *security property*;
- (c) your financial affairs or business or, if you are a corporation, the financial affairs or business of you and any of your *related entities*, or the financial affairs or business of any *debtor/guarantor*; or
- (d) evidence that you have observed and continue to observe your obligations under any *arrangement with us*.

Financial undertakings

21.4 You must:

- (a) not, without our consent:
 - (i) provide financial accommodation to a *related entity*;
 - (ii) permit financial accommodation to remain owing to you by a *related entity*; or
 - (iii) satisfy any financial accommodation you now or in the future owe to a *related entity*;
- (b) (if you are a corporation), not, without our consent, pay any dividend, make any distribution or provide any loan otherwise than in the ordinary course of business;
- (c) not deposit money with a *person* in circumstances where the *money* is not

repayable unless you perform obligations (*including* to pay money) to that *person*;

- (d) (if you are a corporation), ensure that your capital is not reduced or made capable of being called up only in certain circumstances;
- (e) provide written particulars within 5 *business days* of any financial accommodation you obtain from any party other than us; or
- (f) (if you are a corporation), not, without our consent, approve or register a transfer of shares in your capital or change your directors or company secretary.

If you are a corporation, you must ensure that none of your subsidiaries do anything which you are prohibited from doing under this clause.

Your business

21.5 You must:

- (a) conduct your business (*including* collecting debts owed to you) in a proper, orderly and efficient manner; and
- (b) not without our consent, cease conducting your business and not change the general character of any business you conduct (or threaten to do any of these things).

Authorisations

21.6 You must:

- (a) obtain, renew on time and comply with the terms of each authorisation necessary for you to enter into the *arrangements with us*, observe obligations under them and allow them to be enforced; and
- (b) obtain, renew on time and comply with the terms of each authorisation necessary for you to use the *security property* for its current purpose and, if we ask, use your best efforts to obtain permission to use the *security property* for any purpose we reasonably specify.

Further steps

21.7 You agree to do anything we ask (*such as* obtaining consents, signing and producing documents, replying to questions, producing receipts and getting documents completed and signed):

- (a) to provide more effective security over the *security property*;

- (b) to enable us to register any security with the agreed priority (and, if required, renew its registration);
- (c) to enable us to exercise our rights in connection with this *facility agreement* or an *arrangement with us*;
- (d) to enable us to register the power of attorney in clause 46 or a similar power; and
- (e) to show whether you are complying with this *facility agreement* or an *arrangement with us*.

Default

22. When are you in default?

You are in default if:

- (a) you do not pay on time any amounts due under this *facility agreement* or any *arrangement with us*. This *includes* if our electronic transfer instruction is subsequently reversed by the paying institution;
- (b) an account does not have sufficient funds (or available credit) to debit a payment (in breach of clause 4.4);
- (c) you do something you agree not to do under this *facility agreement*, a *security* or an *arrangement with us*, or you don't do something you agree to do under this *facility agreement*, a *security*, or an *arrangement with us*;
- (d) you are, or a *debtor/guarantor* or another *person* is, in default under a *security* or any *arrangement with us*, or an event of default, however described, occurs under a *security* or an *arrangement with us*;
- (e) you give, or a *debtor/guarantor* or another *person* gives, us incorrect or misleading information (including through your representations, warranties and declarations in this *facility agreement*) in connection with this *facility agreement* or any *arrangement with us*;
- (f) you do not, or another *person* does not, carry out in full an undertaking given in connection with this *facility agreement*, a *security* or another *arrangement with us*, within the period specified, or within 7 days of our request if no period is specified;

- (g) you (if you are a corporation) are or become, or a *debtor/guarantor* (if it is a corporation) is or becomes, insolvent or steps are taken to make you or the *debtor/guarantor* insolvent;
- (h) you (if you are a corporation) are or become, or a *debtor/guarantor* (if it is a corporation) is or becomes, deregistered, or steps are taken to deregister you or the *debtor/guarantor*;
- (i) you use the *facility* for a different purpose from the purpose stated in the Schedule;
- (j) a *controller* or a *receiver* is appointed to any part of your or a *debtor/guarantor*'s property;
- (k) this *facility agreement* is, becomes, or is claimed to be, void or unenforceable;
- (l) anything happens which in our reasonable opinion affects your, or a *debtor/guarantor*'s, ability to pay us the *total amount owing* on any account, or to fulfil your, or a *debtor/guarantor*'s, obligations under this *facility agreement*, a *security* or any other *arrangement with us*, or our rights under any *security* or our ability to recover the *total amount owing* on any account;
- (m) we believe on reasonable grounds that urgent action is necessary to protect any *security property*, we have requested you to take such action and you have failed to do so within a reasonable time as specified by us;
- (n) the value of any *security property* materially decreases;
- (o) in the case of a *construction finance facility*, prior to *completion*, an event referred to in clause 22(g), (h), (j), (p) or (t) occurs in respect of the builder of the *works* and:
 - (i) the builder is not replaced (within a reasonable period as determined by us) by another builder who is acceptable to us; and
 - (ii) the replacement builder does not, if requested by us, enter into a tripartite deed with you and us in the form we require;
- (p) a person is appointed to investigate or manage your affairs or the affairs of a *debtor/guarantor*;
- (q) any of the following occurs to you (if you are a corporation) or to a *debtor/guarantor* (if it is a corporation), without our consent:
 - (i) a change takes place in your directors or company secretary;
 - (ii) a transfer of shares in your capital is registered;
 - (iii) new shares, convertible notes or options for shares in your capital are issued; or
 - (iv) your capital is reduced or made capable of being called up only in certain circumstances;
- (r) you (if you are a corporation) or a *debtor/guarantor* (if it is a corporation) cease to be a subsidiary of the corporation which is your holding company or the *debtor/guarantor*'s holding company at the date of this *facility agreement* or a corporation ceases to be your or the *debtor/guarantor*'s subsidiary;
- (s) you are unable to make the representations, warranties and declarations in clauses 3 and 47 at any time;
- (t) you do not, or a *debtor/guarantor* does not, meet all their monetary obligations (whether present or future) on time or within any applicable grace period or any of these obligations become, or can be rendered, payable early otherwise than at the *debtor/guarantor*'s election;
- (u) we reasonably believe someone acted fraudulently in connection with this *facility agreement* or an *arrangement with us*;
- (v) the persons who at the date of this *facility agreement* have *control* of you (if you are a corporation) or a *debtor/guarantor* (if it is a corporation) cease to have such *control* or one or more *persons* acquire *control* of you or the *debtor/guarantor* after that date, without our written consent;
- (w) (if you are, or a *debtor/guarantor* is, a partnership) the partnership is dissolved, an application is made for its dissolution or more than 20% of the partners retire in any 6 month period, without our written consent; or
- (x) (if you are, or a *debtor/guarantor* is, a joint venture partner) the joint venture is terminated, without our written consent.

23. What can happen when you are in default

- 23.1 If you are in default, the *total amount owing* on your *facility account* is payable on demand.
- 23.2 We do not need to give you any notice or demand or allow time to elapse before exercising a right under this *facility agreement* or conferred by law unless a notice, demand or lapse of time is required by law and cannot be excluded.

- 23.3 A law applying to this *facility agreement* may require us to give you a period of notice or to wait for a period of time before exercising a specific power. If such a law allows for that period to be shortened by agreement, then you agree that it is shortened to 1 *business day*.
- 23.4 After a default has occurred and any time required under clause 23.2 and 23.3 has elapsed then to the extent that it is not already due for payment, the *total amount owing* on your *facility account* becomes immediately due for payment, and we may then do one or more of the following in addition to anything else the law allows us to do:
- (a) require that you repay the *total amount owing* on your facility account to us immediately;
 - (b) sue you for the *total amount owing* on your *facility account*;
 - (c) enforce this *facility agreement* or any *security*;
 - (d) make good any default and recover from you our reasonable costs of doing so. This *includes* paying any money that you owe us under this *facility agreement* and recovering that money from you;
 - (e) exercise any other rights we have;
 - (f) use any money you have in any account held with us towards repaying the *total amount owing* on your *facility account* (this is known as “combining accounts”);
 - (g) refuse to make any undrawn portion of the *facility limit* available to you; and
 - (h) terminate any of our obligations under this *facility agreement*.

24. Default rates and customer margin reviews

Default rates

- 24.1 If you do not pay us any part of the *balance owing* on your *facility account* when it is due to be paid, you must also pay us default interest calculated at the *default rate* on that part of the *balance owing* on your *facility account*. Charging interest at the *default rate* is at our discretion. Interest charged at the *default rate* is debited to either of your *nominated account* or your *facility account*, at our discretion.
- 24.2 If we charge default interest, the interest accrues daily from (and including) the due date up to (but excluding) the date of actual payment and is

calculated on actual days elapsed and a year of 365 days (in a leap year, a year of 366 days).

- 24.3 The *default rate* is 4.5% above the *annual percentage rate* on that day.
- 24.4 If we charge default interest, each month (or any other period we choose) we may add to the overdue amount any interest under this clause which has not been paid. You are then liable for interest under this clause on the total amount.

Interest and court orders

- 24.5 If any amount you must pay under any *arrangement with us* becomes covered by a court order, you must pay interest on that amount as a separate obligation. The interest accrues from (and including) the date we first ask you for the amount until (but excluding) the date that amount is paid. This obligation is not affected by the court order. The rate is the rate in clause 24.3 or the rate in the court order (whichever is higher). You must pay interest under this clause on demand from us.

Customer margin reviews

- 24.6 If you are in default by reason of any of the events described in clause 22(c) to 22(x) we may review and increase the *customer margin* (even during an *interest period*). The review and increase in the *customer margin* is at our discretion. However we may not increase the *customer margin* by more than 4.5%.
- 24.7 If we have reviewed the *customer margin* in accordance with clause 24.6 and you subsequently remedy the default to our satisfaction, we may, at our discretion, again review the *customer margin*.

Other matters

25. Reducing or cancelling the facility limit

- 25.1 You may ask us to reduce the *facility limit* by providing us with a *request notice*.
- 25.2 We may reduce or cancel the undrawn portion of the *facility limit* at any time.
- 25.3 If the *facility limit* is reduced, you must immediately pay us the amount (if any) by which the *total amount owing* on your *facility account* exceeds the new *facility limit*.
- 25.4 If the *facility limit* is cancelled, you must immediately pay us the *total amount owing* on your *facility account* in full.

25.5 We may also refuse to provide you with any further amounts under your *facility*. We can do this for any reason, *including*, but not limited to, when you are in default (see clause 22) and we can do this without your consent.

26. **Facility reviews and changes to your customer margin**

26.1 We may review your *facility* in accordance with any provision for review set out in the Facility Details (or, if no such provision is specified, annually) or at any time if there is or may be, in our opinion, a *change of credit*. If we ask you to, you must attend at an interview and give us any documentation we ask you for.

26.2 Following a review under clause 26.1, we may:

- (a) take any action specified in the Facility Details; and
- (b) if there has been a *change of credit*, we may increase your customer margin by up to 4.5% per annum. The increased *customer margin* will be the *customer margin* we determine is appropriate taking into account the *change of credit*.

Construction finance facilities

27. Our additional requirements if you have a *construction finance facility*

Requirements before the first drawdown under a *construction finance facility*

27.1 We need not make the first drawdown under the *construction finance facility* unless the following requirements (in addition to those requirements in clause 1) are all satisfied:

- (a) you have contributed any money we have required you to contribute;
- (b) we have received to our satisfaction:
 - (i) a copy of the fully signed building contract;
 - (ii) a copy of the building plans approved by the local authority;
 - (iii) a full set of the specifications signed by you and your builder;
 - (iv) a copy of all *relevant* approvals (*including* a set of council approved plans and specifications);

- (v) evidence that the builder and other contractors and consultants are registered, hold all necessary licences and have contractors all risks insurance (*including* workers compensation related insurance) in an amount acceptable to us;
 - (vi) an adequate and appropriate insurance policy in your name for the period of construction for the contract price of the building work;
 - (vii) where required by us, a surveyor's certificate and a consulting engineer's certificate; and
 - (viii) notification from our valuers and consultants of their approval of the documents described at (i) - (iii) of this clause 27.1(b) and of the projected construction costs and cashflows; and
- (c) we have registered all securities which we require to be registered.

General requirements for a *construction finance facility*

27.2 If you have a *construction finance facility*:

- (a) you must start construction without unreasonable delay and ensure that all works on the property are carried out only in accordance with plans and specifications approved by us and in accordance with all laws, requirements of authorities and Australian Standards;
- (b) you alone are responsible for ensuring that all plans are followed and that materials and workmanship are satisfactory even if we also monitor the *works*. (If we do so, it is only for our own purposes, and even if we allow a drawdown, it does not mean the *works* are necessarily satisfactory.) We are not liable for the quality of, or any delays in, the *works*;
- (c) you must not have any changes made to the council approved plans and specifications without our written consent and relevant council approvals. You must ask for our consent in writing, and pay our costs and expenses of those changes;
- (d) you must comply with our directions about the plans and specifications or about the *works*;
- (e) notwithstanding clause 27.3, you are responsible for any payments made to your builder or other contractors. We have no contractual relationship or obligations to your builder or other contractors;

- (f) we must be satisfied with the *works upon completion*; and
- (g) you must tell us in writing if you are not satisfied with the works. If you do not tell us, you authorise us to make payments to your builder or other contractors if you had previously directed us to make payments to your builder or other contractors.

Drawdown under a *construction finance facility*

- 27.3 We pay money drawn down for works to you or to your builder or other contractors as you direct. The number of drawdowns, the approximate amount of each drawdown and the works which must be completed before each drawdown, are to be stipulated in the building contract, or as otherwise agreed in writing between you and us.
- 27.4 You agree that you cannot make any claim against us on the basis that we have paid money for works to your builder or other contractors in accordance with your instructions (even if those instructions were general, non-specific or given earlier in time) or any time you are in default.
- 27.5 We may only allow a drawdown:
- (a) if you have given us written particulars of the works completed;
 - (b) if the terms in clause 1 and clause 27.1 are satisfied at the time the drawdown is requested;
 - (c) if we are satisfied with any valuation obtained from our valuer;
 - (d) if we are satisfied with the inspection of the stage of works including any receipts requested by us for materials and labour; and
 - (e) in an amount determined by us. If our determination is less than the amount you ask for, then unless we agree otherwise you must separately arrange with the builder or other contractors for this to be paid.
- 27.6 The fact that we allow any drawdown shall not be construed as proof or admission that the works or any part of the works have been undertaken in accordance with this *facility agreement*.

Inspections under a *construction finance facility*

- 27.7 We may require an inspection of the works at any time. The inspection may be conducted by us or a consultant that we nominate. If we monitor works (such as inspecting or accepting any part of the works construction or approving plans), we will be doing so for our own purposes. We do not owe you

any duty to exercise care or skill in doing so and we need not tell you the results of any inspection. You will pay our costs in respect of these inspections.

Requirements before the final drawdown under a *construction finance facility*

- 27.8 We need not allow the final drawdown unless the following additional requirements are all satisfied:
- (a) the valuer or other consultant nominated by us has inspected the site and certified that the works have been satisfactorily completed in accordance with the council approved plans and specifications provided to us;
 - (b) you provide us with a certificate of compliance or occupancy or similar certificate in relation to the completed works, if we have requested such a certificate;
 - (c) we are satisfied with the cost of the works;
 - (d) you have paid to your builder or other contractor any money owing to the builder or other contractor which exceeds the balance of the facility limit;
 - (e) you tell us in writing that you are satisfied with the works; and
 - (f) you have provided us with confirmation that you have adequate and appropriate insurance for the works for its full insurable value and the policy notes our interest.

Default under a *construction finance facility*

- 27.9 In addition to what can happen when you are in default as set out in clause 23, if you are in default under a *construction finance facility* we may complete the works in any way we consider appropriate. We do not have to. We may change plans and specifications. We may employ any consultants or builders we consider appropriate.
- 27.10 You must pay our costs in doing any of the things referred to in clause 27.9.

General

28. Dealing with rights under this facility agreement

- 28.1 We may assign or otherwise deal with our rights under this *facility agreement* in any way we consider appropriate provided that such assignment or dealing does not in our reasonable opinion materially prejudice your rights or obligations under this *facility agreement*. If we do this, we do not have

to tell you and you may not claim against any assignee (or any other person who has an interest in this *facility agreement*) any right of set-off or other rights you have against us.

28.2 If we do assign or otherwise deal with our rights under this *facility agreement*, you agree that you are still liable for the *total amount owing* on any accounts under this *facility agreement*.

28.3 Your rights are personal to you and may not be assigned without our written consent.

(ix) any other information regarding the status of your accounts held with us that might affect the payment of the commission;

- (f) to any of our *related entities*;
- (g) where we think it is necessary to protect our position and interests;
- (h) if the information is generally and publicly available;
- (i) to any other *debtor/guarantor*; or
- (j) to any person for the purposes of the securitisation of this *facility agreement* and any *security*.

29. Disclosure of information

29.1 Information you provide to us may be disclosed:

- (a) if you consent (unless you are an individual, you may not unreasonably withhold your consent);
- (b) if required by any stock exchange or if allowed or required by law;
- (c) to any *person* in connection with our exercising rights or dealing with rights or obligations (*including* preparatory steps *such as* negotiating with any potential assignee of our rights or other *person* who is considering contracting with us or a *receiver* in connection with this *facility agreement*);
- (d) to our officers, authorised agents and employees, to *receivers* and to legal advisers, auditors and other advisers;
- (e) to any *person* in the business of loan, finance or mortgage broking or other introducer who has introduced you to us. For the purposes of calculating and tracking commissions information provided may *include*:
 - (i) the approval or non-approval of the *facility* application;
 - (ii) the financial particulars relating to your accounts held with us;
 - (iii) any *drawdown date* and the amount of the drawdown;
 - (iv) the *facility limit*, the *facility type*, and our product name or description for the *facility*;
 - (v) the end of month balances on your accounts held with us;
 - (vi) your account names and numbers;
 - (vii) the date the *facility* is at an end;
 - (viii) the details of any default; and

29.2 Without limiting the generality of clause 29.1, you consent to us providing to any *debtor/guarantor*:

- (a) a copy or summary of this *facility agreement*;
- (b) a copy of all *securities* given in connection with this *facility agreement*;
- (c) a copy of any formal demand that is or has been sent to you;
- (d) a copy of any relevant statements of account provided to you (if any);
- (e) a copy of any relevant financial accounts or statements of financial position which you have provided to us;
- (f) a copy of your credit reports from credit reporting agencies; and
- (g) any other financial information about you the guarantor asks for or that we are required to provide by the Code of Banking Practice *including* notices of demand and current credit related insurance contracts (if any).

29.3 We and you agree not to disclose any information of the kind referred to in section 275(1) of the *PPSA* that is not publicly available. You agree not to authorise the disclosure of any information as contemplated under section 275(7)(c) of the *PPSA*.

29.4 Clause 29.3 does not prevent disclosure of any information by us:

- (a) permitted under clause 29.1 or 29.2 or under any *arrangement with us*; or
- (b) where required under section 275 of the *PPSA* because of the operation of section 275(7) of the *PPSA*.

30. Consents

- 30.1 Whenever a provision of this *facility agreement* specifies that our consent or approval is required or that we may direct or require you to do or not do some act or thing, or that we will determine whether an event has occurred or not occurred, we will act reasonably in determining whether or not to give that consent or approval, determining whether that event has occurred or directing you to take some action or satisfy a requirement of ours.
- 30.2 We may impose reasonable conditions on any consent or approval we give under this *facility agreement*. You must comply with all conditions and requirements in any consent or approval we give.
- 30.3 Our consent or approval will not be effective unless it is in writing. We may charge a fee for giving our consent or approval.

31. Manager

We may appoint a person to manage the *facility agreement* and any *securities* for us. We will tell you if we do so. Any such manager is authorised to exercise all of our rights under this *facility agreement* and any *securities*. Until we tell you otherwise, you must deal with that manager in relation to all matters arising in connection with this *facility agreement* and any *securities*.

32. Currency conversions

- 32.1 You must make each payment in the currency in which it is due. Unless stated otherwise in this *facility agreement* or unless we agree otherwise, payments are due in the currency in which we lend it to you or, if we incur obligations at your request, in the currency in which we are obliged to satisfy those obligations.
- 32.2 If we receive an amount in a currency other than that in which it is due:
- (a) we may convert the amount received into the due currency (to do this it might be necessary to convert through a third currency) on the day and at such rates as we consider appropriate taking into account market rates available to us. We may deduct our usual costs in connection with the conversion; and
 - (b) you satisfy your obligation to pay in the due currency only to the extent of the amount of the due currency obtained from the conversion after deducting the *costs* of the conversion.

33. Setting off money

- 33.1 Except to the extent you have a right of set-off granted by law which we cannot exclude by agreement, you must pay the *total amount owing*

on agreement, you must pay the total amount owing on any account in full without setting off amounts you believe we owe you and without counterclaiming amounts from us. This does not prevent you making a separate claim against us for amounts you believe we owe you.

- 33.2 We may set off against the *total amount owing* on any account any money we owe you.

34. Multiple accounts

- 34.1 We may use any money in any of your accounts held with us to pay the *total amount owing* on any account.
- 34.2 If you have more than one account with us (either alone or with any other person) we may treat your accounts as one account.

We do not have to do so in either case, nor do we have to tell you before we do. However, we will provide you with details of such amounts or any combination of accounts upon request from you.

35. Our certificates

- 35.1 We may give you a certificate about a matter or about an amount payable in connection with this *facility agreement*. The certificate is sufficient evidence of the matter or amount, unless it is proved to be incorrect.
- 35.2 We may rely on certificates provided by any other *person* with a *security interest* over the *security property* as to a matter or about an amount payable.

36. Prompt performance

If this *facility agreement* specifies when you must perform an obligation, you must perform it by the time specified. You must perform all other obligations promptly.

37. How we may exercise our rights

- 37.1 We may exercise a right or remedy in any way we consider appropriate.
- 37.2 We may exercise our rights under this *facility agreement* even though:
- (a) we could have done so before but did not or were slow in doing so;
 - (b) we have tried to exercise the rights before (in whole or in part);
 - (c) we could have exercised those or other rights before but didn't;
 - (d) we have exercised other rights before; or

- (e) we hold other *security interests* for payment of the balance owing on your *facility account*.
- 37.3 If we do not exercise a right or remedy fully or at a given time, we can still exercise it later.
- 37.4 We are not liable for loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising, a right or remedy.
- 37.5 Our rights and remedies under this *facility agreement*:
- (a) are in addition to other rights and remedies given by law independently of this *facility agreement* or by any *security*; and
 - (b) may be exercised even if this involves a conflict of duty or we have a personal interest in their exercise.
- 37.6 Our rights and remedies may be exercised by any of our directors, any *authorised officer* or any of our employees.
- (i) any other terms and conditions of the *nominated account* or *facility account* in accordance with the terms and conditions for those accounts;
 - (j) the amount and type of fees and charges and when they are payable (*including* by imposing new fees and charges or changing the method of calculation of a fee or charge) provided that the variation is consistent with changes we make to our contracts with customers in similar circumstances and who have the same type of *facility* as you;
 - (k) any other matter or thing expressly permitted elsewhere in this *facility agreement*;
 - (l) the change is required by or to comply with law; or
 - (m) the change does not materially prejudice your rights or obligations under this agreement..
- 39.2 The notice period and manner of notification for changes to this *facility agreement* under clause 39.1 must be in accordance with the law and any code to which we subscribe and which applies to this *facility agreement*.
- 39.3 Subject to clause 39.2, in respect of a change referred to in clause 39.1(g), (j), (l) or (m), we:

38. Administrative matters

- 38.1 You must pay for anything that you must do under this *facility agreement*.
- 38.2 You agree that we may fill in any blanks in this *facility agreement* or in any related document (such as an acknowledgment).

39. Changes

- 39.1 We may change any of the following at any time without your consent:
- (a) the undrawn portion of the *facility limit* in accordance with clause 25.2;
 - (b) the *customer margin* in accordance with clause 24.6, 24.7 or 26.2;
 - (c) the *default rate* provided it does not at any time exceed the rate specified in clause 24.3;
 - (d) the *interest period* and the *interest payment date* provided the adjustments are of a kind referred to in clause 12.5;
 - (e) any matter relating to the administration of your *facility* (*including* business day conventions, timing of debits and credits and methods of calculation) where the change is not materially prejudicial to you;
 - (f) the *commercial rate loan base rate* (provided that such change does not take effect during an *interest period*);
 - (g) the Business Banking Guide to Fees and Charges;
 - (h) the Business Lending Supplementary Terms and Conditions as specified in and in accordance with those terms;
- (a) will notify you in writing to your last address recorded by us if the change is a new fee or charge or will materially increase your liability under this *facility agreement*; and
 - (b) may notify you of any other change by publication of an advertisement of the change in a major Australian newspaper or newspapers or by placing a notice on or with statements of account or other material we send to you or on any online portal page which you may use to access your *nominated account*, *facility account* or any electronic functionality associated with them or by notice in writing to your last address recorded by us.
- 39.4 Except as specified in clause 39.1, a term of this *facility agreement*, or right or obligation created under it, may not be waived or varied except in writing signed by the party or parties to be bound.
-
- ## 40. Compensation for unforeseen circumstances
- 40.1 You must compensate us on demand if we determine that:
- (a) a *directive*, or change in directive, in either case which comes into operation after the date of this *facility agreement*;
 - (b) a change in a *directive's* interpretation or administration by an authority after the date of this *facility agreement*; or
 - (c) compliance by us or any of our *related entities* with such *directive*, changed *directive* or changed interpretation or administration,

directly or indirectly:

- (d) increases our costs in providing you with the *facility*;
- (e) reduces any amount received or receivable by us, or our effective return, in connection with any *facility*; or
- (f) reduces our return on capital allocated to any *facility*, or our overall return on capital.

However, a reference to a *directive* does not include a *directive* imposing or changing the basis of a tax on our overall net income.

Compensation need not be in the form of a lump sum and may be demanded as a series of payments.

- 40.2 You must compensate us whether or not the increase or reduction could have been avoided. However, at your request, we agree to consider ways of minimising any increase or reduction.

41. Illegality or impossibility

- 41.1 This clause applies if we determine that:

- (a) a change in a *directive*;
- (b) a change in the interpretation or administration of a *directive* by an authority; or
- (c) a *directive*,

taking effect after the date of this *facility agreement*, makes it (or will make it) illegal or impossible for us to fund, provide, or continue to fund or provide the *facility*. In these circumstances, by giving a notice to you, we may suspend or cancel some or all of our obligations under this *facility agreement* as indicated in the notice.

- 41.2 The suspension or cancellation:

- (a) must apply only to the extent necessary to avoid the illegality or impossibility; and
- (b) in the case of suspension, may continue only for so long as the illegality or impossibility continues.

- 41.3 If the illegality or impossibility related to a drawing under the *facility*, we may require repayment of all or part of the affected drawing and interest accrued on that part, by giving a notice to you.

You agree to pay the amount specified within 30 *business days* after receiving the notice (or, if

earlier, on the date the illegality or impossibility arises).

42. If any part of this *facility agreement* is unenforceable

If a court decides that any clause or part of a clause of this *facility agreement* is illegal, void, or unenforceable, that clause or part clause is varied to the extent the court may determine is necessary to render the clause no longer illegal or void, or is if necessary omitted.

43. Your obligations and our rights are unaffected

- 43.1 Any present or future law that would otherwise vary your obligations under this *facility agreement* is excluded (to the extent allowed by law) if it affects our rights or remedies adversely.

- 43.2 This *facility agreement* does not merge with or adversely affect, and is not adversely affected by, any of the following:

- (a) a *security* or right or remedy to which we are entitled; or
- (b) a judgment or order which we obtain against you in respect of any of the *total amount owing* on any account.

We can still exercise our rights under this *facility agreement* as well as under the judgment, order, other *security*, right or remedy.

- 43.3 This *facility agreement* binds each person who signs it even if another *person* who was intended to sign does not sign it or is not bound by it.

44. Reinstatement of rights

- 44.1 Under a law relating to *insolvency* a *person* may claim that a transaction (*including* a payment) in connection with this *facility agreement* is void or voidable. If a claim is made and upheld, conceded or compromised, then:

- (a) we are immediately entitled, as against you, to the rights in respect of the *total amount owing* on any account to which we were entitled immediately before the transaction; and
- (b) on request from us, you agree to do anything to restore to us any *security* we held from you immediately before the transaction.

45. Indemnities

The indemnities in this *facility agreement* are continuing obligations, independent of your other obligations under this *facility agreement*. They continue even after you have repaid the *total amount owing* on any account. It is not necessary for us to incur expenses or make payment before enforcing a right of indemnity conferred by this *facility agreement*.

46. Power of attorney

- 46.1 You appoint us, each of our *authorised officers*, each of our solicitors and each other *person* we authorise separately as your *attorney*. If we ask, you must formally approve anything an *attorney* does under clause 46.2. You may not revoke these appointments.
- 46.2 If you are in default (and where required by law we have served a notice stating that you are in default) each *attorney* may:
- (a) do anything which you can lawfully authorise an *attorney* to do in connection with this *facility agreement*, the *security property* or an *arrangement with us* or which the attorney believes is expedient to give effect to any of our rights or a *receiver's* rights (these things may be done in your or the *attorney's* name and they *include* signing and delivering deeds, selling, transferring or leasing the *security property*, selling, transferring or surrendering any lease, lodging or withdrawing caveats, otherwise dealing with the *security property* and starting, conducting and defending legal proceedings);
 - (b) delegate their powers (*including* this power) and revoke a delegation; and
 - (c) exercise their powers even if this involves a conflict of duty or they have a personal interest in doing so.
- 46.3 Where permitted by law the *attorney* may exercise its powers in clause 46.2 without your consent and without giving you notice.
- 46.4 You acknowledge that any person, *including* the Registrar of Titles of Western Australia or any other registration authority in Australia or elsewhere dealing with any *attorney* or a *person* purporting to be an *attorney* under this power, is:
- (a) entitled to rely on execution of any document by that *person* as conclusive evidence that:

- (i) the *person* holds the office set out in the power;
 - (ii) that the power of attorney has come into effect;
 - (iii) that the power of attorney has not been revoked; and
 - (iv) that the right or power being exercised or being purported to be exercised is properly exercised and that the circumstances have arisen to authorise the exercise of that right and power; and
- (b) not required to make any enquiries in respect of any of the matters set out in paragraph (a).

47. Trustee provisions

- 47.1 You make the following declarations if you enter into any *arrangement with us* or own any of the *security property* as trustee of any trust or settlement:
- (a) any *arrangement with us* is for the benefit of the trust;
 - (b) any *arrangement with us* does not conflict with the operation of the terms of the trust;
 - (c) you are the sole trustee of the trust;
 - (d) you have the power as trustee of the trust to unconditionally enter into this *facility agreement* and perform your obligations under it;
 - (e) the trust has not been terminated and no beneficiary is presently entitled to any assets of the trust;
 - (f) you have the right to be fully indemnified out of the trust assets for obligations incurred under the *arrangement with us*;
 - (g) no action has been taken or proposed to terminate the trust;
 - (h) true copies of the trust deed and other documents relating to the trust have been provided to us and disclose all the terms of the trust;
 - (i) you have not delegated any of your powers as trustee or exercised any power of appointment;
 - (j) no property of the trust has been resettled or set aside or transferred to any other trust;

- (k) the trust documents comply with all applicable laws;
 - (l) by entering into any *arrangement with us* and performing your obligations under it you are properly performing your obligations to the beneficiaries of the trust;
 - (m) you have taken all steps necessary to allow you to enter into and perform your obligations under any *arrangement with us*;
 - (n) no action has been taken to remove you as trustee or to appoint an additional trustee; and
 - (o) you have not breached your obligations as trustee.
- 47.2 You must tell us whenever anything happens which prevents you from repeating any one or more of the declarations in clause 47.1 and you repeat the declarations before:
- (a) we provide any amount to you under any *arrangement with us*;
 - (b) you acknowledge that another agreement is to be an *arrangement with us*; and
 - (c) you consent to us providing financial accommodation to another person which is guaranteed by you under an *arrangement with us*.
- 47.3 If you are a trustee, unless we have consented in writing, you must not:
- (a) do anything in connection with the trust;
 - (b) deal with any property of the trust; or
 - (c) otherwise act in connection with the trust,
- in any way which adversely affects your ability to pay the *total amount owing* on any account. This *includes* making any distribution of capital or resigning as trustee.
- 47.4 If you are a trustee, any *arrangement with us* binds you in your personal capacity and in your capacity as trustee of the trust.
- 47.5 If you are a trustee and you default you:
- (a) must not exercise your powers or discretions under the trust unless we have consented in writing; and
 - (b) must not exercise your right to be paid from the assets of the trust on demand.

48. Insurance

Any obligation in this *facility agreement* relating to insurance is an ongoing obligation until such time as this *facility agreement* is ended. If you fail to obtain insurance as required by this *facility agreement* you authorise us to do so on your behalf.

49. Valuers, investigators and consultants

- 49.1 We may obtain a valuation report on any *security property* at any time. You must pay us all costs in connection with the valuation.
- 49.2 If we reasonably believe you are or may be in default or we reasonably believe that circumstances exist which could lead to you being in default, we may appoint a *person* to investigate whether this belief is accurate. You must co-operate with and comply with every reasonable request made by this *person*. You must pay us all costs in connection with the investigation.
- 49.3 You must pay us all costs in connection with any valuer or consultant we appoint in connection with any *works*.
- 49.4 Any valuer, investigator or consultant we may use is an independent contractor and is not our agent or employee. We are not responsible for any representation, action or inaction by them.
- 49.5 Any report we obtain from the valuer, investigator or consultant is for our use only. Even if we give you a copy of the report, you cannot rely on it. You cannot sue us, the valuer, investigator or consultant if the report is wrong. You must obtain your own report if you wish to rely on it.

50. Other security interests

If you are in default under this *facility agreement* and there is a security interest given to another person which is ranking in priority before our *security* on any *security property*, we may pay out that *security interest* and add the cost of doing that to the *total amount owing* on any of your accounts held with us, as determined by us.

51. Consent to telephone recording

You consent to us recording our telephone conversations with you. There will not necessarily be a warning when we do so.

52. Notices and other communications

52.1 Notices, certificates, consents, approvals and other communications in connection with this *facility agreement* must be in writing, unless we agree otherwise.

52.2 Communications from us may be signed by any of our employees or authorised agents. In addition, if the notice is given by fax or email it is properly signed if our name appears at the beginning or end of the transmission.

52.3 If you are a corporation, communications from you must be signed by a director or another *person* we approve.

52.4 Communications to you may be:

- (a) given personally (if you are a corporation, to one of your directors);
- (b) left at your residential or business address last known to us;
- (c) sent by post to your postal or residential or business address last known to us;
- (d) sent by email or other electronic communication to your or your approved *person's* email or other electronic address last known to us;
- (e) sent by fax to your residential or business fax number last known to us; or
- (f) given in any other way permitted by law.

52.5 Communications to us must be:

- (a) given personally to one of our employees at our registered office and no other place;
- (b) sent by prepaid post to our registered office and no other place; or
- (c) given by any other means permitted by law.

Your local branch may be able to provide details of how your notice can be sent to us (including an email or other electronic address) but your local branch may not be authorised to receive the notice on our behalf. To ensure it is dealt with correctly, any notice should always be addressed to our registered office.

52.6 A communication is taken to be given (whether or not you actually receive it):

- (a) in the case of a communication given personally - on the date it bears or the date it is received by the *person* to whom it is addressed, whichever is the later;
- (b) in the case of a communication sent by post - on the date it bears or the date when it would have been delivered in the ordinary course of post, whichever is the later;
- (c) in the case of a communication sent by email or other electronic form - on the date it bears or, if delivery is outside business hours, 9am on the next *business day*, provided the sender does not receive a non-delivery communication within 2 hours after sending; or
- (d) in the case of a communication sent by fax - on the date it bears or the date on which the machine from which it was sent produces a report indicating that the communication was sent to the fax number of the person to whom it is addressed, whichever is the later.

52.7 If you change your address, you must promptly tell us in writing.

53. Code of Banking Practice and other code or legislation

53.1 To the extent that the Code of Banking Practice, other code or legislation applies to this *facility agreement*, if:

- (a) that legislation or code would otherwise make a provision of this *facility agreement* illegal, void or unenforceable; or
- (b) a provision of this *facility agreement* would otherwise contravene a requirement of that legislation or code or impose an obligation or liability which is prohibited by that legislation or code,

this *facility agreement* is to be read as if that provision were varied to the extent necessary to comply with that legislation or code or, if necessary, omitted.

53.2 To the extent that the Code of Banking Practice, other code or legislation applies to this *facility agreement*:

- (a) our rights to demand any amounts from you and to exercise our rights and remedies against you are subject to the limitations on enforcement of this *facility agreement* imposed by the legislation or code; and
- (b) our rights and remedies under this *facility agreement* are in addition to those given to a credit provider under the legislation or code.

54. Inconsistent law

To the extent permitted by law, this *facility agreement* prevails to the extent it is inconsistent with any law.

55. Governing law and serving documents

- 55.1 This *facility agreement* is governed by the laws of the State of Queensland. You and we submit to the non-exclusive jurisdiction of the courts of that place.
- 55.2 We may serve any document in a court action (*including* a writ of summons, other originating process or third or other party notice) on you by delivering it to, or leaving it at, your address last known to us or such other address as you and we agree at any time. This clause does not prevent any other method of service.
-

56. Ending this *facility agreement*

- 56.1 You can end this *facility agreement* at any time if you:
- (a) give us written notice; and
 - (b) on the termination date notified by you, pay us the *total amount owing* on your *facility account* in full.
- 56.2 Unless we agree otherwise the settlement of any other transaction or the ending of this *facility agreement* requiring the release by us of any *security* must take place at our head office in Brisbane city or at one of our branches.
- 56.3 You must pay any amounts debited to your *facility account* after this *facility agreement* is ended.
-

57. Further information

If you request we will provide you with further information on the following:

- (a) account opening procedures;
- (b) our confidentiality obligations;
- (c) dispute handling procedures;
- (d) combining accounts;
- (e) bank cheques;
- (f) cheque and cheque clearing;
- (g) account operating procedures;
- (h) current *annual percentage rates*, other interest rates, fees and charges; and
- (i) the Code of Banking Practice.

58. Our advice

- 58.1 We advise you to:
- (a) advise us promptly when you are in financial difficulty; and
 - (b) carefully read these General Conditions, the Schedule, the Facility Details and each *security*.
- 58.2 We take no responsibility for any decision you make:
- (a) to enter into this *facility agreement*;
 - (b) to obtain the *facility* and any amounts under it; or
 - (c) about the kind of interest rate (if any) you want under this *facility agreement*.
- 58.3 Our officers, employees and authorised agents do not have our authority to:
- (a) make any predictions about what might happen to our or anyone else's interest rate;
 - (b) tell you what kind of interest rate would best suit you; or
 - (c) make any other representation, prediction or statement of opinion about any other matter or thing affecting this *facility agreement* or the *security*.
-

59. Commissions

We may pay commissions for the introduction of credit business and we may receive commissions for the introduction of business financed by this *facility*. There may be other commissions payable in connection with your *facility* that we do not know about or we are not required by law to disclose. You consent to us giving, or receiving from, any person who introduces you to us or us to you commission, fees or other monetary or non-monetary rewards, whether or not out of money paid by you under this *facility*. If the amount of the commission is not ascertainable, we may give or receive any monetary or non-monetary rewards based on the volume and value of introductions and in calculating the volume and value of introductions we will take this *facility* into account.

60. PPSA law

- 60.1 You must promptly upon our request:
- (a) do anything (including obtaining consents or executing a new document) for the purpose of:
 - (i) ensuring that, any *security interest* created under, or provided for, by any *arrangement with us*:
 - (A) attaches to the collateral that is intended to be covered by that *security interest*; and

- (B) is enforceable, perfected and otherwise effective; and
- (C) has the priority required by us; or

- (ii) enabling us to prepare and register a financing statement or financing change statement; or
- (iii) enabling us to exercise any of our rights or powers in connection with any such *security interest*; and

- (b) provide any information requested by us in connection with *any arrangement with us* to enable us to exercise any of our rights or powers or perform any of our obligations under *PPSA law*.

60.2 You must take any action necessary to register, perfect, preserve and maintain any *security interest* which you hold, or have the benefit of, under and in accordance with the *PPSA law*.

60.3 Anything that you are required by us to do under this clause shall be done by you at your own expense. You agree to reimburse on demand our costs in connection with any action taken by us under or in connection with this clause.

61. Financial Markets Transactions

61.1 Should you wish to manage your exposure under this *facility* you may do so by entering into one or more *financial market transactions* with us under a Master Agreement for Financial Markets Transactions.

61.2 Before entering into a *financial market transaction* you will be required to sign a Master Agreement for Financial Markets Transactions which, amongst other things, provides details as to who will be authorised to enter into *financial market transactions* on your behalf. Depending on the size and type of your business, you will also be issued with either:

- (a) a Financial Services Guide – Treasury Services and the relevant Product Disclosure Statement(s); or
- (b) the Treasury Services Wholesale Terms and Conditions.

The above documents and the Master Agreement for Financial Markets Transactions must be read in conjunction with this *facility agreement* and therefore you must ensure that you have read and understood these.

How to interpret this *facility agreement*

62. Meaning of words

accountable taxes means taxes imposed by a *relevant country* other than those which would not be required to be deducted by you if we provided you with any of our name, address, registration number or similar details or any relevant tax exemption or similar details.

annual percentage rate means a per annum rate of interest. The *annual percentage rate* applying to your *facility* is stipulated in the Schedule. The *annual percentage rate* may change from time to time in the manner permitted by this *facility agreement*. You can find out your current *annual percentage rate* by contacting us.

arrangement with us means an arrangement (including an agreement or a *security interest*) under which a *debtor/guarantor* has or could in the future have obligations to us or any of our related entities. It includes any agreement or *security interest* assigned to us.

attorney means each attorney appointed by you under clause 46.

authorised officer means:

- (a) for us, a director or secretary, or an officer whose title contains the word “director”, “chief”, “head”, “president” or “manager” or a person performing the functions of any of them or any other person nominated by us as an authorised officer for the purposes of any *arrangement with us*; and
- (b) for you, a *person* appointed by you to act as your *authorised officer* for the purposes of any *arrangement with us*.

balance owing means, depending upon the context, at any time the difference between all amounts credited and all amounts debited to any or all of your *facility account*, *nominated account* and other account held with us in connection with the *facility*. When the *balance owing* is to be calculated for the end of a day, it *includes* all debits and credits assigned to that day.

break cost event has the meaning described in clause 20.1.

break costs are described in clause 20.

business day means any day on which Bank of Queensland is open for business.

change of credit means a change in the financial position of you or any person who has given a guarantee of your obligations under this *facility agreement* or a adverse change in the value of the *security property* which we determine would, it had occurred at the time we approved the *facility*, have materially affected our decision to provide the *facility* on the terms set out in the *facility agreement*.

commercial rate loan base rate is the internal rate or rates we set daily for each *facility type* for each of the *interest periods*. You can find out what this rate is for a particular day by contacting your branch.

completion for a *construction finance facility*, means the date of issue of a certificate of practical completion in a form suitable to us by a consultant we appoint or approve for the works.

construction finance facility means a *facility* which is to be used for construction purposes.

control of a corporation *includes* the direct or indirect power to directly or indirectly:

- (a) direct the management or policies of the corporation; or
- (b) control the membership of its board of directors, whether or not the power has statutory, legal or equitable force or is based on statutory, legal or equitable rights and whether or not it arises by means of trusts, agreements, arrangements, understandings, practices, the ownership of any interest in shares or stock of the corporation or otherwise.

controller has the meaning given to it in the Corporations Act.

costs include charges and expenses. It also includes costs, charges and expenses in connection with advisers (in the case of legal advisers, on a full indemnity basis or solicitor and own client basis, whichever is higher).

creditor payment terms are calculated as:

$$\frac{\text{total trade creditors} \times 365}{\text{purchases} \times (12 / \text{period})}$$

current ratio is calculated as:

$$\frac{\text{current assets} \times 100}{\text{current liabilities}}$$

customer margin means the *customer margin* specified in the Schedule.

debtor days are calculated as:

$$\frac{\text{average debtors} \times 365}{\text{sales}}$$

debtor/guarantor means:

- (a) you;
- (b) any *person* who guarantees payment of any part of the *total amount owing* on any account;
- (c) if any part of the *total amount owing* on any account *includes* obligations you owe under a *guarantee*, the person whose obligations you guarantee and any other *person* who guarantees that other *person's* obligations; and
- (d) any other *person* you and we agree is to be a "*debtor/guarantor*" for the purpose of this *facility agreement*.

default rate means a per annum rate of interest payable under clauses 24.1 to 24.4. The *default rate* may change from time to time in the manner permitted by this *facility agreement*.

directive means a treaty, a law, an official directive or request having the force of law, and an official directive, request, guideline or policy with which financiers carrying on business in Australia generally comply. Directive *includes* any Australian Prudential Regulation Authority or Reserve Bank of Australia directive.

drawdown date means each date on which the facility is drawn down (such as by the advance of loan funds to you).

equity ratio is calculated as:

$$\frac{\text{total shareholder funds (net of inter-related loans)} \times 100}{\text{total tangible assets}}$$

facility means the Commercial Rate Loan Facility we agree to provide you under this *facility agreement*.

facility account means the account held with us in your name where we will debit some amounts (*including* all drawdowns) in connection with your *facility*.

facility agreement means these General Conditions, the Facility Details and the Schedule setting out the particulars of your *facility agreement*.

Facility Details means the details that form part of this *facility agreement*.

facility establishment date means the date we open your *facility account* under this *facility agreement*.

facility limit means the *facility limit* stipulated in the Schedule and as varied from time to time by us in accordance with this *facility agreement* and any new or replacement limit as you and we agree.

facility type means any of the *variable commercial rate loan*, *interest capitalised variable commercial rate loan*, *fixed commercial rate loan* or *interest prepaid commercial rate loan* as stipulated in the Schedule and varied from time to time in accordance with this *facility agreement*.

financial market transaction means one or more transactions that are or will be entered into between you and us and that are governed by the Master Agreement for Financial Markets Transactions between you and us.

fixed commercial rate loan means a *facility* where the *interest period* may be any of 1, 2, 3, 4 or 5 years.

fixed charge/interest cover is calculated as:

$$\frac{\text{earnings before interest tax and depreciation}}{\text{total interest paid plus lease expense and hire purchase payments}}$$

for example see including.

General Conditions means these general conditions that form part of this *facility agreement*.

governing body means each entity which manages or administers any shared scheme of which any *security property* is part.

gross profit margin is calculated as:

$$\frac{\text{gross profit} \times 100}{\text{sales}}$$

GST has the same meaning as in the A New Tax System (Goods & Services Tax) Act 1999 (Cth).

guarantee includes an indemnity.

including, such as or for example, when introducing an example, does not limit the meaning of the words to which the example relates to that example or examples of a similar kind.

insolvent means a *person* who:

- (a) is (or state that they are) an insolvent under administration or insolvent (each as defined in the Corporations Act);
- (b) has a *controller* appointed, is in liquidation, in provisional liquidation, under administration or wound up or has had a *receiver* appointed to any part of their property;
- (c) is subject to any arrangement, assignment, moratorium or composition, or protected from creditors under any statute, or dissolved

(in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by us);

- (d) is no longer in control of their affairs;
- (e) has an application or order made (and in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with them, which is preparatory to or could result in any of the things referred to above;
- (f) is taken (under section 459F of the Corporations Act) to have failed to comply with a statutory demand;
- (g) is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or they make a statement from which we reasonably deduce they are so subject);
- (h) is otherwise unable to pay their debts when they fall due; or
- (i) has something substantially similar to any of the things referred to above happen to them under the law of any jurisdiction.

interest capitalisation component means, if you have an interest capitalised *variable commercial rate loan*, that amount of the *facility limit* described as such in the Schedule.

interest capitalised variable commercial rate loan means a *variable commercial rate loan* where:

- (a) the *interest period* may be any of 1, 2 or 3 months; and
- (b) subject to these General Conditions, interest is debited to the *facility account*.

interest cover is calculated as:

$$\frac{\text{earnings before interest tax and depreciation}}{\text{total interest paid}}$$

interest payment date means:

- (a) for a *variable commercial rate loan* and an *interest capitalised variable commercial rate loan* - the last day of each *interest period*;
- (b) for a *fixed commercial rate loan* - subject to clause 12.7(c)(ii), the same date in each month as the drawdown date;
- (c) for an *interest prepaid commercial rate loan* - the *drawdown date* for the first *interest period*,

and the anniversary of the draw down date for any subsequent *interest period*.

If your *interest payment date* falls on the 29th, 30th or 31st of a month, and a particular month does not have that date, your *interest payment date* falls due and owing on the last day of that month.

interest period means the period stipulated in the Schedule (as varied in accordance with this *facility agreement*). We may agree to change the *interest period* in the manner provided for in this *facility agreement*.

interest prepaid commercial rate loan means a facility where:

- (a) the *interest period* is for 1 year; and
- (b) interest is paid annually in advance.

interest prepayment for an *interest prepaid commercial rate loan* means, the interest payment prepaid at the start of any *interest period*.

minimum net worth means the minimum of your net worth. Your net worth is your consolidated capital and revenue reserves excluding all tangible assets and future tax benefits.

nominated account means the business transaction account held with us in your name, nominated by you as the relevant account for crediting and debiting amounts in accordance with this *facility agreement*.

person includes an individual, a firm, a body corporate, an unincorporated association and an authority.

PPSA means the Personal Property Securities Act 2009 (Cth).

PPSA law means:

- (a) the *PPSA*;
- (b) any regulation made pursuant to the *PPSA*; and
- (c) any other legislation or regulation made to implement, or contemplated by, any *PPSA* law referred to in paragraph (a) or (b).

premises means the premises where you intend to carry out, or you are carrying out, works using financial assistance provided under a *construction finance facility*.

quasi-capital ratio is calculated as:

surplus of tangible assets plus and/or minus

shareholders/beneficiaries loans
total tangible assets

receiver includes receiver, or receiver and manager and has the meaning given to it in the Corporations Act.

redraw is described in clause 19.

reduced facility limit means the *facility limit* following any reductions or special reductions.

reduction means the amount of the reduction (if any) which is specified in the Schedule.

reduction date means the dates (if any) upon which *reductions* are due as stipulated in the Schedule.

related entity has the meaning given to it in the Corporations Act.

relevant country means any country, or political sub-division of one or more countries, or any federation or association of countries in which a *debtor/guarantor* is either incorporated or is resident or domiciled for any tax purpose or in which a *debtor/guarantor* carries on business or owns or leases property or from which, or through which, any payment under an *arrangement with us* is made.

request notice means a *request notice* (if any) in the form contained in the Schedule or any other form notified to you from time to time.

Schedule means the schedule that forms part of this *facility agreement*.

security means each *security interest* stipulated in the Facility Details under “Security” and any substituted or additional security interest given in connection with this *facility agreement*.

security interest means:

- (a) any security for the payment of money or performance of obligations including a mortgage, charge, lien, pledge, trust or power or title retention arrangement or *guarantee*;
- (b) a “security interest” as defined in the *PPSA*; or
- (c) any document to grant or create anything referred to in either paragraphs (a) or (b) of this definition and any other thing which gives a creditor priority to any other creditor with respect to any asset or an interest in any asset.

security property means property over which a *security* is held and which is stipulated in the

Facility Details and any substituted or additional security property.

shared scheme means each scheme or plan regulated by a *shared scheme* law that affects any *security property*. Examples of properties which are often part of a shared scheme are strata or stratum title home units and town houses and properties in integrated developments.

special reduction means the amount of the one off *special reduction* (if any) which is specified in the Schedule.

special reduction date means the date (if any) upon which a *special reduction* is due as stipulated in the Schedule.

stock turnover is calculated as:

$$\frac{\text{average value (finished goods and work in progress and raw materials)} \times 365}{\text{cost of goods} \times (12 / \text{period})}$$

such as see including.

taxes means taxes, levies, imposts, charges and duties (*including* stamp and transaction duties) imposed by any authority together with any related interest, penalties, fines and expenses in connection with them, except if imposed on our overall net income.

term means the term specified in the Schedule. The term may change from time to time in the manner permitted by this *facility agreement*.

total amount owing means, depending upon the context at any time, the *balance owing* on any or all of your *facility account*, *nominated account* and any other account held with us in connection with the facility at that time plus all accrued interest charges, any default interest charges and other amounts which you must pay under this *facility agreement* but which have not been debited to your accounts at that time.

This definition applies:

- (a) irrespective of the capacity in which you or we became entitled to the amount concerned;
- (b) irrespective of the capacity in which you or we became liable in respect of the amount concerned;
- (c) whether you or we are liable as principal debtor, as surety, or otherwise;
- (d) whether you are liable alone, or together with another *person*;

(e) even if you owe an amount or obligation to us because it was assigned to us, whether or not:

- (i) the assignment was before, at the same time as, or after this *facility agreement* is executed;
- (ii) you consented to or were aware of the assignment; or
- (iii) the assigned obligation was secured;

(f) even if this *facility agreement* was assigned to us, whether or not:

- (i) you consented to or were aware of the assignment; or
- (ii) any of the *total amount owing* on any account was previously unsecured; and

(g) if you are a trustee, whether or not you have a right of indemnity from the trust fund.

A reference to the *total amount owing* also includes any part of it.

variable commercial rate loan means a *facility* where the *interest period* may be any of 1, 2, 3 or 6 months.

variation date means the effective date of any variation to your *facility agreement* as agreed between you and us.

we, us and our means Bank of Queensland Limited ABN 32 009 656 740 and its successors and assigns.

works means the works specified in the Facility Details (if any) and any building work, excavation or earthworks on the premises or any *security property*, work demolishing, removing or altering any part of the *premises* or any *security property*, or any building or development work required by an authority in connection with the *premises* or any *security property*.

you and your means the *person* or *persons* named in the Facility Details as the customer. If there are more than one, you means each of you separately and every two or more of you jointly. You *includes* your successors and assigns. In the definition of *total amount owing* it also refers to you as so defined whether as a principal or as a surety.

63. Interpretation

The following rules apply to the interpretation of this *facility agreement*:

Reference to:

- (a) a *person* includes the *person's* successors and assigns;
- (b) a thing *includes* all or part of that thing;
- (c) a document includes that document as changed or replaced from time to time;
- (d) a statute *includes* a statute as amended, repealed or replaced from time to time;
- (e) individuals *includes* corporations and the other way around;
- (f) a gender *includes* all other genders;
- (g) currency is to Australian dollars unless stated otherwise;
- (h) this *facility agreement* is a reference to this *facility agreement* (as varied from time to time) between you and us;
- (i) clauses are references to clauses in this *facility agreement*;
- (j) the singular *includes* the plural and the other way around; and
- (k) the Corporations Act is a reference to the Corporations Act 2001 (Cth).

Headings for clauses are included for guidance only and must not be used for interpretation.

For payments made using our internet banking service refer to the Business Lending Supplementary Terms and Conditions for when a day ends. For payments made at a branch, a day ends at the time of closure of the branch. For all other purposes, a day ends at midnight under this *facility agreement*.

The use of the word “may” about any right or power we have under this *facility agreement* indicates that the right or power may be exercised or not exercised, at our discretion.

Words or phrases which are derived from words or phrases which are defined have a similar meaning to the defined term.

If you agree not to do something, you will also not attempt to or permit or cause the thing to be done.

If two or more people are the *debtor/guarantor*, the fact that one person is released from their promises does not mean that any of the others are also released.

It is the parties' intention that, in the interpretation of this *facility agreement*:

- (a) if possible, words which have an ordinary meaning are given that meaning;
- (b) this *facility agreement* is to be interpreted broadly;
- (c) if a general term is used it must be given a broad meaning; and
- (d) general terms must not be limited because of any legal rules of interpretation.

Any accounting terms used for the calculation of financial ratios or other financial covenants are to be interpreted in accordance with accounting standards under the Corporations Act and, if not inconsistent with those accounting standards, generally accepted principles and practices in Australia consistently applied by a body corporate or as between bodies corporate and over time.

Unless defined in this *facility agreement*, a term or expression which is used in this *facility agreement* and which is defined in the *PPSA* has the meaning given to that term or expression in, or in the context of, the *PPSA*.

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1300 55 72 72
boq.com.au

Issuer:
Bank of Queensland Limited ABN 32 009 656 740
AFSL No. 244616

The logo for the Bank of Queensland (BOQ) is located in the bottom right corner. It consists of a dark grey square with a white diagonal line running from the bottom-left corner to the top-right corner. The letters "BOQ" are written in white, bold, sans-serif capital letters on the dark grey background.

BOQ