

# Security Trust Deed

**Perpetual Corporate Trust Limited**

**Perpetual Nominees Limited**

**Credit Suisse (Australia) Limited**

**P.T. Limited**

Ozcar ABS Trust 2009-1

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<b>Date</b>	2008
<b>Parties</b>	<ol style="list-style-type: none"> <li>1. <b>Perpetual Corporate Trust Limited</b> (ABN 99 000 341 533) of Level 12, 123 Pitt Street, Sydney, New South Wales 2000 as trustee of the Ozcar ABS Trust 2009-1 (the <b>Chargor</b>);</li> <li>2. <b>Perpetual Nominees Limited</b> (ABN 37 000 733 700) of Level 12, 123 Pitt Street, Sydney, New South Wales 2000 (the <b>Trust Administrator</b>);</li> <li>3. <b>Credit Suisse (Australia) Limited</b> (ABN 94 007 016 300) of level 31, 1 Macquarie Place, Sydney, New South Wales 2000 as manager of the Ozcar ABS Trust 2009-1 (the <b>Programme Manager</b>); and</li> <li>4. <b>P.T. Limited</b> (ABN 67 004 454 666) of Level 12, 123 Pitt Street, Sydney, New South Wales 2000 as trustee of the Security Trust (the <b>Security Trustee</b>).</li> </ol>
<b>Recitals</b>	<p>A The Chargor is the trustee of the Trust.</p> <p>B Under the terms of the Master Trust Deed, the Chargor is authorised to enter into this Deed to charge the Assets to secure the due and punctual performance of the obligations of the Chargor under the Transaction Documents and the payment in full of the Secured Moneys to the Chargees.</p> <p>C The Security Trustee enters into this Deed for itself and as trustee for each other Chargee.</p>

**IT IS AGREED** as follows.

## 1. Definitions and Interpretation

### 1.1 Definitions

The following definitions apply unless the context requires otherwise.

**Attorney** means any attorney appointed under this Deed or any Collateral Security.

**Charge** means the charge created by this Deed.

**Charge Release Date** means, subject to clause 27.3, the date the Security Trustee releases the Charged Property from the Charge and this Deed under clause 27.1.

**Charged Property** means, in respect of the Trust:

- (a) the sum of \$1 which is at the date of this Deed held by or on behalf of the Chargor in South Australia;
- (b) the sum of \$10,000 which is at the date of this Deed held by or on behalf of the Chargor in Victoria; and
- (c) all other Assets of the Trust:
  - (i) whether held at or acquired after the date of this Deed and which are situated or taken under any applicable law to be situated in any jurisdiction other than New South Wales; or
  - (ii) acquired after the date of this Deed and situated or taken under any applicable law to be situated in New South Wales.

**Chargee** means each of:

- (a) the Security Trustee in relation to its rights (held in its own right or for the benefit of other Chargees) under this Deed;
- (b) any Noteholder in its capacity as Noteholder and in any other capacity under a Transaction Document;
- (c) any Swap Provider in relation to its rights as Swap Provider under the Transaction Documents;
- (d) the Chargor in relation to its rights as trustee of the Trust under the Transaction Documents;
- (e) the Programme Manager in relation to its rights as Programme Manager under the Transaction Documents;
- (f) the Trust Administrator in relation to its rights as Trust Administrator under the Transaction Documents;
- (g) each Servicer in relation to its rights as Servicer under the Transaction Documents;
- (h) the Master Servicer in relation to its rights as Master Servicer under the Transaction Documents;
- (i) each Approved Seller in relation to its rights as Approved Seller under the Transaction Documents;
- (j) any Support Facility Provider (including the Liquidity Facility Provider) in relation to its rights as Support Facility Provider under the Transaction Documents;
- (k) each Custodian in relation to its rights as Custodian under the Transaction Documents; and
- (l) the Guarantor in relation to its rights as Guarantor under the Transaction Documents,

and a reference to any particular Chargee is to be read accordingly.

**Chargor's Indemnity** means:

- (a) the Chargor's right of indemnity under the Master Trust Deed from the Assets in respect of liabilities incurred by the Chargor; and

- (b) all equitable liens and other Security Interests which the Chargor has over the Assets.

**Collateral Security** means any Security Interest, Guarantee or other document or agreement at any time created or entered into in favour of the Security Trustee as security for any Secured Moneys.

**Event of Default** means any of the events specified in clause 7.

**Guarantee** means any guarantee, indemnity, letter of credit, legally binding letter of comfort or suretyship, or any other obligation or irrevocable offer (whatever called and of whatever nature):

- (a) to pay or to purchase;
- (b) to provide funds (whether by the advance of money, the purchase of or subscription for shares or other securities, the purchase of assets, rights or services, or otherwise) for the payment or discharge of;
- (c) to indemnify against the consequences of default in the payment of; or
- (d) to be responsible otherwise for,

an obligation or indebtedness of another person, a dividend, distribution, capital or premium on shares, stock or other interests, or the insolvency or financial condition of another person.

**Liquidation** includes receivership, compromise, arrangement, amalgamation, administration, reconstruction, winding up, dissolution, assignment for the benefit of creditors, bankruptcy or death.

**Power** means a power, right, authority, discretion or remedy which is conferred on the Security Trustee, a Chargee or a Receiver or Attorney:

- (a) by this Deed or any Collateral Security; or
- (b) by law in relation to this Deed or any Collateral Security.

**Receiver** means a receiver or receiver and manager appointed under this Deed or any Collateral Security.

**Representative** means:

- (a) in the case of a Voting Chargee, a person who is appointed as a proxy for that Voting Chargee pursuant to clause 38.9; and
- (b) without limiting the generality of paragraph (a), in the case of a Voting Chargee which is a body corporate, a person who is appointed pursuant to clause 38.10 by the Voting Chargee.

**Secured Moneys** means all money which the Chargor (whether alone or with another person) is or at any time may become actually or contingently liable to pay to or for the account of any Chargee (whether alone or with another person) for any reason whatever under or in connection with a Transaction Document. Additionally:

- (a) it includes money by way of principal, interest, fees, costs, indemnities, Guarantee, charges, duties or expenses, or payment of liquidated or unliquidated damages



under or in connection with a Transaction Document, or as a result of any breach of or default under or in connection with, a Transaction Document; and

- (b) where the Chargor would have been liable but for its Liquidation, it will be taken still to be liable.

**Security Trust** means the trust established under this Deed.

**Series Notice** means the Series Notice dated on or after the date of this deed relating to the Trust as amended from time to time.

**Settlor** means Mark Wormell.

**Trust** means the Ozcar ABS Trust 2009-1 established under the Master Trust Deed and the Notice of Creation of Trust.

**Trust Assets** means the Assets of the Trust from time to time as defined in the Series Notice and includes the rights of the Chargor under the Transaction Documents and under the Collection Account.

**Vesting Date** means the day preceding the earliest of:

- (a) the 80th anniversary of the date of this Deed;
- (b) the 21<sup>st</sup> anniversary of the date of the death of the last survivor of the lineal descendants of King George V living on the date of this Deed; and
- (c) the day after the Charge Release Date.

## 1.2 Master Trust Deed and Series Notice definitions

- (a) Words and expressions which are defined in the Master Trust Deed (as amended by the Series Notice) and the Series Notice (including in each case by reference to another agreement) have the same meanings when used in this Deed unless the context otherwise requires or unless otherwise defined in this Deed. To the extent of any inconsistency between the Master Trust Deed and the Series Notice they will prevail in the following order of priority:
  - (i) first, the Series Notice; and
  - (ii) second, the Master Trust Deed.
- (b) Subject to clause 28, no change to the Master Trust Deed or any Transaction Document (including the order of payment set out in the Series Notice) after the date of this Deed will change the meaning of terms used in this Deed or adversely affect the rights of the Security Trustee under this Deed unless the Security Trustee has agreed in writing to the changes.

## 1.3 Interpretation

Clause 1.2 of the Master Trust Deed applies to this Deed as if set out in full and:

- (a) a reference to an **asset** includes any real or personal, present or future, tangible or intangible property or asset and any right, interest, revenue or benefit in, under or derived from the property or asset;



- (b) an Event of Default **subsists** until it has been waived in writing by the Security Trustee in accordance with clause 7.2 or is otherwise cured or remedied;
- (c) a reference to an amount for which a person is **contingently liable** includes an amount which that person may become actually or contingently liable to pay if a contingency occurs, whether or not that liability will actually arise; and
- (d) **wilful default** means, in respect of the Security Trustee, any wilful failure to comply with or wilful breach of any of its obligations under this Deed, other than a wilful failure or wilful breach which:
  - (i) is caused by the failure by another person to act where that act is a precondition to the act of the Security Trustee;
  - (ii) is in accordance with a lawful court order or direction or otherwise required by law; or
  - (iii) is in accordance with an instruction or direction from the Voting Chargees.

#### 1.4 Determination, statement and certificate sufficient evidence

Except where otherwise provided in this Deed any determination, statement or certificate by the Security Trustee or an Authorised Officer of the Security Trustee provided for in this Deed is sufficient evidence of each thing determined, stated or certified in the absence of manifest error or proof to the contrary.

#### 1.5 Document or agreement

A reference to:

- (a) an **agreement** includes a Security Interest, Guarantee, undertaking, deed, agreement or legally enforceable arrangement whether or not in writing; and
- (b) a **document** includes an agreement (as so defined) in writing or a certificate, notice, instrument or document.

A reference to a specific agreement or document includes it as amended, novated, supplemented or replaced from time to time, except to the extent prohibited by this Deed.

#### 1.6 Rights and obligations of Chargees

- (a) Each Chargee is entitled to the benefit of the obligations (including warranties) of each of the Security Trustee, the Chargor and any other person under this Deed and any Collateral Security.
- (b) Subject to clause 8.5, no Chargee is entitled to enforce this Deed or any Collateral Security other than through the Security Trustee.
- (c) Each Chargee is bound by this Deed and each Collateral Security.
- (d) No Chargee is responsible for the obligations of the Security Trustee or any other Chargee.
- (e) The provisions of this Deed are binding on the Security Trustee, the Chargor and the Chargees and all persons claiming through them, respectively.



- (f) The Security Trustee will give prior written notice to each Noteholder of any meeting of the Voting Chargee and each of them will be entitled to attend. If a Noteholder is not a Voting Chargee for the purposes of that defined term, it will nonetheless have a reasonable opportunity to speak at such meeting (but not to exercise any other rights or entitlements in relation to the meeting or the issues to be considered at such meeting).

## 1.7 Transaction Document

This Deed is a *Transaction Document* for the purposes of the Series Notice.

## 1.8 Chargor as trustee

In this Deed, except where provided to the contrary:

- (a) a reference to the Chargor is a reference to the Chargor in its capacity as trustee of the Trust only, and in no other capacity; and
- (b) a reference to the assets, business, property or undertaking of the Chargor is a reference to the assets, business, property or undertaking of the Chargor only in the capacity described in paragraph (a) above.

## 1.9 Knowledge of the Chargor

In relation to the Trust, the Chargor will only be considered to have knowledge or notice of or be aware of, or have grounds to believe, any matter or thing by virtue of the officers or employees of the Chargor who have day to day responsibility for the administration of the Trust having as the case may be, actual knowledge, actual notice or actual awareness that matter or thing. In addition, knowledge, notice or awareness of an Event of Default or Material Adverse Effect means knowledge, notice or awareness of the events or circumstances constituting the Event of Default or Material Adverse Effect (as applicable) and that those events or circumstances do constitute the Event of Default or Material Adverse Effect (as applicable).

## 1.10 Knowledge of Security Trustee

For the purposes of this Deed, the Security Trustee will only be considered to have knowledge, notice of or to be aware of, or have grounds to believe, any matter or thing by virtue of the officers or employees of the Security Trustee who have day to day responsibility for the administration of the Security Trust, having as the case may be, actual knowledge, actual notice or actual awareness of that matter or thing. In addition, knowledge, notice or awareness of an Event of Default or Material Adverse Effect means knowledge, notice or awareness of the events or circumstances constituting the Event of Default or Material Adverse Effect (as applicable) and that those events or circumstances do constitute the Event of Default or Material Adverse Effect (as applicable).

## 1.11 Actions of Chargor

Without limiting clause 1.9:

- (a) where the Chargor is required to make a determination or form an opinion or a belief about any matter or thing, the Chargor will be considered to have made that



determination or formed that belief if one or more of the officers or employees of the Chargor who have day to day responsibility for the administration of the Trust have made that determination or formed that opinion or belief in good faith; and

- (b) where the Chargor is required to make a determination or form an opinion or a belief on reasonable grounds, it will be sufficient if one or more of the officers or employees of the Chargor who have day to day responsibility for the administration of the Trust have made that determination or formed that opinion or belief in good faith and it could not be said of the determination or belief that no reasonable person in the position of those persons could have, in good faith, made that determination or formed that opinion or belief.

## 1.12 Actions and consent of Security Trustee

- (a) Without limiting clause 1.10:
  - (i) where the Security Trustee is required to make a determination or form a belief about any matter or thing, the Security Trustee will be considered to have made that determination or formed that belief if one or more of the officers or employees of the Security Trustee who have day to day responsibility for the administration of the Security Trust have made that determination or formed that belief in good faith; and
  - (ii) where the Security Trustee is required to make a determination or form a belief on reasonable grounds, it will be sufficient if one or more of the officers or employees of the Security Trustee who have day to day responsibility for the administration of the Security Trust have made that determination or formed that belief in good faith and it could not be said of the determination or belief that no reasonable person in the position of those persons could have, in good faith, made that determination or formed that belief.
- (b) Without affecting clause 36.1, where the consent of the Security Trustee is required under any document it need not give that consent (even if the relevant document requires the consent not to be unreasonably withheld) unless it has been directed to do so by an Extraordinary Resolution of the Voting Chargees.

## 2. Appointment of Security Trustee

### 2.1 The Security Trustee

The Security Trustee:

- (a) is appointed to act as trustee of the Security Trust on behalf of the Chargees on the terms and conditions of this Deed; and
- (b) acknowledges and declares that it:
  - (i) holds the sum of \$10 received on the date of this Deed from the Settlor; and

- (ii) will hold the benefit of the Charge, the Charged Property and the benefit of each of the Transaction Documents to which the Security Trustee is a party,

in each case, on trust for each Chargee, in accordance with the terms and conditions of this Deed.

## 2.2 Resolution of conflicts

- (a) The Security Trustee shall, as regards the exercise of all discretions vested in it by this Deed and all other Transaction Documents, except where expressly provided otherwise, have regard to the interests of the Chargees.
- (b) If there is at any time, in the exercise or proposed exercise of a power or discretion by the Security Trustee, a conflict between a duty owed by the Security Trustee to any Chargee or class of Chargees or between the interests of any one or more classes of Chargee, and a duty owed by it to another Chargee or class of Chargees or a conflict between the interests of one or more classes of Chargee, the Security Trustee must give priority to the interests of the then Voting Chargee and where there is a conflict between the interests of one or more classes of Voting Chargee, the Security Trustee must give priority to the interest of the Voting Chargees in the order in which moneys are applied as set out in clause 15.
- (c) Provided that the Security Trustee acts in good faith, it shall not incur any liability to any Chargee for giving effect to paragraph (b).

## 2.3 Duration of Security Trust

The Security Trust established under this Deed commences on the date of this Deed and ends on the Vesting Date unless determined earlier.

## 3. Charge

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### 3.1 Charge

The Trustee charges to the Security Trustee all its present and future right, title and interest in the Charged Property.

### 3.2 Security

- (a) The security created by this Deed secures the due and punctual payment of the Secured Moneys.
- (b) This Deed is given in consideration of the Security Trustee and the Chargees entering into the Transaction Documents and for other valuable consideration received.

### 3.3 Prospective liability

- (a) For the purpose of the Corporations Act 2001 the maximum prospective liability (as defined in the Corporations Act 2001) secured by this Deed at any time is

\$3,000,000,000 and the total amount recoverable under this Deed is limited to \$3,000,000,000.

- (b) The nature of that prospective liability is advances, interest, fees, costs, indemnities and other amounts included in the definition of **Secured Money**.

### 3.4 Limitation of liability

The Chargor and the Security Trustee covenant and agree that despite the definition of Secured Money in this document, the maximum amount recoverable by the Security Trustee under this document shall be limited to \$3,000,000,000.

## 4. Nature of Charge

### 4.1 Priority

The Charge is a first ranking charge and takes priority over all Security Interests that have been granted over the Charged Property.

### 4.2 Nature of Charge

The Charge operates, subject to clause 4.4 as:

- (a) a fixed charge over the Transaction Documents and the Collection Account; and  
(b) a floating charge only over all Charged Property not subject to a fixed charge in accordance with clause 4.2(a).

The Security Trustee consents to the Chargor operating the Collection Account in accordance with the Transaction Documents (without the need for a release of charge if a withdrawal is made from the Collection Account). That consent can be revoked at any time by written notice from the Security Trustee to the Chargor.

### 4.3 Dealing with Charged Property

- (a) Except with the prior written consent of the Security Trustee, or as expressly permitted in any Transaction Document, the Chargor shall not, and neither the Programme Manager nor the Trust Administrator shall direct the Chargor to:
- (i) create or allow to exist any Security Interest over any Charged Property; or  
(ii) in any other way:
- (A) dispose of;  
(B) create or allow any interest in; or  
(C) part with possession of,  
any Charged Property, except:
- (i) for the purpose of transferring the Charged Property to a successor trustee of the Trust in accordance with the Master Trust Deed; and

- (ii) subject to the Transaction Documents, any disposal of or dealing with any asset for the time being subject to the floating charge, in the ordinary course of the Chargor's ordinary business.
- (b) Where by law a Chargee may not restrict the creation of any Security Interest over an asset ranking after the Charge, paragraph (a) will not restrict that creation. However, the Chargor shall ensure that before that Security Interest is created the holder of that Security Interest (unless the Security Interest arises by operation of law) enters into a deed of priority in form and substance specified by the Security Trustee.

#### 4.4 Crystallisation

The floating charge referred to in clause 4.2(b) will automatically and immediately crystallise and operate as a fixed charge:

- (a) in respect of any asset:
  - (i) upon the occurrence of an Event of Default;
  - (ii) if the Chargor:
    - (A) creates or allows any Security Interest over;
    - (B) sells, leases or otherwise disposes of;
    - (C) creates or allows any interest in; or
    - (D) parts with possession of,that asset in breach of a Transaction Document, or agrees or attempts to do so or takes any step towards doing so;
  - (iii) on the Commissioner of Taxation or his delegate or successor signing a notice under:
    - (A) s218 or s255 of the Income Tax Assessment Act 1936 (Cth) and the Income Tax Assessment Act 1997 (Cth);
    - (B) s260-5 of the Taxation Administration Act 1953 (Cth); or
    - (C) any similar legislation,which will affect that asset; or
  - (iv) on a Government Agency taking any step which may result in an amount of Tax or an amount owing to a Government Agency ranking ahead of the floating charge with respect to that asset; or
- (b) in respect of all the Charged Property on the security constituted by this Deed being enforced in any way.

Except where expressly stated, no notice or action by any Chargee is necessary for the charge to crystallise.



## 4.5 De-crystallisation

The Security Trustee must, at the direction of the Voting Chargees, at any time release any asset which has become subject to a fixed charge under clause 4.4 from the fixed charge by notice to the Chargor. That asset will then again be subject to the floating charge and to the further operation of that clause.

## 5. Covenants and warranties

### 5.1 Covenant

- (a) The Chargor acknowledges its indebtedness to each Chargee in respect of the relevant Secured Moneys. The Chargor shall duly and punctually pay the Secured Moneys when due in accordance with the Transaction Documents, including when demand is made under clause 7.2.
- (b) Subject to the limitations on the obligations and liability of the Chargor under the Master Trust Deed and the other Transaction Documents, the Chargor shall use its reasonable endeavours to ensure that no Event of Default occurs.
- (c) Subject to the limitations on the obligations and liability of the Chargor under the Master Trust Deed and the other Transaction Documents, the Chargor will ensure that it complies with its obligations under the Transaction Documents.
- (d) The Chargor will give to the Security Trustee a copy of the Register, and any information in the power or possession of the Chargor relating to the Trust that the Security Trustee reasonably requests in connection with the exercise and performance of its powers and obligations under this Deed, including without limitation:
  - (i) the identity, and notice details of each Chargee; and
  - (ii) the Secured Moneys owing to each Chargee.
- (e) The Trust Administrator shall cause this Deed to be duly stamped and lodged for registration with the Australian Securities and Investments Commission.

### 5.2 Negative covenants

The Chargor shall not do, nor shall the Trust Administrator direct or cause the Chargor to do, any of the following without the prior written consent of the Security Trustee and the Voting Chargee except as permitted by this Deed, the Master Trust Deed or the Series Notice:

- (a) **(no Financial Indebtedness)** create, incur, assume, permit or suffer to exist any Financial Indebtedness except for:
  - (i) each Note;
  - (ii) Financial Indebtedness arising under the Transaction Documents in relation to the Trust; or
  - (iii) Financial Indebtedness which is fully subordinated to the Secured Moneys or is non-recourse other than with respect to proceeds in excess of those



needed to pay the Secured Moneys, and which does not constitute a claim against the Chargor in the event that those excess proceeds are insufficient to pay that subordinated Financial Indebtedness;

- (b) **(no release under Transaction Documents)** give any release or discharge (whether full, partial or conditional) to any person in respect of their obligations under any of the Transaction Documents relating to the Trust, except as permitted by the Transaction Documents;
- (c) **(bank accounts)** open any bank account not permitted in the Transaction Documents;
- (d) **(Security Interest)** create or permit or suffer to exist any other Security Interest over the Charged Property, other than a lien which arises in favour of the Chargor as the trustee of the Trust; and
- (e) **(other activities)** engage in any business or activity other than as permitted by the Transaction Documents.

### 5.3 Representations and warranties

The Chargor makes the following representations and warranties.

- (a) **(Transaction Documents representations and warranties)** All representations and warranties of the Chargor in the Transaction Documents are true and correct or, if not yet made, will be true and correct when made.
- (b) **(Good title)** The Chargor has not taken any action or failed to take any action, as a result of which it has failed to become or ceased to be the sole holder of equitable or legal title (as applicable) to the Charged Property free of all Security Interests other than those arising under or by reason of the Transaction Documents.
- (c) **(Power to charge)** The Chargor has the power under the Master Trust Deed to enter into this Deed and to charge in the manner provided in this Deed the Charged Property.
- (d) **(Trust validly created)** The Trust has been validly created and is in existence at the date of this Deed.
- (e) **(Sole trustee)** The Chargor has been validly appointed as trustee of the Trust and is presently the sole trustee of the Trust.
- (f) **(Master Trust Deed)** The Trust is constituted pursuant to the Master Trust Deed and the Notice of Creation of Trust.
- (g) **(Right of indemnity)** As far as the Chargor is aware, except as expressly provided in the Master Trust Deed, the Series Notice or statute the Chargor has not limited in any way, and the Chargor has no liability which may be set off against, the Chargor's Indemnity.
- (h) **(No proceedings to remove)** As far as the Chargor is aware, no notice has been given to the Chargor and, to the Chargor's knowledge, no resolution has been passed or direction has been given, removing the Chargor as trustee of the Trust.



## 5.4 Trust Administrator's undertakings

The Trust Administrator undertakes to the Security Trustee to give to the Security Trustee within 5 Business Days of a request:

- (a) a copy of each Trust Administrator's Report given in relation to the Trust;
- (b) each audit report issued by the Auditor in relation to the Trust; and
- (c) a copy of each Transaction Document.

## 6. Further assurances

Whenever the Security Trustee requests the Chargor to do anything:

- (a) more satisfactorily mortgaging, assuring or securing the Charged Property to the Chargees or the Security Trustee's nominee in a manner not inconsistent with this Deed or any Transaction Document; or
- (b) aiding in the execution or exercise of any Power,

the Chargor shall do it immediately, subject to any liability it incurs being covered by the Chargor's Indemnity (other than liabilities arising from its own negligence, fraud or wilful default). It may include registering this Deed, executing or registering any other document or agreement, delivering Transaction Documents or evidence of title and executing and delivering blank transfers.

## 7. Events of Default

### 7.1 Events of Default

Each of the following is an Event of Default (whether or not it is within the control of the Chargor).

- (a) **(Failure to pay)** Subject to clause 7.4, the Chargor fails to pay any Secured Moneys owing to a Noteholder within 10 Business Days of the due date for payment.
- (b) **(Breach of obligation)** The Chargor fails to perform or observe any other provisions (other than an obligation referred to in paragraph (a)) of this Deed or a Transaction Document where such failure may, in the opinion of the Voting Chargee, have a Material Adverse Effect and that default (if in the opinion of the Security Trustee is capable of remedy) is not remedied within 30 Business Days after written notice (or such longer period as may be specified in the notice) from the Security Trustee requiring the failure to be remedied.
- (c) **(Misrepresentation)** A representation or warranty by or on behalf of the Chargor in a Transaction Document is not true, in the opinion of a Voting Chargee, in a material respect or is misleading when made or repeated and (if in the opinion of the Security Trustee is capable of remedy) the relevant circumstances are not remedied within 30 Business Days of the day on which the Chargor becomes aware of the relevant circumstances.

- (d) **(Insolvency – Chargor)** An Insolvency Event occurs in relation to the Chargor:
  - (i) in its capacity as trustee of the Trust; or
  - (ii) in its personal capacity and a successor trustee is not appointed in accordance with the Master Trust Deed within 30 Business Days of the occurrence of the Insolvency Event.
- (e) **(Priority of Charge)** The Charge is not or ceases to be a first ranking charge over the Charged Property, or any other obligation of the Chargor (other than as mandatorily preferred by law) ranks ahead of or pari passu with any of the Secured Moneys.
- (f) **(Enforcement of Security Interest)** Any Security Interest over the Assets is enforced.
- (g) **(Vitiating of Transaction Documents)**
  - (i) All or any part of any Transaction Document is terminated (other than in accordance with its terms) or is or becomes void, illegal, invalid, unenforceable or of limited force and effect; or
  - (ii) a party becomes entitled to terminate, rescind or avoid all or any part of any Transaction Document (except where that party waives its right to terminate, rescind or avoid the relevant Transaction Documents), other than in accordance with its terms,and in either case, in the opinion of the Voting Chargee, there is, or will be, a Material Adverse Effect as a consequence.
- (h) **(Trust)** Without the prior consent of the Security Trustee:
  - (i) the Trust is wound up, or the Chargor is required to wind up the Trust under the Master Trust Deed or applicable law, or the winding up of the Trust commences;
  - (ii) the Trust is held or is conceded by the Chargor not to have been constituted or to have been imperfectly constituted; or
  - (iii) unless another trustee is contemporaneously and immediately appointed to the Trust under the Transaction Documents, the Chargor ceases to be authorised under the Trust to hold the property of the Trust in its name and to perform its obligations under the Transaction Document.

## 7.2 Rights of the Security Trustee upon Event of Default

At any time after an Event of Default occurs and while it subsists, the Security Trustee may, subject to clause 8.1:

- (a) declare the Charge immediately enforceable;
- (b) declare the Secured Moneys immediately due and payable;
- (c) give a notice crystallising the charge in relation to any or all of the Charged Property under clause 4.4;



- (d) appoint a Receiver over the Assets, or exercise the powers that a Receiver would otherwise have if appointed under this Deed; or
- (e) take any other action if so directed by an Extraordinary Resolution of the Voting Chargees.

The Security Trustee may exercise its rights under this clause notwithstanding any delay or previous waiver.

### **7.3 Notify Events of Default**

The Chargor must promptly notify the Subscribers, Noteholders and the Security Trustee if, to the actual knowledge of its officers who are responsible for the administration of the Trust, it becomes aware of the occurrence of an Event of Default or an Amortisation Event including full details (to the extent it is aware of them) of that Event of Default or Amortisation Event (as the case may be).

### **7.4 Events of Default – different classes of Notes**

Notwithstanding any other Transaction Document or clause 7.1, a failure by the Chargor to pay any amounts in respect of a Note will not be an Event of Default for the purposes of this Deed if at any time there are any higher ranking Notes outstanding or for so long as any higher ranking Note Subscriber is committed to subscribe for a Note.

## **8. Enforcement**

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### **8.1 Power to enforce**

At any time after the Charge becomes enforceable, the Security Trustee may, at its discretion and without further notice (subject to the terms of this Deed) take such action as it may think fit to enforce any provisions of this Deed but it may not take any action referred to in clauses 7.2(a) to 7.2(d) (inclusive) unless directed to do so by Extraordinary Resolution of the Voting Chargees, or unless in the opinion of the Security Trustee it is necessary to do so to protect the interests of the Chargees (including the Security Trustee in its personal capacity).

### **8.2 No obligation to enforce**

Pending the receipt of directions from the Voting Chargees and an appropriate indemnity as contemplated by clauses 8.3, 8.4 and 8.5, the Security Trustee shall not be bound to take any action (including, without limitation, the exercise of any right, power, remedy or discretion) or give any consent or waiver or make any determination under this Deed (including, without limiting the generality of the above, to appoint any Receiver, to declare the Charge enforceable or the Secured Moneys immediately due and payable pursuant to clause 7.2 or to take any other proceedings referred to in clause 8.1). Nothing in this clause shall affect the operation of clause 4.4 or the Charge becoming enforceable prior to the Security Trustee receiving directions from the Voting Chargees.



## 8.3 Obligation to convene meeting

Following the Security Trustee becoming aware of the occurrence of an Event of Default in accordance with clause 36.5, it shall promptly convene a meeting of the Voting Chargees in accordance with this Deed, at which it shall seek directions from the Voting Chargees by way of an Extraordinary Resolution of the Voting Chargees regarding the action it should take as a result of that Event of Default including whether to do any of the things referred to in clauses 7.2(a) to 7.2(d) inclusive.

## 8.4 Security Trustee to act in accordance with directions

- (a) Subject to sub-clause (b), the Security Trustee shall take all action necessary to give effect to any Extraordinary Resolution of the Voting Chargees and shall comply with all directions contained in or given pursuant to any Extraordinary Resolution of the Voting Chargees.
- (b) The obligation of the Security Trustee pursuant to sub-clause (a) is subject to:
  - (i) this Deed; and
  - (ii) the Security Trustee being adequately indemnified from the assets of the Security Trust or the Security Trustee receiving from the Voting Chargees an indemnity in a form reasonably satisfactory to the Security Trustee (which may be by way of an Extraordinary Resolution of the Voting Chargees) against all actions, proceedings, claims and demands to which it may render itself liable, and all costs, charges, damages and expenses which it may incur, in giving effect to an Extraordinary Resolution of the Voting Chargees.

The Security Trustee shall first claim on its indemnity from the assets of the Security Trust before it claims on any indemnity from the Chargees including any indemnity provided under clause 8.5.

- (c) If the Security Trustee becomes bound to take steps and/or proceed under this Deed and it fails to do so within a reasonable time and such failure is continuing, the Voting Chargees may exercise such powers as they determine by Extraordinary Resolution and then only if and to the extent the Voting Chargees are able to do so under Australian law.

## 8.5 Security Trustee must receive indemnity

If:

- (a) the Security Trustee convenes a meeting of the Voting Chargees, or is required by an Extraordinary Resolution to take any action under this Deed, and advises the Voting Chargees that the Security Trustee will not act in relation to the enforcement of this Deed unless it is personally indemnified by the Voting Chargees to its reasonable satisfaction against all actions, proceedings, claims and demands to which it may render itself liable, and all costs, charges, damages and expenses which it may incur, in relation to the enforcement of this Deed and put



in funds to the extent to which it may become liable (including costs and expenses); and

(b) those Voting Chargees refuse to grant the requested indemnity, and put it in funds, then the Security Trustee will not be obliged to act in relation to that enforcement and will be released from any liability as a result of its inaction. In those circumstances, the Voting Chargees may exercise such Powers as they determine by Extraordinary Resolution and the Security Trustee is not liable in any manner whatsoever in relation to or in connection with such exercise of Powers.

## **8.6 Limitation on rights of Chargees**

Subject to this Deed, the powers, rights and remedies conferred on the Security Trustee by this Deed are exercisable by the Security Trustee only, and no Chargee is entitled without the written consent of the Security Trustee to exercise the same or any of them. Without limiting the generality of the foregoing, subject to clause 8.5, no Chargee is entitled to enforce the Charge or the provisions of this Deed or to appoint or cause to be appointed a Receiver to any of the Charged Property or otherwise to exercise any power conferred by the terms of any applicable law on charges except as provided in this Deed.

## **8.7 Acts pursuant to resolutions**

The Security Trustee shall not be responsible for having acted in good faith upon any resolution purporting to have been passed at any meeting of the Voting Chargees in respect of which minutes have been made and signed, even though it may subsequently be found that there was some defect in the constitution of that meeting or the passing of that resolution or that for any reason that resolution was not valid or binding upon the Voting Chargees.

## **8.8 Overriding provision**

Notwithstanding any other provision of this Deed:

- (a) the Security Trustee will not be under any obligation to advance or use its own funds for the payment of any losses, costs, expenses or liabilities, except to the extent to which that loss, cost, expense or liability was caused by its own fraud, negligence or wilful default; and
- (b) the Security Trustee is not obliged to do or omit to do anything including entering into any transaction or incurring any liability unless the Security Trustee's liability is limited in a manner satisfactory to the Security Trustee and it has an indemnity in a form satisfactory to the Security Trustee.

## **9. Appointment of Receiver**

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### **9.1 Appointment**

To the extent permitted by law and subject to clause 8, at any time after the Charge becomes enforceable under this Deed the Security Trustee or any Authorised Officer of the Security Trustee may:



- (a) appoint any person or any 2 or more persons jointly or severally or both to be a Receiver of all or any of the Charged Property;
- (b) remove any Receiver;
- (c) appoint another Receiver in addition to or in place of a Receiver; or
- (d) fix or vary the remuneration of a Receiver.

## 9.2 Agent of Chargor

- (a) Subject to clauses 9.2(b) and 9.4, every Receiver is the agent of the Chargor. The Chargor alone is responsible for the Receiver's acts and defaults.
- (b) Each Chargee acknowledges that:
  - (i) any Receiver will be the agent of the Chargor; and
  - (ii) notwithstanding anything else in this Deed or at law, the Chargor's liability in respect of the Receiver's acts and defaults is limited in the manner described in clause 33.14 of the Master Trust Deed.

## 9.3 Receiver's powers

In addition to any powers granted by law, and except to the extent specifically excluded by the terms of his appointment and in accordance with the interests of the Chargees in accordance with this Deed, every Receiver has power to do anything in respect of the Charged Property that the Chargor could do (including, without limitation, having regard to its powers under the Master Trust Deed). However, every Receiver acknowledges that the Chargor's liability in relation to the Receiver's exercise of those powers is limited in the manner described in clause 33.14 of the Master Trust Deed and the Receiver is not empowered to incur any liability on behalf of the Chargor unless that liability is limited in the manner described in that clause. He may:

- (a) **(Take possession and manage)** take possession of, get in and manage the Charged Property;
- (b) **(Lease)** lease any of the Charged Property for any term (whether or not the Receiver has taken possession);
- (c) **(Carry on business)** carry on or concur in carrying on any business;
- (d) **(Acquire any asset)** acquire in any manner any asset (including to take it on lease). After that acquisition it will be included in the Charged Property;
- (e) **(Maintain and improve the Charged Property)** do anything to maintain, protect or improve any of the Charged Property or to obtain income or returns from any of the Charged Property (including by development, sub-division, construction, alteration, or repair, of any property or by pulling down, dismantling or scrapping, any property);
- (f) **(Raise Money)**
  - (i) borrow or raise any money from any Chargee or any other person approved by the Security Trustee;

- (ii) give Guarantees; and
  - (iii) grant any Security Interest over any of the Charged Property to secure that money or Guarantee. That Security Interest may rank in priority to or equally with or after, the security created by this Deed. It may be given in the name of the Chargor or otherwise;
- (g) **(Lend)** lend money or provide financial accommodation;
- (h) **(Sell)** sell any of the Charged Property (whether or not the Receiver has taken possession). Without limitation, any sale may be made:
  - (i) by public auction, private treaty or tender;
  - (ii) for cash or on credit;
  - (iii) in one lot or in parcels;
  - (iv) either with or without special conditions or stipulations as to title or time or mode of payment of purchase money or otherwise;
  - (v) with power to allow the whole or any part of the purchase money to be deferred (whether with or without any security); and
  - (vi) whether or not in conjunction with the sale of any property by any person;
- (i) **(Options)** grant or take put or call options;
- (j) **(Sever fixtures)** sever fixtures;
- (k) **(Employ)** employ or discharge any person as employee, contractor, agent, professional adviser, consultant or auctioneer for any purpose;
- (l) **(Compromise)** make or accept any arrangement or compromise;
- (m) **(Give receipts)** give receipts for money and other assets;
- (n) **(Perform and enforce agreements)**
  - (i) perform or enforce;
  - (ii) exercise or refrain from exercising the Chargor's rights and powers under;  
or
  - (iii) obtain the benefit in other ways of,  
  
any documents or agreements or rights which form part of the Charged Property and any documents or agreements entered into in exercise of any Power;
- (o) **(Vary and terminate agreements)** vary, rescind or terminate any document or agreement (including surrender or accept the surrender of leases);
- (p) **(Authorisations)** apply for, take up, transfer or surrender any Authorisation or any variation of any Authorisation;
- (q) **(Take insolvency proceedings)** make, commence and pursue insolvency proceedings against any person and do any thing in relation to any actual or contemplated Liquidation (including attend and vote at meetings of creditors and appoint proxies);

- (r) **(Take proceedings)** commence, defend, conduct, settle, discontinue or compromise proceedings in the name of the Chargor or otherwise;
- (s) **(Execute documents)** enter into and execute documents or agreements on behalf of himself or the Chargor;
- (t) **(Operate bank accounts)** operate any bank account comprising part of the Charged Property and open and operate any further bank account;
- (u) **(Surrender Charged Property)** surrender, release or transfer any of the Charged Property;
- (v) **(Exchange Charged Property)** exchange with any person any of the Charged Property for other property;
- (w) **(Promote companies)** promote the formation of companies with a view to purchasing any of the Charged Property or assuming the obligations of the Chargor or otherwise;
- (x) **(Delegate)** delegate to any person approved by the Security Trustee any of his Powers (including delegation);
- (y) **(Exercise rights)** exercise all the rights of the Chargor under the Transaction Documents with respect to the Trust Assets;
- (z) **(Vote)** exercise any voting or other rights or powers in respect of any of the Charged Property and do anything in relation to shares or marketable securities;
- (aa) **(Other outgoings)** pay any outgoing or indebtedness of the Chargor or any other person;
- (bb) **(Security Interests)** redeem any Security Interest or acquire it and any debt secured by it;
- (cc) **(Insure)** take out insurance;
- (dd) **(Insurance claims)** make, enforce, compromise and settle all claims in respect of insurance; and
- (ee) **(Incidental power)** do anything incidental to the exercise of any other Power;

All of the above paragraphs are to be construed independently. None limits the generality of any other.

## 9.4 Receiver appointed after commencement of winding up

The power to appoint a Receiver may be exercised even though:

- (a) an order may have been made or a resolution may have been passed for the Liquidation of the Chargor; and
- (b) a receiver appointed in those circumstances may not, or may not in some respects specified by the Receiver, act as the agent of the Chargor.

## 9.5 Powers exercisable by the Security Trustee

Whether or not a Receiver has been appointed, the Security Trustee may exercise any Power of a Receiver at any time after the Charge becomes enforceable under this Deed in



addition to any Power of the Chargees and without giving notice. It may exercise those Powers and its Powers without taking possession or being liable as Chargee in possession. Without limitation, it may exercise those Powers and its Powers directly or through one or more agents. In the latter event, anything done or incurred by such an agent will be taken to be done or incurred by the Security Trustee provided that the Security Trustee will have no liability in respect of the fraud, negligence or wilful default of any agent appointed by the Security Trustee except in accordance with clause 44.5.

## 9.6 Withdrawal

The Security Trustee may at any time (provided it does not have a Material Adverse Effect) give up possession of any Charged Property in accordance with this Deed and may at any time withdraw any receivership.

## 10. Remuneration of Security Trustee

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### 10.1 Costs

In accordance with the Series Notice, the Chargor as trustee of the Trust shall reimburse the Security Trustee for all costs and expenses of the Security Trustee properly incurred in acting as Security Trustee.

### 10.2 Fee

- (a) The Security Trustee shall be entitled to such fee as agreed between the Security Trustee, the Trustee, the Programme Manager, the Trust Administrator and the Voting Chargee from time to time. This fee is payable in accordance with the Series Notice.
- (b) If the Security Trustee is required at any time to undertake duties which relate to the enforcement of the terms of any Transaction Document by the Security Trustee upon a default by any other party under the terms of that Transaction Document, the Security Trustee is entitled to such additional remuneration as agreed in writing by the Security Trustee and the Voting Chargee or if the Voting Chargee is the party in default, the Security Trustee and the Chargor, from time to time or, failing agreement, in such amount as is determined by a merchant bank (acting as an expert and not as an arbitrator) selected by the Security Trustee and approved by the Programme Manager or the Chargor (as the case may be) or an ordinary resolution of Chargees or, failing such approval, nominated by the President for the time being of the Law Society of New South Wales. The determination of such merchant bank shall be conclusive and binding on the Programme Manager, the Chargor, the Chargees and the Security Trustee, so far as the law allows.
- (c) The Security Trustee's fee under sub-clause (a) shall be payable in arrears for the relevant period on the same dates as the Chargor's fee under the Series Notice or as agreed from time to time by the Security Trustee and the Programme Manager.
- (d) The Security Trustee shall be entitled to reimbursement on demand (but in accordance with the Series Notice) for:



- (i) its costs, charges and expenses in connection with the negotiation, preparation, execution, stamping, registration and completion of this Deed and reviewing the Transaction Documents, the exercise or purported exercise of the powers and trusts of this Deed or any of the powers, authorities or discretions vested in it pursuant to this Deed and any consent, approval, waiver or variation in connection with this Deed;
- (ii) all its costs, charges and expenses in connection with demanding or attempting to demand payment of any of the Secured Money;
- (iii) its costs, charges and expenses incurred in connection with the contemplated or actual enforcement or preservation of any rights under this Deed, the Charge or the preservation of the Charged Property (including expenses incurred in retaining independent consultants to evaluate any matter of concern);
- (iv) all stamp duties, registration fees and other duties which may be payable or determined to be payable in respect of this Deed; and
- (v) where the Security Trustee is removed under clause 37.2(b), its reasonable costs, charges and expenses incurred by it in the performance of its duties under this Deed upon the appointment of a replacement Security Trustee, including, without limitation, reasonable legal costs and expenses on a full indemnity basis or a solicitor and own client basis, whichever is the higher.

### **10.3 Additional fees**

Prior to an Event of Default, if the Security Trustee is required at any time to undertake duties which are agreed either by the Programme Manager and the Security Trustee or by the Security Trustee and an ordinary resolution of Chargees, as the case may be, to be of an exceptional nature or otherwise outside the scope of the normal duties of the Security Trustee under this Deed, the Security Trustee shall be entitled to such additional remuneration as may be agreed between the Programme Manager and the Security Trustee, or, failing agreement, in such amount as is determined by a merchant bank (acting as an expert and not as an arbitrator) selected by the Security Trustee and approved by the Programme Manager or an ordinary resolution of Chargees (as the case may be) or, failing such approval, nominated by the President for the time being of the Law Society of New South Wales. Such determination shall be conclusive and binding on the Programme Manager, the Chargees and the Security Trustee, so far as the law allows.

### **10.4 Goods and Services Tax**

If GST is payable in respect of the supply (as defined in any law imposing a GST) by the Security Trustee under or in respect of this Deed or any other Transaction Document, then such GST will be paid out of the Assets as an Expense in accordance with the Series Notice.

### **10.5 Cessation of Fee**

The Security Trustee shall not be entitled to remuneration under clauses 10.1 or 10.2 in respect of any period after the Charge Release Date or after it has resigned or been removed as Security Trustee.



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## 11. Power of attorney

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- (a) For valuable consideration and by way of security the Chargor irrevocably appoints each Receiver and Authorised Officer of the Security Trustee severally its attorney to do anything, following the occurrence of an Event of Default, which:
  - (i) the Chargor is obliged to do under or in relation to any Transaction Document; or
  - (ii) any Chargee or any Receiver is authorised or empowered to do under any Transaction Document or any law but only at the times at which that Chargee or a Receiver (if a Receiver had been appointed) would have been able to do it.
- (b) Without limitation, the Attorney may, following the occurrence of an Event of Default, at any time:
  - (i) do anything which in the opinion of the Security Trustee or Attorney is necessary or expedient to secure, preserve, perfect, or give effect to the security contained in this Deed (including anything under clauses 12 or 13). For this purpose, without limitation, he may execute any legal mortgage, transfer, assignment and other assurance of any of the Charged Property in favour of any Chargee, any purchaser or any nominee; and
  - (ii) delegate his powers (including delegation).
- (c) No Attorney appointed under this Deed may act inconsistently with this Deed or any other Transaction Document.
- (d) No Attorney appointed under this Deed may incur any liability on behalf of the Chargor unless that liability is limited in the manner described in clause 33 of the Master Trust Deed.

## 12. Completion of blank securities

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The Security Trustee, any Authorised Officer of the Security Trustee, any Receiver or any Attorney may complete any document which at any time is executed by or on behalf of the Chargor and deposited with the Security Trustee. It may complete it in favour of any Chargee, any purchaser or any nominee. It may not do so inconsistently with this Deed or any other Transaction Document.

## 13. Performance of Chargor's obligations

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If at any time the Chargor fails duly to perform any obligation in any Transaction Document the Security Trustee or any person it authorises may do anything which in its opinion is necessary or expedient to make good or to attempt to make good that failure to its satisfaction.

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## 14. Statutory powers

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### 14.1 Powers in augmentation

The powers conferred on a Chargee by law:

- (a) are in addition to the Powers conferred by this Deed;
- (b) (to the extent permitted by law and provided there is sufficient time to do so, with the prior written consent of the Voting Chargees) may be exercised by the Security Trustee immediately after the Charge becomes enforceable under this Deed and at any time subsequently; and
- (c) are excluded or varied only so far as they are inconsistent with the express terms of this Deed or any Collateral Security.

### 14.2 Notice not required

To the extent permitted by law:

- (a) the Chargor dispenses with any notice or lapse of time required by any law before enforcing this Deed or any Collateral Security or exercising any Power;
- (b) subject to this Deed, no Chargee is required to give notice to any person before enforcement or exercise; and
- (c) any law requiring the giving of notice or the compliance with a procedure or the lapse of time before enforcement or exercise is excluded.

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## 15. Application of moneys received

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### 15.1 Priorities

The proceeds from the enforcement of the Charge will be applied in the order of priority set out in the Series Notice.

### 15.2 Moneys actually received

In applying any moneys towards satisfaction of the Secured Moneys, the Chargor will be credited only with the money available for that purpose which is actually received by the relevant Chargee. The credit will date from the time of receipt.

### 15.3 Amounts contingently due

If any of the Secured Money is contingently owing to any Chargee at the time of a distribution of an amount under clause 15.1, the Security Trustee may retain any of that amount. If it does, it shall place the amount retained on short term interest bearing deposit until the relevant Secured Moneys become actually due or cease to be contingently owing, or it becomes reasonably apparent that the relevant contingency will not occur and the Security Trustee shall then:

- (a) pay to that Chargee the amount which becomes actually due to it; and



- (b) apply the balance of the amount retained (together with interest earned on the deposit) in accordance with clause 15.1.

## **15.4 Notice of subsequent Security Interests**

- (a) If any Chargee receives actual or constructive notice of a subsequent Security Interest affecting any of the Charged Property it may open a separate account in the name of the Chargor in the books of that Chargee.
- (b) If that Chargee does not open a new account it will be treated as if it had done so at the time it received actual or constructive notice of the Security Interest.
- (c) From the time the new account is opened or is taken to be opened:
  - (i) all advances and accommodation made available by that Chargee to the Chargor;
  - (ii) all payments and repayments made by the Chargor to that Chargee; and
  - (iii) moneys to be applied towards the Secured Moneys under clause 15.1, will be or will be taken to be debited or credited, as appropriate, to the new account. Payments, repayments and other moneys will only be applied in reduction of other Secured Moneys owing to that Chargee to the extent that there is no debit balance in that account.

## **15.5 Satisfaction of debts**

Each Chargee shall accept the distribution of moneys under this clause in full and final satisfaction of all Secured Moneys owing to it, and any debt represented by any shortfall that exists after any final distribution under this clause is extinguished.

## **16. Other Security Interests over Charged Property**

- (a) Any Chargee and any Receiver or Attorney may rely on the certificate of a holder of another Security Interest affecting or purporting to affect the Charged Property as to the amount and property secured by the Security Interest.
- (b) The Security Trustee or any Receiver may at any time pay or agree to pay the amount certified by the holder of a Security Interest or purported Security Interest to be necessary to discharge it or some indebtedness secured by it, or to acquire it. From the date of payment that amount will be part of the Secured Moneys and the Chargor shall indemnify the Security Trustee and the Receiver against that amount. This applies whether or not that Security Interest or purported Security Interest was valid or prior, equal or subsequent ranking, or the property or moneys stated in the certificate were secured by it.



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## 17. Protection of Chargees, Receiver and Attorney

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To the extent permitted by law, neither any Chargee nor any Receiver or Attorney will be liable:

- (a) in respect of any conduct, delay, negligence or wilful default in the exercise or non-exercise of any Power; nor
- (b) for any loss (including consequential loss) which results from the exercise of any Power,

except where it arises from fraud, negligence or wilful default on the part of the relevant Chargee, Receiver or Attorney (but in all cases subject to clause 36.13(f)).

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## 18. Protection of third parties

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### 18.1 No enquiry

No party to any Dealing (as defined below) and no person asked to register a Dealing:

- (a) is bound to enquire:
  - (i) whether an Event of Default has occurred or whether this Deed has become enforceable;
  - (ii) whether a person who is, or purports or is purported to be, a Receiver or Attorney is duly appointed;
  - (iii) as to the amount of Secured Moneys or whether Secured Moneys are due and payable; or
  - (iv) in any other way as to the propriety or regularity of the Dealing; or
- (b) is affected by express notice that the Dealing is unnecessary or improper.

For the protection of any party to a Dealing or a person registering a Dealing, the Dealing will be taken to be authorised by this Deed and will be valid accordingly, even if there is any irregularity or impropriety in the Dealing.

In this clause a *Dealing* is:

- (a) any payment or any delivery or handing over of an asset to; or
- (b) any acquisition, incurring of Financial Indebtedness, receipt, sale, lease, disposal or other dealing, by,

any Chargee or any Receiver or Attorney, or any person who purports or is purported to be a Receiver or Attorney.

### 18.2 Receipt

The receipt of any Authorised Officer of any Chargee or any Receiver or Attorney (or person who purports, or is purported, to be a Receiver or Attorney) for any moneys or assets payable to, or receivable or received by it, exonerates the person paying those moneys or handing over that asset from being concerned as to their application, or from being liable or accountable for their loss or misapplication.



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## 19. Expenses, indemnity

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### 19.1 Expenses

In accordance with the Series Notice and this Deed, the Chargor shall reimburse each Chargee, Receiver and Attorney for its expenses in relation to:

- (a) any consent, agreement, approval, waiver or amendment under or in relation to the Transaction Documents; and
- (b)
  - (i) any actual or contemplated enforcement of the Transaction Documents or the actual or contemplated exercise, preservation or consideration of any Powers under the Transaction Documents or in relation to the Charged Property; and
  - (ii) any enquiry by a Government Agency concerning the Chargor or the Charged Property or a transaction or activity the subject of the Transaction Documents, or in connection with which, financial accommodation or funds raised under a Transaction Document are used or provided.

This includes legal costs and expenses (including in-house lawyers charged at their usual rates) on a full indemnity basis, expenses incurred in reimbursing or indemnifying any Receiver or Attorney or in retaining consultants to evaluate matters of material bona fide concern to that Chargee and administrative costs including time of its executives (whose time and costs are to be charged at reasonable rates). This does not limit the generality of clause 19.2.

### 19.2 Indemnity

Subject to clause 15.1, on demand the Chargor shall indemnify each Chargee and each Receiver and Attorney against any loss, cost, charge, liability or expense that Chargee (or any officer or employee of that Chargee) or any Receiver or Attorney may sustain or incur as a direct or indirect consequence of:

- (a) the occurrence of any Event of Default; or
- (b) any exercise or attempted exercise of any Power or any failure to exercise any Power.

## 20. Stamp duties

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- (a) The Chargor shall pay (and reimburse each Chargee for) all stamp, transaction, registration and similar Taxes (including fines and penalties) in relation to the execution, delivery, performance or enforcement of any Transaction Document or any payment or receipt or any other transaction contemplated by any Transaction Document.
- (b) Those Taxes include debits tax or other Taxes payable by return and Taxes passed on to any Chargee (other than any Noteholder) by any bank or financial institution other than interest withholding tax.

- (c) The Chargor shall indemnify each Chargee against any liability resulting from delay or omission to pay those Taxes except to the extent the liability results from failure by the Chargee to pay any Tax after having been put in funds to do so by the Chargor.

## **21. Interest on overdue amounts**

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### **21.1 Accrual**

Interest accrues on each unpaid amount which is due and payable by the Chargor under or in respect of this Deed (including interest payable under this clause, but excluding any unpaid interest which is due and payable by the Chargor as trustee of the Trust in relation to a Note):

- (a) on a daily basis up to the date of actual payment from (and including) the due date or, in the case of an amount payable by way of reimbursement or indemnity, the date of disbursement or loss, if earlier;
- (b) both before and after judgment (as a separate and independent obligation); and
- (c) at the rate provided in clause 21.3.

### **21.2 Payment**

The Chargor shall pay interest accrued under this clause on demand by the Security Trustee and on each Payment Date. That interest is payable in the currency of the unpaid amount on which it accrues.

### **21.3 Rate**

The rate applicable under this clause is the sum of 2% per annum plus the Bank Bill Rate.

## **22. Certificate as to amount of Secured Moneys, etc.**

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A certificate signed by an Authorised Officer of the Security Trustee will be sufficient evidence against the Chargor and the Chargees, in the absence of manifest error or proof to the contrary:

- (a) as to the amount of Secured Moneys stated in the certificate;
- (b) that a person specified in that certificate is a Chargee;
- (c) that a document specified in that certificate is a Transaction Document; and
- (d) that the Security Trustee is of the opinion stated in the certificate.

## **23. Survival of representations**

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All representations and warranties in a Transaction Document survive the execution and delivery of the Transaction Documents and the provision of advances and accommodation.



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## 24. Indemnity and reimbursement obligations

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Each indemnity, reimbursement and similar obligation in a Transaction Document:

- (a) is a continuing obligation;
- (b) is a separate and independent obligation;
- (c) is payable on demand;
- (d) survives termination or discharge of the Transaction Document; and
- (e) is subject to the order of payment contained in the Series Notice and clause 15 of this Deed and the restriction on remedies contained in clause 29.3.

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## 25. Continuing security

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Each of this Deed and the Collateral Security is a continuing security despite any settlement of account, intervening payment or anything else until a final discharge of this Deed and each Collateral Security has been given to the Chargor.

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## 26. Other securities

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No Power and nothing in this Deed or any Collateral Security merges in, or in any other way prejudicially affects or is prejudicially affected by:

- (a) any other Security Interest; or
- (b) any judgment, right or remedy against any person,

which any Chargee or any person claiming through any Chargee may have at any time.

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## 27. Discharge of the Charge

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### 27.1 Release

Upon the Programme Manager providing a certificate to the Security Trustee (upon which certificate the Security Trustee may rely conclusively unless it knows that the certificate is incorrect) stating that:

- (a) all Secured Moneys (actually or contingently owing) have been paid in full; and
- (b) all the obligations of the Chargor under the Transaction Documents have been performed, observed and fulfilled,

then the Security Trustee shall, subject to clause 27.2, at the request of the Programme Manager or the Chargor, and at the cost of the Chargor, release the Charged Property from the Charge and this Deed.

### 27.2 Contingent liabilities

The Security Trustee shall be under no obligation to release the Charge unless at the time such release is sought the Security Trustee has no contingent or prospective liabilities in respect of the Trust or otherwise in connection with this Deed whether or not there is any



reasonable likelihood of such liabilities, becoming actual liabilities, including without limitation, in respect of any bills, notes drafts, cheques, guarantees, letters of credit or other notes or documents issued, drawn, endorsed or accepted by the Security Trustee for the account or at the request of the Chargor for the Trust.

### **27.3 Charge reinstated**

If any claim is made by any person that any moneys applied in payment or satisfaction of the Secured Moneys must be repaid or refunded under any law (including, without limit, any law relating to preferences, bankruptcy, insolvency or the winding up of bodies corporate) and the Charge has already been discharged, the Chargor shall, at the expense of the Trust, promptly do, execute and deliver, and cause any relevant person to do, execute and deliver, all such acts and documents as the Security Trustee may require to reinstate this Charge unless the Security Trustee agrees otherwise in writing.

## **28. Amendment**

### **28.1 Amendment without consent**

With the consent of the Voting Chargee, the Security Trustee, the Programme Manager and the Chargor may, by way of supplemental deed alter, add to or modify this Deed (including this clause 28) so long as such alteration, addition or modification is:

- (a) to correct a manifest error or ambiguity or is of a formal, technical or administrative nature only;
- (b) in the opinion of the Security Trustee necessary to comply with the provisions of any law or regulation or with the requirements of any Government Agency;
- (c) in the opinion of the Security Trustee appropriate or expedient as a consequence of an amendment to any law or regulation or altered requirements of any Government Agency (including, without limitation, an alteration, addition or modification which is in the opinion of the Security Trustee appropriate or expedient as a consequence of the enactment of a law or regulation or an amendment to any law or regulation or ruling by the Commissioner or Deputy Commissioner of Taxation or any governmental announcement or statement, in any case which has or may have the effect of altering the manner or basis of taxation of trusts generally or of trusts similar to the Trust); or
- (d) in the opinion of the Security Trustee neither prejudicial nor likely to be prejudicial to the interest of the Chargees as a whole or any class of Chargee.

### **28.2 Extraordinary Resolution of Voting Chargees**

Subject to clause 28.4, where in the opinion of the Security Trustee, a proposed alteration, addition or modification to this Deed, other than an alteration, addition or modification referred to in clause 28.1(a), (b) or (c) is prejudicial or likely to be prejudicial to the interest of the Chargees as a whole or any class of Chargees, the Security Trustee and the Chargor may make such alteration, addition or modification if consented to by all of the affected Chargees.



## **28.3 Distribution of amendments**

The Trust Administrator shall distribute to all Chargees a copy of any amendments made pursuant to clause 28.1 or 28.2 as soon as reasonably practicable after the amendment has been made.

## **28.4 Copy of amendments in advance to Designated Rating Agency**

The Trust Administrator shall provide a copy of a proposed alteration, addition or modification referred to in clause 28.2 to each Designated Rating Agency at least 5 Business Days (or such other period as may from time to time be agreed by the Trust Administrator with the Designated Rating Agency) prior to any alteration, addition or modification taking effect.

## **29. Limitation of Liability**

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### **29.1 Limited Recourse**

- (a) Clause 33 of the Master Trust Deed applies to the obligations and liabilities of the Chargor and the Trust Administrator under this Deed.
- (b) The Chargor enters into this Deed in its capacity as trustee of the Trust and in no other capacity. Notwithstanding any other provisions of this Deed or any other Transaction Document, a liability arising under or in connection with this Deed or any other Transaction Document is limited to and can be enforced against the Chargor only to the extent to which it can be satisfied out of the Assets out of which the Chargor is actually indemnified for the liability. This limitation of the Chargor's liability applies despite any other provision of this Deed or any other Transaction Document and extends to all liabilities and obligations of the Chargor in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Deed, any Transaction Document or the Trust.
- (c) The parties other than the Chargor may not sue the Chargor in any capacity other than as trustee of the Trust, including seek the appointment of a receiver (except in relation to the Assets), a liquidator, an administrator or any similar person to the Chargor or prove in any liquidation, administration or arrangement of or affecting the Chargor (except in relation to the Assets).
- (d) The provisions of this clause 29 shall not apply to any obligation or liability of the Chargor to the extent that it is not satisfied because under the Master Trust Deed, any other Transaction Document in relation to the Trust or by operation of law there is a reduction in the extent of the Chargor's indemnification out of the Assets, as a result of the Chargor's fraud, negligence or wilful default in relation to the Trust.
- (e) It is acknowledged that the Relevant Parties (as defined in paragraph (h)) of the Trust are responsible under this Deed and the other Transaction Documents for performing a variety of obligations relating to the Trust. No act or omission of the Chargor (including any related failure to satisfy its obligations or breach of

representation or warranty under this Deed or any other Transaction Document) will be considered fraud, negligence or wilful default of the Chargor for the purpose of paragraph (d) of this clause 29 to the extent to which the act or omission was caused or contributed to by any failure by any Relevant Party or any other person to fulfil its obligations relating to the Trust or by any other act or omission of any Relevant Party or any other person.

- (f) No attorney, agent, receiver or receiver and manager appointed in accordance with this Deed or any other Transaction Document has authority to act on behalf of the Chargor in a way which exposes the Chargor to any personal liability and no act or omission of any such person will be considered fraud, negligence or wilful default of the Chargor for the purpose of paragraph (d) of this clause 29.
- (g) The Chargor is not obliged to do or refrain from doing anything under this Deed or any other Transaction Document (including incur any liability) unless the Chargor's liability is limited in the same manner as set out in this clause.
- (h) For the purposes of this clause *Relevant Party* means each party to a Transaction Document other than the Chargor.

## 29.2 Unrestricted remedies

Nothing in clause 29.3 limits a Chargee in:

- (a) obtaining an injunction or other order to restrain any breach of this agreement by any party;
- (b) obtaining declaratory relief; or
- (c) relation to its rights under this Deed.

## 29.3 Restricted remedies

Except as provided in clauses 29.1 and 29.2, a Chargee shall not:

- (a) **(statutory demand)** issue any demand under s459E(1) of the Corporations Act (or any analogous provision under any other law) against the Chargor;
- (b) **(winding up)** apply for the winding up or dissolution of the Chargor;
- (c) **(execution)** levy or enforce any distress or other execution to, on, or against any assets of the Chargor;
- (d) **(court appointed receiver)** apply for the appointment by a court or a receiver to any of the assets of the Chargor;
- (e) **(judgment)** obtain a judgment for the payment of money or damages by the Chargor;
- (f) **(set-off or counterclaim)** exercise or seek to exercise any set-off or counterclaim against the Chargor; or
- (g) **(administrator)** appoint, or agree to the appointment of, any administrator to the Chargor,

or take proceedings for any of the above and the Chargee waives its rights to make those applications and take those proceedings.

## **29.4 Advice from Professional Advisers**

Neither the Security Trustee nor the Chargor will be regarded as negligent or in wilful default to the extent to which the Security Trustee or the Chargor (as the case may be) accepts and relies on an opinion, advice or letter from a professional adviser (legal, financial, audit or otherwise) which contains a dollar amount limitation on that professional adviser's liability.

## **30. Waivers, remedies cumulative**

- (a) No failure to exercise and no delay in exercising any Power operates as a waiver. No single or partial exercise of any Power precludes any other or further exercise of that Power or any other Power.
- (b) The Powers in this Deed and each Collateral Security are in addition to, and do not exclude or limit, any right, power or remedy provided by law.

## **31. Consents and opinion**

Except where expressly stated any Chargee may give or withhold, or give conditionally, approvals and consents, may be satisfied or unsatisfied, may form opinions, and may exercise its Powers, at its absolute discretion.

## **32. Severability of provisions**

- (a) Any provision of this Deed or any Collateral Security which is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this Deed or any Collateral Security nor affect the validity or enforceability of that provision in any other jurisdiction.
- (b) Without limiting the generality of paragraph (a):
  - (i) the definition of Secured Moneys does not include any liability so long as and to the extent that the inclusion of that liability would avoid, invalidate or render ineffective clauses 3 or 4.4 or the security constituted by this Deed; and
  - (ii) the definition of the Charged Property does not include any asset so long as and to the extent that the inclusion of that asset would invalidate, avoid or render ineffective clauses 3 or 4.4 or the security constituted by this Deed.

The Chargor shall use its reasonable endeavours to satisfy any condition or obtain any Authorisation which relates to it as trustee of the Trust, but not in respect of



the Trust generally which may be necessary to include that liability or asset validly under the Charge or this Deed.

### 33. Moratorium legislation

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To the full extent permitted by law all legislation which at any time directly or indirectly:

- (a) lessens, varies or affects in favour of the Chargor any obligation under this Deed or any Collateral Security; or
- (b) delays, prevents or prejudicially affects the exercise by any Chargee, any Receiver or Attorney, of any Power,

is excluded from this Deed and any Collateral Security.

### 34. Assignments

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- (a) Subject to the other Transaction Documents, a Chargee may assign its rights under this Deed and each Collateral Security. If this Deed or any Chargee's interest in this Deed is assigned, the Secured Moneys will include all actual and contingent liability of the Chargor to the assignee, whether or not it was incurred before the assignment or in contemplation of it.
- (b) The Chargor may only assign or transfer any of its rights or obligations under this Deed or any Collateral Security in accordance with the Transaction Documents (which includes a transfer of the Chargor's rights and obligations to a replacement trustee of the Trust appointed in accordance with the Master Trust Deed).

### 35. Notices

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- (a) All notices, requests, demands, consents, approvals, agreements or other communications to or by a party to this Deed:
    - (i) must be in writing;
    - (ii) must be signed by an Authorised Officer of the sender;
    - (iii) will be taken to be duly given or made:
      - (A) (in the case of delivery in person or by post) when delivered, received or left at the address of the recipient shown in this Deed (or at such other address as may be notified in writing by the recipient to the sender from time to time or as provided in clause 35(b)); and
      - (B) (in the case of facsimile transmission) on receipt by the sender of a transmission report confirming successful transmission to such facsimile number as may be notified in writing by the recipient to the sender from time to time or as provided in clause 35(b),
- but if delivery or receipt is on a day on which business is not generally carried on in the place to which the communication is sent or is later than



4.00pm (local time), it will be taken to have been duly given or made at the commencement of business on the next day on which business is generally carried on in that place.

- (b) The Security Trustee may give notice to a Chargee at the address or facsimile number notified to the Security Trustee by the Chargor or the Trust Administrator as that Chargee's address for notice.

## **36. Relationship of Chargees to Security Trustee**

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### **36.1 Instructions; extent of discretion**

- (a) The Security Trustee will have no duties or responsibilities except those expressly set out in this Deed or any Collateral Security.
- (b) Subject to this Deed, in the exercise of all its Powers the Security Trustee shall act in accordance with any Extraordinary Resolution of the Voting Chargees. The Security Trustee will have no liability in respect of any loss, costs or damages which result from the Security Trustee so acting.
- (c) In the absence of an Extraordinary Resolution of the Voting Chargees, the Security Trustee need not act but, if it does act, it must act (with prior written notice to the Noteholders) in the best interests of the Chargees in accordance with this Deed.
- (d) Any action taken by the Security Trustee under this Deed or any Collateral Security binds all the Chargees.

### **36.2 No obligation to investigate authority**

- (a) Neither the Chargor nor the Security Trustee need enquire whether any Extraordinary Resolution has been passed or as to the terms of any Extraordinary Resolution.
- (b) As between the Chargor on the one hand and the Security Trustee and the Chargees on the other, all action taken by the Security Trustee under this Deed or any Collateral Security will be taken to be authorised.

### **36.3 Delegation**

- (a) The Security Trustee may in carrying out and performing its duties and obligations in this Deed employ agents and attorneys for such purposes and the Security Trustee will not be liable for the acts or omissions of any such agent or delegate except as set out in clause 44.5. The Security Trustee may at the expense of the Chargor obtain such advice and information from lawyers, accountants, bankers and other consultants and experts as it considers desirable to allow it to be properly advised and informed in relation to its powers and obligations. Before obtaining such advice or information (unless the advice or information relates to the Programme Manager) before the occurrence of an Event of Default, the Security Trustee shall first inform the Programme Manager of the need for the advice or information and obtain the approval of the Programme Manager, which approval shall not be unreasonably withheld or delayed.

- (b) Notwithstanding other provisions in this clause 36.3, where the Security Trustee employs a Related Body Corporate as agent or attorney, the Security Trustee shall be liable for all acts or omissions of the agent or attorney done or omitted whilst acting in its capacity as such.

## **36.4 Reliance on documents and experts**

Without limiting clause 44, the Security Trustee may rely on:

- (a) any document (including any facsimile transmission, telegram or telex) it reasonably believes to be genuine and correct including any document given by the Chargor under clause 5.1(d) or by the Trust Administrator under clause 5.4 or the Programme Manager under this Deed; and
- (b) advice and statements of lawyers, accountants, bankers and other consultants and experts, whether or not retained by it.

## **36.5 Notice of default**

- (a) The Security Trustee will be taken not to have knowledge of the occurrence of an Event of Default:
  - (i) unless the Security Trustee has received notice from a Chargee or the Chargor stating that an Event of Default has occurred and describing it; or
  - (ii) except in accordance with clause 1.10.
- (b) If the Security Trustee becomes aware of the occurrence of an Event of Default, the Security Trustee shall promptly notify the Chargees.

## **36.6 Security Trustee as Chargee**

- (a) The Security Trustee in its capacity as a Chargee has the same rights and powers under the Transaction Documents as any other Chargee. It may exercise them as if it were not acting as the Security Trustee.
- (b) The Security Trustee (other than in its capacity as trustee of the Security Trust) and its associates may engage in any kind of business with the Chargor, Programme Manager, any Chargee or other person as if it were not the Security Trustee. It may receive consideration for services in connection with any Transaction Document without having to account to the Chargees.

## **36.7 Indemnity to Security Trustee**

Subject to clause 36.13 and to the order of payment contained in the Series Notice and clause 15 of this Deed, the Chargor shall indemnify the Security Trustee (to the extent not reimbursed by the Chargor) against any loss, cost, liability, expense or damage the Security Trustee may sustain or incur directly or indirectly under or in relation to the Transaction Documents. This does not limit the Chargor's liability under any other provision.

## **36.8 Independent investigation**

Each Chargee confirms that it has made and will continue to make, independently and without reliance on the Security Trustee, the Chargor or any other Chargee (including the



Trust Administrator) unless otherwise provided in the Transaction Documents and based on the Transaction Documents, agreements and information which it regards appropriate:

- (a) its own investigations into the Trust, the Notes, and other Chargees (including the Trust Administrator); and
- (b) its own analyses and decisions whether to take or not take action under any Transaction Document.

### **36.9 No monitoring**

The Security Trustee is not required to keep itself informed as to the compliance by the Chargor, the Programme Manager or the Trust Administrator with any Transaction Document or any other document or agreement or to inspect any property or book of the Chargor, the Programme Manager or the Trust Administrator.

### **36.10 Information**

The Chargor authorises the Security Trustee to provide any Chargee, with any information concerning the Trust and the Notes which may come into the possession of the Security Trustee. The Security Trustee need not provide any other person with such information.

### **36.11 Conflicts**

- (a) Subject to clause 2.2, in the event of any dispute, ambiguity or doubt as to the construction or enforceability of this Deed or of any other document or the Security Trustee's powers or obligations under or in connection with this Deed or the determination or calculation of any amount or thing for the purpose of this Deed or the construction or validity of any direction from the Chargees, the Security Trustee may:
  - (i) obtain and rely on advice from any person referred to in clause 36.4 and may comply with such direction or order; and/or
  - (ii) apply to a court or similar body for any direction or order the Security Trustee considers appropriate,

and provided the Security Trustee is using reasonable endeavours to resolve such ambiguity, dispute or doubt, the Security Trustee, in its absolute discretion, may refuse to act or refrain from acting in relation to matters affected by such dispute, ambiguity or doubt.

- (b) The Security Trustee has no responsibility for the form or contents of this Deed or any other Transaction Document and will not have any liability (except, in each case, with respect to itself) arising as a result of or in connection with any inadequacy, invalidity or unenforceability of any provision of this Deed or the other Transaction Documents.



## 36.12 No liability

Without limitation the Security Trustee shall not be liable for:

- (a) any decline in the value or loss realised upon any sale or other disposition made under this Deed of any Charged Property or any other property charged to the Security Trustee by any other person in respect of or relating to the obligations of the Chargor or any person in respect of the Chargor or the Secured Moneys or relating in any way to the Charged Property;
- (b) any decline or loss directly or indirectly arising from the Security Trustee acting or failing to act as a consequence of an opinion reached by it; and
- (c) any loss, expense or liability which may be suffered as a result of any assets secured by this Deed, Charged Property or any deeds or documents of title thereto being uninsured or inadequately insured or being held by clearing organisations or their operator or by the Custodian, the Master Servicer or any Servicer,

except to the extent to which the decline in value, loss, expense or liability arose as a result of the fraud, negligence or wilful default of the Security Trustee.

## 36.13 Limitation of Security Trustee's liability

- (a) The Security Trustee enters into this Deed only in its capacity as trustee of the Security Trust and in no other capacity.
- (b) Except to the extent expressly provided by paragraph (e):
  - (i) a liability or obligation arising under or in connection with this Deed or any other Transaction Document is limited to and can be enforced against the Security Trustee only to the extent to which it can be satisfied out of the assets of the Security Trust out of which the Security Trustee is actually indemnified for the liability and each party to this Deed and each other Transaction Document waives all claims it may otherwise have except for this clause 36.13(b)(i); and
  - (ii) this limitation of the Security Trustee's liability applies despite any other provision of this Deed or any other Transaction Document and extends to all liabilities and obligations of, undertaken or incurred by, or devolving on, the Security Trustee arising from, or in any way connected with, any conduct, omission, representation, warranty, agreement, transaction or other matter or thing under or related to this Deed or any other Transaction Document.
- (c) The Security Trustee is not obliged to do anything or refrain from doing anything under or in connection with this Deed or any other Transaction Document (including incur a liability) unless the Security Trustee's liability is limited in the same manner as set out in this clause 36.13 or otherwise in a manner satisfactory to the Security Trustee (in its absolute discretion).
- (d) Except to the extent expressly provided by paragraph (e), the parties other than the Security Trustee may not sue the Security Trustee in any capacity other than as trustee of the Security Trust, including seeking the appointment of a receiver, a

liquidator, an administrator or any similar person to the Security Trustee or prove in any liquidation, administration or arrangements of or affecting the Security Trustee.

- (e) The provisions of this clause 36.13 limiting the Security Trustee's liability will not apply to any liability or obligation of the Security Trustee to the extent that it is not satisfied because under this Deed or any other Transaction Document or by operation of law there is a reduction in the extent of the Security Trustee's indemnification out of the assets of the Security Trust, as a result of the Security Trustee's fraud, negligence or wilful default.
- (f) In no circumstances, however, will the Security Trustee be personally liable for any indirect, incidental, consequential or special damages (including, without limitation, lost profits) of any form incurred by any person or entity, whether or not foreseeable and regardless of the type of action in which such a claim may be brought (except to the extent that there is a determination by a relevant court of fraud by the Security Trustee).
- (g) The parties agree that:
  - (i) each of the Chargor and the Trust Administrator is responsible under this Deed and the other Transaction Documents for performing a variety of obligations relating to the Security Trust;
  - (ii) no act or omission of the Security Trustee will constitute fraud, negligence or wilful default of the Security Trustee to the extent to which the act or omission was caused or contributed to by any failure of the Chargor or the Trust Administrator to fulfil its obligations relating to the Security Trust or by any other act or omission of the Chargor or the Trust Administrator (including, without limitation, any failure by the Trust Administrator to give a direction to the Chargor) or any of its agents or contractors; and
  - (iii) no attorney, agent or other person appointed in accordance with this Deed or any other Transaction Document has authority to act on behalf of the Security Trustee in a way which exposes the Security Trustee to any personal liability and no act or omission of such a person will be considered fraud, negligence or wilful default of the Security Trustee.
- (h) In no event will the Security Trustee be personally liable for any failure or delay in the performance of its obligations under this Deed or any Transaction Document because of circumstances beyond its control including, but not limited to, acts of God, flood, war (whether declared or undeclared), terrorism, fire, riot, embargo, labour dispute, any statute, ordinance, code or other law which restricts or prohibits the Security Trustee from performing its obligations under this Deed or any Transaction Document, the inability to obtain or the failure of equipment or the interruption of communications or computer facilities to the extent, in each case, that these occurrences are beyond the control of the Security Trustee and any other causes beyond the Security Trustee's control.



## 37. Retirement and removal of Security Trustee

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### 37.1 Retirement

Subject to any Transaction Document to which the Security Trustee is a party, and subject also to the appointment of a successor Security Trustee as provided in this clause, the Security Trustee may retire at any time upon giving not less than 3 months' notice (or such shorter period as the parties may agree) in writing to the Chargor, the Trust Administrator, the Programme Manager, each Noteholder and each Subscriber without assigning any reason and without being responsible for any costs occasioned by such retirement.

### 37.2 Removal

Subject to any Transaction Document to which the Security Trustee is a party and the appointment of a successor Security Trustee as provided in this clause, the Security Trustee may be removed:

- (a) by the Programme Manager if any of the following occurs in relation to the Security Trustee:
  - (i) an Insolvency Event occurring in relation to the Security Trustee in its personal capacity;
  - (ii) the cessation by the Security Trustee of its business; or
  - (iii) the Security Trustee fails to comply with any of its obligations under any Transaction Document and such action has had, or, if continued will have, a Material Adverse Effect, and, if capable of remedy, that failure is not remedied within 10 Business Days after the Security Trustee having received written notice with respect thereto from the Programme Manager;or
- (b) at any time by an Extraordinary Resolution of the Voting Chargees.

The Programme Manager will notify the Subscribers and the Noteholders if the Security Trustee is removed in accordance with this clause 37.2.

### 37.3 Replacement

- (a) Upon notice of resignation or removal the Programme Manager shall have the right to appoint a successor Security Trustee who has been previously approved by an Extraordinary Resolution of the Voting Chargees and who accepts the appointment.
- (b) If no successor Security Trustee is appointed within 20 Business Days after receipt by the Chargor and the Programme Manager of a notice of resignation in clause 37.1 or receipt by the Security Trustee of a notice of removal in clause 37.2 (as the case may be), the Voting Chargees may elect a Security Trustee from among the Voting Chargees.
- (c) On its appointment the successor Security Trustee will have all the rights, powers and obligations of the retiring Security Trustee. The retiring Security Trustee will be discharged from its rights, powers and obligations, subject to paragraph (e).



- (d) The retiring Security Trustee shall execute and deliver all documents or agreements which are necessary or desirable in its opinion to transfer to the successor Security Trustee this Deed and each Collateral Security or to effect the appointment of the successor Security Trustee.
- (e) After any retiring Security Trustee's resignation or removal, this Deed will continue in effect in respect of anything done or omitted to be done by it while it was acting as Security Trustee.
- (f) The resignation or removal of a Security Trustee can only be effective from the time a successor Security Trustee is appointed.

## 38. Meetings of Voting Chargees

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### 38.1 Limitation on Security Trustee's powers

- (a) Except as provided for in this Deed, the Security Trustee shall not assent or give effect to any matter which a meeting of Voting Chargees is empowered by Extraordinary Resolution to do, unless the Security Trustee has previously been authorised to do so by an Extraordinary Resolution of Voting Chargees.
- (b) Where there is at any time only one Voting Chargee:
  - (i) it is not anticipated that there will be any meeting of Voting Chargees; and
  - (ii) the Security Trustee or the Trust Administrator or the Programme Manager may, instead of convening a meeting with that Voting Chargee, seek written directions from that Voting Chargee. Such written directions shall be taken to be an Extraordinary Resolution of the Voting Chargee.

### 38.2 Convening of meetings

- (a) **(Generally)**
  - (i) The Security Trustee or the Trust Administrator or the Programme Manager at any time may convene a meeting of the Voting Chargees.
  - (ii) Subject to the Security Trustee being adequately indemnified out of the assets of the Security Trust against all costs and expenses occasioned as a result, the Security Trustee shall convene a meeting of the Voting Chargees if requested to do so:
    - (A) by the Chargor; or
    - (B) by the Voting Chargees being holders of not less than 40% of the then Secured Moneys.
- (b) **(Time and place)**

Every meeting of Voting Chargees shall be held at such time and place as the Security Trustee approves.



## 38.3 Notice of meetings

- (a) **(Period of Notice)** Subject to clause 38.3(b), at least 7 days' notice (inclusive of the day on which the notice is given and of the day on which the meeting is held) shall be given to the Voting Chargees and the Beneficiary.
- (b) **(Short notice)** Notwithstanding that a meeting is convened upon shorter notice than as specified in clause 38.3(a), or a meeting or details of that meeting are not notified, advised or approved in accordance with this clause 38, it shall be deemed to be duly convened if it is so agreed by the Voting Chargees representing a quorum.
- (c) **(Copies)** A copy of the notice shall in all cases be given by the party to this Deed convening the meeting to the other parties to this Deed, each Noteholder.
- (d) **(Method of giving notice)** Notice of a meeting shall be given in the manner provided in this Deed.
- (e) **(Contents of a notice)** Notice of a meeting of Voting Chargees shall specify, unless in any particular case the Security Trustee otherwise agrees:
  - (i) the day, time and place of the proposed meeting; and
  - (ii) the nature of the resolutions to be proposed.
- (f) **(Failure to give notice)** The accidental omission to give notice to or the non-receipt of notice by any person entitled to receive it shall not invalidate the proceedings at any meeting.

## 38.4 Chairman

A person (who need not be a Voting Chargee and who may be a Representative of the Security Trustee) nominated in writing by the Security Trustee shall be entitled to take the chair at every such meeting but if no such nomination is made or if at any meeting the person nominated is not present within 15 minutes after the time appointed for the holding of that meeting the Voting Chargees present shall choose one of their number to be chairman.

## 38.5 Quorum

At any such meeting any one or more Voting Chargees present in person holding, or being Representatives of Voting Chargees holding or representing, in the aggregate not less than 51% of the then Secured Moneys of the Voting Chargees shall form a quorum for the transaction of business (other than passing an Extraordinary Resolution in which case the quorum shall be those persons holding or representing, in the aggregate, not less than 67.5% of the then Secured Moneys of the Voting Chargees) and no business (other than the choosing of a chairman) shall be transacted at any meeting unless the requisite quorum is present at the commencement of business.

## 38.6 Adjournment

- (a) **(Quorum not present)** If within 15 minutes from the time appointed for any such meeting a quorum is not present the meeting shall, if convened on the



requisition of the Voting Chargees be dissolved. In any other case it shall stand adjourned (unless the Security Trustee agrees that it be dissolved) for such period, not being less than 7 days nor more than 42 days, as may be appointed by the chairman. At the adjourned meeting 2 or more persons present in person holding, or being Representatives holding or representing, in the aggregate, not less than 15% of the then Secured Moneys of the Voting Chargees shall (except for the purpose of passing an Extraordinary Resolution) form a quorum and shall have the power to pass any resolution and to decide upon all matters which could properly have been dealt with at the meeting from which the adjournment took place had a quorum been present at that meeting. The quorum at any such adjourned meeting for passing a Extraordinary Resolution shall be any one or more persons present in person holding, or being Representatives holding or representing, in the aggregate, not less than 50% of the then Secured Moneys of the Voting Chargees.

- (b) **(Adjournment of meeting)** The chairman may with the consent of (and shall if directed by) any meeting adjourn the same from time to time and from place to place but no business shall be transacted at any adjourned meeting except business which might lawfully have been transacted at the meeting from which the adjournment took place.
- (c) **(Notice of adjourned meeting)** At least 5 days' notice of any meeting adjourned through want of a quorum shall be given in the same manner as of an original meeting and such notice shall state the quorum required at such adjourned meeting. It shall not, however, otherwise be necessary to give any notice of an adjourned meeting.

### 38.7 Voting procedure

- (a) **(Show of hands)** Every question submitted to a meeting shall be decided in the first instance by a show of hands and in case of equality of votes the chairman shall both on a show of hands and on a poll have a casting vote in addition to the vote or votes (if any) to which he may be entitled as a Voting Chargee or as a Representative.
- (b) **(Declaration)** At any meeting, unless a poll is (before or on the declaration of the result of the show of hands) demanded by the chairman, the Chargor, the Trust Administrator, the Programme Manager or the Security Trustee or by one or more persons holding, or being a Representative or Representatives holding or representing, in aggregate not less than 15% of the then Secured Moneys, a declaration by the chairman that a resolution has been carried by a particular majority or lost or not carried by any particular majority shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against that resolution.
- (c) **(Poll)** If at any meeting a poll is so demanded, it shall be taken in such manner and (subject as provided below) either at once or after such an adjournment as the chairman directs and the result of such poll shall be deemed to be the resolution of the meeting at which the poll was demanded as at the date of the taking of the



poll. The demand for a poll shall not prevent the continuance of the meeting for the transaction of any business other than the question on which the poll has been demanded.

- (d) **(No adjournment)** Any poll demanded at any meeting on the election of a chairman or on any question of adjournment shall be taken at the meeting without adjournment.
- (e) **(Votes)** Subject to clause 38.7(a), at any meeting:
  - (i) on a show of hands, every person holding, or being a Representative holding or representing other persons who hold, Secured Moneys shall have one vote; and
  - (ii) on a poll, every person who is present shall have one vote for each \$100 (but not part thereof) of the Secured Moneys that he holds or in respect of which he is a Representative. Any person entitled to more than one vote need not use or cast all of the votes to which he is entitled in the same way.

For the purpose of determining the amount of Secured Moneys at any time, the Security Trustee may rely on the Financial Reports of the Chargor and any information provided by the Auditor of the Chargor. Clause 22 will apply to any determination of Secured Moneys for the definition of *Voting Chargee* and this clause 38.

### 38.8 Right to attend and speak

The Chargor, the Trust Administrator, the Programme Manager, the Security Trustee and each other Chargee (through their respective Representatives) and their respective financial and legal advisers shall be entitled to attend and speak at any meeting of Voting Chargees (and, to the extent that they are also a Voting Chargee, to vote at that meeting). No person shall otherwise be entitled to attend or vote at any meeting of the Voting Chargees or to join with others in requesting the convening of such a meeting unless he is a Voting Chargee or a Representative.

### 38.9 Appointment of proxies

- (a) **(Requirements)** Each appointment of a proxy shall be in writing and shall be deposited at the registered office of the Security Trustee or in such other place as the Security Trustee shall designate or approve, together with proof satisfactory to the Security Trustee of its due execution (if so required by the Security Trustee), not less than 24 hours before the time appointed for holding the meeting or adjourned meeting at which the named proxy proposes to vote, and in default, the appointment of proxy shall not be treated as valid unless the chairman of the meeting decides otherwise before that meeting or adjourned meeting proceeds to business. A notarially certified copy proof of due execution as specified above (if applicable) shall, if required by the Security Trustee, be produced by the proxy at the meeting or adjourned meeting, but the Security Trustee shall not thereby be obliged to investigate or be concerned with the validity or the authority of the

proxy named in any such appointment. The proxy named in any appointment of proxy need not be a Voting Chargee.

- (b) **(Proxy remains valid)** Any vote given in accordance with the terms of an appointment of proxy set out in clause 38.9(a) shall be valid notwithstanding the previous revocation or amendment of the appointment of proxy or of any of the Voting Chargee's instructions pursuant to which it was executed, provided that no intimation in writing of such revocation or amendment has been received by the Security Trustee at its registered office, or by the chairman of the meeting, in each case within the 24 hours before the commencement of the meeting or adjourned meeting at which the appointment of proxy is used.

### 38.10 Corporate Representatives

A person authorised pursuant to section 250D of the Corporations Act 2001 by a Voting Chargee being a body corporate to act for that Voting Chargee at any meeting shall, in accordance with his authority until his authority is revoked by the body corporate concerned, be entitled to exercise the same powers on behalf of that body corporate as that body corporate could exercise if it were an individual Voting Chargee and shall be entitled to produce evidence of his authority (together with, if required by the Security Trustee, evidence satisfactory to the Security Trustee of the due execution of the authority) to act at any time before the time appointed for the holding of or at the meeting or adjourned meeting or for the taking of a poll at which he proposes to vote.

### 38.11 Rights of Representatives

A Representative shall have the right to demand or join in demanding a poll and shall (except and to the extent to which the Representative is specifically directed to vote for or against any proposal) have power generally to act at a meeting for the Voting Chargee concerned. The Security Trustee and any officer of the Security Trustee may be appointed a Representative.

### 38.12 Extraordinary Resolutions

- (a) **(Powers)** A meeting of the Voting Chargees shall, without prejudice to any rights or powers conferred on other persons by this Deed, have power exercisable by Extraordinary Resolution:
- (i) to direct the Security Trustee in the action that should be taken by it following the occurrence of an Event of Default or the Charge or this Deed becoming enforceable;
  - (ii) to sanction any action that the Security Trustee or a Receiver proposes to take to enforce the provisions of this Deed;
  - (iii) to sanction any proposal by the Trust Administrator, the Chargor or the Security Trustee for any modification, abrogation, variation or compromise of, or arrangement in respect of, the rights of the Chargees against the Chargor or the Trust Administrator whether such rights shall arise under this Deed, the Transaction Documents or otherwise;

- (iv) to sanction the exchange or substitution of the Secured Moneys for, or the conversion of the Secured Moneys into, bonds or other obligations or securities of the Chargor or any body corporate formed or to be formed;
  - (v) to assent to any modification of the provisions contained in this Deed which may be proposed by the Chargor, the Trust Administrator or the Security Trustee;
  - (vi) to give any authority, direction, guidance or sanction sought by the Security Trustee from the Voting Chargees;
  - (vii) to appoint any persons (whether Voting Chargees or not) as a committee or committees to represent the interests of the Voting Chargees and to confer on such committee or committees any powers or discretions which the Voting Chargees could themselves exercise by Extraordinary Resolution;
  - (viii) to remove the Security Trustee;
  - (ix) to approve a person proposed to be appointed as a new Security Trustee for the time being;
  - (x) to discharge or exonerate the Security Trustee from any liability in respect of any act or omission for which it may become responsible under this Deed;
  - (xi) to do any other thing which under this Deed is required to be given by an Extraordinary Resolution;
  - (xii) to authorise the Security Trustee or any other person to concur in and execute and do all such documents, acts and things as may be necessary to carry out and give effect to any Extraordinary Resolution;
  - (xiii) to determine whether the Security Trustee should or should not perform an act; or
  - (xiv) to sanction any waiver or authorisation of any breach or proposed breach of any of the terms and conditions of the Transaction Documents.
- (b) **(No power)** A meeting of the Voting Chargees shall not have power in relation to any Chargee to:
- (i) release any obligation to pay any of the Secured Moneys to that Chargee;
  - (ii) alter any date upon which any of the Secured Moneys is payable in relation to that Chargee;
  - (iii) alter the amount of any payment of any part of the Secured Moneys; or
  - (iv) alter clause 15.1 in relation to that Chargee,
- without the consent of that Chargee.



## 38.13 Extraordinary Resolution binding on Chargees

Subject to clause 38.12(b), an Extraordinary Resolution passed at a meeting of the Voting Chargees duly convened and held in accordance with this clause 38 shall be binding upon all Chargees whether or not present at such meeting and each of the Chargees and the Chargor, the Trust Administrator and the Security Trustee shall be bound to give effect to it accordingly.

## 38.14 Minutes and records

Minutes of all resolutions and proceedings at every meeting of the Voting Chargees under this clause 38 shall be made and duly entered in the books to be from time to time provided for that purpose by the Security Trustee and any such minutes purporting to be signed by the chairman of the meeting at which those resolutions were passed or proceedings transacted or by the chairman of the next succeeding meeting of the Voting Chargees shall be conclusive evidence of the matters contained in those minutes and until the contrary is proved, provided every meeting in respect of the proceedings of which minutes have been made and signed as provided in this clause 38.14 shall be deemed to have been duly convened and held and all resolutions passed or proceedings transacted in that meeting to have been duly passed and transacted.

## 38.15 Written resolutions

Notwithstanding the preceding provisions of this clause 38, a resolution of all the Voting Chargees (including an Extraordinary Resolution) may be passed, without any meeting or previous notice being required, by an instrument or notes in writing which have:

- (a) in the case of a resolution (including an Extraordinary Resolution) of all the Voting Chargees, been signed by all the Voting Chargees; and
- (b) any such instrument shall be effective upon presentation to the Security Trustee for entry in the records referred to in clause 38.14.

## 38.16 Further procedures for meetings

Subject to all other provisions contained in this Deed, the Security Trustee may without the consent of the Chargees prescribe such further regulations regarding the holding of meetings of the Voting Chargees and attendance and voting at those meetings as the Security Trustee may in its sole discretion determine including particularly (but without prejudice to the generality of the above) such regulations and requirements as the Security Trustee thinks reasonable:

- (a) **(persons are Voting Chargees)** so as to satisfy itself that persons are in fact Voting Chargees who purport to requisition a meeting or who purport to make any requisition to the Security Trustee in accordance with this Deed;
- (b) **(entitlement to vote)** so as to satisfy itself that persons who purport to attend or vote at any meeting of Voting Chargees are entitled to do so in accordance with this clause 38 and this Deed; and
- (c) **(forms of Representative)** as to the form of appointment of a Representative.

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## 39. Authorised Officers

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The Chargor irrevocably authorises each Chargee to rely on a certificate by a person purporting to be its director or secretary as to the identity and signatures of its Authorised Officers. The Chargor warrants that those persons have been authorised to give notices and communications under or in connection with the Transaction Documents.

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## 40. Governing law and jurisdiction

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This Deed is governed by the laws applying in New South Wales. Each party to this Deed submits to the non-exclusive jurisdiction of courts exercising jurisdiction there.

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## 41. Counterparts

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This Deed may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

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## 42. Set-Off

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No Chargee may apply any credit balance in any currency (whether or not matured) in any account comprised in the Charged Property towards satisfaction of any sum then due and payable to that Chargee under or in relation to any Transaction Document or otherwise.

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## 43. Acknowledgement by Chargor

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The Chargor confirms that:

- (a) it has not entered into any Transaction Document in reliance on, or as a result of, any conduct of any kind of or on behalf of any Chargee (other than the Programme Manager) or any Related Body Corporate of any Chargee (including any advice, warranty, representation or undertaking); and
- (b) no Chargee nor any Related Body Corporate of any Chargee is obliged to do anything (including disclose anything or give advice),

except as expressly set out in the Transaction Documents or in writing duly signed by or on behalf of the Chargee or its Related Body Corporate.

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## 44. Security Trustee's limited liability

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### 44.1 Reliance on certificate

- (a) Without limiting clause 36.4, the Security Trustee shall not incur any liability as a result of relying upon the authority, validity, due authorisation of, or the accuracy of any information contained in any notice, resolution, direction, consent, certificate, receipt, affidavit, statement, valuation report or other document or communication (including any of the above submitted or provided by the Trust Administrator by the Programme Manager, by the Chargor or by a Chargee) if the



Security Trustee is entitled, under clause 44.2 to assume such authenticity, validity, due authorisation or accuracy.

- (b) In preparing any notice, certificate, advice or proposal the Security Trustee shall be entitled to assume, unless it is actually aware to the contrary, that each person under any Authorised Investment, Receivable, Receivable Security, Related Securities, other Transaction Document or any other deed, agreement or arrangement incidental to any of the above or to the Trust, will perform their obligations under those documents in full by the due date and otherwise in accordance with their terms.

## 44.2 Security Trustee's reliance on Trust Administrator

- (a) **(Authorised Officers are sufficient evidence)** Without limiting clause 36.4 whenever any certificate, notice, proposal, direction, instruction, document or other communication is to be given to the Security Trustee, the Security Trustee may assume:
  - (i) the authenticity and validity of any signature in any such document and that such document has been duly authorised; and
  - (ii) the accuracy of any information contained in any such documents,in either case the Security Trustee is actually aware to the contrary.
- (b) **(Chargor not liable for loss)** The Security Trustee shall not be responsible for any loss arising from any forgery or lack of authenticity or any act, neglect, mistake or discrepancy of the Trust Administrator or the Programme Manager or any officer, employee, agent or delegate of the Trust Administrator or the Programme Manager in preparing any such document or in compiling, verifying or calculating any matter or information contained in any such document, if the officers of the Security Trustee responsible for the administration of the Security Trust are not actually aware of such forgery, lack of authenticity or validity, act, neglect, mistake or discrepancy.

## 44.3 Compliance with laws

The Security Trustee shall not incur any liability to anyone in respect of any failure to perform or to do any act or thing which by reason of any provision of any applicable present or future law of any place or any applicable ordinance, rule, regulation or by law or of any applicable decree, order or judgment of any competent court or other tribunal, the Security Trustee shall be prohibited from doing or performing.

## 44.4 Reliance on experts

The Security Trustee may rely on and act on the opinion or statement or certificate or advice of or information obtained from barristers or solicitors (whether instructed by the Security Trustee or not), bankers, accountants, brokers, valuers and other persons believed by it in good faith to be expert or properly informed in relation to the matters on which they are consulted and the Security Trustee shall not be liable for anything done or suffered by it in good faith in reliance on such opinion, statement, certificate, advice or

information except to the extent of losses, costs, claims or damages caused by the Security Trustee's fraud, negligence or wilful default.

#### **44.5 Responsibility for actions of agents**

The Security Trustee shall not be responsible for any act, omission, wilful default, mistake, oversight, error of judgement, forgetfulness or want of prudence on the part of the Trust Administrator, the Programme Manager, any person or agent appointed by the Security Trustee or on whom the Security Trustee is entitled to rely under this Deed (other than a Related Body Corporate of the Security Trustee), attorney, banker, receiver, barrister, solicitor, agent or other person acting as agent or adviser to the Security Trustee except:

- (a) to the extent of losses, costs, claims or damages caused by the Security Trustee's fraud, negligence or wilful default;
- (b) where the Security Trustee did not appoint that person in good faith or failed to exercise reasonable care in selecting that person;
- (c) where the Security Trustee expressly instructs that person to do (or omit to do) the relevant act;
- (d) where the Security Trustee is aware (as contemplated in clause 1.10) of the default of that person and does not take the action reasonably available to it under the relevant Transaction Document to remedy that person's act or omission, to the extent to which any loss or liability arose or any increase in loss or liability caused by the Security Trustee's failure to take the relevant action; or
- (e) where the Transaction Documents expressly provide that, despite this clause 44.5, the Security Trustee is so liable,

provided that nothing in this Deed or any other Transaction Document imposes any obligations on the Security Trustee to review or supervise the performance by any other party of its obligations.

#### **44.6 Powers, authorities and discretions**

Except as otherwise provided in this Deed and in the absence of fraud, negligence or wilful default, the Security Trustee shall not be in any way responsible for any loss (whether consequential or otherwise), costs, damages or inconvenience that may result from the exercise or non-exercise of any powers, authorities and discretions vested in it.

#### **44.7 Impossibility or impracticability**

If for any reason whatsoever it becomes impossible or impracticable for it to carry out any or all of the provisions of this Deed or any other Transaction Document, the Security Trustee shall not be under any liability and, except to the extent of its own fraud, negligence or wilful default, nor shall it incur any liability by reason of any error of law or any matter or thing done or suffered or omitted to be done in good faith by it or its officers, employees, agents or delegates.



#### 44.8 Legal and other proceedings

(a) **(Indemnity for legal costs)** The Security Trustee shall be indemnified out of the Security Trust for all legal costs and disbursements on a full indemnity basis and all other costs, disbursements, outgoings and expenses incurred by the Security Trustee in connection with:

- (i) the enforcement or contemplated enforcement of, or preservation of rights under;
- (ii) without limiting the generality of paragraph (i) above, the initiation, defence, carriage and settlement of any action, suit, proceeding or dispute in respect of; and
- (iii) obtaining legal advice or opinions concerning or relating to the interpretation or construction of,

this Deed or any other Transaction Document or otherwise under or in respect of the Security Trust provided that the enforcement, contemplated enforcement or preservation by the Security Trustee (as the case may be) of the rights referred to in paragraph (i) or the court proceedings referred to in paragraph (ii) (including in each case the defence of any action, suit, proceeding or dispute brought against the Security Trustee), and the basis of incurring any of those costs, disbursements, outgoings and expenses by the Security Trustee:

- (iv) has been approved in advance by an Extraordinary Resolution of the Voting Chargees; or
- (v) is regarded by the Security Trustee as necessary to protect the Security Trustee against potential personal liability or to protect the interests of the Chargees and the Security Trustee reasonably believes that any delay in seeking an approval under paragraph (iv) will be prejudicial to the interests of the Chargees.

(b) **(Defence of proceedings alleging negligence etc.)** The Security Trustee shall be entitled to claim in respect of the above indemnity from the Security Trust for its expenses and liabilities incurred in defending any action, suit, proceeding or dispute in which fraud, negligence or wilful default is alleged or claimed against it, but on the same being proved, accepted or admitted by it, it shall from its personal assets immediately repay to the Security Trust the amount previously paid by the Security Trust to it in respect of that indemnity.

#### 44.9 No liability except for negligence etc.

Except to the extent caused by the fraud, negligence or wilful default on its part (but without limiting clause 36.13) or on the part of any of its officers or employees, or any agents or delegate, sub-agent, sub-delegate employed by the Security Trustee in accordance with this Deed (and where this Deed provides that the Security Trustee is liable for the acts or omissions of any such person) to carry out any transactions contemplated by this Deed, the Security Trustee shall not be liable personally for any losses, costs, liabilities or claims arising from the failure to pay moneys on the due date for payment to any



Chargee or any other person or for any loss howsoever caused in respect of the Security Trust or to any Chargee or other person.

#### 44.10 Further limitations on Security Trustee's liability

Subject to clauses 44.2 and 36.13, the Security Trustee shall not be liable:

- (a) **(for loss on its discretions)** for any losses, costs, liabilities or expenses arising out of the exercise or non-exercise by it of its powers, authorities or discretion or for any other act or omission on its part under this Deed, any other Transaction Document or any other document except to the extent to which that loss, cost, liability or expense was caused by the fraud, negligence or wilful default of the Security Trustee or any of its officers or employees, or any agent, delegate, sub-agent, sub-delegate employed by the Security Trustee in accordance with this Deed (and where this Deed provides that the Security Trustee is liable for the acts or omissions of any such person);
- (b) **(for loss on its directions)** for any losses, costs, damages or expenses caused by its acting (in circumstances where this Deed requires it to act or contemplates that it may so act) on any instruction or direction given to it by any Chargee under this Deed, any other Transaction Document or any other document, except to the extent that it is caused by the fraud, negligence or wilful default of the Security Trustee, or any of its officers or employees, or an agent or delegate employed by the Security Trustee in accordance with this Deed to carry out any transactions contemplated by this Deed (and where this Deed provides that the Security Trustee is liable for the acts or omissions of such person);
- (c) **(for certain defaults)** for any Event of Default;
- (d) **(failure by Chargor to comply)** without limiting the Security Trustee's obligations under the Transaction Documents, for any act, omission or default of the Chargor in relation to its obligations under the Transaction Documents;
- (e) **(failure by any person)** for the failure of a person to carry out an agreement with the Security Trustee in connection with the Trust; or
- (f) **(failure to check)** for any losses, costs, liabilities or expenses caused by the Security Trustee's failure to check any calculation, information, document, form or list supplied or purported to be supplied to it by the Trust Administrator, the Programme Manager or the Chargor,

except, in the case of paragraphs (c) to (f) (inclusive), to the extent that it is caused by the fraud, negligence or wilful default of the Security Trustee.

Nothing in this clause 44.10 alone (but without limiting the operation of any other clause of this Deed) shall imply a duty on the Security Trustee to supervise the Trust Administrator, the Programme Manager or the Chargor in the performance of the Trust Administrator's or the Chargor's functions and duties, and the exercise by the Trust Administrator, the Programme Manager or the Chargor of its discretions.

#### 44.11 Conflicts

- (a) **(No conflict)** Nothing in this Deed shall prevent the Security Trustee or any of its Related Body Corporates or Associates or their directors or other officers (each a **Relevant Person**) (subject to any applicable laws and regulations) from:
- (i) subscribing for purchase, holding, dealing in or disposing of any Note;
  - (ii) entering into any financial, banking, development, insurance, agency, broking or other transaction with, or providing any advice or services for the Trust; or
  - (iii) being interested in any such contract or transaction or otherwise at any time contracting or acting in any capacity as representative or agent.
- (b) **(Not liable to account)** A Relevant Person shall not be in any way liable to account to any Chargee or any other person for any profits or benefits (including any profit, bank charges, commission, exchange, brokerage and fees) made or derived under or in connection with any transaction or contract specified in paragraph (a) above.
- (c) **(Fiduciary relationship)** A Relevant Person shall not by reason of any fiduciary relationship be in any way precluded from making any contracts or entering into any transactions with any person in the ordinary course of its business or from undertaking any banking, financial, development, agency or other services including any contract or transaction in relation to the placing of or dealing with any investment and the acceptance of any office or profit or any contract of loan or deposits or other contract or transaction which any person or company not being a party to this Deed could or might have lawfully entered into if not a party to this Deed. A Relevant Person shall not be accountable to any Chargee or any other person for any profits arising from any such contracts, transactions or offices.

#### 44.12 Information

Except for notices and other documents and information (if any) expressed to be required to be furnished to any person by the Security Trustee under this Deed or any other Transaction Document, the Security Trustee shall not have any duty or responsibility to provide any person (including any Chargee) with any credit or other information concerning the affairs, financial condition or business of the Trust.

#### 44.13 Investigation by Security Trustee

Each Chargee acknowledges that:

- (a) the Security Trustee has no duty, and is under no obligation, to investigate whether an Event of Default has occurred in relation to the Trust;
- (b) subject to clause 1.10, the Security Trustee is required to provide the notices referred to in this Deed in respect of a determination of Material Adverse Effect only if it is aware of the facts giving rise to the Material Adverse Effect; and

- (c) in making any such determination, the Security Trustee (if it is aware of the facts and that they constitute a Material Adverse Effect or Event of Default) will seek and rely on advice given to it by its advisors in a manner contemplated by this Deed.

**EXECUTED** and delivered as a deed in Sydney.

Each attorney executing this Deed states that he or she has no notice of revocation or suspension of his or her power of attorney.

## CHARGOR

**Signed Sealed and Delivered for Perpetual Corporate Trust Limited** by its attorneys under power of attorney in the presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Attorney

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Attorney

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

## TRUST ADMINISTRATOR

**Signed Sealed and Delivered for Perpetual Nominees Limited** by its attorneys under power of attorney in the presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Attorney

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Attorney

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

## PROGRAMME MANAGER

**Signed Sealed and Delivered for Credit Suisse (Australia) Limited** by its attorneys under power of attorney in the presence of:

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Attorney Signature

\_\_\_\_\_  
Print Name

## SECURITY TRUSTEE

**Signed Sealed and Delivered on behalf of P.T. Limited** by its attorneys in the presence of:

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Attorney Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Attorney Signature

\_\_\_\_\_  
Print Name