

Standard

Loan

Conditions



STANDARD LOAN CONDITIONS

PART I: PRELIMINARY

1. PURPOSE OF THESE TERMS

The purpose of these Terms is to set forth in detail the basis on which the Bank may from time to time provide financial accommodation to the Borrower under its Facility Letters. These Terms shall be read in conjunction with any Facility Letter from the Bank to the Borrower, and in the event of any inconsistency between a Facility Letter and these Terms, the provisions of the relevant Facility Letter shall prevail in respect of the financial accommodation made available under that Facility Letter.

2. DEFINITIONS AND INTERPRETATION

2.1 Definitions

The following definitions apply unless the context requires otherwise.

"Authorisation" includes:

- (a) any consent, authorisation, registration, filing, lodgement, agreement, notarisation, certificate, permission, licence, approval, authority or exemption from, by or with a Governmental Agency; or
- (b) in relation to anything which will be fully or partly prohibited or restricted by law if a Governmental Agency intervenes or acts in any way within a specified period after lodgement, filing, registration or notification, the expiry of that period without intervention or action.

"Authorised Officer" means

- (a) in respect of the Borrower or the Security Party:
 - (i) in respect of a Borrower or Security Party who is an individual, the Borrower or the Security Party;
 - (ii) in respect of a Borrower or Security Party which is a body corporate, any director or secretary; and
 - (iii) in either case, any person from time to time nominated as an Authorised Officer by the Borrower or the Security Party by a notice to the Bank accompanied by certified copies of signatures of all new persons so appointed; and
- (b) in respect of the Bank, any person whose title or acting title includes the words "Head of", "Manager" or "President" or cognate expressions, or any secretary or director.

"Bank" means, in respect of any Facility, whichever of National Australia Bank Limited (A.C.N. 004 044 937), National Australia Merchant Bank (Singapore) Limited and Bank of New Zealand is designated as the "Bank" in the relevant Facility Letter.

"Bank Guaranteed Facility" means any Facility which is so designated in the relevant Facility Letter.

"Bank Guarantor" means, in respect of any Bank Guaranteed Facility, whichever of National Australia Bank Limited (A.C.N. 004 044 937), National Australia Merchant Bank (Singapore) Limited and Bank of New Zealand is designated as the "Bank Guarantor" for purposes of the Facility in the relevant Facility Letter.

"Borrower" means, in respect of any Facility, each person who:

- (a) is designated as such in the relevant Facility Letter; and
- (b) has signed the relevant Facility Letter.

"Building" means the dwelling house and other structures erected or to be erected on the Property.

"Business Day" means a weekday on which:

- (a) the relevant financial markets are open for business of the kind contemplated by this Agreement in Singapore; and
- (b) for purposes of determining the length of a Funding Period or where a payment is to be made, banks are open in the principal financial centre of the currency of the relevant Loan.

"Commitment" means, in relation to a Facility, the Bank's lending commitment under that Facility identified in the relevant Facility Letter.

"Drawdown Date" means the date on which any accommodation under this Agreement is or is to be drawn.

"Drawdown Notice" means a notice under Clause 3.

"Eurocurrency" means:

- (a) a currency (other than Singapore dollars) which is freely transferable and convertible into the Facility Currency and in which transactions are effected between banks in Singapore; and
- (b) if upon request by the Borrower the Bank approves, Singapore dollars.

"Event of Default" means any of the events specified in Clause 13.

"Exchange Rate" with respect to a currency and a Facility on a date means the Bank's spot rate of exchange as at approximately 11 am (Singapore time) on that date for the purchase of that currency against the currency in which the Facility is denominated.

"Excluded Tax" means a Tax imposed by a jurisdiction on the net income of the Bank as a consequence of the Bank being a resident of or organised or doing business in that jurisdiction but not any Tax:

- (a) which is calculated on or by reference to the gross amount of a payment derived under a Transaction Document or another document referred to in a Transaction Document (without the allowance of a deduction); or
- (b) which is imposed as a result of the Bank being considered a resident of or organised or doing business in that jurisdiction solely as a result of it being a party to a Transaction Document or a transaction contemplated by a Transaction Document.

"Facility" means a loan facility from time to time made or agreed to be made available by the Bank to the Borrower on terms which include these Terms.

"Facility Currency" means, in respect of any Facility but subject to Clause 18.3, the currency in which that Facility is made available, as specified in the Facility Letter.

"Facility Letter" means a letter from the Bank to the Borrower offering the provision of a Facility to the Borrower, signed by the Borrower by way of acceptance of that offer.

"Financial Indebtedness" means any indebtedness, whether secured or unsecured, as principal, surety or otherwise, present or future, actual or contingent in respect of moneys borrowed or raised or any financial accommodation whatever.

"Fixed Rate Facility" means a Facility provided at a rate of interest which, under the relevant Facility Letter, is expressed to be fixed for the term of the Loan.

"Funding Period" means, in relation to a Loan, a period for the fixing of interest rates for the Loan. In each case the period commences on the Drawdown Date or Rollover Date of the Loan and has a duration selected or determined under Clause 5.4.

"Governmental Agency" means any government or any governmental, semi-governmental or judicial entity, agency, authority, central bank, department, legislature, minister, ministry, official or public person. It also includes any self regulatory organisation established under statute or any stock exchange.

"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) to be responsible otherwise for an obligation or indebtedness of another person.

"Lending Rate" means, in relation to a Funding Period:

- (a) the rate posted by the Bank at its Lending Office at or about 11 am (Singapore time) two Business Days before the Funding Period as its lending rate for the currency comprised in the relevant Loan; or
- (b) if no such rate is posted, the rate determined by the Bank to be its cost (including all administrative and ancillary costs and costs incurred in complying with any legislation, regulation or directive of any Governmental Agency) of raising deposits in the currency of the relevant Loan of a term comparable to that Funding Period from leading banks in the Singapore interbank market at or about 11 am (Singapore time) two Business Days before that Funding Period.

"Loan" means all accommodation made available under a Facility which is denominated in the same currency and has the same Funding Period and, except in the case of a Revolving Facility, the same Drawdown Date or Rollover Date.

"Margin" means, in respect of a Loan, the rate per cent per annum specified in the relevant Facility Letter as the Margin.

"Material Adverse Effect" means in the opinion of the Bank a material adverse effect on the ability of the Borrower or a Security Party to perform its obligations under a Transaction Document or on the security of the Bank or on the financial condition or business of the Borrower or a Security Party.

"Mortgaged Property" means the property which is subject to the Security Interest (if any) constituted or evidenced by any Transaction Document.

"Potential Event of Default" means anything which with the giving of notice or the passage of time or the making of any determination or the satisfaction of any other condition (or any combination thereof) might or would become an Event of Default.

"Principal Outstanding" means the aggregate principal amount of all outstanding Loans.

"Property" means such property as is designated as the "Property" in the relevant Facility Letter and all fixtures including the building(s) erected or to be erected thereon.

"Related Corporation" means any corporation:

- (a) which is a Subsidiary of the Bank;
- (b) of which the Bank is a Subsidiary; or
- (c) which is a Subsidiary of a corporation of which the Bank itself is a Subsidiary.

"Repayment Date" means, in respect of any Facility, the date or dates specified as such in the relevant Facility Letter.

"Revolving Facility" means any Facility which in the relevant Facility Letter is designated as revolving.

"Rollover Date" means, in respect of a Facility, the last day of a Funding Period of a Loan.

"Same Day Funds" means

- (a) in the case of US dollars, US dollar funds settled through the New York Clearing House Interbank Payments System (or another manner of payment in US dollars specified by the Bank to the Borrower as being customary at the time for the settlement of international transactions of the type contemplated by this Agreement);
- (b) in the case of Australian dollars, a bank cheque or other immediately available funds (or another manner of payment in Australian dollars specified by the Bank to the Borrower as being customary at the time for the settlement of international transactions of the type contemplated by this Agreement);
- (c) in the case of New Zealand dollars, a bank cheque or other immediately available funds (or another manner of payment in New Zealand dollars specified by the Bank to the Borrower as being customary at the time for the settlement of international transactions of the type contemplated by this Agreement); and
- (d) in the case of any other currency, the manner of payment in the currency concerned specified by the Bank to the Borrower as being customary at the time for the settlement of international transactions in that currency of the type contemplated by this Agreement.

"Secured Moneys" means all moneys (whether principal, interest, fee, commission or otherwise) which the Borrower (whether alone or with another person and whether as principal or surety) is or at any time may become actually or contingently liable to pay to or for the account of the Bank (whether alone or with another person) for any reason whatever under or in connection with this Agreement, any Facility Letter or any Guarantee or Security Interest which secures any such moneys.

"Security Interest" includes any mortgage, pledge, lien, hypothecation or charge or any security or preferential interest or arrangement of any kind having substantially the same economic effect (including any "holdback" or "flawed asset" arrangement) or any other right of, or arrangement with, any creditor to have its claims satisfied in priority to other creditors with, or from the proceeds of, any asset.

"Security Party" means any person designated as such in a Facility Letter and references in this Agreement to "Security Party" shall apply where the context so requires.

"Security Percentage" means, in respect of a Facility and a category of property, the percentage specified in the relevant Facility Letter in relation to that category of property.

"Subsidiary" has the meaning given in the Singapore Companies Act (Cap. 50).

"Tax" includes any present or future tax, levy, impost, deduction, charge, rate, duty, compulsory loan or withholding which is levied or imposed by a Governmental Agency, and any related interest, penalty, charge, fee or other amount.

"Terms" means these terms and conditions.

"Transaction Document" means this Agreement, any Facility Letter from time to time, any Guarantee or Security Interest from time to time in respect of any of the financial accommodation made available under that Facility Letter, any document or agreement entered into or provided under or in connection with or supplemental or ancillary to any of the foregoing, and any document or agreement entered into or provided under or in connection with, or for the purpose of amending or novating, any of the above. It includes, without limitation, in the case of a Bank Guaranteed Facility all agreements, indemnities, Security Interests and other instruments or documentation whatsoever between the Borrower and, or issued by the Borrower in favour of, the Bank Guarantor in relation to the Bank Guarantor's Guarantee in respect of that Facility. It also includes, without limitation, an undertaking by the Borrower or its lawyers under or in relation to any of the above.

2.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural and the converse.
- (b) A gender includes all genders.
- (c) Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of the foregoing.
- (e) A reference to a Clause, Annexure or Schedule is a reference to a clause of, or annexure or schedule to, this Agreement.
- (f) A reference to a party to this Agreement or another agreement or document includes the party's successors and permitted substitutes, personal representatives, or assigns.
- (g) A reference to an agreement or document is to the agreement or document as amended, novated, supplemented or replaced from time to time, except to the extent prohibited by this Agreement.
- (h) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation, directive or statutory instrument issued under it.

- (i) A reference to "writing" includes, where the Bank agrees specifically to the giving of notices and communications by fax, a facsimile transmission and any means of reproducing words in a tangible and permanently visible form.
- (j) A reference to conduct includes, without limitation, an omission, statement or undertaking, whether or not in writing.
- (k) A reference to an "asset" includes any real or personal, present or future, tangible or intangible property or asset (including, without limitation, any trade secret or confidential information) and any right, interest, revenue (including the right to receive revenues) or benefit in, under or derived from the property or asset.
- (l) A reference to an amount for which a person is contingently liable includes, without limitation, 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.
- (m) A reference to "this Agreement" is to these Terms as from time to time supplemented or varied in respect of any Facility by a Facility Letter.

2.3 Determination, statement and certificate conclusive

Except where otherwise provided in this Agreement any determination, statement or certificate by the Bank or an Authorised Officer of the Bank provided for in this Agreement is final and conclusive and binds the Borrower and/or Security Party in the absence of manifest error.

2.4 Document or agreement

A reference to an "agreement" includes a Security Interest, Guarantee, undertaking, deed, agreement or legally enforceable arrangement whether or not in writing. A reference to a "document" includes an agreement (as so defined) in writing or a certificate, notice, instrument or document.

2.5 Multiple Borrowers/Security Parties

Where there is more than one Borrower, references to the Borrower shall be read as references to the Borrowers jointly and severally. Similarly where there is more than one Security Party, references to the Security Party shall be read as references to the Security Parties jointly and severally.

2.6 Bank Guaranteed Facility

Where a Facility is a Bank Guaranteed Facility, then the representations and warranties contained in Clause 11 and the undertakings contained in Clause 12 shall be deemed to be given by the Borrower and the Security Party to the Bank both for itself and the Bank Guarantor in respect of that Facility.

2.7 Security Party

Where there is a Security Party, all the obligations of the Borrower and covenants, undertakings, terms and conditions contained in this Agreement shall be binding on the Borrower and the Security Party jointly and severally.

PART II: DRAWDOWN AND REPAYMENT

3. DRAWDOWN NOTICES

Whenever the Borrower wishes either:

- (a) to make a drawing under a Facility; or
- (b) to continue a Loan under a Facility otherwise than on the terms on which Loans will be automatically extended under Clause 8.1,

it shall give to the Bank an irrevocable Drawdown Notice in the form from time to time approved by the Bank, to be received by the Bank not later than 11 am (Singapore time) two Business Days before the relevant Drawdown Date or Rollover Date (which shall be a Business Day).

4. CONDITIONS PRECEDENT

4.1 Documentary conditions precedent

The obligations of the Bank under the Facility are subject to the condition precedent that the Bank receives in form and substance satisfactory to it:

- (a) all documents and instruments necessary or in the Bank's opinion desirable to ensure the registration, validity, priority and enforceability of all securities, instruments and assurances referred to in the relevant Facility Letter and herein;
- (b) evidence that all Authorisations necessary to permit the acquisition and/or ownership of the Property by the Borrower have been obtained and are in terms satisfactory to the Bank;
- (c) such other documents and instruments as the Bank may reasonably consider necessary for giving full effect to this Agreement or the Transaction Documents or conferring on the Bank the full benefits of all rights, powers and remedies conferred upon the Bank in this Agreement or the Transaction Documents; and
- (d) where applicable in each case, the following documents and instruments:

(i) Where the Borrower is a corporation

- (1) An extract from resolutions of the directors of the Borrower approving the execution and performance by it of its obligations under the relevant Facility Letter, this Agreement and the documents referred to herein.
- (2) A certified copy of the Borrower's certificate of incorporation and memorandum and articles of association.
- (3) The power of attorney (if any) pursuant to which the relevant Facility Letter, this Agreement and the documents referred to herein are executed on its behalf, where necessary in the Bank's opinion stamped and/or registered and/or notarised and/or legalised.
- (4) Copies of the signatures of all persons appointed by the Borrower to execute on its behalf the relevant Facility Letter, this Agreement and the documents referred to herein and proof of identity of each such person.
- (5) All such account opening forms, privacy releases, bank secrecy consents and other documentation as the Bank may require in accordance with its practices from time to time for the opening of accounts.

(ii) Where the Borrower is an individual

- (1) The power of attorney (if any) pursuant to which the relevant Facility Letter, this Agreement and the documents referred to herein are executed on his behalf, where necessary in the Bank's opinion stamped and/or registered and/or notarised and/or legalised.
- (2) Copies of the signatures of all persons appointed by the Borrower to execute on his behalf the relevant Facility Letter, this Agreement and the documents referred to herein and proof of identity of the Borrower and of each such person.
- (3) All such account opening forms, privacy releases, bank secrecy consents and other documentation as the Bank may require in accordance with its practices from time to time for the opening of accounts.

(iii) Where the Bank is granted a Security Interest over cash deposits

- (1) A duly executed (and stamped where appropriate) first ranking charge over cash deposits securing the Facility.
- (2) Evidence that the cash deposits so charged, in an amount or amounts satisfactory to the Bank, have been duly deposited with Bank.

(iv) Where the Bank is granted a Security Interest over property

- (1) Duly executed (and stamped where appropriate) first ranking mortgages of such real property as may be agreed between the Bank and the Borrower (including without limitation the Property) securing the Facility.
- (2) Evidence that all real property over which the Bank holds a Security Interest securing the Facility (including without limitation the Property) are insured with a reputable insurer for the respective interests of each mortgagor of such property and the Bank in such amount and against such risks as the Bank may deem appropriate.
- (3) A valuation acceptable to the Bank of all real property over which the Bank holds a Security Interest securing the Facility (including without limitation the Property).
- (4) Evidence that all Authorisations necessary to permit the acquisition and/or ownership of all real property over which the Bank holds a Security Interest securing the Facility (including without limitation the Property) and its mortgaging to secure the Facility have been obtained and are in terms satisfactory to the Bank.
- (5) Satisfactory results to such searches and enquiries as the Bank may deem appropriate.
- (6) Evidence satisfactory to the Bank that the Borrower has fully paid for the difference between the total purchase price of the Property (including the cost of the construction and development of the Building thereon) and the Loan.

(v) Where construction of the Property is financed

- (1) Building plans satisfactory to the Bank for the building whose construction is to be financed from the Facility.
- (2) Evidence satisfactory to the Bank that the Borrower has either:
 - (a) expended on the construction of the building an amount acceptable to the Bank; or
 - (b) has deposited in an escrow account with the Bank an amount acceptable to the Bank under arrangements for its release acceptable to the Bank.

(vi) Where the Facility is a Bank Guaranteed Facility

- (1) Execution of the relevant Facility Letter by the Bank Guarantor.
- (2) A Guarantee by the Bank Guarantor of the Borrower's obligations in respect of the Facility, in such terms as the Bank may require.
- (3) A duly executed Indemnity to Bank ("Indemnity to Bank"), under which the Borrower and the Security Party indemnify the Bank Guarantor in respect of the Bank Guarantor's obligations under its Guarantee of the Facility to the Bank.

- (4) A Guarantee of the Borrower's and the Security Party's obligations in respect of the Indemnity to Bank, in terms and from such guarantors as the Bank Guarantor may require.
- (5) All condition precedent documents specified in Clause 4.1 (in addition to those given to the Bank), but with the appropriate modifications thereto such that the references therein to "Bank" and "Facility" shall be read as "Bank Guarantor" and "Indemnity to Bank" respectively, where the context so requires.

(vii) Where the Guarantor is a corporation

- (1) An extract from resolutions of the directors of that Guarantor approving the execution and performance by it of its obligations under the relevant Guarantee.
- (2) A certified copy of the Guarantor's certificate of incorporation and memorandum and articles of association.
- (3) The power of attorney (if any) pursuant to which the relevant Guarantee is executed on its behalf, where necessary in the Bank Guarantor's opinion stamped and/or registered and/or notarised and/or legalised.
- (4) Copies of the signatures of all persons appointed by the Guarantor to execute on its behalf the relevant Guarantee and proof of identity of each such person.

(viii) Where the Guarantor is an individual

- (1) The power of attorney (if any) pursuant to which the relevant Guarantee is executed on his behalf, where necessary in the Bank Guarantor's opinion stamped and/or registered and/or notarised and/or legalised.
- (2) Copies of the signatures of all persons appointed by the Guarantor to execute on his behalf the relevant Guarantee and proof of identity of the Guarantor and of each such person.

Where there is a Security Party, all references to the "Borrower" shall also include the Security Party.

4.2 **Conditions precedent to each Loan**

The obligation of the Bank to make available or to continue a Loan is subject to the further conditions precedent that:

- (a) **Representations true:** The representations and warranties by the Borrower and the Security Party in the Transaction Documents are true as at the date of the relevant Drawdown Notice (if any) and the relevant Drawdown Date or Rollover Date as though they had been made at that date in respect of the facts and circumstances then subsisting;
- (b) **No default:** No Event of Default or Potential Event of Default shall be subsisting at the date of the relevant Drawdown Notice (if any) and the relevant Drawdown Date or Rollover Date or will result from the provision or continuation of the Loan, and the Borrower and the Security Party are not in breach of or default under any agreement to an extent or in a manner which has or could have a material adverse effect on the Borrower and/or the Security Party;
- (c) **Authorisations:** All necessary Authorisations for the provision or continuation of that Loan have been obtained; and
- (d) **Availability:** In respect of that Loan, the Bank has not determined that any of the circumstances described in paragraphs (a), (b) or (c) of Clause 10.6 apply.

4.3 **Consents**

Where the Bank's consent or approval is, under the terms of this Agreement, required to be obtained in relation to any act, matter or thing, the Bank may at its discretion grant or refuse its approval or consent or make its approval or consent conditional upon the satisfaction of such conditions as the Bank may deem appropriate, and the Borrower shall satisfy or procure the satisfaction of all such conditions.

5. **INTEREST AND FUNDING PERIODS**

5.1 **Interest rate**

Interest will accrue from day to day on each Loan under a Facility for each Funding Period at the rate per cent per annum which is the sum of (1) the Margin for that Loan and (2) the Bank's Lending Rate for the currency and the Funding Period concerned.

5.2 **Basis of calculation of interest**

That interest will be calculated on the basis of the actual number of days elapsed and:

- (a) in the case of a currency other than Sterling, Hong Kong Dollars or Singapore Dollars, a year of 360 days and
- (b) in the case of Sterling, Hong Kong Dollars or Singapore Dollars, a year of 365 days.

5.3 **Payment of Interest**

The Borrower shall pay that accrued interest in the currency of the relevant Loan on the last day of the relevant Funding Period and also, in the case of a Funding Period longer than six months, on the day six months after commencement of that Funding Period if the Bank so requires by notice in writing.

5.4 Funding Periods

- (a) Subject to this Clause, Funding Periods for a Loan shall have the duration specified in the relevant Facility Letter.
- (b) In the case of a Fixed Rate Facility, the Funding Period is the term of the relevant Loan.
- (c) If a Funding Period ends on a day which is not a Business Day, that Funding Period will be extended to the next Business Day in the same month of the year or, if none, the preceding Business Day.
- (d) If a Funding Period of a number of months commences on a date in a month of the year and there is no corresponding date in the month of the year in which it is to end, it will end on the last Business Day of the latter month.
- (e) No Funding Period may extend beyond the final Repayment Date and any Funding Period which shall otherwise extend beyond the final Repayment Date shall end instead on the final Repayment Date.
- (f) If the Borrower fails to select Funding Periods complying with this Clause, the Bank may vary the relevant Funding Period (including by varying any Drawdown Notice and the interest rate payable for the relevant Loan) so as to ensure compliance.
- (g) The Borrower may, by not less than one (1) month's notice in writing to the Bank given before the end of the current Funding Period, vary the Funding Period of the Loan to a duration of either 1, 3, or 6 months.

6. REPAYMENT

6.1 Manner

The Borrower shall repay the Principal Outstanding and interest thereon in accordance with the requirements of this Agreement.

6.2 Application of instalment monies

Each instalment comprises both principal and interest and shall be applied

- (a) firstly, towards interest and default interest due but unpaid as at the relevant payment date;
- (b) secondly, towards the interest payable on the relevant payment date; and
- (c) thirdly, towards the principal payable on the relevant payment date;

or in such other manner as the Bank shall so see fit.

7. PREPAYMENTS

7.1 Voluntary prepayments: non Revolving Facilities

- (a) **Application:** The provisions of this Clause 7.1 apply to Facilities which are not Revolving Facilities.
- (b) **Prepayment:** Subject to this Clause, if it gives at least 30 days' prior notice to the Bank the Borrower may with the Bank's consent prepay the Principal Outstanding in part or in whole, subject to such conditions (including as to prepayment premiums) as the Bank may specify. That notice is irrevocable and the Borrower shall prepay in accordance with it.
- (c) **Time for voluntary prepayments:** Prepayments under this Clause 7.1 may only be made:
 - (i) in the case of a Fixed Rate Facility, on such dates (if any) as the Bank may specify in the Facility Letter; or
 - (ii) in any other case, on the last day of the Funding Period of the relevant Loan.
- (d) **Application against repayment instalments:** Prepayments under this Clause 7.1 shall be applied against repayment instalments in inverse order of maturity.

7.2 Voluntary prepayment: Revolving Facilities

- (a) **Application:** The provisions of this Clause 7.2 apply to Facilities which are Revolving Facilities.
- (b) **Prepayment:** The Borrower may prepay the Principal Outstanding in part or in whole on the last day of the Funding Period of a Loan or Loans having an aggregate principal amount equal to the amount to be prepaid.
- (c) **Redrawing:** Prepayments under this Clause 7.2 may, subject to the other provisions of this Agreement, be redrawn.

7.3 Interest and Indemnities

At the time of the prepayment the Borrower shall pay:

- (a) any interest accrued on any amount prepaid under this Agreement; and
- (b) in the case of any prepayment of a Fixed Rate Facility, such amount as the Bank determines to be necessary to compensate it for any loss, cost or expense suffered or incurred by the Bank by reason of the Fixed Rate Facility being repaid otherwise than on its Repayment Date.

The provisions of paragraph (b) are without prejudice to the indemnification obligations of the Borrower under Clauses 18 and 21.

7.4 Limitation on prepayments

The Borrower may not prepay all or any part of the Principal Outstanding except in accordance with this Agreement.

8. **ROLLOVER AND CONVERSION**

8.1 Rollover

On each Rollover Date for a Loan, the Loan shall, subject to the other provisions of this Agreement, be automatically continued on the basis of the Funding Period (if any) specified in the Drawdown Notice (if any) which the Borrower issues in respect of that Loan in relation to that Rollover Date or, if no such Drawdown Notice is issued, a Funding Period determined in accordance with Clause 5.4.

8.2 Conversion

(a) **Redenomination:** The Borrower may, with the Bank's prior consent from time to time redenominate the Facility:

- (i) if drawn in the Facility Currency, in a Eurocurrency; or
- (ii) if drawn in a Eurocurrency, in the Facility Currency,

at the Exchange Rate as at the second Business Day prior to the relevant Rollover Date. Repayments shall then be made in the currency in which the Loan is then denominated.

(b) **Bank review:** Upon receipt of any request under (a) above, the Bank may review the terms upon which the Facility is granted (including without limitation as to the Margin, the term, the loan amount and the Security Percentage) and, without prejudice to its rights under Clause 4.3, may make it a condition of its consent under this Clause that the terms which, consequent upon its review under this Clause it deems appropriate, apply to this Facility with effect from any redenomination under this Clause 8.2.

PART III: PROTECTION OF THE BANK'S RETURN

9. **TAXATION**

9.1 Additional payments

Whenever the Borrower is obliged to make a deduction or withholding in respect of Tax from any payment under any Transaction Document:

- (a) it shall promptly pay the amount deducted or withheld to the appropriate Governmental Agency;
- (b) within 30 days of the end of the month in which the deduction or withholding is made, it shall deliver to the Bank official receipts or other documentation acceptable to the Bank evidencing payment of that amount; and
- (c) unless the Tax is an Excluded Tax, it shall pay the Bank on the due date of the payment any additional amounts necessary (as determined by the Bank) to ensure that the Bank receives when due and retains (free from any liability other than tax on its overall net income) a net amount (after payment of any Taxes in respect of those additional amounts) in the relevant currency equal to the full amount which it would have received and so retained had a deduction or withholding not been made, and it shall indemnify the Bank on demand against the Tax and any amounts recoverable from the Bank in respect of the Tax.

The Borrower waives any statutory right to recover from the Bank any amount paid under this Clause.

9.2 Survival of obligations

The obligations of the Borrower under this Clause survive the repayment of the Principal Outstanding and the termination of this Agreement.

9.3 Acceleration on nonpayment of Tax

- (a) The provisions of this Clause apply where the Borrower is a resident of Australia for tax purposes.
- (b) Even if all or part of Clause 9.1 (c) may be void or unenforceable it is a condition precedent to the provision of Loans and their continuation that the Borrower performs it as set out. If the Borrower does not the Bank may terminate the Commitment by notice to the Borrower.
- (c) Upon that notice the Borrower shall immediately prepay the Principal Outstanding together with accrued interest, fees and all other moneys payable under the Transaction Documents.
- (d) The Borrower:
 - (i) is aware that Clause 9.1 (c) may be void because of section 261 of the Australian Income Tax Assessment Act 1936;
 - (ii) shall not seek restitution of any payments made by it under that Clause; and
 - (iii) acknowledges that the Bank has entered this Agreement and will provide and continue Loans in reliance on the above and on the assurance of the Borrower that it will comply with that Clause whether or not it is void.

9.4 Goods and Services Tax

In the event that any Goods and Services Tax ("GST") or other similar taxes, levies or charges whatsoever are now or hereafter required by law to be paid on or in respect of any sums payable to the Bank or any other matters under or relating to the Facility or any security relating to the Facility, the same shall be borne by the Borrower and the Borrower shall pay to the Bank the amount of any such GST or other taxes, levies or charges (or such part thereof which the law does not prohibit the Bank from collecting from the Borrower) on or before the same becomes due under law, in addition to all other sums payable to the Bank in relation to the Facility and the Borrower shall indemnify the Bank against payment thereof.

10. CHANGES IN CIRCUMSTANCES

10.1 Increased costs

Whenever the Bank determines that:

- (a) the effective cost to the Bank of making, funding or maintaining any Loan or its Commitment is increased in any way;
- (b) any amount paid or payable to the Bank or received or receivable by the Bank, or the effective return to the Bank or any of its Related Corporations, under or in respect of any Transaction Document is reduced in any way;
- (c) the return of the Bank or any of its Related Corporations on the capital which is or becomes directly or indirectly allocated by the Bank or the Related Corporation to any Loan or its Commitment is reduced in any way; or
- (d) insofar as any relevant law, official directive or request relates to or affects its Commitment, any Loan or the Transaction Documents, the overall return on capital of the Bank or any of its Related Corporations is reduced in any way,

as a result of any change in, any making of, or any change in the interpretation or application by any Governmental Agency of, or compliance with, any law, official directive or request, then:

- (e) the Bank shall promptly notify the Borrower; and
- (f) on demand from time to time the Borrower shall pay for the account of the Bank the amount certified by an Authorised Officer of the Bank to be necessary to compensate the Bank or the relevant Related Corporation (as the case may be) for the increased cost or the reduction.

Without limiting the above in any way, this Clause applies:

- (g) to any law, official directive or request with respect to Taxation except an Excluded Tax or reserve, liquidity, capital adequacy, special deposit or similar requirements;
- (h) to official directives or requests which do not have the force of law where it is the practice of responsible bankers or financial institutions in the country concerned to comply with them; and
- (i) where the increased cost or the reduction arises because the Bank or any of its Related Corporations is restricted in its capacity to enter other transactions, or is required to make a payment, or foregoes or earns reduced interest or other return on any capital or on any amount calculated by reference in any way to, or allocates capital to, the amount of any Loan, its Commitment or to any other amount paid or payable or received or receivable under any Transaction Document.

10.2 Minimisation

- (a) **(No defence)** It will not be a defence that any cost, reduction or payment referred to in Clause 9 (Taxation) or this Clause could have been avoided.
- (b) **(Negotiation)** At the request of the Borrower, the Bank shall negotiate in good faith with the Borrower with a view to finding a means by which any cost, reduction or payment or the effect of any unlawfulness or impracticability referred to in Clause 10.5 can be minimised.

10.3 Survival of obligations

The Borrower's obligations under this Clause survive the repayment of any relevant Loan and the termination of this Agreement.

10.4 Prepayment on increased costs

- (a) Within 60 days after:
 - (i) the Borrower receives a notice under Clause 10.1 (e); or
 - (ii) the Borrower becomes aware that as a result of the making of, or a change in the interpretation or application by any Governmental Agency of, any law or treaty, the Borrower is or will become obliged to make any additional payment under Clause 9,the Borrower may notify the Bank that it wishes to prepay the Facility affected.
- (b) The notification will be irrevocable. The Borrower shall prepay in accordance with it on the last day of the relevant Funding Period or Periods current when the notification is given.

10.5 Illegality

If the change in, the making of, or a change in the interpretation or application by any Governmental Agency of, any law, directive or treaty makes it unlawful or impracticable for the Bank to make, fund or maintain the accommodation required under this Agreement:

- (a) the Bank may terminate its Commitment by notice to the Borrower;
- (b) if required by the law or treaty, or if necessary to prevent or remedy a breach of the law or treaty, the Borrower shall prepay the Bank the Principal Outstanding, together with all interest, fees and other amounts payable under this Agreement; and
- (c) the Borrower shall make the prepayment immediately or, if in the opinion of the Bank delay in prepayment is permitted by the law or treaty, or will not cause a breach of the law or treaty, on the latest permitted day.

10.6 Market disturbance - Suspension Notice

Whenever, before the start of a Funding Period of a Loan the Bank determines that:

- (a) by reason of circumstances affecting the relevant interbank or other relevant financial market, adequate and fair means do not or will not exist for ascertaining the rate of interest applicable to such Loan during that Funding Period under the definition of Lending Rate in Clause 2.1; or
- (b) deposits in the relevant interbank or other relevant financial market are not available in the ordinary course of business to the Bank in the currency of the Loan for a term equal to that Funding Period; or
- (c) by reason of any change in or in the application of any applicable law or of any change in national or international financial, political or economic conditions, exchange rates or exchange controls, it is impracticable for it to fund or continue to fund such Loan during such Funding Period by deposits obtained in the relevant interbank or other relevant financial market,

the Bank shall promptly give notice (a "Suspension Notice") to the Borrower.

10.7 Alternative basis

If the Bank issues a Suspension Notice relating to a Loan:

- (a) **Consultation:** The Bank shall consult in good faith with the Borrower with a view to agreeing an alternative basis for advancing or rolling over the Loan;
- (b) **Suspension of obligation:** Pending that consultation the Bank will not be obliged to advance or rollover the Loan;
- (c) **Alternative basis:** If an alternative basis is agreed, it will apply in accordance with its terms; and
- (d) **Cessation of notice if no agreement:** If an alternative basis is not agreed within 30 days of such Suspension Notice, the obligation of the Bank to advance or rollover that Loan will cease and where the Loan has been drawdown, the Borrower shall promptly prepay the Loan together with all interest (calculated at the rate or rates last applicable), fees, and other amounts payable under this Agreement.

PART IV: REPRESENTATIONS, UNDERTAKINGS AND DEFAULT

11 REPRESENTATIONS AND WARRANTIES

11.1 Representations and warranties

The Borrower and the Security Party make the following representations and warranties.

- (a) **(Power)** The Borrower and each Security Party has the power to enter into and perform its obligations under the Transaction Documents to which it is expressed to be a party, to carry out the transactions contemplated by those documents and to carry on its business as now conducted or contemplated.
- (b) **(Action)** The Borrower and each Security Party has taken (and has not revoked) all necessary action to authorise the entry into and performance of the Transaction Documents to which it is expressed to be a party, and to carry out the transactions contemplated by those documents.
- (c) **(Documents binding)** Each Transaction Document to which the Borrower or a Security Party is expressed to be a party is its valid and binding obligation enforceable in accordance with its terms, subject to any necessary stamping and registration.
- (d) **(Transactions permitted)** The execution, delivery and performance by the Borrower and each Security Party of the Transaction Documents to which it is expressed to be a party and each transaction contemplated under those documents do not and will not violate in any respect a provision of:
 - (i) a law or treaty or a judgment, ruling, order or decree of a Governmental Agency binding on it;
 - (ii) its memorandum or articles of association or other constitutional documents; or
 - (iii) any other document or agreement which is binding on it or its assets.

(e) **(No default)**

- (i) Neither the Borrower nor any Security Party is in breach of or in default under a document or agreement (including, without limitation, an Authorisation, binding on it or its assets which relates to Financial Indebtedness.
- (ii) Nothing has occurred which constitutes (nor will the execution or performance by the Borrower or any Security Party of the Transaction Documents to which it is a party constitute) an Event of Default, Potential Event of Default, cancellation event, prepayment event or similar event (whatever called) under those documents or agreements, whether immediately or after notice or lapse of time or both.

(f) **(Authorisations)** Each Authorisation which is required in relation to:

- (i) the execution, delivery and performance by the Borrower or any Security Party of the Transaction Documents to which it is expressed to be a party and the transactions contemplated by those documents;
- (ii) the validity and enforceability of those documents; and
- (iii) its business as now conducted or contemplated and which is material,

has been obtained or effected. Each is in full force and effect. It has complied with each of them. It has paid all applicable fees for each of them.

(g) **(No misrepresentation)** All information provided by it to the Bank is true in all material respects at the date of this Agreement or, if later, when provided. Neither that information nor its conduct and the conduct of anyone on its behalf in relation to the transactions contemplated by the Transaction Documents, was or is misleading, by omission or otherwise.

(h) **(No litigation)** No litigation, arbitration or administrative proceeding (including, without limitation, a dispute with any statutory or governmental authority) is current or pending or threatened against the Borrower or any Security Party or any of its respective assets:

- (i) to restrain the entry into, exercise of its rights under and/or performance or enforcement of or compliance with its obligations under the Transaction Documents; or
- (ii) which has or could have a Material Adverse Effect on it.

(i) **(No existing Security Interest)** There exists no Security Interest on or over the whole or any part of the Mortgaged Property.

11.2 **Reliance on representations and warranties**

The Borrower acknowledges that the Bank has entered the Transaction Documents in reliance on the representations and warranties in this Clause.

11.3 **Repetition**

The representation and warranties shall be deemed to be repeated and will be correct and complied with on each Drawdown Date or Rollover Date with reference to each Transaction Document.

12. **UNDERTAKINGS**

12.1 **General undertakings**

The Borrower and the Security Party undertake to the Bank as follows, except to the extent that the Bank consents.

(a) **(Purpose)** It shall use the net proceeds of all accommodation provided under a Facility for the purpose designated in the Facility Letter.

(b) **(Authorisations)** It will ensure that each Authorisation required for:

- (i) the execution, delivery and performance by it or any Security Party of the Transaction Documents to which it is expressed to be a party and the transactions contemplated by those documents;
- (ii) the validity and enforceability of those documents;
- (iii) the carrying out of the purpose referred to in (a) above; and
- (iv) the carrying on by it of its business as now conducted or contemplated,

is obtained and promptly renewed and maintained in full force and effect, and that if any such Authorisation is expressed to be made conditional on the satisfaction of any condition by the Borrower or the Security Party it shall ensure the timely satisfaction of that condition. It will pay all applicable fees for them. It will provide copies promptly to the Bank (and, in the case of a Bank Guaranteed Facility, the Bank Guarantor) when they are obtained or renewed.

(c) **(Notice to Bank)** It will notify the Bank (and, in the case of a Bank Guaranteed Facility, the Bank Guarantor) as soon as it becomes aware of:

- (i) any Event of Default or Potential Event of Default;
- (ii) any proposal by a Governmental Agency to acquire compulsorily any of the Mortgaged Property;

- (iii) any substantial dispute between it and a Governmental Agency; and
 - (iv) any change in its Authorised Officers, giving specimen signatures of any new Authorised Officer appointed, and, where requested by the Bank, evidence satisfactory to the Bank of the authority of any Authorised Officer.
- (d) **(Information)** It will give the Bank (and, in the case of a Bank Guaranteed Facility, the Bank Guarantor) on demand such information concerning its and any Security Party's respective financial positions or the Mortgaged Property as the Bank (and, in the case of a Bank Guaranteed Facility, the Bank Guarantor) may from time to time request.
- (e) **(Adequate Security Margin)** Without prejudice to any rights which the Bank (and, in the case of a Bank Guaranteed Facility, the Bank Guarantor) may have, if the market value of the Mortgaged Property securing the Facility falls below what the Bank (and, in the case of a Bank Guaranteed Facility, the Bank Guarantor) considers, in its or their sole opinion, to be an adequate security margin (taking into account any other Security Interests), the Borrower will on request by the Bank (and/or, in the case of a Bank Guaranteed Facility, the Bank Guarantor) repay such amount of the Facility as the Bank and/or Bank Guarantor (as the case may be) may specify and/or will grant or procure the granting in favour of the Bank (and/or, in the case of a Bank Guaranteed Facility, the Bank Guarantor) of additional Security Interests over such property as is acceptable to the Bank (and/or, in the case of a Bank Guaranteed Facility, the Bank Guarantor). The Bank shall also be entitled in such cases to reduce the Facility and/or withhold activation/disbursement or further activation/disbursement of the Facility.
- (f) **(Security Parties' obligations)** It will ensure that each Security Party complies with its obligations under each Transaction Document to which it is a party.
- (g) **(Ranking)** It will ensure that:
- (i) if its obligations under this Agreement are not secured by any Security Interest, they will at all times rank at least equally and rateably in all respects with all its other present and future unsecured and unsubordinated obligations (except for such obligations which are mandatorily preferred by law);
 - (ii) if its obligations under this Agreement are secured by a Security Interest, that any such Security Interest will be a first ranking Security Interest in point of priority; and
 - (iii) in the case of a Bank Guaranteed Facility, any Security Interest which secures its indemnification obligations to the Bank Guarantor in respect of the Bank Guarantor's Guarantee of the relevant Facility will be a first ranking Security Interest in point of priority.
- (h) **(Corporate undertakings)** If the Borrower and/or the Security Party is a corporation:
- (i) **(Corporate reporting and Information)** It will provide to the Bank (and, in the case of a Bank Guaranteed Facility, the Bank Guarantor):
 - (A) **(annual accounts)** as soon as practicable (and in any event not later than 120 days) after the close of each of its financial years copies of its audited balance sheet and profit and loss account;
 - (B) **(semi-annual accounts)** as soon as practicable (and in any event not later than 90 days) after the first half of each of its financial years copies of its unaudited balance sheet and profit and loss account in respect of that half-year;
 - (ii) **(Negative pledge)** It will not create or allow to exist a Security Interest over its assets, undertaking, rights or revenues (present or future) other than:
 - (A) a lien arising by operation of law in the ordinary course of day-to-day trading and not securing Financial Indebtedness where it duly pays the indebtedness secured by that lien other than indebtedness contested in good faith and by appropriate proceedings; and
 - (B) the Security Interests (if any) created by it which are comprised in the Transaction Documents.
 - (iii) **(No change in ownership)** It will not effect any change in ownership/shareholding by new shareholders or undertake or permit any form of reconstruction or amalgamation with another company.
 - (iv) **(Memorandum and Articles of Association)** It will not without the prior consent of the Bank amend or alter any of the provisions of its memorandum or articles of association or other constitutional document relating to its borrowing powers or principal objects.
- (i) **(Change of business)** It will ensure that there is no material change in the nature of its business (whether by a single transaction or a number of related or unrelated transactions, whether at one time or over a period of time and whether by disposal, acquisition or otherwise).
- (j) **(Disposals)** It will not (whether by a single transaction or a number of related or unrelated transactions and whether at one time or over a period of time) sell, transfer, lease out, lend or otherwise dispose of (whether outright, by a sale-and-repurchase or sale-and-leaseback arrangement, or otherwise) all or any part of its assets, the disposal of which (either alone or when aggregated with all other disposals by it required to be taken into account under this sub-paragraph) is or could have a Material Adverse Effect on it.
- (k) **(Further assurance)** It will from time to time on request by the Bank (and, in the case of a Bank Guaranteed Facility, the Bank Guarantor) do or procure the doing of all such acts and will execute or procure the execution of all such documents as the Bank or Bank Guarantor (as the case may be) may reasonably consider necessary for giving full effect to this Agreement or the Transaction Documents or conferring on the Bank or Bank Guarantor (as the case may be) the full benefits of all rights, powers and remedies conferred upon the Bank and/or Bank Guarantor in this Agreement or the Transaction Documents.

12.2 Additional undertakings where construction of the Property is financed

- (a) Prior to the disbursement of the Loan towards financing any construction costs:-
- (i) **(Borrower's Funds)** The Borrower and the Security Party shall produce documentary evidence satisfactory to the Bank and the Guarantor (as the case may be) (including, without limitation, a copy of a signed, fixed priced construction contract with a registered builder) that the Borrower and/or Security Party has disbursed the difference between the total purchase price of the Property, including the cost of construction and development of the Building thereon, and the Loan.
 - (ii) **(Plans)** The Borrower and the Security Party shall provide the Bank and Bank Guarantor (as the case may be) with a copy of building plans that have been stamped as approved by the local council authority, together with documentary evidence satisfactory to the Bank and Bank Guarantor (as the case may be) that all necessary approvals for the construction of the Building have been obtained from the relevant authorities, and if conditions are imposed they are to be acceptable to the Bank and Bank Guarantor (as the case may be).
 - (iii) **(All Risks Insurance Policy)** The Borrower and the Security Party shall provide the Bank and Bank Guarantor (as the case may be) with a copy of the builder's "All Risks" insurance policy which has noted and indicates on the policy that the Bank and/or Bank Guarantor (as the case may be) is the first mortgagee.
 - (iv) **(Housing Indemnity Insurance)** The Borrower and the Security Party shall provide the Bank and Bank Guarantor with a copy of the builder's "Housing Indemnity Insurance" covering risks such as non completion by the builder and structural defects due to negligence by the builder, such insurance to be satisfactory to the Bank and Bank Guarantor (as the case may be).
 - (v) **(Workman's Compensation/Public Liability Insurance)** The Borrower and the Security Party shall provide the Bank and Bank Guarantor (as the case may be) with confirmation from the builder that they hold adequate workman's compensation insurance cover and public liability insurance.
- (b) **(Cost Overruns)** Any cost overruns will be for the Borrower's account and the Borrower shall produce to the Bank and Bank Guarantor (as the case may be) satisfactory documentary evidence of such payments.
- (c) **(No change to plans)** Once building plans have been lodged with the Bank and Bank Guarantor, no alterations to building specifications or plans (whether layout or otherwise) may be made without the prior written consent of the Bank and Bank Guarantor (as the case may be).
- (d) **(Comprehensive Insurance Policy)** The builder's "All Risks" insurance policy shall be replaced by the Borrower's and the Security Party's own comprehensive insurance policy when the construction reaches lock up stage. Such insurance shall be taken with an insurer that is acceptable to the Bank and Bank Guarantor (as the case may be).
- (e) **(Inspection)** The Bank and Bank Guarantor (as the case may be) shall be entitled to undertake inspections of the building prior to making any drawdowns requested by the Borrower. This inspection is for the Bank's and Bank Guarantor's own internal purposes and a copy of the inspection report will not be provided to the Borrower and/or Security Party. The cost of such inspection will be borne by the Borrower.
- (f) **(Certificate of Occupancy)** Prior to the Bank making the final drawdown under the Loan, the Borrower and the Security Party shall provide the Bank and Bank Guarantor (as the case may be) with a "Certificate of Occupancy" issued by the competent authority concerned.
- (g) **(Completion)** The Building shall be completed within 26 weeks after the Borrower and the Security Party obtains possession of the Property or such other period as may be specified by the Bank and Bank Guarantor, and the Borrower and the Security Party shall carry out and complete the Building in a proper and efficient manner, and will ensure that all plans, permissions, licences and other requirements necessary for the construction and completion of the Building are obtained or complied with and that they remain in force and valid at all material times.
- (h) **(Insurance)** The value of the insurance cover on the Building shall be increased during its construction by such amounts as the Bank and Bank Guarantor (as the case may be) from time to time requires, having regard to progress in the construction of the Building.
- (i) **(No liability of Bank/and Bank Guarantor)** The Borrower and the Security Party acknowledge(s) and agree(s) that the Bank and Bank Guarantor (as the case may be) has/have no liability or responsibility in respect of the design, construction, quality or completion of the Building.
- (j) **(Information)** The Borrower and the Security Party shall submit to the Bank and Bank Guarantor (as the case may be) all such information and documents regarding the Building and its construction as may be required from time to time by the Bank and Bank Guarantor (as the case may be).

12.3 Term of undertakings

Each undertaking in this Clause continues from the date of this Agreement until the Secured Moneys are fully and finally repaid.

13. EVENTS OF DEFAULT

13.1 Events of Default

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

- (a) **(Obligations under Transaction Documents)** The Borrower or any Security Party fails:

- (i) to pay an amount payable by it under a Transaction Document when due;
 - (ii) to comply with any of its other obligations under a Transaction Document and, if in the opinion of the Bank that failure can be remedied within 14 days (or such shorter time as may be specified in a Transaction Document), does not remedy the failure within that period; or
 - (iii) to satisfy within the time stipulated anything which the Bank made a condition of its waiving compliance with a condition precedent or undertaking in a Transaction Document.
- (b) **(Misrepresentation)** A representation, warranty or statement by or on behalf of the Borrower or any Security Party in a Transaction Document, or in a document provided under or in connection with a Transaction Document, is not complied with or is not true in a material respect or is misleading when made or deemed repeated.
- (c) **(Cross default)**
- (i) Financial Indebtedness of the Borrower or any Security Party:
 - (A) is not paid when due (or within an applicable grace period); or
 - (B) becomes due and payable or is declared to be or is capable of being declared due and payable before its stated maturity or expiry; or
 - (ii) an Event of Default, Potential Event of Default, cancellation event, prepayment event or similar event (whatever called) under any facility relating to the Financial Indebtedness of the Borrower or any Security Party or under another Transaction Document occurs.
- (d) **(Administration, winding up, arrangements, insolvency etc.)**
- (i) An application or an order is made, proceedings are commenced, a resolution is passed or proposed in a notice of meeting or an application to a court or other steps are taken for:
 - (A) the bankruptcy, winding up, dissolution, judicial management or administration of the Borrower or any Security Party; or
 - (B) the Borrower or any Security Party entering into an arrangement, compromise or composition with or assignment for the benefit of its creditors or a class of them.
 - (ii) The Borrower or any Security Party is, or under applicable legislation is taken to be, insolvent or unable to pay its debts (other than as the result of a failure to pay a debt or claim the subject of a good faith dispute in appropriate proceedings) or stops or suspends or threatens to stop or suspend payment of all or a material part of or a class of its debts.
- (e) **(Enforcement against assets)**
- (i) A receiver, receiver and manager, administrative receiver, liquidator, judicial manager or similar officer is appointed to;
 - (ii) a Security Interest becomes enforceable or is enforced over; or
 - (iii) a distress, attachment, execution or other legal process is levied, enforced or sued out on, against or over, all or any of the assets of the Borrower or any Security Party and is not discharged or stayed within 7 days.
- (f) **(Analogous process)** Anything analogous to anything referred to in paragraphs (d) and (e), or having substantially similar effect, occurs with respect to the Borrower or any Security Party.
- (g) **(Vitiation of Transaction Documents)**
- (i) All or any part of a Transaction Document is terminated or is or becomes void, illegal, invalid, unenforceable or of limited force and effect;
 - (ii) a party becomes entitled to terminate, rescind or avoid all or part of a Transaction Document; or
 - (iii) a party other than the Bank alleges or claims that an event described in sub-paragraph (i) has occurred or that it is entitled as described in sub-paragraph (ii).
- (h) **(Material adverse change)** Any other event or series of events, whether related or not, occurs or circumstances arise (including, without limitation, a material adverse change in the business, assets or financial condition of the Borrower or any Security Party), which in the opinion of the Bank may have a Material Adverse Effect.
- (i) **(Governmental interference)** A law or anything done by a Governmental Agency (including the revocation of an Authorisation) which wholly or partially to a material extent renders illegal, prevents or restricts the performance or effectiveness of a Transaction Document or otherwise has a Material Adverse Effect.
- (j) **(Humans)** The Borrower or any Security Party, being a human, dies or ceases to be of full legal capacity or commits or omits to do an act under circumstances which may give rise to bankruptcy proceedings being instituted against it.
- (k) **(Cessation of business)** The Borrower or the Security Party ceases or threatens to cease to carry on all or a substantial part of its business or any material part of its business.

- (l) **(Failing Business)** If in the opinion of the Bank (and/or, in the case of a Bank Guaranteed Facility, the Bank Guarantor) any Security Interest of the Bank or Bank Guarantor (as the case may be) or the business of the Borrower or the Security Party is in jeopardy.
- (m) **(Other circumstances)** If an event occurs or circumstances arise which gives the Bank (and/or, in the case of a Bank Guaranteed Facility, the Bank Guarantor) reasonable grounds for believing that the Borrower and/or the Security Party may be unable to perform or comply with any one or more of the Borrower's and/or the Security Party's obligations under this Agreement or any Transaction Documents.

13.2 Consequences

In addition to any other rights provided by law or any Transaction Document, at any time after an Event of Default the Bank may do all or any of the following:

- (a) by notice to the Borrower declare the Secured Moneys immediately due and payable and the Borrower will immediately pay the Secured Moneys;
- (b) by notice to the Borrower cancel the Commitment.

PART V: GENERAL PROVISIONS

14. PAYMENTS

14.1 Manner

The Borrower shall make all payments under any Transaction Document in Same Day Funds to the account specified by the Bank from time to time by 11 am (local time) on the due date, without set-off or counterclaim and without deduction, whether on account of Taxes or otherwise, except any compulsory deduction for Taxation.

14.2 Payment to be made on Business Day

Whenever any payment becomes due on a day which is not a Business Day, the due date will be the next Business Day in the same month of the year or, if none, the preceding Business Day.

14.3 Appropriation where insufficient moneys available

Amounts received by the Bank will be appropriated between principal, interest and other amounts as the Bank determines. This appropriation will override any appropriation made by the Borrower. Without limitation the Bank may appropriate amounts first in payment of amounts payable to it by way of indemnity or reimbursement.

14.4 Blocked payments

- (a) **(Notification of application)** If the Bank becomes aware that it is unlawful or, in the opinion of the Bank, impracticable, for any payment to be made in accordance with Clause 14.1, the Bank shall notify the Borrower.
- (b) **(Alternative manner of payment)** Until the notice is revoked the Borrower shall make the payments to the account specified in writing by the Bank or to another account or in another manner agreed between the Borrower and the Bank.
- (c) **(Revocation)** If the Bank becomes aware that it is no longer unlawful or, in the opinion of the Bank, impracticable for any payment of the type referred to in a notice under paragraph (a), the Bank shall revoke that notice in relation to payments of that type.

14.5 Suspense account

Any monies received or recovered under the Transaction Documents may be placed, without prejudice to any other rights which the Bank may have, to the credit of a separate or suspense account which may be kept by the Bank for so long as the Bank may determine, without any obligation on the Bank's part thereof to apply the same in or towards the payment, discharge or satisfaction of any of the Secured Monies. In the event of any proceedings relating to bankruptcy, winding-up or any analogous proceedings, the Bank may prove for the whole of the Bank's claims against the Borrower and/or Security Party as if such monies had never been received by the Bank.

15. INTEREST ON OVERDUE AMOUNTS

15.1 Accrual and payment

- (a) **(Accrual)** Interest accrues on each unpaid amount which is due and payable by the Borrower under or in respect of any Transaction Document (including interest payable under this Clause):
 - (i) 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;
 - (ii) both before and after judgment (as a separate and independent obligation) and notwithstanding that the relationship of banker and customer may have ceased; and
 - (iii) at the rate provided in Clause 15.2.
- (b) **(Payment)** The Borrower shall pay interest accrued under this Clause on demand by the Bank and in any case interest shall be payable at the end of each such Funding Period and any interest which is not so paid shall be added to the unpaid amount and itself bear interest accordingly. That interest is payable in the currency of the unpaid amount on which it accrues.

15.2 Rate

The rate applicable under this Clause is the sum of:

- (a) 2% per annum;
- (b) the Margin; and
- (c) for each successive funding period not exceeding three months from time to time selected by the Bank, the Bank's cost of funds in the relevant currency for the funding period.

Interest is calculated on the basis of a year of 360 days. The Bank's statement from time to time as to its cost of funds shall be conclusive, in the absence of manifest error.

16. FEES

The Borrower shall pay to the Bank such fees as are specified in the Facility Letter.

17. INDEMNITIES

On demand the Borrower shall indemnify the Bank against any loss, cost, charge, liability or expense the Bank (or any officer or employee of the Bank) may sustain or incur as a direct or indirect consequence of:

- (a) the occurrence or continuance of any Event of Default or Potential Event of Default;
- (b) any exercise or attempted exercise of any right, power or remedy under any Transaction Document or any failure to exercise any right, power or remedy;
- (c) a Loan from time to time agreed to be provided by the Bank not being provided for any reason (including, without limitation, failure to fulfil any condition precedent but excluding any default by the Bank); or
- (d) the Bank receiving payments of principal in respect any Loan before the last day of a Funding Period relating to the Loan for any reason, including, without limitation, prepayment in accordance with this Agreement.

Without limitation the indemnity will cover any amount determined by the Bank to be incurred by reason of the liquidation or re-employment of deposits or other funds acquired or contracted for by the Bank to fund or maintain any Loan or amount (including loss of margin) and by reason of the reversing or termination of any agreement or arrangement entered into by the Bank to hedge, fix or limit its effective cost of funding or maintaining any Loan or amount.

18. CURRENCY INDEMNITY

18.1 General

On demand the Borrower shall indemnify the Bank against any deficiency which arises whenever, for any reason (including, without limitation, as a result of a judgment or order):

- (a) the Bank receives or recovers an amount in one currency (the "Payment Currency") in respect of an amount denominated under a Transaction Document in another currency (the "Due Currency"); and
- (b) the amount actually received or recovered by the Bank in accordance with its normal practice when it converts the Payment Currency into the Due Currency is less than the relevant amount of the Due Currency, taking into account any premiums and costs of exchange.

18.2 Liquidation

In the event of the liquidation (or analogous process) of the Borrower, the Borrower shall indemnify the Bank on demand against any deficiency resulting from any variation as between:

- (a) the exchange rate actually applied for the purposes of the liquidation (or analogous process) in converting into another currency an amount expressed in one currency due or contingently owing under a Transaction Document or under a judgment or order relating to a Transaction Document; and
- (b) the exchange rate at which the Bank in accordance with its normal practice would be able to purchase the last-mentioned currency with the first-mentioned currency as at the final date or dates for the filing of proof or other claim in the liquidation (or analogous process) or the nearest available prior date including any premiums and costs of exchange payable in connection with the purchase.

18.3 Conversion

The Bank may (without prejudice to any of its rights) upon and at any time after the happening of an Event of Default, so long as the same is continuing, by notice to the Borrower convert or translate the Facility Currency into another currency, including, without limitation, the currency of any amounts received or recovered by the Bank under the Transaction Documents.

19. CONTROL ACCOUNTS

The accounts kept by the Bank constitute sufficient evidence unless the contrary is proved of the amount at any time due from the Borrower under this Agreement.

20. **EXPENSES**

On demand the Borrower shall pay or reimburse the Bank for all costs and expenses of the Bank in relation to:

- (a) the preparation, execution and completion of the Transaction Documents and any subsequent consent, approval, waiver, supplement or amendment;
- (b) the actual or contemplated enforcement of the Transaction Documents, or actual or contemplated exercise, preservation or consideration of any rights, powers or remedies under the Transaction Documents, administrative costs including any time of its executives (whose time and costs are to be charged at reasonable rates); and
- (c) retaining consultants (including valuers) to evaluate matters of material concern to the Bank, whether in relation to the circumstances contemplated by (a) or (b) above or otherwise.

and including in each case legal costs and expenses (including in-house lawyers charged at their usual rates) on a full indemnity basis and all goods and services, value added and other duties or taxes payable on such costs and expenses.

21. **TRANSACTION TAXES**

- (a) The Borrower shall pay all stamp, transaction, documentary, registration and similar Taxes (including fines and penalties) which may be payable or determined to be payable 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 goods and services tax, value added tax, any account debits tax or other Taxes payable by return and Taxes passed on to the Bank by any other bank or financial institution.
- (c) On demand the Borrower shall indemnify the Bank against any liability resulting from delay or omission to pay those Taxes except to the extent the liability results from failure by the Bank to pay any Tax after having been put in funds to do so by the Borrower.

22. **SET-OFF**

- (a) The Borrower and the Security Party irrevocably authorise the Bank to, at any time and without notice to the Borrower or the Security Party, apply any credit balance in any currency (whether or not matured) in any of the Borrower's and/or the Security Party's accounts with any branch wherever situated towards satisfaction of any sum at any time whether contingent or due and payable by it to under or in relation to any Transaction Document. The Bank is not obliged to make the application. If such debiting causes the Borrower's and/or the Security Party's account to be overdrawn, interest shall be payable on the amount overdrawn calculated in the manner and at the rate of set forth in Clause 15.
- (b) The Bank may effect currency exchanges appropriate to implement that application.

23. **WAIVERS, REMEDIES CUMULATIVE**

- (a) No failure to exercise and no delay in exercising any right, power or remedy under any Transaction Document operates as a waiver. Nor does any single or partial exercise of any right, power or remedy preclude any other or further exercise of that or any other right, power or remedy.
- (b) The rights, powers and remedies provided to the Bank in the Transaction Documents are in addition to, and do not exclude or limit, any right, power or remedy provided by law.

24. **SEVERABILITY OF PROVISIONS**

Any provision of any Transaction Document 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 that Transaction Document nor affect the validity or enforceability of that provision in any other jurisdiction.

25. **SURVIVAL OF REPRESENTATIONS AND INDEMNITIES**

- (a) All representations and warranties in any Transaction Document survive the execution and delivery of the Transaction Documents and the provision of advances and accommodation.
- (b) Each indemnity in any Transaction Document:
 - (i) is a continuing obligation;
 - (ii) is a separate and independent obligation; and
 - (iii) survives termination or discharge of the relevant Transaction Document.

26. **MORATORIUM LEGISLATION**

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 Borrower and/or the Security Party any obligation under a Transaction Document: or
- (b) delays, prevents or prejudicially affects the exercise by the Bank of any right, power or remedy conferred by any Transaction Document, is excluded from the Transaction Documents.

27. ASSIGNMENTS

27.1 **Assignment by Borrower or Security Party**

The Borrower and the Security Party may not assign or transfer any of its respective rights or obligations under this Agreement without the prior written consent of the Bank.

27.2 **Assignment by Bank**

The Bank may assign or transfer all or any of its rights or obligations under the Transaction Documents at any time if:

- (a) any necessary prior Authorisation is obtained;
- (b) in the case of a transfer of obligations, the transfer is effected by means of a novation agreement between the Bank, the Borrower and the Security Party, and the transferee, under which the Bank is relieved of its rights and obligations under the Transaction Documents to the extent specified in the novation agreement and the transferee agrees to take the benefit of such rights and to be bound by such obligations to the same extent; and
- (c) written notice of the assignment or transfer is given to the Borrower and/or the Security Party.

By its execution of these terms, the Borrower and the Security Party appoints the Bank as its agent to sign on its behalf any such novation agreement, and in consideration of the Bank from time to time making or agreeing to make financial accommodation available to the Borrower under Facility Letters, undertakes not to revoke or terminate this agency.

27.3 **Change of Lending Office**

The Bank may change its Lending Office if it first notifies and consults with the Borrower.

27.4 **No increased costs**

Notwithstanding anything to the contrary in this Agreement, if the Bank assigns its rights under this Agreement or changes its Lending Office, the Borrower will not be required to pay any net increase in the aggregate amount of costs, Taxes, fees or charges which is a direct consequence of the assignment or change of Lending Office and of which the Bank or its assignee was aware or ought reasonably to have been aware on the date of the assignment or change.

28. CONFIDENTIALITY

28.1 **Consent to disclosure**

Without prejudice to all rights which the Bank may have for the disclosure of information (whether under common law or Section 47 of the Singapore Banking Act (Cap 19) or otherwise, the Bank shall be entitled to disclose any confidential information or document supplied by the Borrower and/or the Security Party in connection with or any information relating to any of the transactions provided for in the Transaction Documents or any information related to the Borrower and/or the Security Party:

- (a) in proceedings before any court or arbitral tribunal arising out of or in connection with any Transaction Document to the extent that such disclosure is deemed by the Bank necessary to protect its interests;
- (b) if required to do so under a binding order of any Governmental Agency or any procedure for discovery in any proceedings;
- (c) if required to do so under any law or any administrative guidelines, directive, request or policy, whether or not having the force of law and, if not having the force of law, the observance of which is in accordance with the practice of responsible bankers or financial institutions similarly situated;
- (d) otherwise as required or permitted by any Transaction Document provided that the Bank makes the recipient aware of the confidential nature of such information or document;
- (e) to its legal advisers and its consultants (including valuers);
- (f) to any of the Related Corporations or representative or branch offices of the Bank in any jurisdiction;
- (g) to any intending assignee or transferee of any of its rights or obligations under any of the Transaction Documents or to persons who have entered into or who are proposing to enter into contractual arrangements with the Bank in relation to the Facility or any of the Transaction Documents;
- (h) with the prior written consent of the Borrower or the Security Party;
- (i) to any borrower, guarantor, mortgagor and/or any other party involved in the Facility or any of the Transaction Documents or any Security Interest therein;
- (j) to the Commissioner of Stamp Duties, the Registry of Companies and Businesses and/or any other government officials or departments or relevant bodies to whom the Bank deems fit to disclose information, for purposes in connection with stamping (or assessment of stamp duties on), registering, lodging or filing any Transaction Documents or conducting of searches in connection with the Facility.
- (k) in so far as it relates to the Borrower's or Security Party's name, address and account number only, to the Bank's printer or the Bank's authorised agents for the purpose of printing any cheque books, or notices or other correspondence to the Borrower and/or Security Party or any other forms or documents for the internal use of the Bank.

28.2 Extent of obligations

The Clause shall survive the termination of this Agreement and constitutes a written consent by the Borrower for the purposes of Section 47 of the Singapore Banking Act Cap. 19.

29. NOTICES

29.1 Generally

All notices, requests, demands, consents, approvals, agreements or other communications to or by a party to this Agreement:

- (a) must be in writing;
- (b) must be signed by an Authorised Officer of the sender; and
- (c) will be deemed to be duly given or made:
 - (i) (if sent by post) 24 hours after despatch; or
 - (ii) (if delivered personally or despatched by telex or facsimile subject to receiving the correct telex answerback or facsimile answerback) at the time of delivery or despatch if received by 4 pm (local time) in the place of intended receipt on a Business Day in that place and otherwise on the next Business Day in that place;

Provided that any notice or communication to be made or delivered to the Bank shall be effective only on actual receipt by the Bank.

29.2 Facsimile notices

Notwithstanding any other provision of this Agreement, neither party shall give or receive notices by facsimile transmission except with the prior written approval of the Bank.

30. AUTHORISED OFFICERS

The Borrower and the Security Party irrevocably authorise the Bank to rely on a certificate by any person purporting to be its director or secretary as to the identity and signatures of its Authorised Officers. The Borrower and the Security Party warrant that those persons have been authorised to give notices and communications under or in connection with the Transaction Documents.

31. GOVERNING LAW

This Agreement is governed by and shall be construed in accordance with the laws of Singapore.

32. JURISDICTION

32.1 Jurisdiction

With respect to any legal action or proceedings which may be brought at any time with respect to any Transaction Document or any transaction contemplated in any Transaction Document (each, a "Relevant Action"), the Borrower and the Security Party irrevocably:

- (a) submits to and accepts, for itself and in respect of its assets, generally and unconditionally the non-exclusive jurisdiction of any of the courts of England, Singapore, New Zealand or of any state or territory of Australia or of the Commonwealth of Australia selected by the Bank, and
- (b) waives any objection it may have now or in the future to the venue any claim it may have now or in the future that the Relevant Action has been brought in an inconvenient forum.

32.2 Optional arbitration

Any dispute arising out of or in connection with any Transaction Document, including any question regarding the existence, validity or termination of any Transaction Document, may at the option of the Bank be referred to and finally resolved by arbitration in Singapore in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC") for the time being in force, which rules are deemed to be incorporated by reference into this Clause. The arbitral tribunal shall consist of a single arbitrator to be appointed by the Chairman of SIAC, and the language of the arbitration shall be the English language.

33. CHANGE IN CONSTITUTION

This Agreement shall continue to be valid and binding for all purposes notwithstanding:

- (a) any change by amalgamation, consolidation, reconstruction or otherwise which may be made in the constitution of the company by which the business of the Bank may for the time being be carried on and shall be available to the company carrying on the business of the Bank for the time being; or
- (b) the death, insanity, bankruptcy, insolvency, liquidation or winding up of the Borrower or the Security Party as the case may be; or
- (c) any change in constitution, amalgamation, consolidation or reconstruction of or affecting the Borrower or the Security Party as the case may be.

34. **SECURITY PARTY LIABLE AS PRINCIPAL DEBTOR**

Although as between themselves the Security Party and the Borrower and any other person or party liable to the Bank jointly with the Security Party and the Borrower or either of them one party or parties may be surety for the other party or parties yet as between them and each of them and the Bank they and each of them shall be principal debtor or debtors jointly and severally liable to the Bank and the Mortgaged Property shall not in any event whatever be released by time being given or extended or by indulgence being granted to or compromise, composition or other arrangement being made with any other person or party liable to the Bank or in any manner whatsoever.

35. **NO AVOIDANCE**

No disposition, assurance, security or payment which may be avoided under any statutory provisions or enactments or under any law relating to bankruptcy or liquidation and no release, settlement or discharge which may have been given or made on the faith of any such disposition, assurance, security or payment shall prejudice or affect the Bank's right to recover from the Security Party and/or the Borrower to the full extent of the moneys secured by the Mortgaged Property and the Transaction Documents as if such disposition, assurance, security, payment, release, settlement or discharge (as the case may be) had never been granted, given or made.

36. **ACKNOWLEDGEMENT BY BORROWER AND SECURITY PARTY**

The Borrower and the Security Party confirm that:

- (a) it has not entered into this Agreement in reliance on, or as a result of, any statement or conduct of any kind of or on behalf of the Bank or any Related Corporation of the Bank (including, without limitation, any advice, warranty, representation or undertaking); and
- (b) neither the Bank nor any Related Corporation of the Bank is obliged to do anything (including, without limitation, 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 Bank or Related Corporation.

37. **CONSENTS AND OPINION**

Except where expressly stated the Bank may give or withhold, or give conditionally, approvals and consents, may be satisfied or unsatisfied, and may form opinions, at its absolute discretion.

38. **AMENDMENTS**

Without prejudice to the Bank's other rights and powers under these Terms or any Facility Letter, the Bank may by notice in writing from time to time to the Borrower vary the provisions of these Terms or any Facility Letter.

Each attorney executing this Agreement represents and warrants that he has no notice of revocation or suspension of his power of attorney.