

# **Bendigo Equipment Finance.**

Equipment Loan and  
Security.

Terms &  
Conditions.

1 March 2020



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On signing the *Details* and returning it to us you make an offer to us to enter into the *equipment loan and security agreement*.

Your offer may be accepted by us as contemplated in the *Details*. You should carefully consider and fully understand the terms of the *equipment loan and security agreement* before you sign the *Details*. We recommend that you obtain legal and financial advice before you sign the *Details*.

## 1 Your Declarations

1.1 You and each Guarantor declare that:

- (a) you have the power to enter into and observe your obligations under this document;
- (b) you have in full force and effect the authorisations necessary to enter into and observe obligations under this document;
- (c) your obligations under this document are valid, binding and enforceable according to its terms;
- (d) you do not breach any law or any obligation to any other person by signing this document;
- (e) all the information you have given us is correct and not misleading and you have not withheld any information that might have caused us not to enter into this document or any transaction document;
- (f) you are not in *default* (see clause 9);
- (g) if you enter into this document as a company, you benefit by entering into this document;
- (h) if you enter into this document as a partner in a *partnership* with one or more *persons*, the *persons* named in the *Details* are all the partners in the *partnership*;
- (i) the Loan is to be spent wholly in acquiring the *collateral* and in meeting your obligations under this document;
- (j) you own the *collateral*, or are in the process of becoming the owner of it, and will own all *proceeds* free from *encumbrances* other than those approved by us;
- (k) unless you have told us otherwise in writing, all of the *collateral* is *commercial property*;
- (l) the *collateral* is to be used wholly or predominantly for business or investment purposes or for both purposes;
- (m) you have told us about or have discharged or ended all rights that affect the *collateral*, or are proposed or likely to affect it (such as leases, *security interests* or the rights of a beneficiary under a trust) other than those to which we have given prior written consent; and
- (n) you have satisfied yourself as to the merchantability, quality, suitability, safety and fitness for purpose of the *collateral*.

1.2 Clauses 1.3 and 1.4 apply if you or any *Guarantor* enter into this document (including the *guarantee* contained in this document) as a trustee.

1.3 You and each Guarantor also declare that:

- (a) you enter into this document in your personal capacity and in your capacity as trustee, and are liable in each of those capacities;

- (b) you have the power as trustee of the trust to unconditionally enter into the *transaction documents* and perform your obligations under them;
- (c) by entering into the *transaction documents* and performing your obligations under them you are properly performing your obligations to the beneficiaries of the trust;
- (d) you have taken all steps necessary to allow you to enter into and perform your obligations under the *transaction documents*;
- (e) you are validly appointed as trustee of the trust and you are the only trustee of the trust;
- (f) no action has been taken to remove you as trustee, to terminate the trust or revoke a power of the trustee or to appoint an additional trustee;
- (g) you are entitled to be fully indemnified from the property of the trust for your obligations under the *transaction documents* (including the obligation to pay the *amount owing*) and the trust property is sufficient to satisfy this right of indemnity;
- (h) you have not breached your obligations as trustee of the trust;
- (i) you have given us full particulars of the trust including a copy of the signed and stamped trust deed containing all the terms of the trust certified by you or, if you are a company, one of your directors or secretaries as being true and up-to-date;
- (j) (without limiting our right of subrogation in relation to the trust) the rights of the beneficiaries to the trust property rank after the trustee's rights of indemnity against the assets of the trust (including the *collateral*);
- (k) the trust has been validly created and is in existence at the date you sign each transaction document;
- (l) a date has not been declared under the trust deed as the date on which the trust will be vested or come to an end;
- (m) it is in the best interests of the beneficiaries of the trust that you enter into the *transaction documents*;
- (n) no proceedings of any description have been or are likely to be commenced or threatened which could have a material adverse effect on the assets or financial position of the trust or on your trusteeship of the trust;
- (o) you will not, without our prior written consent, exercise in your own favour personally, any right of indemnification, reimbursement, recoupment, lien or charge to which you might be entitled personally against or in respect of all money or other assets forming part of the trust; and
- (p) if any money or other assets which once formed part of the trust are at any time in your hands freed of their trust character by virtue of the exercise or purported exercise of any right of indemnification, reimbursement, recoupment, lien or charge, you will hold that money and/or those assets on trust for us to the extent to which any liability under a transaction document has not been satisfied.

You agree to ensure that nothing happens that would prevent you truthfully repeating all these representations and warranties (unless we consent to that thing happening).

#### 1.4 You must:

- (a) not without our prior written consent cease to be the trustee of the trust;
- (b) not without our prior written consent permit any change to the terms of the trust (such consent not to be unreasonably withheld);
- (c) ensure that the trust is not terminated or does not vest or cease to exist;
- (d) only distribute capital of the trust if the remaining property of the trust will be sufficient to indemnify you under clause 1.3(g) following the distribution;
- (e) promptly give us, as and when from time to time we ask you to, copies of an up-to-date balance sheet and profit and loss account of the trust and any other information we require about the business or financial condition of the trust;
- (f) subject to clause 1.3(o), not do anything which limits, prejudices or disposes of all, part of or an interest in your right to be indemnified or exonerated from the trust assets;
- (g) notify us immediately in writing if the trust is determined or for any other reason ceases to exist and also notify us immediately in writing if you are required or directed by any of the beneficiaries of the trust to do any act or thing in relation to the trust or any asset of the trust; and
- (h) comply with all of the terms of the trust deed and with your obligations as trustee.

1.5 You must tell us if anything has happened which prevents you from repeating any one or more of the declarations in clause 1.3 and performing any of the undertakings in clause 1.4 before we provide you with the Loan or other financial accommodation.

## 2 What you undertake in this document

2.1 By signing the *Details* you enter into this *equipment loan and security agreement* with us and you undertake certain obligations. You also give us rights concerning you and the *collateral* - for example, if you do not comply with your obligations, we may take possession of the *collateral*, sell or otherwise deal with it, and sue you for any remaining money you owe to us.

2.2 You are liable for all of the obligations under this document both individually and collectively with any one or more other persons named in this document as borrower and grantor.

2.3 You must ensure that you are not in *default* under this document. You also agree to carry out on time all your obligations to us under this document and each *transaction document*, including the obligation to pay any of the *amount owing*.

2.4 You agree to give us prompt notice of any *default* and the steps taken to remedy it.

2.5 You agree to pay us on demand that part of the *amount owing* specified by us in the demand. These obligations and your other obligations under this document (such as under clauses 47 and 48) continue even if we release the *collateral* from this document.

2.6 You agree:

- (a) to obtain, renew on time and comply with the terms of each authorisation necessary to enter into this document, observe obligations under it and allow it to be enforced;
- (b) not to change your corporate or individual name as shown in the *Details* without first notifying us of the new name not less than 15 business days before the change takes effect; and
- (c) if we ask, use your best efforts to obtain permission to use the *collateral* for any purpose we reasonably specify.

## 3 Dealing with the collateral

3.1 You may not, without our prior written consent, do, or agree to do, any of the following:

- (a) create another *encumbrance* in connection with the *collateral* or *proceeds* or allow one to arise; or
- (b) create a trust, power or lien in connection with the *collateral* or *proceeds* or allow one to arise; or
- (c) deal in any way with this document or allow any interest in it to arise or be varied.

3.2 You may not, without our prior written consent, do, or agree to do, any of the following in respect of the *collateral*:

- (a) sell, assign or otherwise dispose of the *collateral*;
- (b) lease, hire or license the *collateral*, or allow a surrender or variation of any lease, hire or licence;
- (c) give control of the *collateral* to another person other than us;
- (d) part with possession of the *collateral* other than by giving possession to us;
- (e) allow a set-off or combination of *accounts*;
- (f) change the nature of the *collateral*;
- (g) abandon, settle, compromise, or discontinue or become nonsuited in respect of any proceedings against any person (other than us) in respect of any of your rights in connection with the *collateral*;
- (h) exercise or waive any of your rights or release any person from its obligations in connection with the *collateral*;
- (i) move any *collateral* or *proceeds* outside Australia; or
- (j) deal in any other way with the *collateral* or any interest in it, or allow any interest in it to arise or be varied.

3.3 If the collateral includes chattel paper (including any *specific chattel paper*), you will:

- (a) if the chattel paper is evidenced by a written instrument:
  - (i) if requested by us, deposit with us the written instrument for the chattel paper; or
  - (ii) if not deposited with us:
    - A ensure that the chattel paper includes a prominent and

- permanent notice of the security interest constituted by this document. The notice on the chattel paper does not need to specify us as the secured party;
    - B keep the chattel paper in good condition to the extent that failure to do so may have a material adverse effect; and
    - C protect the chattel paper from theft, loss or damage.
- (b) if the chattel paper is evidenced by an electronic record you must ensure that:
  - (i) a single authoritative copy of the record exists which is unique, identifiable and unalterable;
  - (ii) the authoritative copy identifies us as the transferee of the record;
  - (iii) the authoritative copy is communicated to and maintained by us or our agent;
  - (iv) copies or revisions of the record that change the transferee of the authoritative copy can be made only with our consent;
  - (v) each copy of the authoritative copy (or any copy of such copy) is readily identifiable as a copy that is not the authoritative copy; and
  - (vi) any revision of the authoritative copy is readily identifiable as an authorised or unauthorised copy; and
- (c) maintain insurance over the chattel paper, including for loss or destruction of the chattel paper and insurance in respect of any other risk we reasonably ask.

3.4 If you *lease* or hire *collateral* to other *persons* in accordance with clause 3.2 (because you obtain our prior written consent), you must:

- (a) ensure any lease or hiring arrangement with those other *persons* is not a *PPS lease* or if it is you must comply with clause 3.5(d) at all times;
- (b) have the terms on which you lease or hire the *collateral* approved by us before you enter into the lease or hiring arrangement; and
- (c) require the other *person* to acknowledge our *security interest* in the *collateral* and that its interest in the *collateral* is subject to or subordinate to our *security interest*.

3.5 You agree:

- (a) not to do anything that might lower the value of the *collateral*;
- (b) comply with all laws and directions, requests and requirements of authorities and your other obligations in connection with the *collateral*;

- (c) give to us a copy of any order or notice from an authority concerning the use or condition of the *collateral* as soon as you become aware of it;
- (d) to perfect and continuously maintain perfection of any *security interest* that itself forms part of the *collateral* (including perfecting as a *purchase money security interest* if applicable);
- (e) to do everything necessary to ensure that a third *person* cannot acquire an interest in any *collateral* free of, or having priority over, our *security interest*;
- (f) to take steps to rectify any defect in your holding of the *collateral* as soon as you become aware of such defect;
- (g) to take or defend all legal proceedings that is advisable for the protection or recovery of the *collateral*;
- (h) to accept and act on any reasonable direction given in relation to the *collateral* by us;
- (i) if we ask, to give us a copy of all documents you receive as holder of, or in connection with the *collateral*; and
- (j) to comply with any reasonable conditions we attach to any approvals or consents we give you in connection with the *collateral*.

We will provide you or with a reasonable period to review and comply with any directions or additional conditions we require to be complied with under clauses 3.5(h) and 3.5(j). We may give you shorter (or no) advance notice of such additional directions or conditions if it is necessary for us to act quickly to manage an immediate risk, or if our request is necessary to comply with the requirements of a third party.

#### 4 Conditions to the provision of the Loan

We are not obliged to make the Loan or any other financial accommodation available to you unless we:

- (a) have received, on or before the date of the Loan or other financial accommodation, each of the following in form and substance acceptable to us:
  - (i) this document and any Security, executed and delivered by the parties to it (other than us); and
  - (ii) where applicable and if required by us, evidence of the stamping and registration of each Security or a security interest constituted by it or an amount of money sufficient to enable us to stamp and register it; and
  - (iii) details of the collateral to be purchased with the Loan or financial accommodation; and
  - (iv) any other documents or information (whether originals or copies) which we, in our absolute discretion, consider necessary or desirable to examine or hold before providing the Loan or other financial accommodation; and

- (b) are satisfied no *default* has occurred and is continuing or would result from the provision of the Loan or other financial accommodation.

## 5 Payment of interest and repayment of principal

5.1 You must repay the Loan and interest on the Loan by the *instalment amounts* set out in the *Details*. Each instalment amount covers principal and interest. The first *instalment amount* will be paid on the *first instalment payment date*. Each subsequent *instalment amount* will be paid at the end of each and every *instalment frequency* until the expiration of the Term. If you fail to pay an *instalment amount*, we may charge further interest calculated at the Overdue Interest Rate on the amount due but unpaid from the due date until payment is received.

5.2 Interest on the Loan is calculated by applying the rate which applies to the Loan to the monthly balance of the Loan at the end of each month. Interest is debited monthly.

5.3 You must repay the outstanding balance of the Loan and all accrued interest by making the Balloon Payment (if any) on the *final repayment date*.

If you fail to pay this money when due, we may charge further interest calculated at the Overdue Interest Rate on the amount due but unpaid from the due date until payment is received.

5.4 If we require, you must repay any other *amount owing* on the *final repayment date*. If you fail to pay this money when due, we may charge further interest calculated at the rate agreed between you and us from time to time in writing in relation to that amount and in the absence of agreement at the Overdue Interest Rate on the amount due but unpaid from the due date until payment is received.

5.5 If you fail to pay any other amount *payable* under this document when due we may charge further interest calculated at the rate agreed between you and us from time to time in writing in relation to that amount and, in the absence of agreement at the Overdue Interest Rate, on the amount due but unpaid from the due date until payment is received.

5.6 If you are a *farmer* and we have provided you the Loan or any other financial accommodation under this *equipment loan and security agreement* for the purposes of a *farming operation*, we will not charge you the *Overdue Interest Rate* during any period that the land you use for the *farming operation* is in drought or subject to another natural disaster. We will refund any interest charged at the *Overdue Interest Rate*, or late payment fees charged by us, during the period the relevant land was in drought or subject to another natural disaster. We will consider land to be in drought or subject to another natural disaster when an Australian State or Territory government makes a declaration to that effect, or (if no such declaration is made) when we are satisfied on other grounds that the relevant land is in drought or subject to another natural disaster.

## 6 Early repayment

You may repay in full the Loan any other *amounts owing* on the Loan at any time prior to the *final repayment date*. However, if you do so you must also pay us the *early termination fee* set out in the *Details* as well as any *break costs*.

*Break costs* are our reasonable estimate of the loss we may incur as a result of the early repayment. We include in our calculation any difference between the interest rate for the Loan on the date the Loan started and the interest rate that would apply on the date of

early repayment of the Loan, calculated by reference to the amount being repaid.

The *early termination fee* is an amount to compensate us for administrative expenses arising out of an early repayment under this clause 5.6 and is a fixed amount set out in the *Details*.

## 7 Consequence of loss or damage to collateral

If the *collateral* is stolen, lost, defective or seriously damaged, we may give you a notice stating that the *amount owing* is immediately due for payment (to the extent it is not already due for payment). If you do not pay the *amount owing* we may then sue you for that amount, or enforce any Security, or do both.

## 8 We may perform your obligations

We may do anything which you should have done under this document but which you have either not done or in our opinion have not done properly. If we do so, you must pay our expenses on demand.

## 9 When you are in default?

You are in *default* under this document if, and only if:

- (a) you or a Guarantor does not *pay* when due any of the *amount owing*; or
- (b) you or any Guarantor do something you or the Guarantor agree not to do under a *transaction document* which has the effect of materially increasing our risk or ability to recover all amounts owing under any *transaction document* and is not capable of being remedied within a reasonable period of time required by us acting reasonably; or
- (c) you or any Guarantor do not do something you or the Guarantor agree to do, or another *person* does not do something you agreed that other *person* would do, under a *transaction document* within the period specified, or within seven days if no period is specified which creates a material credit risk to us; or
- (d) a representation and warranty or declaration (including through your declarations under clause 1) made by you or any Guarantor in connection with a *transaction document* is incorrect or misleading which has the effect of materially increasing our risk or ability to recover all amounts owing under any *transaction document*; or
- (e) we reasonably believe you, any Guarantor or another *person*:
  - (i) has acted fraudulently in connection with any transaction document; or
  - (ii) has not complied with the law or any requirement of a statutory authority or it becomes unlawful for you or us to continue with the *equipment loan and security agreement*; or
- (f) you or any Guarantor are an individual, and dies or is or becomes incapable of managing your or the Guarantor's affairs; or
- (g) you or any Guarantor are an individual, and a bankruptcy notice is filed in relation to you or the Guarantor; or

- (h) you or any Guarantor become an *insolvent* under administration within the meaning of section 9 of the Corporations Act or any steps are taken to make you *insolvent*; or
- (i) you or any Guarantor, if you or the Guarantor are a corporation, become, or any step is taken by which you or the Guarantor may become, an externally-administered body corporate within the meaning of section 9 of the Corporations Act or any steps are taken to make you or the Guarantor an externally-administered body corporate; or
- (j) a *controller* as defined in section 9 of the Corporations Act is appointed to any part of your property or the property of any Guarantor; or
- (k) if you or any Guarantor are a corporation, you or the Guarantor are or become deregistered, or any step is taken to deregister you or the Guarantor; or
- (l) you or any Guarantor cease or threaten to cease to carry on business; or
- (m) you or any Guarantor transfer or dispose of all or a substantial part of your assets or the assets of any Guarantor; or
- (n) you or any Guarantor are a corporation and you or the Guarantor or any subsidiary of either passes a resolution without our consent:
- (i) to permit the giving of financial assistance, whether directly or indirectly, for the purpose of, or in connection with, an acquisition or proposed acquisition by a *person* of shares or of any right or interest in shares in you or the Guarantor or the subsidiary or any holding company or subsidiary of yours of the Guarantor; or
- (ii) for the reduction of share capital; or
- (iii) to limit the ability to make calls on uncalled share capital; or
- (iv) approving the purchase of any shares in itself other than redeemable preference shares,
- and doing so has the effect of materially increasing our risk or ability to recover all amounts owing under any *transaction document*; or
- (o) you or any Guarantor are a corporation and if any matter relating to it or any subsidiary of either becomes subject to a direction under or to an investigation under, or taken to be under, the Corporations Act or the Australian Securities and Investments Commission Act 2001 (Commonwealth); or
- (p) any Security does not have or loses the priority it is intended to have in circumstances which has the effect of materially increasing our risk or ability to recover all amounts owing under any *transaction document* and is not capable of being remedied within 7 business days; or
- (q) where this is not a *banking code contract*, a *default* (however described) occurs under any other *transaction document* which has the effect of increasing our risk or ability to recover all amounts owing under any *transaction document* and is not capable of being remedied within a reasonable period of time required by us acting reasonably; or we believe on reasonable grounds that urgent action is necessary to protect any *collateral*; or
- (r) where this is a *banking code contract*, a default occurs of the same type as one described in clauses 9(a), (d), (e), (g), (h), (i), (j), (k), (m) or (n) under any other *transaction document* which has the effect of increasing our risk or ability to recover all amounts owing under any *transaction document* and is not capable of being remedied within a reasonable period of time required by us acting reasonably; or we believe on reasonable grounds that urgent action is necessary to protect any *collateral*; or
- (s) the value of the *collateral* materially decreases which has the effect of increasing our risk or ability to recover all amounts owing under any *transaction document*.

## 10 Consequences of default

10.1 If you are in default, we will give you a notice stating that you are in default. If you do not, or cannot, correct the *default* within any applicable remedy period given in the notice or required by law (or if you are in *default* again for a similar reason at the end of any applicable remedy period given in the notice or required by law), then at the end of that period and without further notice to you the *amount owing* becomes immediately due for payment (to the extent it is not already due for payment).

10.2 After a *default* has occurred and the *amount owing* becomes immediately due for payment (to the extent it is not already due for payment), we may do one or more of the following in addition to anything else the law allows us to do:

- (a) sue you for the *amount owing*;
- (b) take or give up possession of the *collateral* as often as we choose;
- (c) if applicable, remove personal possessions from the *collateral* and either abandon them or store them (at your cost) without being liable to you. (If we store them and you do not reclaim them within one month after we notify you that we intend to sell them, we may dispose of them and use the *proceeds* towards paying the *amount owing*);
- (d) do anything an owner of the *collateral* could do, including selling it or conducting your business;
- (e) enter any place we believe any of the *collateral* is held in order to do any of the above;
- (f) appoint one or more receivers to do anything the law allows a receiver to do and any of the things in clauses 10.2(a) to (e) inclusive; or
- (g) do *anything* that the *receiver* may do under clause 10.2(f).

Paragraphs (f) and (g) apply as though you are a company even if you are not.

10.3 If this is a *small business contract* but not a *banking code contract*, we will only take enforcement action under this clause if the *default* creates a material risk that you may not pay any *amount owing* when it is due or we may be unable



to enforce our rights against any *security*, and provided we have given you 30 days to remedy the *default* (unless we reasonably consider a shorter remedy period, or no remedy period, is required for us to manage an immediate risk).

- 10.4 If this is a *banking code contract*, we will not enforce our rights under clause 10.2 if you have met all your payment obligations under this *equipment loan and security agreement*, unless:
- (a) a default under clauses 9(a), 9(d), 9(e), 9(g), 9(h), 9(i), 9(j), 9(k), 9(m), 9(n) or 9(r), has occurred; and
  - (b) it is by its nature material or we reasonably consider that the default has had, or is likely to have, a material impact on:
    - (i) your or any Guarantor's ability to meet financial obligations owed to us ;(or our ability to assess this);
    - (ii) our security risk (or our ability to assess this); or
    - (iii) our legal or reputational risk (but only if the *default* under clauses 9(d) or (e) occurs); and
  - (c) we have given you at least 30 days to remedy the *default*, unless we consider a shorter notice period, or no notice period, to be reasonable in circumstances where:
    - (i) we reasonably determine that the default is unable to be remedied;
    - (ii) based on our reasonable opinion, it is reasonable for us to act to manage an a material and immediate risk relating to the nature of the relevant *default*, your particular circumstances, or the value of any real property or other property or assets secured by a Security; or
    - (iii) we have already given you a reasonable period of time to remedy the default but you did not fix it during this time.

10.5 You should inform us promptly if you are in financial difficulty.

## 11 Taxes and GST

- 11.1 You must pay all taxes and charges imposed by statute or any *government authority* which are *payable* in relation to this document or any transaction contemplated by this document.
- 11.2 If GST is imposed on any supply made by us under or in connection with this document or the *collateral*, the amount you must pay for that supply is increased by the amount of that GST.
- 11.3 To the extent that we incur an amount of additional costs or expense or recover a lesser amount by reason of the impact of GST in connection with or arising out of this document, the *collateral* or any Security, that amount may be recovered by us from you.

## 12 Use of money received by us

- 12.1 Money received under this document is to be used towards paying the *amount owing* unless we are obliged to pay the money to anyone with a prior claim. However, if money

received represents *proceeds* of an insurance claim, we may use it to replace the *collateral* or carry out other work on it.

- 12.2 If, at the time we receive the money, any part of the *amount owing* is not then due for payment, we may retain an amount equal to that part. We must hold it in an interest bearing account. We may use it (and any net interest after tax - including income tax) to pay the *amount owing* when it becomes due for payment.
- 12.3 We may use any money received under this document towards paying any part of the *amount owing* that we choose, including by paying a later repayment before an earlier repayment or a *non-purchase money security interest* obligations before a *purchase money security interest* (this part applies even if that part falls due after we exercise our rights under clauses 7 or 10).
- 12.4 We agree to pay any money remaining after the *amount owing* is paid either to you (which we may do by paying it into an account in your name) or to another *person* entitled to it (such as another *person* with a *security interest* in the *collateral*).
- 12.5 We need not credit you with money until after we actually receive it (including, where we have appointed a *receiver*, the date the *receiver* pays money to us).

## 13 Setting off money owed to you and combination of accounts

Except to the extent you have a right of set-off granted by law which we cannot exclude by agreement (such as under *consumer credit legislation*), you agree to pay us the *amount owing* in full without set off, counterclaim or deduction in respect of taxes unless prohibited by law. However we may set-off any amount due for payment by you to us against any money we may owe to you or any Guarantor under this document, any other agreement or otherwise. We will promptly inform you if we exercise the right of set off contained in this clause 13 and combine any of your *accounts*.

## 14 Withholding

If any law requires you or any Guarantor to make any deduction or withholding from any payment under this document or under any guarantee, then you or any Guarantor must pay to us such additional payments as are necessary to ensure that, after making the withholding or deduction, we receive an amount equal to the amount that we would have received if no deduction or withholding had been made.

## 15 Notices, other communications and service of documents

- 15.1 All notices, certificates, consents, approvals and other communications ('*notices*') in connection with this document must be in writing and in the English language, signed by an *authorised officer* of the sender.
- 15.2 Subject to clause 53.2, *notices* must be:
- (a) left at the address set out in the *Details*;
  - (b) sent by pre-paid post to any address (airmail, if appropriate) to the address set out in the *Details*;
  - (c) sent by email to the email address set out in the *Details*; or
  - (d) given by any way permitted by law.

But if the intended recipient has notified a changed postal address or changed email address, then the *notice* must be to that address, number or email address.

### 15.3 Communications to us must be:

- (a) given personally to one of our employees or agents at:
  - (i) the branch if applicable where you arranged this document; or
  - (ii) any other branch or branch of our agent that we tell you; or
  - (iii) our registered office or the registered office of our agent; or
- (b) sent by pre-paid post or electronically to any of those places.

15.4 *Notices* take effect from the time they are received unless a later time is specified in them. If sent by post, *notices* are taken to be received three business days after posting. If sent by fax, *notices* are taken to be received at the time shown in the transmission report as the time that the whole fax was sent. If sent by email, *notices* are taken to be received when the relevant email enters the information system of the recipient's internet service provider.

15.5 We may serve any document in a court action (including a writ of summons, other originating process or third or other party notice) on you or a Guarantor by delivering it to the address last known to us or the place where the *collateral* is kept last known to us, or by leaving it at either of those places. This clause 15 does not prevent any other method of service.

## 16 Our certificates

We may rely on a certificate provided by any other *person* with a *security interest* as to any amount that is owed to them. We may give you a certificate about a matter or about an amount *payable* in connection with this document.

The certificate is sufficient evidence of the matter or amount, unless it is proved to be incorrect.

## 17 Prompt performance

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

## 18 How we may exercise our rights

18.1 We may exercise a right or remedy or give or refuse our consent under any *transaction document* in any way we consider appropriate including by imposing conditions. We agree to act reasonably and in a way that is reasonably necessary to protect our legitimate interests when exercising a right or remedy or giving or refusing consent in relation to any matter. If we refuse consent for any matter, we will provide you with our reasons for doing so.

18.2 We may enforce this document before we enforce other rights or remedies:

- (a) against any other *person*; or
- (b) under another document, such as another *security interest*.

If we have more than one *security interest*, we may enforce them in any order we choose.

18.3 If we or a *receiver* do or does not exercise a right or remedy fully or at a given time, then we or the *receiver* can still exercise it later.

18.4 Neither we nor a *receiver* are or is liable for loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising, a right or remedy. To the extent that this document is a *small business contract* or a *banking code contract*, nothing in this clause 18 limits our liability to you in respect of loss caused by our (or any of our officers', employees', contractors', agents' or receivers') fraud, negligence or wilful misconduct.

18.5 Our and any *receiver's* rights and remedies under this document:

- (a) are in addition to other rights and remedies given by law independently of this document; and
- (b) may be exercised even if this involves a conflict of duty or we, or the *receiver* have a personal interest in their exercise.

18.6 Our rights and remedies under a *transaction document* may be exercised by any of our *authorised officers*.

## 19 Your obligations and our rights are unaffected

19.1 Subject to clause 25, any present or future law that would otherwise vary your obligations under this document is excluded (to the extent allowed by law) if it affects our rights or remedies adversely.

19.2 Subject to clause 25, rights given to us or any *receiver* under this document and your liabilities under it are not affected by any law that might otherwise affect them. They are in addition to other rights and remedies given by law independently of this document.

19.3 This document does not merge with or adversely affect, and is not adversely affected by, any of the following:

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

(We can still exercise our rights under this document as well as under the judgment, order, security, right or remedy).

## 20 Reinstatement of rights

Under law, a trustee in bankruptcy, liquidator or *controller* may ask us to refund a payment we have received in connection with the *amount owing* (including an amount that was at any time part of the *amount owing*). To the extent we are obliged to, or we agree to, make a refund we may treat the payments as if it had not been made. We are then entitled to rights against you (including under this document) as if the payment had never been made. If we ask, you agree to do everything necessary to restore to us any *security interest* we held from you immediately before the payment. This applies despite anything in this document.

## 21 Indemnities

The indemnities in this document are continuing obligations, independent of your other obligations under this document and continue after this document ends.

It is not necessary for us to incur expense or make payment before enforcing a right of indemnity conferred by this document.

(ii) our reasonable enforcement expenses reasonably incurred in enforcing this document;

## 22 Variation or waiver

Unless this document expressly states otherwise, a term of this document, or right created under it, may not be waived or varied except in writing signed by the party or parties to be bound.

(b) our rights to demand any amounts from you and to exercise its rights and remedies against you are subject to the limitations on enforcement of this document imposed by the *consumer credit legislation*; and

## 23 Time of the essence

Time is of the essence in this document in respect of an obligation of you to pay money.

(c) our rights and remedies under this document are in addition to those given to a credit provider under the *consumer credit legislation*.

## 24 Power of attorney

24.1 You appoint us, each of our *authorised officers* and each *receiver* under this document as your *attorney*. Each *attorney* may act individually or collectively. If we ask, you agree to formally approve anything an *attorney* does under clause 24.2 except in cases of the *attorney's* fraud, negligence or wilful misconduct. You may not revoke these appointments.

25.3 To the extent that *consumer credit legislation* applies to this document you must do anything we ask (such as obtaining consents, signing and producing documents, replying to questions, producing receipts and getting documents completed and signed), to ensure that each agreement which is intended to be covered by this document becomes an *agreement covered by this equipment loan and security agreement*.

24.2 If you are in *default*, any *attorney* may, after the expiry of any applicable remedy period in relation to the *default*:

## 26 Inconsistent law

26.1 To the extent permitted by law and subject to clause 25, this document prevails to the extent it is inconsistent with any law.

(a) do anything which you can lawfully authorise an *attorney* to do in connection with this document or the *collateral* or which the *attorney* believes is expedient to give effect to any of our rights or a *receiver's* rights (including executing documents, selling or leasing the *collateral*, otherwise dealing with the *collateral* and starting, conducting and defending legal proceedings); and

26.2 This document does not create a *security interest* in respect of any particular *collateral*, if the creation of that *security interest* by this document would cause this document to be void. If prior acts would prevent the *security interest* being void, then this document will not create a *security interest* in respect of that particular *collateral* until those prior acts have been carried out.

(b) delegate their powers (including this power) and revoke a delegation; and

## 27 Counterparts

This document may consist of a number of copies, each signed by one or more of you. When taken together, the signed copies are treated as making up the one document.

(c) exercise their powers even if this involves a conflict of duty or they have a personal interest in doing so.

## 25 Consumer credit legislation

25.1 To the extent that the *consumer credit legislation* applies to this document, if:

## 28 Applicable law and serving documents

28.1 This document is governed by the laws of the *State* and the laws of the Commonwealth of Australia. You and we submit to the non-exclusive jurisdiction of the courts of the *State*.

(a) that *consumer credit legislation* would otherwise make a provision of this document illegal, void or unenforceable; or

28.2 We may serve any document in a court action on you by delivering it to, or leaving it at, your address set out in the *Details* or such other address as you and we agree at any time. This clause 28 does not prevent any other method of service.

(b) a provision of this document would otherwise contravene a requirement of that *consumer credit legislation* or impose an obligation or liability which is prohibited by that *consumer credit legislation*;

28.3 By your execution of this document, you invite, request and authorise us and our related entities, to provide to you from time to time, information and material as to the range of financial and other services provided by us or them.

this document is to be read as if the provision were varied to the extent necessary to comply with that *consumer credit legislation* or, if necessary, omitted.

## 29 Assignment

25.2 To the extent that *consumer credit legislation* applies to this document:

29.1 We may assign or otherwise deal with our rights and interests under this document including the *guarantee* or any *Security* in any way we consider appropriate and you and the Guarantor consent to us novating our obligations under this document to any *person* at any time. If we do this, you may not claim against any assignee (or any other *person* who has an interest in this document) any right of set-off or other rights you have against us.

(a) this document does not secure and the *amount owing* does not include any amount which exceeds the sum of:

(i) the amount of your liabilities under each agreement covered by this equipment loan and security agreement; and

29.2 You agree that we may disclose any information or documents we consider desirable to help us exercise this right. You also agree that we may disclose information or

documents at any time to a *person* to whom we assign our rights or novate our obligations under this document, the *guarantee* or any *Security*.

29.3 You may not assign or otherwise deal with your rights under this *equipment loan and security agreement*.

### 30 Joint and several liability

30.1 Where you comprise more than one *person*, the covenants and agreements on your part contained or implied in this document binds you jointly and each of you separately. Among other things, this means that each of you are liable both on your own and together for the whole of the *amount owing* and other payments which you must pay under this document. Where you comprise of more than one *person*, you agree that each of you may have access to information about this document without the other *person's* consent.

30.2 If there is more than one Guarantor named in the *Details* then the liability of each Guarantor is joint and several.

### 31 Commission

You acknowledge that we may pay a commission, fee or other remuneration to a *person* who introduces you to us and agrees that the Loan may include such a commission, fee or other remuneration.

### 32 Banking Code of Practice

32.1 The Banking Code of Practice applies to this document if you are an individual or a "*small business*" as referred to in the Banking Code of Practice.

32.2 The Banking Code of Practice requires us to draw your attention to the availability of general descriptive information concerning our banking services and cheques. This includes information about:

- (a) account opening procedures;
- (b) options available under the tax file number legislation;
- (c) our obligations regarding the confidentiality of your information;
- (d) complaint handling procedures;
- (e) bank cheques;
- (f) the advisability of you informing us promptly when you are in financial difficulty so that we may discuss your situation; and
- (g) the advisability of you reading the terms and conditions applying to this banking service.

Some of this information is contained in this document. This information is also set out in full in the Business Accounts and Facilities Terms and Conditions document. A copy of the Business Accounts and Facilities Terms and Conditions document can be obtained by contacting any of our branches, by telephoning Bendigo On Call on 1300 236 344 or by visiting our website at [www.bendigobank.com.au](http://www.bendigobank.com.au)

32.3 You should inform us promptly if you are in financial difficulty so that we may discuss your situation.

### 33 Australian Financial Complaints Authority

We hope we never have a situation where we cannot resolve a concern or complaint to your satisfaction. However, if this happens, you can refer the matter to the Australian Financial Complaints Authority (AFCA).

AFCA's role is to investigate matters only after customers have fully exhausted the established complaint procedures of their bank.

You can get more information about this service by contacting AFCA at:

Australian Financial Complaints Authority  
GPO Box 3  
Melbourne VIC 3001  
Telephone: 1800 931 678  
Email: [info@afca.org.au](mailto:info@afca.org.au)  
Internet: <https://www.afca.org.au/make-a-complaint/complain/>

### 34 Statement of Account

We will not provide periodic statements of amounts owing and/or paid under this document. However, if you ask us, we will provide you with a statement of amounts owing under this document as well as any break costs that are *payable*.

### 35 Changes to Fees and Charges

35.1 We will notify you of the introduction or variation of a government charge *payable* directly or indirectly by you under clause 11 of this document by advertisement in a national newspaper or in writing to you unless the introduction or variation is publicised by a government, government agency or representative body.

35.2 Information about standard fees is available by visiting our website at [www.bendigobank.com.au](http://www.bendigobank.com.au) or by telephoning our Equipment Finance Department on (03) 8414 7770.

35.3 Information about interest rates applicable to equipment loans is available by visiting our website at [www.bendigobank.com.au](http://www.bendigobank.com.au) or by telephoning our Equipment Finance Department on (03) 8414 7770. The interest rates stated on the website or provided by our Equipment Finance Department are those which are applicable to a facility where the applicant applies directly to us for approval of the facility.

### 36 Privacy

We are committed to ensuring your privacy is protected and understand your concerns regarding the confidentiality and security of personal information you provide to us. You can obtain information about privacy in our Privacy Policy which is available upon request at any of our branches or on our website at [www.bendigobank.com.au](http://www.bendigobank.com.au)

### 37 Anti-Money Laundering & Counter-Terrorism Financing (AML/CTF), identification and information requirements

37.1 We may delay, block or refuse to make a payment to you or to a supplier or seller of goods under this document if we believe on reasonable grounds that making a payment may breach any law in Australia or any other country. We will incur no liability if we do so.

37.2 We may, and you consent to us doing so, seek verification of your identification and identification documents from independent sources and/or third parties.

- 37.3 We may request, and you must provide, further documentary evidence of your identity as we deem necessary to confirm your identity.
- 37.4 We may request that you produce, and you must provide in *person* if necessary, the original and/or certified true copies of all documentary evidence confirming your identity.
- 37.5 In the event that we are unable to properly confirm your identity, we may at our sole discretion, refuse to make a payment to you or to a supplier or seller of goods under this document until such time as your identity can be confirmed.
- 37.6 We may request, and you must provide:
- (a) any other additional information we deem necessary in relation to your identity, personal affairs, business dealings and/or the purpose of your relationship with us; and
  - (b) any information which we reasonably require to comply with any laws in Australia or any other country.
- 37.7 We will keep copies of all documents provided by you and will disclose or provide copies of your identification documents or any other information provided by you to third parties as required by any laws in Australia or any other country.
- 38 Confidentiality**
- You and we agree that the terms and conditions of this document and any related documents and information are confidential. You and we agree that the content of these documents and such information will not be disclosed except to the extent and for the purposes such disclosure is expressly permitted by this document or required by law (other than s.275(1) of the PPSA).
- 39 Disclosure of information**
- Information you provide to us may be disclosed:
- (a) in connection with any *person* exercising rights under this document (such as selling the *collateral* or assigning or otherwise dealing with our rights under this document);
  - (b) to our related entities, its and our officers and employees, to receivers and to legal advisers, auditors and other advisers;
  - (c) to organisations that referred the transaction to us for which this document was granted;
  - (d) if the information is generally and publicly available;
  - (e) if you consent (you may not unreasonably withhold your consent);
  - (f) if required by any stock exchange or if allowed or required by law; or
  - (g) to any *person* who gives a guarantee or grants a *security interest* in connection with the payment of the *amount owing*.
- 40 Guarantee and Indemnity**
- 40.1 In consideration of us at the request of the Guarantor entering into this document, the Guarantor guarantees to us:
- (a) the due and punctual performance by you of your obligations under this document or any holding over pursuant to this document; and
  - (b) payment of the *amount owing*.
- 40.2 As a separate obligation the Guarantor indemnifies us against any reasonable loss or damage which we suffer or sustain as a result of the non-payment of any money or the non-performance of any of your obligations under this document, any holding over pursuant to this document or consequent upon termination or expiration of this document, except to the extent that we suffer or sustain loss or damage due to our fraud, negligence, or wilful misconduct, or that of our employees or agents.
- 40.3 The obligations of the Guarantor under this *guarantee* are principal obligations imposed on the Guarantor. We have the right to make a claim or demand upon the guarantor pursuant to this *guarantee* without having first taken any proceedings against you or any other *person*.
- 40.4 The Guarantor's obligations under this *guarantee* are not impaired or discharged by:
- (a) any variation (with or without the consent of the Guarantor) of this document;
  - (b) any breach, wilful or otherwise of any of your obligations under this document whether or not with the consent or knowledge of you or any Guarantor or us;
  - (c) the granting of any time, credit, indulgence or concession to you or to any Guarantor;
  - (d) the fact that the whole or any part of the moneys *payable* by you under this document may not be or may cease to be recoverable from you or from any other Guarantor;
  - (e) the fact that you or any other Guarantor may be discharged from all or any of your obligations to pay any moneys under this document for any reason other than that the same has been in full;
  - (f) you or any Guarantor, being an individual, dies, suffers from any mental incapacity or becomes *insolvent* under administration within the meaning of section 9 of the Corporations Act;
  - (g) you or any Guarantor being a company become an externally-administered body corporate within the meaning of section 9 of the Corporations Act;
  - (h) the avoidance for any reason of any payment by you or on your behalf or by any guarantor;
  - (i) the fact that any *person* who was intended to execute this document as Guarantor or otherwise to become a co-surety for your obligations under this document has not done so;
  - (j) the transfer or assignment of the benefit of this document including this *guarantee* to any *person* or corporation;
  - (k) any other matter or thing which, but for this provision, could or might operate to abrogate or reduce the Guarantor's liability.
- 40.5 Our rights under this *guarantee* are in addition to and do not merge with or affect any other securities now or subsequently held by us from you or from the Guarantor from any other *person*.

- 40.6 We are not obliged to marshal in favour of the Guarantor any security held by us or any other funds or assets that we may be entitled to receive or to have a claim upon.
- 40.7 Any security now or subsequently held by any Guarantor from you for your obligations to indemnify that Guarantor against liability under this *guarantee* must be held by the Guarantor in our favour and at the cost of the Guarantor as security for the Guarantor's liability to us. The Guarantor must upon request deposit that security with us or assign it by way of security to us.
- 40.8 The Guarantor must not compete with us for any dividend or distribution in any winding up, scheme of arrangement or management or administration of you or claim any set-off or make any counterclaim against you.
- 40.9 All moneys received by us which are capable of being applied by us towards payment of any moneys then due, or which may become due under this document must be regarded as payments in gross. The Guarantor has no right to claim the benefit of any moneys so received until we have received the whole of the moneys due or which may become *payable* to us under this document.
- 40.10 Where the Banking Code of Practice applies to this document, and the Guarantor is an individual or small business (as defined in the Banking Code of Practice), the following additional provisions apply:
- (a) the Guarantor's liability under this clause 40 is limited to the amount equal to the total instalments stated in the *Details* plus GST, plus:
- (i) any costs;
- (ii) any overdue interest; and
- (b) our rights under clause 40.3 to make a claim or demand upon the Guarantor pursuant to this *guarantee* without having first taken any proceedings against you are subject to the Banking Code of Practice.
- (c) We will give any Guarantor the following information within 14 days of the relevant event:
- (i) a copy of any formal demand or default notice we have sent to you after we have sent it;
- (ii) a written notice if you have advised us that you are experiencing financial difficulty which has resulted in a change to this equipment loan and security agreement; or
- (iii) a written notice if you are in continuing default for more than two months after we have issued a default notice under the *equipment loan and security agreement*,
- except where the Guarantor is a commercial asset financing guarantor, sole director guarantor or trustee guarantor (as defined in the Banking Code of Practice).

#### 41 Creation of security interest

- 41.1 For the purpose of securing payment of the *amount owing*, you grant a *security interest* in the *collateral* to us. You do this as beneficial owner unless you have told us that you enter this document as trustee of a trust. If you have told us that you enter this document as trustee of that trust, you do this as sole trustee of the trust for all the *collateral* comprising the trust fund of the trust and you do this as

beneficial owner for all the other *collateral*. If and to the extent the *collateral* includes any property or rights that is not personal property (as defined in the PPSA and to which the PPSA applies) the *security interest* granted by you in this document takes effect as a mortgage in respect of that *collateral*.

- 41.2 We will promptly release the *collateral* from this document if there is no *amount owing*.

- 41.3 Where you hold the *collateral* jointly with one or more others, whether or not named in the *Details*, and whether in *partnership*, joint venture or otherwise, and we hold a *security interest* from all such other *persons*, whether under this document or under any other security instruments, you acknowledge that such *security interests*, constitute a *security interest* over all the *collateral* held by the firm, *partnership* or joint venture.

#### How this document affects you and the collateral

#### 42 Attachment

The *security interests* granted by this document attach to the *collateral* to which the PPSA applies in accordance with the PPSA and the parties confirm that they have not agreed that any *security interest* granted by this document attaches at any later time.

#### 43 Taxes and fees

You agree to pay on time all amounts *payable* to any authority in connection with the *collateral*, including *taxes*, maintenance fees, registration fees, renewal registration fees and licence fees.

#### 44 Partnership

- 44.1 You must *obtain* our consent before:

- (a) allowing any partner to leave any partnership that you are a partner of; or
- (b) any new partner is added to any partnership that you are a partner of,

whether or not any such partnership is named in the *Details*, and you must procure any partner added to any such partnership to assume the liability in respect of all amounts owing before that partner became a partner, by executing a document in substantially the same form as this document.

- 44.2 If you lease or hire *collateral* to other *persons* in accordance with clause 3.2 (because you obtain our prior written consent), you must:

- (a) ensure any lease or hiring arrangement with those other *persons* is not a *PPS lease* or if it is you must comply with clause 3.5(d) at all times;
- (b) have the terms on which you lease or hire the *collateral* approved by us before you enter into the lease or hiring arrangement; and
- (c) require the other *person* to acknowledge our *security interest* in the *collateral* and that its interest in the *collateral* is subject to or subordinate to our *security interest*.

#### 45 Other security interests

- 45.1 If we consent to another *security interest* in the *collateral* and if we ask, then you agree to get an agreement acceptable to us regarding the priority between this document and the other *security interest*.

- 45.2 If you do not get our consent and any agreement or deed we ask for, we:
- (a) need not make funds available under a *transaction document*; and
  - (b) may exercise any other rights that arise because you do not do so, such as the right to take possession of the *collateral*, to sell it or to otherwise deal with it.

45.3 You agree to ensure that the amount secured under any other *security interest* in the *collateral* is not increased without our consent.

45.4 You agree to comply with any obligation in connection with any other *security interest* in the *collateral*.

#### 46 Administrative matters

46.1 You agree to deposit with us any documents evidencing title to any *collateral* (including documents of title), chattel paper or other documents we request relating to the *collateral*. But you need not deposit them with us if another *person* is holding them under a *security interest* in the *collateral* to which we have consented and which has priority over this document.

46.2 You agree to do anything we ask you to do to perfect the *security interest* granted under this document.

46.3 We may register this document or a notification in respect of it or a *security interest* related to or constituted by this document at your expense.

46.4 You agree to do anything we reasonably ask you to do (such as obtaining consents, signing and producing documents, producing receipts and getting documents completed and signed):

- (a) to provide more effective security over the *collateral* for payment of the *amount owing* or performance of an obligation; or
- (b) to enable us to register this document or a notice in respect of it or the *security interests* constituted by it with the agreed priority; or
- (c) to enable us to exercise our rights in connection with the *collateral*; or
- (d) to enable us to register the power of *attorney* in clause 24 or a similar power; or
- (e) to show whether you are complying with this document.

We will give you a reasonable period to review and comply with anything we reasonably ask you to do under this clause 46.4. We may give you shorter notice (or no advance notice) to comply with a request, if it is necessary for us to act quickly to avoid or reduce a material increase in our risk, or our request is necessary to comply with the requirements of a third party.

46.5 If requested by us you agree to promptly supply us with the correct serial numbers for the *collateral* in respect of *security interests* in that *collateral* that may be registered on the PPSR by serial number.

46.6 You agree that we may fill in any blanks in this document or any document relating to this document (such as transfers for the *collateral*). We will give you a copy of any document we have completed in this way.

46.7 If we ask, you agree to supply us with any information about or documents affecting:

- (a) the *collateral*; or
- (b) this document.

#### Costs, indemnities and interest

#### 47 What you agree to pay

47.1 You agree to pay or reimburse us on demand for:

- (a) our *reasonable costs* in connection with:
  - (i) the negotiation, preparation, execution, stamping and registration of this document or any other *transaction document* or any *security interest* related to any of them; and
  - (ii) the general on-going administration of this document (including giving and considering consents, waivers and releases); and
- (b) our and any *receiver's costs* in otherwise *acting* in connection with this document or any other *transaction document*, such as enforcing or preserving rights (or considering enforcing or preserving them) or doing anything in connection with any enquiry by an authority involving you or any of your *related entities*; and
- (c) taxes and fees (including registration fees) and fines and penalties in respect of fees paid or that we reasonably believe are *payable* in connection with this document or any *transaction document* or a payment or receipt or any other transaction or *security interest* contemplated by any *transaction document*. However, you need not pay a fine or penalty in connection with taxes or fees to the extent that you have placed us in sufficient cleared funds for us to be able to pay the taxes or fees by the due date.

We may debit any of these amounts to your account before we ask you to pay us.

47.2 You indemnify us against any liability or loss arising from, and any costs in connection with:

- (a) you being in default; or
- (b) any *person* exercising or attempting to exercise rights in connection with this document or any other *transaction document* if you are in default; or
- (c) *collateral* and this document; or
- (d) any *indemnity* we give your *controller* or administrator:
  - (i) in respect of you; or
  - (ii) over any of the *collateral*.

47.3 You agree that:

- (a) the costs referred to in clause 47.1 and the liability, loss or costs in clause 47.2 include legal costs in accordance with any written agreement as to legal costs or, if no agreement, on whichever is the higher of a full indemnity basis or solicitor and own client basis; and

- (b) the costs referred to in clauses 47.1(a) and (b) include those paid, or that we reasonably believe are *payable*, to *persons* engaged by us in connection with this document or any other *transaction document* (such as consultants).
- 47.4 You agree to pay us an amount equal to any liability, loss or costs (including consequential or economic loss) of a kind referred to in clauses 47.2(a) to (c) inclusive suffered or incurred by:
- (a) any receiver or *attorney* appointed under this document; or
- (b) any of our employees, officers, agents or contractors; or
- (c) any lessee, purchaser or occupier of the *collateral*.
- 47.5 You agree to pay for anything that you must do under this document.
- 47.6 To the extent that this document is a *small business contract* or a *banking code contract*, the costs referred to in this clause 47 will not include costs incurred as a result of our (or any of our officers', employees', contractors', agents' or receivers') fraud, negligence or wilful misconduct.
- 47.7 If GST has any application to any supply made under or in connection with this document, we may, in addition to any other consideration expressed as *payable* elsewhere in this document, recover from you an additional amount on account of GST, such amount to be calculated by multiplying the amount or consideration *payable* by you for the relevant supply by the prevailing GST rate. Any additional amount on account of GST recoverable from you under this clause 47 will be calculated without deduction or set off of any other amount and is *payable* by you upon demand by us whether such demand is by means of an invoice or otherwise.
- 47.8 If we are unable to obtain a full input tax credit for an amount paid on account of GST by us to another *person* in respect of a supply made by another *person* to us in respect of this document, then you shall be liable to pay us an amount equal to the input tax credit to which we are not entitled under the GST legislation.
- 47.9 Each of us agrees to do all things, including providing tax invoices or other documentation in such form and detail that may be necessary, to enable or assist the other party to claim or verify any GST input tax credit, set off, rebate or refund in relation to the amount attributed to any GST included in any amount *payable* under this document.
- 48 Interest**
- 48.1 You agree to pay interest calculated daily on daily balances on any part of the *amount owing* which is due for payment (or which is debited to your account with us) but which is not otherwise incurring interest.
- 48.2 The interest accrues daily from the date the amount becomes due or when it is debited to your account with us (whichever is earlier) until you pay it.
- 48.3 The rate of interest applying to each daily balance is the rate specified by us from time to time or (if no rate is specified) 2% above the highest interest rate applying to the *amount owing* on that day as reasonably determined by us.
- 48.4 You agree to pay interest owing under this clause 48 when we specify.
- 48.5 Each month (or any other periods we choose), we may add to the amount you owe us any interest under this clause 48

which has not been paid. You will then be liable for interest under this clause 48 on the total amount.

48.6 If a liability becomes merged in a judgment, then you agree to pay us on demand interest on the amount of that liability as an independent obligation. This interest:

- (a) accrues from the date the liability becomes due for payment both before and after the judgment until the liability is paid; and
- (b) is calculated at the rate that is the higher of the judgment rate and the rate in clause 48.3.

## **49 Things we may do at any time**

49.1 Except to the extent that we are not permitted to do so by law, without first seeking your consent or court authority, we may enter land and buildings owned or occupied by you, any place where the *collateral* is located, your places of business and your registered office to:

- (a) inspect the *collateral*; or
- (b) find out whether you are complying with this document; or
- (c) carry out our rights under this document; or
- (d) inspect and copy records relating to you or the *collateral*; or
- (e) investigate your financial affairs or business.

49.2 Unless there is an emergency, we agree to give you reasonable notice before entering under clause 49.1. You agree to help us to enter, such as by getting any consent necessary.

49.3 We may do anything which you should have done under this document but which you have either not done or in our reasonable opinion have not done properly. We will only do so if we have first given you a reasonable period to perform the relevant obligation (including any period we are required to give you under this *document*). If we do so, you agree to pay our reasonable costs when we ask.

49.4 We do not become a mortgagee in possession because we enter the land and buildings under clause 49.1 or exercise our rights under clause 49.3.

49.5 If we ask, you agree to ensure that rent and other income from the *collateral* are paid to us. If however, you continue to receive them, you must pay them to us.

49.6 If we reasonably believe you are or may be in default, we may appoint a *person* to investigate whether this belief is accurate. You must co-operate with and comply with every reasonable request made by this *person*. If you are or were in *default* at any time during the investigation, you must pay to us all cost in connection with the investigation.

## **50 Receivers**

50.1 In exercising our power to appoint a *receiver* we may:

- (a) appoint any *receiver* to all or any part of the *collateral* or its income; and
- (b) acting reasonably, set a *receiver's* pay at any figure we determine as appropriate, remove a *receiver* and appoint a new or additional *receiver*.

50.2 If we appoint more than one *receiver*, we may specify whether they may act individually or must act collectively.



50.3 The *receiver* is your agent unless we notify you that the receiver is to act as our agent. You are solely responsible for anything done, or not done, by a *receiver* and for the *receiver's* remuneration and costs. To the extent that this document is a *small business contract* or a *banking code contract*, you will not be responsible for any fraud, negligence or wilful misconduct of the *receiver*.

50.4 Unless the terms of appointment restrict a *receiver's* powers, the *receiver* may do anything the law allows a *receiver* to do and any of the things we may do under clause 10.2(a) to (e) inclusive. This clause 50 applies as though you are a company even if you are not.

50.5 We may enforce this document before we enforce *other* rights and remedies we have against any other *person* or under any other document or *encumbrance*.

## 51 Exclusion of time periods

51.1 Neither we nor any *receiver* need give you any notice or demand or allow time to elapse before exercising a right under this document or conferred by law (including a right to sell) unless the notice, demand or lapse of time is required by law and cannot be excluded.

51.2 If law requires that a period of notice must be given or a lapse of time must occur or be permitted before a right under this document or conferred by law may be exercised, then:

- (a) when a period of notice or lapse of time is *mandatory*, that period of notice must be given or that lapse of time must occur or be permitted by us; or
- (b) when law provides that a period of notice or lapse of time may be stipulated or fixed by this document, then one day is stipulated and fixed as that period of notice or lapse of time including, if applicable, as the period of notice or lapse of time during which:
  - (i) a *default* must continue before a notice is given or requirement otherwise made for payment of the *amount owing* or the observance of other obligations under this document; and
  - (ii) a notice or request for payment of the *amount owing* or the observance of other obligations under this document must remain not complied with before we or a *receiver* may exercise its rights.

## 52 Disposal of the collateral is final

You agree that if we or a *receiver* sell or sells, or otherwise dispose or disposes of the *collateral*:

- (a) you will not challenge the acquirer's right to acquire the *collateral* (including on the ground that we or the receiver were or was, not entitled to dispose of the *collateral* or that you did not receive notice of the intended disposal) and you will not seek to reclaim that property; and
- (b) the *person* who acquires the *collateral* need not check whether we or the receiver had the right to dispose of the *collateral* or whether we or the receiver exercised that right properly.

## General

## 53 PPSA

53.1 If the *collateral* is not intended to be used predominantly for personal, domestic or household purposes, you agree that:

- (a) to the extent that section 115(1) of the PPSA allows *this*, the following provisions of the PPSA will not apply to the enforcement of this document over the *collateral*:
  - (i) section 95 (notice of removal of *accession*), to the extent that it requires us to give a notice to you;
  - (ii) section 96 (when a *person* with an interest in the whole may retain an *accession*);
  - (iii) subsection 121(4) (enforcement of liquid assets – notice to grantor);
  - (iv) section 125 (obligation to dispose of or retain *collateral*);
  - (v) section 130 (notice of disposal), to the extent that it requires us to give a notice to you;
  - (vi) paragraph 132(3)(d) (contents of statement of account after disposal);
  - (vii) subsection 132(4) (statement of account if no disposal);
  - (viii) section 142 (redemption of *collateral*);
  - (ix) section 143 (reinstatement of security agreement); and
- (b) to the extent that section 115(7) of the PPSA allows *this*, the following provisions of the PPSA will not apply to the *enforcement* of this document over the *collateral*:
  - (i) section 127 (seizure by higher priority parties – notice);
  - (ii) section 129(2) and (3) (disposal by purchase);
  - (iii) section 132 (secured party to give statement of account);
  - (iv) section 134(2) (proposal of secured party to retain *collateral*);
  - (v) section 135 (notice of retention of *collateral*);
  - (vi) section 136(3), (4) and (5) (retaining *collateral* free of interest); and
  - (vii) section 137 (*persons* entitled to notice may object to proposal).

53.2 Despite clause 15, notices or documents required or permitted to be given to us for the purposes of the PPSA must be given in accordance with the PPSA.

53.3 Without limiting clause 46.3 you consent to us effecting a registration on the PPSR (in any manner we consider appropriate) in relation to any *security interest* arising under or in connection with or contemplated by this document and you agree to provide all assistance reasonably required to facilitate this.

53.4 You waive the right to receive any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded.

## 54 Meaning of words

54.1 In this document:

**accession** includes accessions for the purposes of the PPSA but is not limited to them.

**accounts** includes accounts for the purposes for the PPSA but is not limited to them. It also includes all receivables and book debts.

**agreement covered by this equipment loan and security agreement** means:

- (a) an agreement between one or more of you and us which all of you acknowledge in writing to be an *agreement covered by this equipment loan and security agreement*; and
- (b) each agreement which varies such an agreement.

Without limiting this definition, it includes an agreement or arrangement which is assigned to us and any agreement or arrangement which you acknowledged to another *person* to be an *agreement covered by this equipment loan and security agreement* before the agreement or arrangement was assigned to us.

**amount owing** means at any time, subject to clause 25, all amounts that at any time; for any reason or circumstance in connection with any agreement (including an *agreement covered by this equipment loan and security agreement*), transaction, engagement, document, instrument (whether or not negotiable), event, act, omission, matter or thing whatsoever; whether at law, in equity, under statute or otherwise; and whether or not of a type within the contemplation of the parties at the date of this document:

- (a) are *payable*, are owing but not currently *payable*, are contingently owing, or remain unpaid by you to us; or
- (b) we have advanced or paid on your behalf or on your express or implied request; or
- (c) we are liable to pay by reason of any act or omission on your part, or that we have paid or advanced in the protection or maintenance of the *collateral* or this document following an act or omission on your part; or
- (d) are reasonably foreseeable as likely, after that time, to fall within any of the above paragraphs.

This definition applies:

- (e) irrespective of the capacity in which you or we became entitled to the amount concerned;
- (f) irrespective of the capacity in which you or we became liable in respect of the amount concerned;
- (g) whether you or we are liable as principal debtor, as surety or otherwise;
- (h) whether you are liable alone, or together with another *person*;
- (i) even if you owe an amount or obligation to us because it was assigned to us, whether or not:
  - (i) the assignment was before or after the date of this document; or
  - (ii) you consented to or were aware of the

assignment; or

- (iii) the assigned obligation was secured;
- (j) even if this document was assigned to us, whether or not:
  - (i) you consented to or were aware of the assignment; or
  - (ii) any of the *amount owing* was previously unsecured; and
- (k) if you are a trustee, whether or not you have a right of indemnity from the trust fund.

**attorney** means each *attorney* appointed by you under clause 24.

**authorised officer** means:

- (a) in relation to us, an employee of ours:
  - (i) whose title or acting title is or includes the word manager, accountant or officer; or
  - (ii) who is authorised by us to act as our *attorney*;
- (b) in your case, you (if the grantor is an individual), a director or a secretary of the grantor (if the grantor is a body corporate or body politic) or any other *person* appointed by you to act as an authorised officer under this document or a *transaction document*.

**banking code contract** means this equipment loan and security agreement if you are an individual or a small business. as defined in the Banking Code of Practice).

**Banking Code of Practice** means the Banking Code of Practice published by the Australian Banking Association.

**Bendigo and Adelaide Bank Group** means Bendigo and Adelaide Bank Limited and its related bodies corporate.

**break costs** are an estimate of the loss we suffer arising from an early repayment and include the amounts referred to in clause 5.6.

**collateral** means the property and rights described in the Details.

**collateral security** means any present or future security interest given by any person to secure or otherwise ensure the payment of the amount owing.

**consumer credit legislation** means the National Credit Code forming schedule 1 to the National Consumer Credit Protection Act 2009 (Cth) (as amended) and the unfair contract terms provisions in Subdiv BA of Div 2 of Pt 2 of the Australian Securities and Investments Commission Act 2001.

**contaminant** means anything (including a liquid, solid, gas, odour, temperature, sound, vibration or radiation) that makes or could make the collateral or the environment:

- (a) unsafe or unfit for humans or animals; or
- (b) degraded in any way (including in its capacity to support plant life

**controller** has the meaning it has in the Corporations Act.

**Corporations Act** means the Corporations Act 2001 (Cth).

**costs** includes charges and expenses including those incurred in connection with legal and other advisers on a full indemnity basis. To the extent this is a *small business contract* or a *banking code contract* our costs

will be limited to reasonable costs only.

**default** means each of the events specified in clause 9 and includes any one or more of them.

**Details** means the document headed Specific Security Agreement Details or Equipment Loan and Security Agreement Details (as applicable) which is executed by you and which forms part of this document and the *equipment loan and security agreement*.

**document** means:

- (a) the contract formed upon our acceptance of your offer contained in the *Details*; and
- (b) this document which provides for a *security interest* in the *collateral*. This document is comprised of the *Details*, these Terms and Conditions and each Schedule to these Terms and Conditions and a reference to the document is a reference to any part of the *Details*, the Terms and Conditions and the Schedules.

**early termination fee** means the fee set out in the fees and charges section of the details that is *payable* if you terminate the *Loan* or the *Loan* is terminated for any reason before the end of the *Term*.

**encumbrance** means any *security interest*, notice under section 218 or 255 of the Income Tax Assessment Act 1936 (Cth) or under any similar provision of any law, profit a prendre, lien, easement, restrictive covenant, equity, interest, garnishee order, writ of execution, right of set-off, lease, licence to use or occupy, assignment of income or monetary claim, and any agreement or deed to create any of them or allow them to exist.

**equipment loan and security agreement** means:

- (a) the contract formed upon our acceptance of your offer contained in the *Details*; and
- (b) this document which provides for a *security interest* in the *collateral*. This *equipment loan and security agreement* is comprised of the *Details*, these Equipment Loan and Security Terms and Conditions and each Schedule to these Equipment Loan and Security Terms and Conditions and a reference to the *equipment loan and security agreement* is a reference to any part of the *Details*, the Equipment Loan Terms and Conditions and the Schedules.

**farmer** means a 'farmer' as defined in section 4 of the Farm Debt Mediation Act 1994 (NSW) (meaning a person (whether an individual person or a corporation) who is solely or principally engaged in a Farming Operation and includes a person who owns land cultivated under a share-farming agreement and the personal representatives of a deceased farmer).

**farming operation** means a 'farming operation' as defined in section 4AB of the Farm Debt Mediation Act 1994 (NSW) as meaning a business undertaking that primarily involves one or more of the following activities:

- (a) agriculture (for example, crop growing and livestock or grain farming);
- (b) aquaculture;
- (c) the cultivation or harvesting of timber or native vegetation; or
- (d) any activity involving primary production carried out in connection with an activity referred to in the above bullet points.

**final repayment date** means the final repayment date outlined in the *Details*.

**first instalment payment date** means the first instalment payment date outlined in the *Details*.

**government authority** means any government or any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.

**GST** means any tax in the nature of a consumption tax, a goods and services tax, a value added tax or similar tax including, without limitation, any tax arising under the A New Tax System (Goods and Services Tax) Act 1999 (Cth) and associated legislation.

**guarantee** means any guarantee or indemnity given by a Guarantor.

**Guarantor** means each *person* who has guaranteed your obligations under this document and includes any guarantor referred to in the *Details* and any *person* who, whether at the time of entering into this document or subsequently, guarantee your obligations under this document.

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

**insolvent** means

- (a) an individual who has either:
  - (i) committed an act of bankruptcy;
  - (ii) entered into an assignment, arrangement, compromise or composition with his/her creditors; or
  - (iii) is unable to pay any of his/her debts as and when they fall due,
- (b) a body corporate, partnership, other entity or trustee of a trust in respect of which:
  - (i) (except for the purpose of a solvent reconstruction or amalgamation with *our* prior written consent), an order has been made to wind it up or a liquidator, provisional liquidator or *controller* has been appointed to it or any of its assets or a resolution has been passed for it to be wound up;
  - (ii) an administrator has been appointed to it;
  - (iii) it has entered, or a court has approved the terms of, an assignment, arrangement, compromise or composition with any of its creditors or members;
  - (iv) an application has been made by ASIC to deregister or dissolve it;
  - (v) it is insolvent within the meaning of section 95A of the Corporations Act 2001 (as disclosed in its accounts or otherwise); or
  - (vi) it is unable to pay its debts as and when they fall due.

**instalment amount** means each instalment amount outlined in the *Details*.

**instalment frequency** means the instalment frequency outlined in the *Details*.

**Loan** means the principal amount to be made available from us to you, the details of which are contained in the *Details*.

**overdue interest rate** means the rate which is 2% higher than the rate which applies to the *Loan*.

**partnership** means, if applicable, the partnership described in the *Details*.

**payable** in relation to an amount, means an amount which is currently payable or will or may be payable in the future.

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

**PPSA** means the Personal Property Securities Act 2009 (Cth) and any regulations made pursuant to it.

**PPSR** means the register established under the PPSA.

**premises** means the premises the details of which are outlined in the *Details*.

**proceeds** includes proceeds for the purposes of the PPSA but is not limited to them.

**receiver** includes receiver, or receiver and manager.

**related entity** has the meaning it has in the Corporations Act.

**security** means each security specified in the *Details* and any other security for the payment of the *amount owing* including a *security interest*.

**security interest:**

- (a) in relation to any personal property (as defined in the PPSA) has the same meaning as in the PPSA; and
- (b) in relation to any other property to which the PPSA does not apply, means any security for the payment of money or performance of obligations including a mortgage, charge, lien, pledge, trust or power.

**Security interest** also includes a guarantee or indemnity.

**small business contract** has the meaning given in section 12BF(4) of the *Australian Securities and Investments Commission Act 2001* (Cth).

**specific chattel paper** means any chattel paper specifically described as such in the *Details* and forming part of the *collateral*.

**State** means the state or territory of *our* address specified in the *Details*.

**such as** see **including**.

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

**term** means the term outlined in the *Details*.

**transaction documents** means:

- (a) this document, including the *guarantee* provided under this document;
- (b) any document under which we provide financial accommodation to you or under which there is an amount owing;
- (c) any *collateral* security;
- (d) any agreement covered by this document;
- (e) any document which you acknowledge in writing to be a transaction document; and
- (f) any other document connected with any of the documents in (a) to (e) above.

**we, us** and **our** means Bendigo and Adelaide Bank Limited ABN 11 068 049 178 and our successors and assigns. "us" and "our" have corresponding meanings.

**you** means the person or persons named in the *Details* as "Borrower" and/or "Grantor" and, where specified, also the Guarantor. If there are more than one, you means each of them separately and every two or more of them jointly.

54.2 The following words have the respective meanings given to them in the PPSA: ADI account, aircraft, attach, chattel paper, commercial property, commingled, control, crops, document of title, intellectual property, intellectual property licence, inventory, intermediated security, investment instrument, livestock, motor vehicle, negotiable instrument, other goods, perfect, PPS lease, purchase money security interest, watercraft.

54.3 The singular includes the plural and vice versa.

54.4 Reference to one gender includes any other gender.

54.5 A reference to:

- (a) a document or deed includes any variation, novation or replacement of it;
- (b) a person includes a reference to that person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and assigns;
- (c) any thing (including the *amount owing* and *collateral*) includes the whole and each part of it; and
- (d) the word "include" or any form of that word must be construed as if it were followed by "(without being limited to)".

54.6 Each Schedule forms part of this document.

54.7 The *Details* (including any special conditions set out in the *Details*) and each Schedule are incorporated into and forms part of this document. All references to 'this document' includes the *Details* and each Schedule.

## Schedule – Aircraft, Motor Vehicle, Watercraft or Other Goods

This Schedule applies if and to the extent the *collateral* includes aircraft, motor vehicles, watercraft or other goods.

### 1. Looking after the *collateral*

- 1.1 You agree:
- (a) to keep the *collateral* in good working order and condition and correct any defect; and
  - (b) to protect the *collateral* from theft, loss or damage; and
  - (c) to tell us if the *collateral* is contaminated, defective or seriously damaged; and
  - (d) to tell us if anything happens which may result in a claim for compensation in relation to the *collateral*; and
  - (e) if the *collateral* is a motor vehicle, to get our consent to keep the motor vehicle in a place other than the *premises* stated in the *Details*.
- 1.2 You agree to:
- (a) ensure that each person who uses the *collateral* complies with all laws and requirements of authorities and other obligations in connection with the use of the *collateral*; and
  - (b) obtain, maintain and comply with any licences required for you to carry out any activity in connection with the *collateral* and maintain and comply with any licences which form part of or relate to the *collateral*; and
  - (c) ensure any replacement part or addition to any of the *collateral*, whether or not an *accession*, becomes subject to this security agreement free of any *security interest* (other than a *security interest* held by us).
- 1.3 Unless we consent, you agree:
- (a) to notify us if there is a *contaminant* on, in, under or migrating to or from the *collateral*; and
  - (b) not to have a *contaminant* on, in or under, or release a *contaminant* from or allow a *contaminant* to escape from the *collateral*; and
  - (c) to immediately remove any *contaminant* from the *collateral* and make good any damage caused by the *contaminant* or its removal; and
  - (d) if a *contaminant* is released, escapes or migrates from the *collateral*, to minimise its impact on the environment and make good any damage it causes; and
  - (e) not to deal with the *collateral* or any *contaminant* in such a way as to increase the risk of harm from the *contaminant*; and
  - (f) if the *collateral* comprises a motor vehicle, not to change the *premises* at which it the motor vehicle is normally located or garaged as specified in the *Details*.

### 2. Insurance

- 2.1 You agree to maintain insurance over the *collateral*:
- (a) if the *collateral* is a motor vehicle or watercraft, against fire, theft and accident, other usual risks and compulsory third party insurance; and
  - (b) for other *collateral*, against fire, theft, accident

and any other risk we reasonably require.

- 2.2 The insurance under clause 2.1 of this Schedule must be for the full insurable value of the collateral on a replacement and reinstatement basis.

- 2.3 Each policy under clause 2.1 of this Schedule must:

- (a) note our interest as the secured party; and
- (b) be on terms and for an amount satisfactory to us; and
- (c) be with an insurer appropriately licensed in Australia.

- 2.4 You agree:

- (a) to produce evidence of current insurance cover (including a certified copy of each policy) whenever we ask; and
- (b) to pay all insurance premiums at least 3 business days before the due date for payment and if we ask, produce receipts for payment; and
- (c) to remedy anything which may prejudice the insurance cover if it lapses.
- (d) the insurance cover is not reduced or cancelled, and you agree to notify us if it is or could be; and
- (e) nothing happens that could permit an insurer to decline a claim or prejudice the insurance cover, and you agree to notify us if anything would permit an insurer to do this.

### 3. Insurance claims

- 3.1 You agree to ensure that *proceeds* from an insurance claim are:

- (a) used to reinstate the *collateral*; or
- (b) paid to us (We agree to then use them as set out in clause 12 of the Terms and Conditions).

However, if we direct you to use or hold any insurance *proceeds* in a particular way, you agree to use or hold them as we direct.

- 3.2 You agree to notify us if an insurance claim is refused either in part or in full.

- 3.3 If we notify you, we may take over your rights to make, pursue or settle an insurance claim. We may exercise those rights in any manner we choose.

### 4. Dealing with the *collateral*

You may not, without our prior written consent, do, or agree to do, any of the following in respect to the *collateral*:

- (a) in respect to other goods, fix the *collateral* to any land or buildings; or
- (b) alter any identifying mark of the *collateral* (such as a serial number); or
- (c) allow the *collateral* to become an *accession* to, or *commingled* with, any property that is not *collateral*.

### 5. Ships

If the *collateral* is a ship registered under the Shipping Registration Act 1981 (Cth), the *collateral* includes all of your right title and interest and shares in the ship.

## Schedule – Crops or Livestock

This Schedule applies if and to the extent the *collateral* includes *crops* or *livestock*.

### 1. Looking after the *collateral*

1.1 You agree to:

- (a) protect the *collateral* from theft, loss or damage; and
- (b) tell us if the *collateral* is contaminated, defective or seriously damaged; and
- (c) tell us if anything happens which may result in a claim for compensation in relation to the *collateral*.

1.2 You agree to:

- (a) ensure that each person who uses the *collateral* complies with all laws and requirements and other obligations of authorities in connection with the use of the *collateral*; and
- (b) obtain, maintain and comply with any licences required for you to carry out any activity in connection with the *collateral* and maintain and comply with any licences which form part of or relate to the *collateral*; and
- (c) pay on time all amounts for which you are liable as owner of the *collateral* or as owner, lessee or occupier of the land, including rates, taxes, levies and any agistment payments; and
- (d) properly maintain the land including the control of vermin and weeds and construct and maintain proper fencing.

1.3 Unless we consent, you agree:

- (a) to notify us if there is a *contaminant* on, in, under or migrating to or from the *collateral* or the *land*; and
- (b) not to have a *contaminant* on, in or under, or release a *contaminant* from or allow a *contaminant* to escape from the *collateral* or the *land*; and
- (c) to immediately remove any *contaminant* from the *collateral* or the *land* and make good any damage caused by the *contaminant* or its removal; and
- (d) if a *contaminant* is released, escapes or migrates from the *collateral* or the *land*, to minimise its impact on the environment and make good any damage it causes; and
- (e) not to deal with the *collateral* or any *contaminant* in such a way as to increase the risk of harm from the *contaminant*.

1.4 If the *collateral* comprises *crops* you must:

- (a) sow, grow, cultivate, harvest, gather in, store, carry away and sell the crop using proper, efficient, recognised and approved methods and standards of operation in accordance with good industry practice; and
- (b) use all fertilisers, pesticides, irrigation and farming techniques using proper, efficient, recognised and approved methods and standards in accordance with good industry practice; and
- (c) subject to clause 3.2 of the Terms and Conditions, provide a copy of this document to any purchaser of the crop before the sale of the crop to that purchaser; and

- (d) subject to clause 3.2 of the Terms and Conditions, collect the sale proceeds and any other amount payable to you in connection with the crop in a proper, orderly and efficient manner.

1.5 If the *collateral* comprises *livestock* you must:

- (a) not, without our consent:
  - (i) change the general quality, character or description of the *livestock*; and
  - (ii) remove any of the *livestock* from the *land*; and
- (b) ensure that all *livestock* are, if we ask, branded, marked or earmarked as directed by us and that all *livestock* other than *livestock* already bearing an existing brand, earmark or mark when purchased or acquired:
  - (i) bears the brands, earmarks and other marks approved in writing by us;
  - (ii) do not bear any other brand, earmark or mark; and
  - (iii) are and remain easily identifiable; and
- (c) maintain all *livestock* in a clean and healthy condition and ensure that all *livestock* are properly fed, sheltered and cared for; and
- (d) if we ask, give us a written statement containing details of all *livestock* and the location of that *livestock*, such statement to be in the form approved by us; and
- (e) provide all medicines and veterinary assistance to the *livestock* which, according to good husbandry, should be provided; and
- (f) keep separate certain parts of the *livestock* which according to good husbandry should be kept separate; and
- (g) immediately replace any of the *livestock* which die or become lost or stolen with other stock of similar nature and value; and
- (h) if we ask, at your expense and in the proper season, shear all sheep being part of the *livestock* and deliver the wool to us at the place we appoint.

### 2. Insurance

2.1 You agree to maintain insurance over the *collateral* against fire, storm damage, theft, accident and any other risk we reasonably require.

2.2 The insurance under clause 2.1 of this Schedule must be for the full insurable value of the *collateral* on a replacement and reinstatement basis.

2.3 Each policy under clause 2.1 of this Schedule must:

- (a) note our interest as the secured party; and
- (b) be on terms and for an amount satisfactory to us; and
- (c) be with an insurer appropriately licensed in Australia.

2.4 You agree:

- (a) to produce evidence of current insurance cover (including a certified copy of each policy) whenever we ask; and
- (b) to pay all insurance premiums at least 3 business days before the due date for payment and if we ask, produce receipts for payment; and
- (c) to remedy anything which may prejudice the

- insurance cover if it lapses.
- 2.5 You agree to ensure that:
- (a) the insurance cover is not reduced or cancelled, and you agree to notify us if it is or could be; and
  - (b) nothing happens that could permit an insurer to decline a claim or prejudice the insurance cover, and you agree to notify us if anything would permit an insurer to do this.

### 3. Insurance claims

- 3.1 You agree to ensure that *proceeds* from an insurance claim are:
- (a) used to reinstate the *collateral*; or
  - (b) paid to us (We agree to then use them as set out in clause 12 of the Terms and *Conditions*).

However, if we direct you to use or hold any insurance *proceeds* in a particular way, you agree to use or hold them as we direct.

- 3.2 You agree to notify us if an insurance claim is refused either in part or in full.
- 3.3 If we notify you, we may take over your rights to make, pursue or settle an insurance claim. We may exercise those rights in any manner we choose.

### 4. Dealing with the *collateral*

- 4.1 You may not, without our prior written consent, do, or agree to do, any of the following in respect to the *collateral*:
- (a) in respect to livestock, alter any identifying mark of the *collateral* (such as a brand); or
  - (b) allow the *collateral* to become commingled with any property that is no *collateral*.
- 4.2 Despite clause 3.2 of the Terms and Conditions, you may sell *crops* or *livestock* comprising *collateral* if:
- (a) you do so in the ordinary course of your ordinary business and for fair market value; and
  - (b) you either apply the *proceeds* of sale to:
    - (i) if the *collateral* sold is *livestock*, purchase further *livestock* in substitution for the *livestock* sold; or
    - (ii) *immediately* pay the *proceeds* of sale to us.

### 5. Licences

- 5.1 If a *licence* is required for any activity carried out on the *land* or in connection with the *collateral* then you must:
- (a) when carrying out that activity, do so in a proper and orderly manner; and
  - (b) comply with all laws and requirements of authorities in connection with the *licence*; and
  - (c) obtain and renew on time the *licence* and each authorisation necessary to carry on the activity for which the *licence* is necessary and oppose any application to restrict or cancel the *licence*; and
  - (d) not, without our consent:
    - (i) surrender *or* attempt to surrender the *licence*; or
    - (ii) deal with or part with possession of any interest in the *licence*; or
    - (iii) amend the *licence*; or

- (iv) do anything which could cause the
- (v) *licence* to be forfeited or cancelled; or
- (vi) allow a security to arise over the *licence*; and
- (e) give us a copy of each notice, order, summons or conviction in connection with the *licence*.

- 5.2 If you are not the *holder* of a *licence*, you must ensure that:

- (a) the holder complies with the obligations set out in clause 5.1 of this Schedule; and
- (b) the holder gives us an authority to apply for information from authorities and a power of attorney relating to the *licence*, each in a form satisfactory to us.

- 5.3 After a default has occurred, if we ask, you must do your best to ensure that each *licence* is transferred to us or our nominee.

- 5.4 You irrevocably appoint us and each employee of us jointly and severally to be *your* attorney to do all things in your name which we consider appropriate in relation to any *licence* or anything in connection with any *licence*.

### 6. Livestock

Without limiting clause 54 in the Terms and Conditions, if the *collateral* is *livestock* it also includes any unborn young or offspring of the *livestock* described as *collateral* in the *Details* and any *livestock* acquired in place of or in substitution for that *livestock* in accordance with clause 4.2 of this Schedule.

### 7. Meaning of words

In this document:

***land*** means, as applicable, the land on which the *crops* comprising the *collateral* are grown or on which the *livestock* comprising the *collateral* are kept or depastured, as identified in the description of *collateral* in the *Details* and any other land which we approve in writing.

***licence*** means any licence, permit or authorisation (including to discharge hazardous waste, to draw water, develop or use the *land* or the *collateral*, or to produce or sell the *collateral*) which allows an activity to be carried out on or in connection with the *land* or the *collateral*.

## Schedule – Investment Instruments and/or Intermediated Securities

This Schedule will apply if and to the extent that the *collateral* includes *investment instruments* (such as shares or units not held on CHES) and/or *intermediated securities* (such as CHES securities).

### 1. Looking after the *collateral*

1.1 You agree that you will:

- (a) carry out on time all of your obligations in connection with the *collateral* and comply with all directions, requests, or requirements of government agencies relating to the *collateral*;
- (b) duly and punctually pay all calls, premiums and instalments which may be or become payable in respect of the *collateral*;
- (c) immediately after becoming aware of any *new rights*, notify us in writing of any such *new rights* and if requested by us, provide documentary or other evidence of these *new rights*;
- (d) if we ask you, take up any *new rights* in connection with the *collateral* (we will only do this if in our opinion, failure to do so could mean that the *collateral* is likely to become materially lessened in value or prejudicially affected); and
- (e) if any of the *collateral* is an *intermediated security*, ensure at all times that there is a *sponsorship agreement*.

1.2 You will not without our prior written consent:

- (a) consent to, vote in favour of or permit any variation or abrogation of the rights and privileges attaching to the *collateral* or any diminution of the benefits and privileges enjoyed by the holder of the *collateral*;
- (b) take any action that will operate to convert a *certificated security* into an *uncertificated security* (or vice versa); or
- (c) change the *controlling participant* in respect to any *intermediated security*.

### 2. Obligation to deposit documents and give notices

2.1 While this document is in effect, you must give us possession of all documents of title to interests in the *collateral* or that evidence title to the *collateral*.

2.2 If the *collateral* includes *investment instruments*, you agree to deposit with us at the time of execution of this document:

- (a) *the certificates* (if any) in respect of the *collateral*; and
- (b) the number of *transfers* specified by us in respect to the *collateral* completed with the name of the transferee and the consideration and date left blank.

2.3 If we ask, you agree to immediately give to any issuer, broker, share registrar or other person specified by us, an irrevocable direction (in a form approved by us) to deliver to us any certificates held or issued by that person in respect of certificated securities. You agree to give to us a copy of the direction, immediately after giving it.

2.4 If any additional investment instruments become subject to this document, you agree to deposit with us:

- (a) *the certificates* (if any) in respect of the

*collateral*; and

- (b) the number of *transfers* specified by us in respect to the *collateral* with the name of the transferee and the consideration left blank.

You also agree to execute any security notice required by us to acknowledge that the additional *investment instruments* are subject to this document.

2.5 You agree to deposit with us the sponsorship agreement for the intermediated securities and the certificates (if any) for the intermediated securities.

2.6 You agree to ensure that any additional intermediated securities that become subject to this document, also become subject to the sponsorship agreement.

### 3. Cash distributions and benefits

3.1 If you are not in default of this document:

- (a) you are entitled to all dividends, cash returns of capital, or other income in respect of *investment instruments* or *intermediated securities*;
- (b) you are entitled to all *proceeds* from the disposal or relinquishment of rights and all *proceeds* in relation to options or other rights granted to you;
- (c) you may exercise your rights to take up further *investment instruments* or *intermediated securities*; and
- (d) you may exercise any voting power in respect of the *investment instruments* or *intermediated securities*.

3.2 If you are in default of this document, then all your rights in clause 3.1 of this Schedule, immediately cease and:

- (a) we are entitled to all distributions and other income in respect of the *collateral* referred to in clause 3.1(a) and (b) of this Schedule; and
- (b) we are entitled to exercise the rights referred to in clause 3.1(c) and (d) of this Schedule.

3.3 We need not:

- (a) do anything to obtain payment of any dividends or other income in respect of the investment instruments or intermediated securities;
- (b) exercise any voting power in connection with the investment instruments or intermediated securities;
- (c) exercise any other rights in respect of the investment instruments or intermediated securities; or
- (d) sell the investment instruments or intermediated securities, even if we have reason to believe that the value of the *collateral* may fall.

We are not responsible for any loss as a result of such a failure to act or delay in so acting.

### 4. Registration as holder of the *collateral* and completion of documents

4.1 We may at any time procure the registration of ourselves as the registered holder of the *collateral*.

4.2 We, any of our *authorised officers*, any receiver or attorney may complete any document which is at any time executed by you or on your behalf and deposited with us, including any transfer. Such documents may be completed in favour of any person.



## 5. Meaning of words

### 5.1 In this document:

**certificate** means the certificate, scrip or other documentary evidence of title to the *investment instrument or intermediated security*.

**certificated security** means an *investment instrument or intermediated security* forming part of the *collateral*, title to which is evidenced by a *certificate*.

**controlling participant** means the controlling participant of all *collateral* that is an intermediated security.

**new rights** means all assets, rights, powers and proceeds of any nature at any time attaching to, or arising out of any holding in, any *collateral* or any new right in the *collateral* including:

- (a) all money, *distributions*, interest, allotments, offers, benefits, rights, bonuses.
- (b) all *proceeds* from any disposal, share buyback, redemption, compulsory acquisition, liquidation or scheme of arrangement.
- (c) any *investment instrument or intermediated security* resulting from the conversion, consolidation or subdivision of the *collateral*.
- (d) any right to take –up or *investment instrument or intermediated security* resulting from an allotment, offer, bonus issue or dividend reinvestment plan.
- (e) any certificate or other evidence of title to any of the above.

**settlement rules** mean the settlement rules issued by the ASX Settlement and Transfer Corporation Pty Ltd (ABN 49 008 504 532).

**sponsorship agreement** means the sponsorship agreement entered into between us, the controlling participant (if we are not the controlling participant) and you on terms acceptable to us, and under which the *controlling participant* is the sponsor of all of the *collateral* that is an intermediated security.

**transfer** means a transfer of the *collateral* executed by you as transferor (and which in respect of the *collateral* that is an intermediated security):

- (a) includes the holder identification number; and
- (b) is executed by the *controlling participant*.

**uncertificated security** means an investment instrument or intermediated security forming part of the *collateral*, the title to which is not evidenced by a certificate.

### 5.2 Settlement Rules

All expressions used in this Schedule which are defined or adopted in the *settlement rules* have the meaning given to them in the *settlement rules*, unless the context otherwise requires.

# Schedule – Intangible Property

## Part A – Accounts

Part A of this Schedule will apply if and to the extent the *collateral* includes *accounts* (such as book debts or other receivables).

### 1. Looking after the *collateral*

1.1 You agree that you will open the *collection ADI account*, if it has not already been opened.

1.2 You agree to:

- (a) procure the prompt collection of the *accounts* until we otherwise direct. We appoint you as our agent for collection for this purpose;
- (b) deposit to the *collection ADI account*, the *proceeds* of the *accounts*;
- (c) conduct your *business* (including collecting *accounts*) in a proper, orderly and efficient manner;
- (d) not without our consent, cease conducting the *business* and not to significantly change the general character of the *business*; and
- (e) maintain insurance over the *collateral* and the *business* for the risks and for the value that a prudent person operating a business in the nature of the *business* would maintain (including debtor's insurance, insurance for loss or destruction of the chattel paper and insurance in respect of any other risk we reasonably ask).

1.3 You will not without our prior written consent:

- (a) withdraw the whole or any part of the funds held in the *collection ADI account* or grant or allow to arise any third party rights over or against the whole or any part of the funds held in the *collection ADI account*;
- (b) authorise any payments from the *collection ADI account* or permit a set off or combination of accounts in respect of the *collection ADI account*; or
- (c) permit or attempt to do any of the things referred to in this clause.

### 2. What can happen if you are in default?

2.1 If a default has occurred and is continuing, we may notify you that:

- (a) you are prohibited from collecting the *accounts*; and
- (b) we intend to collect the *accounts*.

2.2 If we give you notice under this clause, you agree to:

- (a) us collecting the *accounts* and notifying debtors of our interest in the *accounts*; and
- (b) us preparing and dispatching invoices in connection with the *accounts*, whether or not an invoice has been prepared previously or dispatched in respect of the *accounts*; and
- (c) use your best endeavours to assist us to collect the *accounts*.

### 3. Meaning of words

In this document:

***business*** means the *business* described in the *Details* under the heading "Intangible Property" as being relevant to the *accounts* forming part of the *collateral*.

***collection ADI account*** means the *collection ADI*

*account* described in the *Details* under the heading "Intangible Property" as forming part of the *collateral* or any other *ADI account* nominated or approved by us and controlled by us in the manner contemplated by section 341(3) of the PPSA into which the amounts paid in discharge of *accounts* are to be deposited.

## Part B – Secured ADI accounts

Part B of this Schedule will apply if and to the extent the *collateral* includes a *secured ADI account*.

### 4. Looking after the *collateral*

You will not without our prior written consent:

- (a) withdraw the whole or any part of the funds held in the *secured ADI account* or grant or allow to arise any third party rights over or against the whole or any part of the funds held in the *secured ADI account*;
- (b) authorise any payments from the *secured ADI account* or permit a set off or combination of accounts in respect of the *secured ADI account*; or
- (c) permit or attempt to do any of the things referred to in this clause.

### 5. Meaning of words

In this document:

***secured ADI account*** means the ***secured ADI account*** described as such in the *Details*, which forms part of the *collateral*.

***initial deposit amount*** means any amount credited to the *secured ADI account* on or before the date of this document, including any amount specified as such in the *Details*, which amount forms part of the *collateral*.

## Part C – Contract rights

Part C of this Schedule will apply if and to the extent the *collateral* includes contract rights in respect to a *secured agreement*.

### 6. Looking after the *collateral*

6.1 You agree that you will:

- (a) obtain, renew on time and comply with the terms of each authorisation necessary to enter into the *secured agreement*, observe obligations under the *secured agreement* and allow it to be enforced;
- (b) take the action that a prudent, diligent and reasonable person would take to ensure that each *third party* to the *secured agreement* complies with its obligations in connection with the *secured agreement*; and
- (c) if any default by a *third party* in connection with the *secured agreement* occurs, promptly notify us giving full details of the default and the steps taken by you or the *third party* to remedy it.

6.2 You will not without our prior written consent:

- (a) cause or permit the *secured agreement* to be varied, repudiated, rescinded or terminated, or rendered void, voidable or unenforceable; or
- (b) abandon, settle, compromise or discontinue any proceedings against any person (other than us) in connection with the *collateral*, including the *third party*.

### 7. Obligation to deposit documents and give notices

7.1 You agree that you will:

- (a) deposit with us or our nominee, all documents comprising the secured agreement;
- (b) if we ask, procure that any *third party* to the secured agreement enter into a tripartite deed on such terms as we reasonably request.

7.2 You agree to:

- (a) promptly provide written notice to the *third party* of our *security interest* in the *secured agreement* after you execute this document;
- (b) procure from the *third party* as soon as possible (but no later than seven days after the date of this document) a written acknowledgement from the *third party* of our *security interest*, confirming that the *third party* consents to our *security interest* in the *secured agreement* and that the *third party* has not received notice of any other *security interest* in the *secured agreement*.

## 8. Income and benefits

8.1 If you are not in default of this document, you are entitled to all income and other monetary benefits in connection with the *secured agreement*.

8.2 If you are in default of this document, then all rights under clause 8.1 of this schedule will immediately cease and you agree to procure that all income in respect of the *secured agreement* is paid directly to us.

8.3 We need not:

- (a) do anything to obtain payment of any income in respect of the *secured agreement*;
- (b) exercise rights in respect of the *secured agreement*; or
- (c) sell or otherwise transfer the rights in the *secured agreement*, even if we have reason to believe that the value of those rights may fall.

We are not responsible for any loss as a result of such a failure to act or delay in so acting.

## 9. Meaning of words

In this document:

***secured agreement*** means the *secured agreement* described as such in the *Details*, which forms part of the *collateral*.

***third party*** means each person other than you who is a party to the *secured agreement*.

## Part D – Intellectual Property/Intellectual Property

Licences Part D of this Schedule will apply if and to the extent the *collateral* includes intellectual property or intellectual property licences.

## 10. Looking after the *collateral*

You will not without our prior written consent:

- (a) consent to or permit any variation or abrogation of the rights and privileges attaching to the intellectual property/intellectual property licences or any diminution of the benefits and privileges enjoyed by the holder of the intellectual property/intellectual property licences;
- (b) waive any of your rights or release any person from its obligations in connection with the *intellectual property/intellectual property licences*; and
- (c) do anything that will alter the registration of the *intellectual property/intellectual property*

*licences* with a government agency.

## 11. Obligation to give notices

11.1 While this document is in effect, you must give us written notice of:

- (a) any newly acquired or created intellectual property or intellectual property licence; and
- (b) any directions, requests, or requirements of government agencies relating to the intellectual property/intellectual property licences.

11.2 If we reasonably ask you agree to provide a *security interest* over any acquired or created *intellectual property* or *intellectual property licence*. We will only do this if in our opinion failure to hold such an additional *security interest* will materially lower the value of the *collateral* or otherwise prejudicially affect the *collateral*.

## 12. Income and benefits

12.1 If you are not in default of this document, you are entitled to all income and other monetary benefits in connection with the *intellectual property/ intellectual property licences*.

12.2 If you are in default of this document, then all rights under clause 12.1 of this schedule will immediately cease and you agree to procure that all income in respect of the *intellectual property/ intellectual property licences* is paid directly to us.

12.3 We need not:

- (a) do anything to obtain payment of any income in respect of the *intellectual property/intellectual property licences*;
- (b) exercise rights in respect of the intellectual property/intellectual property licences; or
- (c) sell, licence or otherwise transfer the intellectual property/intellectual property licences, even if we have reason to believe that the value of the intellectual property/intellectual property licences may fall.

We are not responsible for any loss as a result of such a failure to act or delay in so acting.

## Schedule – Farm goods

This Schedule will apply if and to the extent that the *collateral* includes goods which are farm equipment or farm machinery

- 1.1 If the provision of any legislation relating to farmers, farm business or operations or farming equipment or machinery (applicable legislation) applies to this *contract* and:
- (1) we are required to give any *notice* in addition to that provided for in this *contract* or provide *notice* for a longer period than provided for in this *contract*;
  - (2) the maximum amount we may recover from you is subject to any limitation or retention; or
  - (3) any of *our* rights against you are subject to any restriction or limitation,
- then:
- (4) we must give you the *notice* which complies with the applicable legislation;
  - (5) the maximum amount we can recover from you is the lesser of the amount specified in the applicable legislation and the amount provided for in this *contract*; and
  - (6) we must exercise *our* rights under this contract subject to *your* rights under the applicable legislation.
- 1.2 You must disclose to us (if you have not already done so) if:
- (1) you are or become a farmer within the meaning of the applicable legislation;
  - (2) the *goods* are or are intended to be used in connection with a farming business or operation within the meaning of the applicable legislation; or
  - (3) the *goods* are or become farm equipment or farm machinery within the meaning of the applicable legislation.

## Contact us

<b>In person</b>	At your nearest Bendigo Bank branch
<b>On the phone</b>	Call <b>1300 236 344</b>
<b>Online</b>	At <a href="http://bendigobank.com.au">bendigobank.com.au</a>
<b>By mail</b>	The Bendigo Centre PO Box 480 Bendigo VIC 3552

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