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**DEED OF CHARGE**

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DATED THE \_\_\_\_ DAY OF \_\_\_\_\_ 20\_\_

Company Pty Ltd

ACN 111 222 333

**THIS DEED OF CHARGE DATED** \_\_\_\_\_ **20** \_\_\_\_\_ .

**BETWEEN:** **Company Pty Ltd ACN 111 222 333** a Company duly incorporated and having its registered office at 1 Brisbane Street Brisbane 7000 (the "Company");

**AND:** **Other Company Pty Ltd ACN 333 222 111** a Company duly incorporated and having its registered office at 1 Perth Street Perth 5000 (the "Mortgagee").

**WHEREAS:**

- A. Simultaneous with the granting by the Company of this Charge the Mortgagee has agreed to advance by way of secured loan \$500 000 (the "Borrowed Sum") to the Company under the terms of this Charge.
- B. The Mortgagee may in the future lend further monies or extend further credit to the Company and/or provide future credit facilities to the Company.
- C. In consideration of the Mortgagee advancing the Borrowed Sum to the Company pursuant to this Charge and to secure the Borrowed Sum and all other monies on any account whatsoever which may become due and payable by the Company to the Mortgagee, the Company has agreed to execute and grant to the Mortgagee this Charge.

**NOW THIS CHARGE WITNESSES AND IT IS HEREBY AGREED AND DECLARED** as follows:

**1 DEFINITIONS**

**1.1 The meaning of certain words and expressions**

In this Charge, unless the context otherwise requires, these words and expressions have the following meanings:

"Books" has the same meaning as in the *Corporations Act 2001* (Cth);

"Borrowed Sum" means the sum of \$500 000;

"Business" means the business being conducted by the Company at the date hereof and any business conducted by the Company at any time after the granting of this Charge;

"Charge" means the charge created by this Deed over the Charged Property;

"Charged Property" means the whole of the Company's undertaking and all its Property and assets of whatsoever and wheresoever, both present and future, including without

limitation all Property listed or described in Clause 2.2 and all Property listed or described in Clause 2.3. Where the Company is borrowing the Borrowed Sum as trustee of a Trust, the Charged Property also includes all Trust Property held by the Company as trustee of that Trust;

**“Collateral Security”** means any other security, guarantee or indemnity given to the Mortgagee which secures the Secured Money;

**“Company”** means the company itself, its successors, any liquidator or administrator of the company, any Controller (within the meaning of the Corporations Act) and any Person to whom the company transfers the whole or any part of its Interests in the Charged Property;

**“Contamination”** means the presence of a chemical which because of its type, location or concentration causes a risk to the health of any Person or to the environment;

**“Controller”** has the same meaning as given to that word in the Corporations Act;

**“Corporations Act”** means the *Corporations Act 2001* (Cth);

**“Encumber”** means to create an Encumbrance;

**“Encumbrance”** includes:

- (a) any mortgage, charge, debenture assignment or any interest by way of security over any asset;
- (b) any title retention arrangement, preferential right, trust arrangement or other arrangement (including without limitation any set-off or “flawed-asset” arrangement having the same or equivalent commercial effect as a grant of security);
- (c) any easement, restrictive covenant, caveat or other similar restriction on Property; or
- (d) any agreement to create, confer or give any of the rights or interests in (a), (b) or (c) hereof.

**“Encumber”** and **“Encumbrancer”** are to be construed accordingly.

**“Environment”** means the physical surroundings including land, water, atmosphere, climate, sound, odours, tastes, creatures and plants. It includes the Charged Property;

**“Environmental Damage”** means pollution or harm to the Environment (including Contamination) affecting the Charged Property or coming from the Charged Property or from something being done on the Charged Property;

**“Environmental Law”** means any Laws that have the general purpose or effect of protecting the Environment or regulating any activities that may affect the Environment (including but not limited to laws relating to land use, noise, pollution, waste, dangerous goods or hazardous substances);

**“Fixed Charge”** means the fixed charge granted by the Company to the Mortgagee under this Deed of Charge;

**“Floating Charge”** means the floating charge granted by the Company to the Mortgagee under this Deed of Charge;

**“Garnishee”** means a Person (including the Mortgagee) who:

- (a) holds, or may hold, money for the Company or on its account; or
- (b) owes, or may owe, the Company money;

**“Garnishee Notice”** means a Notice which is validly given to a Garnishee under any law which requires a Garnishee to deal with money in accordance with the Notice regardless of any contrary direction which the Company may give a Garnishee;

**“Government Agency”** means a government, any government department, or an authority or Person who administers an applicable Law;

**“Industry”** means the industry in which the Business is conducted;

**“Intellectual Property Rights”** means:

- (a) any intellectual or industrial Property of any kind (whether protected by statute, at common law, in equity or otherwise); and
- (b) all Licences to use or rights to grant the Licensees to use or rights to be registered as the owner or user of any Intellectual Property.

**“Intellectual Property”** includes without limitation all:

- (a) patents, inventions, copyrights, moral rights or designs (whether registrable or not);
- (b) circuit layout designs or rights in relation to the circuit layouts;
- (c) trade secrets, confidential information, technical information process, technique or know-how; and
- (d) any trade marks, trade names, logos or get-up (whether registered or unregistered and regardless of whether it is registrable);

**“Interest”** means interest payable by the Company to the Mortgagee at any time at the rate set out in the Loan Agreement or in any other document setting out the interest which the Company must pay the Mortgagee on the Principal Money from time to time outstanding. Such interest will accrue daily on so much of the Principal Money as is outstanding from time to time at each date of calculation;

**“Laws”** means all laws, whether State or Federal, which are in any way applicable to this Deed of Charge or which in any way apply to any activity of the Company or to any of the Charged Property and includes all statutes, regulations, codes, by-laws, delegated legislation

and all amendments and changes to those laws that might be made at any time;

**“Licence”** means a licence, registration or permit under a law for a business or activity;

**“Licensed”** means having a Licence;

**“Licensee”** means a Person who holds a Licence;

**“Licensing Authority”** means:

- (a) a Government Agency responsible for granting Licences; or
- (b) a court or tribunal that has authority to hear appeals from decisions of a Government Agency responsible for granting Licences;

**“Loan Agreement”** means any Loan Agreement entered into by the Company and the Mortgagee in respect to the Borrowed Sum or in respect of any other monies which form part of the Principal Money;

**“Mortgagee”** means the person described as Mortgagee in this Charge and where applicable includes its legal Personal representatives, lawful assigns and successors in title and any act done or step taken by it under this Charge may be done so in its name by:

- (a) any employee of the Mortgagee who is authorised to take action in regard to this Charge or whose authority to do so is later confirmed by the Mortgagee;
- (b) any employee of the Mortgagee who is authorised by the Mortgagee to act as his/her attorney; or
- (c) any lawyer, Controller, or Receiver or other Person appointed by the Mortgagee to do something under or pursuant to this Charge;

**“Mortgagee’s Costs and Expenses”** means any taxes, duties, costs and expenses which the Mortgagee considers or the Mortgagee’s Appointee considers it has incurred or will incur:

- (a) in connection with preparing, stamping or registering this Charge, the Loan Agreement or any Collateral Security;
- (b) in connection with investigating, protecting or defending the rights of the Company or the Mortgagee to the Charged Property;
- (c) all costs, charges and expenses of whatever kind or nature incurred by the Mortgagee in enforcing, investigating, protecting or defending its rights under the Loan Agreement, this Charge and/or any Collateral Security;
- (d) in connection with any transaction under or relating to this Charge, the Charged Property or the Secured Money;
- (e) as a result of exercising, trying to exercise or not exercising its rights under a law or under this Charge, a Collateral Security or any other agreement relating to the Secured

Money; or

- (f) because the Company has breached any provision of this Charge, the Loan Agreement and/or any Collateral Security.

They include:

- (g) agents Charges and commissions;
- (h) any goods and services tax, stamp duty, financial institutions duty, bank account debit tax or other tax or duty on this Charge or on any transaction under or relating to this Charge, the Charged Property or the Secured Money;
- (i) the fees and expenses of any Person engaged by the Mortgagee for any purpose relating to this Charge, the Charged Property or the Secured Money including but not limited to the fees and remuneration paid to any Receiver exercising powers under clause 5.7 or clause 5.13;
- (j) the cost of time spent by any employee of the Mortgagee because the Company is or has been in default;
- (k) postage, commissions valuation fees, fees Charges and expenses relating to this Charge, any Loan Agreement and/or any Collateral Security; and
- (l) The Mortgagee legal costs on a full indemnity basis;

**“Notice”** means, where applicable, whether in hard form or electronic form:

- (a) any notice, request, demand or letter or other form of communication, other than oral communications given by one party to the other and without limitation include any written document addressed by one party to the other;
- (b) any notice, request, demand, communication, order, writ, summons, statement of claim or other formal notification from any court, tribunal or Government Agency.

**“Person”** means an individual, a corporation, a partnership, an association or a Government Agency;

**“Pollutant”** means a substance that can cause pollution, or harm to the Environment or whose use is regulated by an Environmental Law;

**“Principal Money”** means at any time all money owing by the Company to the Mortgagee including:

- (a) the Borrowed Sum;
- (b) money which the Company owes to the Mortgagee at any time for any reason either alone or jointly with any other Person including without limitation any amounts owing under any Loan Agreement;

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- (c) money which any other Person owes to the Mortgagee at any time because of something that the Mortgagee does or does not do at the Company's express or implied request;
- (d) money which when the Mortgagee makes a demand under this Charge or the question of payment arises, it is reasonably foreseeable that the Company will owe to the Mortgagee arising out of some earlier transaction with the Company or with another Person at the Company's express or implied request;
- (e) money which the Mortgagee may receive for crediting to any of the Company's accounts but which:
  - (i) the Mortgagee has to pay to someone else because of a legal requirement; or
  - (ii) the Mortgagee has in its discretion paid to someone else on a claim being made by a liquidator or Controller of the Company.
- (f) money which the Mortgagee pays, whether voluntarily or not, because some payment of or transaction or arrangement relating to money previously paid to it is or is claimed to be void, voidable or a preference.

All of the monies described in each of the above paragraphs are and will be Principal Money:

- (g) whether or not the money is due for payment at that time;
- (h) even if the money is owing only on a contingency;
- (i) whether the Company or the other Person owes the money alone or jointly, or jointly and severally or in common with any other Person and whether as principal or as surety;
- (j) whether the relevant transactions took place before or after the Company executed this Charge; and
- (k) whether or not the relevant transactions took place in the course of the Business or the Mortgagee's business.

**"Principal Money"** also includes money which the Company owes or may owe the Mortgagee:

- (l) because the Company guarantees to the Mortgagee someone else's obligations;
- (m) because the Mortgagee issues a letter of credit or gives a guarantee or other undertaking to another Person for the Company or at its request;
- (n) because the Mortgagee draws, issues, accepts, endorses, purchases, discounts, or pays any bill of exchange or promissory note for the Company or at its request;
- (o) under any bill of exchange or promissory note which the Company issues, accepts or

endorses (including but not limited to one issued, accepted or endorsed by a partnership of which the Company is a member) and which the Mortgagee holds in any capacity;

- (p) under any leasing agreement;
- (q) as Interest payable on the Principal Money including Interest which has been capitalised;
- (r) as interest on any judgment entered by the Mortgagee against the Company, and/or any security provider pursuant to any Collateral Security in respect of the Principal Money;
- (s) under any arrangement that the Mortgagee enters into for the Company or at its request to manage movements in foreign currency exchange or interest rates or other costs of obtaining financial accommodation; and
- (t) for the Mortgagee's costs and expenses.

**“Property”** means all real and personal property of whatsoever kind or nature and whether tangible or intangible and whether recognised as property at law or in equity and includes any estate, share or interest in any real or personal property, any chose in action, and any other right or interest of any kind owned by the Company at the date hereof or any time after the date hereof;

**“Prospective Liability”** means any future liability which the Company has pursuant to this Charge to pay to the Mortgagee as part of the Principal Money including any future amount which the Mortgagee lends to the Company or which the Mortgagee becomes liable or may become liable to any third party lending money to the Company including the repayment of which loan the Mortgagee guarantees;

**“Prospective Liability Specified Maximum Amount”** means for the purposes of Section 282 of the Corporations Act the total advances which the Mortgagee may make to the Company of further sums which with the Borrowed Sum and all other monies lent by the Mortgagee to the Company do not exceed in total five hundred thousand (\$500 000).

**“Receiver”** means any receiver or any receiver and manager appointed under this Charge.

**“Secured Money”** means the Principal Money and all Interest accrued on the Principal Money which has not been added to it;

**“Trust”** means any trust of which the Company is the trustee at the date hereof or becomes the trustee of at any time in the future.

## **1.2 Other references**

- 1.2.1 A reference in this Charge to a particular Law or to a particular provision of a Law is a reference to:
- (a) that Law or provision, and to all regulations and other rules made under it; and
  - (b) any Law, regulation or other rule which modifies or replaces any of them, as in force for the time being.
- 1.2.2 In this Charge, a word indicating the singular also indicates the plural and vice versa, and a word indicating any gender also indicates each other gender.
- 1.2.3 Headings are for convenience only and do not affect the interpretation of this Charge.
- 1.2.4 A reference in this Charge to something (including but not limited to the Charged Property or the Secured Money) is also a reference to any part of it.

## **1.3 Effect of laws**

- 1.3.1 The rights given to the Mortgagee under this Charge are in addition to and do not exclude any other rights which it has under any law.
- 1.3.2 To the extent that it can lawfully be excluded, any law that might limit the Mortgagee's rights under this Charge is excluded.

## **1.4 What happens if a provision of this Charge is invalid**

- 1.4.1 If a provision of this Charge is or becomes invalid or unenforceable, the provision is to be read down (if possible) so as to be valid and enforceable. If it cannot, this Charge takes effect as if it did not include that provision.

## **2 CHARGE**

### **2.1 Charging provision**

- 2.1.1 The Company hereby charges in favour of the Mortgagee as security for payment to the Mortgagee of the Secured Money all the Charged Property whether existing or owned now or in the future.

### **2.2 Fixed Charge**

- 2.2.1 This Charge is a fixed Charge over all the Company's right, title and interest (legal or beneficial) both present and future in the Charged Property including all the Company's interest in:
- 2.2.1.1 any freehold or leasehold Property or any fixtures, plant, fittings, furniture and equipment (other than stock in trade);
  - 2.2.1.2 any marketable securities (as defined in section 9 of the Corporations Act);
  - 2.2.1.3 the Business including the goodwill of the Business;

- 2.2.1.4 any Licences held in connection with any business of the Company or with the use of any of the Charged Property;
- 2.2.1.5 calls on share capital and uncalled capital;
- 2.2.1.6 any insurance policies, any computer software relating in any way to the business transactions of the Company and all Books of the Company;
- 2.2.1.7 any title documents;
- 2.2.1.8 any Intellectual Property Rights;
- 2.2.1.9 any partnership in which the Company is a partner;
- 2.2.1.10 any joint venture in which the Company is a joint venturer;
- 2.2.1.11 all Shares in other companies held by the Company and all units in any unit trust held by the Company;
- 2.2.1.12 all rights under agreements of any kind whatever; and
- 2.2.1.13 all personal chattels of the Company held by it on whatsoever account.

### **2.3 Floating Charge**

- 2.3.1 Subject to clause 2.6, this Charge is a Floating Charge over all of the Charged Property which is not subject to an effective fixed Charge including:
  - 2.3.1.1 all book debts or other sums of money owed to the Company on whatsoever account; and
  - 2.3.1.2 all stock, raw materials, work in progress, products and other commodities which the Company might acquire for the purposes of sale.

### **2.4 Restrictions on dealing with Charged Property**

- 2.4.1 The Company must not, unless the Mortgagee agrees first in writing:
  - 2.4.1.1 mortgage, charge or otherwise Encumber the Charged Property (or attempt to do so);
  - 2.4.1.2 permit any Encumbrance other than this Charge to exist over the Charged Property; or
  - 2.4.1.3 part with, sell, transfer or otherwise dispose of the Charged Property or any interest in the Charged Property (or attempt to do so) other than as permitted by clause 2.5.

### **2.5 Dealing with assets subject to Floating Charge**

- 2.5.1 The Company may, in the ordinary course of business, dispose of or deal with any of the Property in respect of which this Charge operates as a Floating Charge.

## **2.6 Crystallisation**

2.6.1 The Floating Charge will become a fixed Charge:

2.6.1.1 over all the Charged Property previously subject to the Floating Charge automatically and immediately without any further act on the part of the Mortgagee being necessary if any of the Principal Money becomes due and payable to the Mortgagee and is not paid immediately when due;

2.6.1.2 over the Charged Property specified in a Notice if given by the Mortgagee to the Company terminating the Floating Charge. The Mortgagee may give a Notice of this kind to the Company at any time; or

2.6.1.3 over any of the Charged Property in respect of which any Government Agency may rank in priority for payment of any tax, duty, or Charge ahead of the Floating Charge automatically and immediately without any further act on the Mortgagee's part being necessary, immediately prior to the moment at which the claim of that Government Agency would otherwise rank in priority to the interest of the Mortgagee under this Charge.

2.6.2 If the Floating Charge over any Charged Property becomes a fixed Charge, the Company cannot dispose of or deal with that Charged Property unless the Mortgagee agrees first in writing.

2.6.3 If the Charged Property specified in a Notice terminating the Floating Charge is the proceeds of any book debts or other debts, the Mortgagee may in that Notice require the Company to pay any proceeds of the relevant debts into an account specified in the Notice. The Company must immediately comply with the Notice. Money which is paid under this paragraph into the specified account cannot be withdrawn by the Company unless the Mortgagee agrees first in writing.

## **2.7 Floating nature of Charge restored**

2.7.1 At any time after this Charge has become a fixed Charge over any Property under clause 2.6, the Mortgagee may give a Notice to the Company allowing the Company to dispose of or deal with that Property or any part of it. On the giving of such a Notice, this Charge will again operate as a Floating Charge and not a fixed Charge in respect of the Property specified in the Notice.

## **3 THE COMPANY'S TITLE**

### **3.1 The Company represents to the Mortgagee that:**

3.1.1 the Company has an absolute and unchallengeable right to Charge the Charged

Property in favour of the Mortgagee;

- 3.1.2 except for Encumbrances already held by the Mortgagee or Encumbrances to which the Mortgagee has given its written consent before the execution of this Charge, the Charged Property is free from Encumbrances;
- 3.1.3 except for any rights or claims which the Company has disclosed to the Mortgagee in writing before the execution of this Charge, no other Person has or claims any rights in or affecting the Charged Property; and
- 3.1.4 unless the Mortgagee has agreed otherwise in writing the Charge created by clause 2.1 is a first ranking Charge over all the Charged Property.
- 3.2** The Company acknowledges that the Mortgagee has relied on the complete truth and accuracy of the representations in clause 3.1 in deciding to lend the Borrowed Sum and all other Principal Money to the Company.

#### **4 THE COMPANY'S PAYMENT AND OTHER OBLIGATIONS**

##### **4.1 Principal**

- 4.1.1 The Company must pay the whole of the Principal Money to the Mortgagee at the time or times the Mortgagee and the Company agree. If there is no such agreement then the Company must immediately pay the whole of the Principal Money to the Mortgagee when the Mortgagee demands such payment.
- 4.1.2 The Company must in the absence of any agreement to the contrary pay so much of the Principal Money to the Mortgagee as and when the Mortgagee may demand such payment.
- 4.1.3 The Company acknowledges that it is liable under this Charge to pay all amounts for which it becomes liable to the Mortgagee in the future and which form the whole or any part of the Prospective Liability.

##### **4.2 Interest**

- 4.2.1 Interest accrues daily on the Principal Money (other than any part of the Principal Money that is only owing contingently) owing at the end of each day. This Interest accrues at the rate of 8.6% per annum. The Mortgagee may by one month's prior written Notice to the Company increase the rate of Interest.
- 4.2.2 In determining a rate, the Mortgagee may have regard to the matters that it considers appropriate. These matters may include the nature, purpose, amount and risk grading of the account or facility and the Interest rate or rates charged by it to its other customers for similar accounts or facilities. Unless the Mortgagee and the Company

agree that a rate is a fixed rate, a rate may be varied by the Mortgagee from time to time.

4.2.3 The Company must pay accrued Interest at such times as the Mortgagee in its absolute discretion may require. Unless the Mortgagee specifies to the contrary, the Company must pay Interest monthly, on the day of each Month that the Mortgagee decides.

4.2.4 If the Company does not pay accrued Interest when it is due, the Mortgagee may decide at any time to add the unpaid Interest to the Principal Money, so that Interest accrues on the unpaid Interest.

4.2.5 This clause applies both before and after any judgment or order against the Company in respect of the Principal Money or any part thereof.

#### **4.3 The Company must pay the Mortgagee costs and expenses**

4.3.1 The Company must pay the Mortgagee costs and expenses whenever the Mortgagee demands.

#### **4.4 Payments to be made on a business day**

4.4.1 Unless the Mortgagee and the Company agree otherwise, if the due date for a payment is not a business day, the amount is payable on the preceding business day. In this clause, "business day" means the day on which banks are open in 1 Brisbane Street Brisbane 7000.

#### **4.5 Obligations under other agreements**

4.5.1 The Company must ensure that there is no breach of any obligation under any other agreement it has with the Mortgagee relating to the Secured Money or under any Collateral Security.

4.5.2 The Company must ensure that there is no breach of any obligation under any other agreement it has with its bankers or any other finance provider relating to the Secured Money or under any Collateral Security provided to those entities.

4.5.3 The Company must ensure that there is no breach of any obligation under any other agreement it has with the Mortgagee.

### **5 THE COMPANY'S OBLIGATIONS REGARDING THE CHARGED PROPERTY**

#### **5.1 The Company must maintain the Charged Property in good condition**

5.1.1 The Company must keep the Charged Property in good order and condition. The Company must do whatever the Mortgagee requests as necessary or desirable to bring the Charged Property up to that condition as soon as the Mortgagee requests it to.

5.1.2 The Company must keep all of the Charged Property safe, ensure that it is properly

and safely stored and where the Charged Property consists of stock in trade, the Company will ensure that such stock in trade is fit and merchantable.

**5.2 The Company must pay rates and taxes**

5.2.1 The Company must pay on time all taxes, rates and outgoings payable or assessed on the Charged Property or the Company.

**5.3 The Company must protect the Mortgagee's Interest in the Charged Property**

5.3.1 The Mortgagee may at any time after the date hereof require the Company and the Company must if so required do whatever the Mortgagee requires in order:

5.3.1.1 to more perfectly secure the Charged Property to the Mortgagee under this Charge;

5.3.1.2 to enable the Mortgagee to better exercise any of its rights under this Charge.

This includes (without limitation) the execution of legal mortgages, transfers, assignments, or other securities over the Charged Property in such forms as the Mortgagee requires.

5.3.2 The Company must make sure that every other Person who has or claims to have an interest in the Charged Property does all things which the Mortgagee may require to effectively secure the Charged Property to the benefit of the Mortgagee.

**5.4 The Company must comply with laws and other obligations**

5.4.1 The Company must comply with all obligations that it has regarding the Charged Property and with all laws. These obligations include obligations arising from the requirements of Government Agencies affecting the Charged Property and obligations under leases, Licences or Encumbrances.

**5.5 The Company must not alter the Charged Property**

5.5.1 The Company must not make material alterations to the Charged Property, unless the Mortgagee agrees first in writing.

**5.6 The Company must protect the value of and title to the Charged Property**

5.6.1 The Company must promptly do everything necessary and everything reasonably required by the Mortgagee, to:

- (a) maintain the value of the Charged Property; and
- (b) protect and enforce the Company's title and the Mortgagee title as Chargee to the Charged Property.

**5.7 The Company must allow the Mortgagee to inspect Charged Property**

5.7.1 The Company must allow the Mortgagee or any representative of the Mortgagee to enter on any part of the Company's premises at all reasonable times to:

- (a) inspect the condition of the Charged Property;
- (b) investigate the Company's affairs;
- (c) carry out any Environmental audit or assessment; and
- (d) do anything that the Mortgagee considers necessary or desirable to make good any breach of this Charge and to protect and enforce the Mortgagee rights under this Charge.

**5.8 The Company Must provide details of retention of title arrangements**

5.8.1 The Company must, at intervals specified by the Mortgagee, provide the Mortgagee with full details of any Property held under any arrangement under which the ownership or the title remains with the seller or any other party until the seller or the other party has been paid the purchase price or other money owing by the Company. The Mortgagee may in its discretion pay on behalf of the Company to the seller or other party at any time the purchase price or other money owing so that the ownership or title to the Property passes to the Company.

**5.9 The Company must not purchase shares or make calls**

5.9.1 The Company must not, unless the Mortgagee agrees first in writing:

- (a) employ any of the Company's funds or other assets in the purchase of shares in any other corporation;
- (b) call up or receive in advance of calls of the uncalled capital and uncalled premiums charged under this Charge; or
- (c) apply any uncalled capital and uncalled premiums when called up for any purpose other than in payment to the Mortgagee of the Secured Money.

**5.10 The Company must perform obligations under prior ranking securities**

5.10.1 Where there is any mortgage or debenture or other security ranking in priority to this Charge, the Company must duly and punctually observe and perform all its obligations (including obligations to pay principal, interest and other money) under any security which has priority over or ranks subsequent to this Charge.

**5.11 The Company must Deliver to the Mortgagee securities given in favour of the Company**

5.11.1 If requested by the Mortgagee to do so, the Company must immediately sign as

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transferor or assignor and lodge with the Mortgagee any such transfer or assignment of any Property as further security under this Charge any security that is given to the Company as security for payment of money to the Company.

5.11.2 Where the company is given at any time security by any Person to secure a payment to the Company, the Company must if requested by the Mortgagee deliver all those security documents to the Mortgagee.

**5.12 The Company must provide financial statements and accounts**

5.12.1 The Company must at any time when the Mortgagee requests it to do so provide promptly to the Mortgagee true and correct financial statements, accounts and reports showing the Company's transactions and true financial position; and

5.12.2 If the Mortgagee requires by Notice in writing to the Company, the Company must:

- (a) have the Company's Books duly audited by an auditor acceptable to the Mortgagee; and
- (b) immediately provide to the Mortgagee a copy of the Company's balance sheet and trading and profit and loss accounts duly certified by that auditor.

**5.13 The Company must give the Mortgagee information**

5.13.1 The Company must ensure that its accountants, auditors, directors, secretaries, public officers and staff promptly provide to the Mortgagee or the Mortgagee's representative or any Receiver whatever information and produce whatever Books the Mortgagee or the Mortgagee's representative or any Receiver reasonably requests the Company to produce about the Charged Property or the Company's affairs.

5.13.2 The Mortgagee or the Mortgagee's appointee may:

- (a) contact directly the Company's accountants or auditors for the purpose of obtaining or verifying any information about the Company's affairs; and
- (b) inspect and take copies of or extracts from all Books relating in any way to the Company's business transactions (whether in the possession of the Company or its accountants or auditors).

**5.14 The Company must provide information given to the Company's members**

5.14.1 If the Company gives any Notice, report or information to any of its members in accordance with any court order, any law or its constitution, the Company must provide the Mortgagee with a copy of that Notice, report or information at the same time.

**5.15 The Company must conduct the Company's business efficiently**

5.15.1 The Company must carry on and conduct the business in a proper and efficient manner and in accordance with proper and sound Business principles having regard to the industry.

5.15.2 The Company must comply with all Laws regulating the Industry.

**5.16 The Company must not discontinue or change the Business**

5.16.1 The Company must not, unless the Mortgagee agrees first in writing, discontinue or change the general character of the Business.

5.16.2 The Company must not engage in any activity which is outside of the ordinary and usual course of business having regard to the nature of the Business.

5.16.3 The Company must promptly notify the Mortgagee of any fact, circumstance or event which reasonably could be construed as having a material and adverse effect upon the value of the Business at the time or after such fact, circumstance or event.

**5.17 The Company must lodge titles to Real Property acquisitions**

5.17.1 If the Company enters into a Contract to acquire any freehold or leasehold property, the Company must immediately inform the Mortgagee. As soon as the Company (or anyone on its behalf) receives the title documents for any freehold or leasehold Property that it has acquired, the Company must ensure that the title documents are lodged immediately for registration with the relevant Government Agency.

**5.18 To provide the Mortgagee with Notices received about the Charged Property**

5.18.1 The Company must immediately provide the Mortgagee with a copy of any Notice given to the Company by any Government Agency regarding the condition or use of the Charged Property.

**5.19 The Company must provide the Mortgagee with receipts for payments**

5.19.1 If under this Charge the Company is obliged to make a payment, the Mortgagee may ask for evidence that the payment has been made. If the Mortgagee requests for evidence that a payment has been made, the Company must immediately provide to the Mortgagee receipts or other evidence of payment to the Mortgagee.

**5.20 The Company must do everything at its own expense**

5.20.1 Everything that the Company does under this Charge or under any Law will be done at its own expense. This applies even if it is something that the Mortgagee has asked the Company to do or is for the Mortgagee's benefit.

## **6 INSURANCE**

### **6.1 Type of policy required**

6.1.1 The Company has taken out and holds all current insurance policies over the Charged Property which are reasonably necessary to protect the Charged Property against accident loss or damage. The Company must at all times ensure that:

- (a) those parts of the Charged Property which are of an insurable nature are insured with an insurance company and under a policy or policies which are acceptable to the Mortgagee;
- (b) such insurance policies cover all relevant risks of destruction, loss and damage to the relevant Charged Property and cover the risk of destruction, loss and damage to the Property of other Persons in the possession of the Company and also cover the risk of personal injury to individuals on the Company's Premises;
- (c) all other types of insurance policies (including business interruption insurance) which are reasonable or customary for a business enterprise similar to the Business are taken out and maintained;
- (d) all other types of insurance policies that are reasonable or customary for Property of the nature of any of the Charged Property;
- (e) if the Mortgagee requests insurance be taken out against any other risks as specified by the Mortgagee or with the inclusion in any insurance policy of special terms specified by the Mortgagee that those insurance policies are taken out and maintained and that such special terms are included in those insurance policies; and
- (f) all insurance policies cover both the Mortgagee's interest and the Company's interest in the Charged Property and that the Mortgagee's interest is noted on all insurance policies.

### **6.2 Payment of premiums**

6.2.1 The Company must ensure that at all times all insurance premiums and other amounts that the Company has to pay under any insurance policy are paid before the due dates for payment.

### **6.3 Company not to prejudice the insurance**

6.3.1 The Company must not by act or omission:

- (a) render any insurance policy invalid or unenforceable; or

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- (b) give the insurer a legitimate right to cancel or avoid the insurance policy or reject any claim or reduce the amount payable on a claim under any insurance policy.

#### **6.4 Provision of insurance documents to the Mortgagee**

6.4.1 If the Mortgagee requests for any of the following documents at any time:

- (a) the insurance policy document for the current insurance;
- (b) a certificate from the insurer confirming that the insurance policy is current; or
- (c) any other document that shows the Company has complied with its obligations under this clause, or that the Mortgagee believes is necessary or desirable to help it to exercise any rights it has relating to the insurance policy,

then the Company must provide them to the Mortgagee promptly.

#### **6.5 Notice of Insurance Incident**

6.5.1 The Company must immediately tell the Mortgagee if an event or accident occurs that entitles the Company to make a claim under any insurance policy.

### **7 ENVIRONMENTAL LAWS**

#### **7.1 Representations About The Charged Property**

7.1.1 Except for matters that the Company has told the Mortgagee about in writing before the Company executed this Charge and to which the Mortgagee has given its written consent, the Company represents to the Mortgagee that at the time of executing this Charge:

- (a) the Company is not in breach of any Environmental Law;
- (b) there is no Environmental Damage to the Charged Property;
- (c) there are no Notices relating to the Charged Property which have been issued under any Environmental Law that are still outstanding;
- (d) the Charged Property is not listed on any register kept under any Environmental Law; and
- (e) Pollutants are not being made, stored, used or dealt with in any other way on the Charged Property.

7.1.2 The Company also represents to the Mortgagee that none of those things has ever happened while the Company has held an interest in the Charged Property.

#### **7.2 Continuing compliance**

7.2.1 The Company must ensure that the matters contained in clause 7.1 remain true at all times.

### **7.3 Remedy of Environmental Damage**

7.3.1 If any Environmental Damage occurs, the Company must immediately:

- (a) inform the Mortgagee of that Environmental Damage; and
- (b) remedy that Environmental Damage.

### **7.4 Environmental reports**

7.4.1 Whether or not this Charge has become enforceable the Company must, if asked to do so by the Mortgagee, promptly:

- (a) obtain Environmental reports in relation to the Charged Property from experts acceptable to the Mortgagee and give a copy of each report to the Mortgagee. Each report to be in the form and to discuss the issues specified by the Mortgagee; or
- (b) do whatever the Mortgagee says is necessary or desirable:
  - (i) as a result of any Environmental report;
  - (ii) to reduce any actual or possible Environmental damage; and
  - (iii) to comply with any Notice issued for the Charged Property under an Environmental Law.

### **7.5 Environmental Licences**

7.5.1 The Company holds all Licences, approvals and permits which are required from or by any relevant Government Agency in order for the Company to carry on the Business in the manner it is currently carried on.

7.5.2 All those Licences, approvals and permits referred to in this clause are in good standing and the Company is not in its activities by act or omission and will not in the future be placing any of those Licences, approvals or permits at risk of cancellation.

## **8 PROVISIONS WHICH APPLY IF THE COMPANY IS TRUSTEE OF A TRUST**

### **8.1 Charge over Trust property**

8.1.1 If the Company acts now or in the future as trustee of any Trust (regardless of whether or not the Company has told the Mortgagee about that Trust):

- 8.1.1.1 the provisions of this Charge apply to the Company, both in its own capacity and as trustee of any Trust;
- 8.1.1.2 the Mortgagee or any representative of the Mortgagee may, when exercising powers under this Charge, exercise the powers given to the Company as trustee in the relevant Trust Deed, including any power of the trustee to appoint attorneys;

8.1.1.3 the Charge over the Charged Property held by the Company as trustee will remain enforceable even if the Charge over the Charged Property held by the Company in its own capacity is unenforceable; and

8.1.1.4 the Charge over the Charged Property held by the Company in its own capacity will remain enforceable even if the Charge over the Charged Property held by the Company as trustee is unenforceable.

## **8.2 Certain Trust assets may be excluded**

8.2.1 The Mortgagee may agree in writing to exclude from this Charge all or any Property held by the Company as trustee of a specified Trust.

## **8.3 Representations about the Trust**

8.3.1 The Company represents to the Mortgagee that:

8.3.1.1 the Company does not act as the trustee of any trust, except as trustee of the Trust;

8.3.1.2 the Company is the sole trustee of the Trust and no action has been taken to remove or replace it;

8.3.1.3 the copies of the Trust Deed and any other documents relating to the Trust that have been provided to the Mortgagee before the Company executed this Charge are true copies which contain all of the terms of the Trust in force at the date of this Charge;

8.3.1.4 the Company has power under the Trust Deed to enter into and perform its obligations under this Charge, and all necessary action has been taken to authorise the execution and performance of this Charge under the Trust Deed;

8.3.1.5 this Charge is executed and all transactions secured by this Charge are or will be entered into as part of the due and proper administration of the Trust and are or will be for the benefit of the beneficiaries;

8.3.1.6 the Company has a right to be fully indemnified out of the Trust's assets the subject of the Trust and has a lien over the Trust's assets in support of that indemnity and no action has been taken to restrict or limit that right or lien;

8.3.1.7 the Company is not in default under the Trust Deed;

8.3.1.8 no vesting date for the Trust has been determined;

8.3.1.9 the rights of the Mortgagee under this Charge will rank against the Trust's assets in priority to the claims of the beneficiaries of the Trust; and

8.3.1.10 each of these representations will remain true as long as this Charge remains in force.

#### **8.4 Other obligations regarding the Trust**

8.4.1 The Company agrees that:

8.4.1.1 in the event that it ceases to act as trustee of the Trust, it will make sure that any successor of the Company as trustee of the Trust executes any documents which the Mortgagee requests to ensure that the Mortgagee continuously retains security over the Trust's assets;

8.4.1.2 if this Charge becomes enforceable, the Company must, if asked by the Mortgagee, exercise the rights against the Trust's assets or the beneficiaries for the purpose of repaying the Secured Money to the Mortgagee; and

8.4.1.3 unless the Mortgagee agrees first in writing, the Company must not:

- (i) cease to be the sole trustee of the Trust;
- (ii) allow the Trust to be determined in any way;
- (iii) allow any part of the capital of the Trust to be distributed in any way;
- (iv) allow the Trust deed to be varied, added to or revoked; or
- (v) if the Trust is a unit trust, allow any units to be issued, transferred, Charged, redeemed or otherwise dealt with.

#### **8.5 The Company must tell the Mortgagee about new trusts**

8.5.1 If after this Charge is executed, the Company becomes the trustee of a Trust:

8.5.1.1 the Company must immediately inform the Mortgagee and provide the Mortgagee with a copy of the Trust Deed of the Trust;

8.5.1.2 the Company must immediately execute any documents which the Mortgagee requests for to ensure that the Mortgagee has effective security over the assets of the Trust; and

8.5.1.3 clauses 8.3 and 8.4 will apply with any necessary modifications in relation to the Trust.

#### **8.6 If the Company does not tell the Mortgagee about Trusts**

8.6.1 If the Mortgagee discovers that the Company acts as the trustee of any Trust which the Company has not disclosed to the Mortgagee, in addition to any other rights that the Mortgagee may have against the Company:

8.6.1.1 the Company must immediately provide the Mortgagee with a copy of the Trust deed of the Trust if the Mortgagee requests for it;

8.6.1.2 the Company must immediately execute any documents which the Mortgagee requests to ensure that the Mortgagee has effective security over the assets of the Trust;

8.6.1.3 clauses 8.3 and 8.4 will apply with any necessary modifications in relation to the Trust.

## **9 LICENCES**

### **9.1 Representations about Licences**

9.1.1 The Company represents to the Mortgagee that at the time of executing this Charge:

9.1.1.1 for each business or activity of the Company, the Company (or a Licensee on its behalf) has every Licence which is necessary or desirable for that Business or activity to be carried on lawfully;

9.1.1.2 each Licence is both valid and current;

9.1.1.3 all of the terms of each Licence have been complied with; and

9.1.1.4 nothing has happened that might cause any Licence to be cancelled, suspended or otherwise affected in a way that might prejudice the Mortgagee.

### **9.2 What the Company must do**

9.2.1 The Company must:

9.2.1.1 apply or make sure that a Licensee acceptable to the Mortgagee applies for each Licence and for any renewal of each Licence which is necessary or desirable for the Company's business or other activities;

9.2.1.2 do everything needed to get the Licences and renewals of them;

9.2.1.3 if the Mortgagee requests, promptly give the Mortgagee each of the Licences and a copy of each return given to the Licensing Authority;

9.2.1.4 if this Charge has become enforceable and the Mortgagee requests, promptly do everything needed to have any of the Licences transferred to the Mortgagee or its nominee;

9.2.1.5 make sure that nothing happens that might result in:

(i) any of the Licences being cancelled or suspended;

(ii) any of the Licences being otherwise affected in a way that might prejudice the Mortgagee; or

(iii) the goodwill or the trade of the Business being affected in a way that might prejudice the Mortgagee,

and do everything necessary to make sure that none of the above events or

circumstances occurs.

9.2.2 The Company must provide to the Mortgagee immediately on request:

9.2.2.1 a copy of any Notice given by a Licensing Authority regarding the possible cancellation, suspension or modification of a Licence;

9.2.2.2 a copy of any Notice given by a Government Agency about the condition of any premises which are Licensed;

9.2.2.3 a copy of any document served in legal proceedings which relate in any way to a Licence;

9.2.3 The Company must promptly give:

9.2.3.1 Notice to the Mortgagee of any endorsement on a Licence; and

9.2.3.2 Notice to the Mortgagee if the Company is, or any nominee or any Licensee is, convicted of any breach of a Law concerning a Licence,

and, at the same time, tell the Mortgagee all that the Company knows or is able to find out about all those relevant matters;

9.2.4 If:

9.2.4.1 the Company as a Licensee ceases for any reason to hold a Licence; or

9.2.4.2 a Licence held by the Company is affected in any way which might adversely affect the Business or the value of any of the Charged Property,

then the Company must promptly notify the Mortgagee thereof and do everything that the Mortgagee requires in order to preserve the rights and interests of the Mortgagee.

9.2.5 Where the Company is the licensor then the Company must:

9.2.5.1 make sure that where applicable each Licensee, lessee and nominee also complies with everything in this part of this Charge as if they were the Company and had executed this Charge; and

9.2.5.2 if requested by the Mortgagee to do so, make sure that each Licensee, lessee and nominee enters into an agreement with the Mortgagee in the form required by the Mortgagee containing similar obligations regarding the Licence as those imposed on the Company under this clause.

### **9.3 What the Company must not do**

9.3.1 The Company must not, unless the Mortgagee agrees first in writing:

9.3.1.1 amend, give up, transfer, or give anyone else a right in any Licence;

9.3.1.2 remove a Licence which applies to any particular premises or things;

9.3.1.3 compromise, settle or release any claim for compensation to which the

Company or a Licensee might be entitled because the Company or the Licensee ceases for any reason to hold a Licence; or

9.3.1.4 allow any of these things to happen.

#### **9.4 The Mortgagee may act on the Company's behalf**

9.4.1 The Company hereby appoints the Mortgagee as the Company's agent to do anything that can be done in respect of any Licence. Where the Company is the Licensor, the Company must also make sure that each Licensee also appoints the Mortgagee as its agent with the same authority. Further, the Mortgagee may:

9.4.1.1 renew a Licence or transfer or charge it to another Person;

9.4.1.2 represent the Company in dealings with and appearances before any Licensing Authority or Government Agency; or

9.4.1.3 obtain compensation that may be payable to the Company because the Company ceases to hold any Licence or because a Licence is affected in any way.

9.4.2 The appointment by the Company of the Mortgagee as its agent for the purpose of clause 9.4.1 is irrevocable for so long as any of the Secured Moneys are owing under this Charge.

9.4.3 As agent for the Company, the Mortgagee may engage and instruct lawyers and other professionals to do any thing or bring any proceedings or defend any claim relating in any way to any Licence. The Company must promptly and fully reimburse all costs and expenses incurred by the Mortgagee in engaging such professionals and/or lawyers. Such reimbursement to be on a full indemnity basis.

#### **9.5 Licensee or nominee to give power of attorney**

9.5.1 If a Licensee holds a Licence or if a Licence that the Company holds is in the name of a nominee, the Company must make sure that the Licensee or nominee gives the Mortgagee a power of attorney that authorises them to do any of the things which the Mortgagee can do as the Company's agent or attorney and anything else that the Mortgagee reasonably requires in order to protect the Charged Property.

### **10 ENFORCEMENT OF SECURITY**

#### **10.1 Failure to pay Secured Money**

10.1.1 If the Company fails to pay any part of the Secured Money when it is due and payable, then without the need for any Notice or demand:

10.1.1.1 this Charge will, at the option of the Mortgagee, immediately become

enforceable; and

10.1.1.2 the whole of the Secured Money will, at the option of the Mortgagee, immediately become due and payable (if it is not already).

10.1.2 The Mortgagee may exercise any right it has under this Charge after it has exercised any of its options in this clause, regardless of whether the Mortgagee has Notified the Company about the exercise of the option before it exercises such right.

## **10.2 Other enforcement without Notice**

10.2.1 If:

10.2.1.1 an application is made, a resolution is passed or an order is made for the Company's winding up;

10.2.1.2 any of the Charged Property is seized by or on behalf of a creditor or under legal process or a Garnishee Notice is given in respect of tax or other money that the Company is said to owe;

10.2.1.3 a provision of this Charge or any other security or agreement in respect of the Secured Money:

(a) does not have effect, or ceases to have effect, in accordance with its terms; or

(b) is or becomes void, voidable, illegal, invalid or unenforceable (but not simply because of the principles and rules of the common law or equity that affect creditor's rights generally);

10.2.1.4 the Company becomes an externally-administered body corporate (within the meaning of the Corporations Act) or a Controller or trustee for creditors is appointed in respect of any of the Property;

10.2.1.5 the Company suspends payment of its debts, the Company is, or states that it is, or is presumed by Law to be, insolvent or unable to pay its debts or the Company takes any step for the purpose of entering into a compromise or arrangement with any of its creditors or its members;

10.2.1.6 unless the Mortgagee agrees first in writing, the Company offers for sale or sells, factors, alienates, charges, Encumbers or parts with possession or disposes of all or any of the Company's book debts or other debts or any of the Company's rights in relation to those debts or attempts to do any of those things; or

10.2.1.7 unless the Mortgagee agrees first in writing, the Company creates or purports

or attempts to create or suffers to subsist any Encumbrance (other than a lien which arises solely by operation of Law in the ordinary course of the Business, where the amount secured is not overdue for payment) on the Charged Property,

then, without the need for any Notice or demand:

10.2.1.8 this Charge immediately becomes enforceable; and

10.2.1.9 the whole of the Secured Money immediately becomes due and payable (if it is not already).

### **10.3 Other enforcement with Notice**

10.3.1 If:

10.3.1.1 the Company stops or threatens to stop carrying on all or a material part of the Business;

10.3.1.2 in the Mortgagee's opinion, the Secured Money is not applied for the purpose for which the Mortgagee agreed to make it available;

10.3.1.3 any works for which the Secured Money was made available by the Mortgagee are not carried out in a manner satisfactory to the Mortgagee (including not carrying out the work expeditiously or at all);

10.3.1.4 an event occurs that causes an Encumbrance or a security given by the Company to become enforceable;

10.3.1.5 subject to the other provisions in this Charge, the Company breaches an obligation under this Charge or any other security or agreement in respect of the Secured Money and either:

(a) the breach cannot be remedied; or

(b) if it can be remedied, the Mortgagee gives the Company a written Notice requiring the Company to remedy it and, 5 business days later it is still not remedied;

10.3.1.6 any representation, warranty, assurance or statement given in this Charge or any other security or agreement in respect of the Secured Money is incorrect or misleading;

10.3.1.7 unless the Mortgagee agrees first in writing, the Company sells, assigns or transfers or attempts to sell, transfer or assign:

(a) any of the Charged Property, other than as permitted by this Charge and in the ordinary course of the Business; or

- (b) the whole of its assets or a major part thereof;
  - (c) the Business;
- 10.3.1.8 unless the Mortgagee agrees first in writing, the Company passes a resolution or takes a step:
- (a) to give financial assistance, whether directly or indirectly, for the purpose of or in connection with a buy back or proposed buy back of:
    - (i) the Company's shares; or
    - (ii) any right or interest in those shares;
  - (b) to reduce the Company's share capital; or
  - (c) to limit the Company's ability to make calls on its uncalled share capital;
- 10.3.1.9 the Company breaches any obligation under a lease or Licence now or in the future held in connection with the Business or with the use of the Charged Property;
- 10.3.1.10 the Company is in breach or default under the terms of any agreements arrangements or understandings with its bankers or any finance institution providing funds to it or any other finance provider of whatever type;
- 10.3.1.11 the Company is in breach or default under the terms of any agreements arrangements or understandings with the Mortgagee of whatever type including but not limited to the Loan Agreement and/or any Collateral Security;
- 10.3.1.12 the Company fails at any time to provide any information or produce any Books reasonably requested by any Receiver;
- 10.3.1.13 the Company fails to pay before the end of any grace period an amount that is due and payable to someone other than the Mortgagee in respect of obligations relating to financial accommodation or financial arrangements;
- 10.3.1.14 any obligation that the Company has becomes due and payable, or capable of being declared due and payable, before its stated maturity, but this does not include where it does so at the Company's option;
- 10.3.1.15 circumstances arise that, in the Mortgagee's opinion, may have a material adverse effect on the Business or financial condition of the Company or on the Company's ability to perform its obligations under this Charge or any other agreement with the Mortgagee; or
- 10.3.1.16 where the Company entered into this Charge as a trustee of any Trust or

becomes a trustee of a Trust:

- (a) the Trust is held by a court not to have been properly constituted or the Company concedes that the Trust has not been properly constituted;
- (b) the Trust terminates or the beneficiaries of the Trust resolve to terminate it;
- (c) the Company ceases:
  - (i) to hold the Trust Property in its name; or
  - (ii) to be trustee; or
- (d) the Company commits a breach of Trust which, in the Mortgagee's opinion, is material;
- (e) the Company is removed, resigns or retires as trustee of the Trust or attempts to do so

then by the Mortgagee giving Notice to the Company:

10.3.1.17 this Charge immediately becomes enforceable; and

10.3.1.18 the whole of the Secured Money immediately becomes due and payable (if it is not already).

#### **10.4 Statutory requirements for Notice**

10.4.1 If any Law requires any Notice or lapse of time before this Charge may be enforced, or a Receiver may be appointed, in respect of land or any other part of the Charged Property then to the extent permitted by Law, that requirement is waived or dispensed with by the Company. If Notice or lapse of time cannot be waived or dispensed with, this Charge may be enforced, or a Receiver may be appointed, after the shortest period of Notice or lapse of time that the Law permits.

#### **10.5 Company to notify the Mortgagee of certain matters**

10.5.1 The Company must immediately give Notice to the Mortgagee if

10.5.1.1 any of the events described in clauses 10.2 or 10.3 occur without the Mortgagee having first agreed in writing; or

10.5.1.2 there is any breach of any agreements or arrangements or understandings (of whatever kind or nature) with the Mortgagee; or

10.5.1.3 there is any material breach of any agreements or arrangements or understandings to which the Company is a party.

## **11 APPOINTMENT OF RECEIVER**

### **11.1 Appointment**

11.1.1 At any time after this Charge has become enforceable (regardless of whether or not the whole of the Secured Money is due and payable), the Mortgagee may:

11.1.1.1 appoint one or more Persons to be Receivers or Receivers and managers of the Charged Property. If more than one Person is appointed, the Mortgagee may appoint them to act jointly or jointly and severally;

11.1.1.2 remove any Receiver and appoint another Receiver in its place; and

11.1.1.3 fix a Receiver's remuneration and terms of appointment.

11.1.2 The power to appoint a Receiver may be exercised even though at the time when the appointment is made an order may have been made or a resolution may have been passed for the Company's winding up and even though a Receiver appointed in those circumstances may, or may not in some respects, act as the Mortgagee agent.

### **11.2 Receiver the Company's agent**

11.2.1 Each Receiver is the Company's agent (except to the extent otherwise determined in writing by the Mortgagee). The Company is solely responsible for anything the Receiver does or does not do.

### **11.3 Powers of Receiver**

11.3.1 Each Receiver, in addition to all powers conferred on the Receiver by Law and without any further consent or authority on the Company's part being required, has the following powers:

11.3.1.1 to take possession of, collect, get in and use the Charged Property;

11.3.1.2 to carry on, or agree to carrying on the Business within the Company's powers and to do everything which the Company could do if exercising those powers;

11.3.1.3 to exercise all the Company's powers and all the powers of the Company's governing body over the Charged Property;

11.3.1.4 to exercise all or any of the powers conferred by Section 420 of the Corporations Act as if those powers had been set out in full in this Charge;

11.3.1.5 to take, grant, assign, surrender or accept surrenders of leases or sub-leases of the Charged Property. These leases or sub-leases may be for any length of time and on any terms and conditions which the Receiver considers expedient;

- 11.3.1.6 to borrow or raise from anyone (including the Mortgagee) any money which, in the Receiver's opinion, may be required for the exercise of any of the Receiver's powers and to give security over the Charged Property for any borrowing or raising. The Receiver has power to give security which ranks in priority to or equally with or after this Charge;
- 11.3.1.7 to sell or join in selling the Charged Property, either by public auction, by private contract or by tender and either for cash or on credit and on any other terms and conditions which the Receiver considers expedient and by deed or other instrument to convey the Charged Property to any purchaser;
- 11.3.1.8 to employ other people for all or any of these purposes and to pay them the remuneration which the Receiver considers appropriate and to confer on or delegate to any of these Persons all or any of the powers conferred by this Charge and to discharge any of these employees on behalf of the Company;
- 11.3.1.9 to make any arrangements or compromises which the Receiver considers expedient;
- 11.3.1.10 to give valid receipts for any money and other assets received by the Receiver;
- 11.3.1.11 to carry out and enforce specific performance, or otherwise obtain the benefit, of all contracts entered into or held by the Company or entered into in exercise of the powers conferred by this Charge;
- 11.3.1.12 to make debtors insolvent or bankrupt and to wind up companies and to do all things in connection with any insolvency, bankruptcy or winding up which the Receiver thinks necessary for the recovery or protection of the Charged Property;
- 11.3.1.13 to take or defend any legal proceedings if the Receiver considers it expedient to do so in the course of exercising the Receiver's powers;
- 11.3.1.14 to do all things which the Receiver considers necessary to perform or observe any of the Company's obligations under this Charge;
- 11.3.1.15 to compel the Company or its liquidator to execute any deed or other document and to do anything which the Receiver considers to be expedient to give effect to any sale, disposition, mortgage or agreement made by the Receiver;
- 11.3.1.16 to rebuild, erect, alter, improve, provide services to, insure and maintain the

Charged Property;

11.3.1.17 to do all or any of these things or exercise all or any of these powers in the Company's name or otherwise; and

11.3.1.18 to do anything that the Receiver considers expedient to obtain the repayment of the Secured Money.

11.3.2 The powers of the Receiver must be construed independently. No one power limits the generality of any other power

#### **11.4 Receiver borrowing from the Mortgagee**

11.4.1 If the Receiver borrows or raises money from the Mortgagee:

11.4.1.1 unless otherwise agreed by the Mortgagee, any money borrowed or raised by the Receiver will be regarded as having been borrowed or raised by the Company on the security of this Charge and will carry interest accordingly and will form part of the Principal Money (however, if the law would otherwise confer a greater priority in respect of any money borrowed by the Receiver, that greater priority will apply rather than the priority given by this paragraph);

11.4.1.2 the Mortgagee does not have to check whether the Receiver is acting properly; and

11.4.1.3 the Mortgagee is not responsible for what the Receiver does or does not do with the money.

### **12 APPLICATION OF MONEY**

#### **12.1 Application of money received by the Mortgagee**

12.1.1 A Receiver or the Mortgagee will apply any money which is received from enforcing this Charge in this order:

12.1.1.1 firstly, to pay on an indemnity and full reimbursement basis the Mortgagee's costs and expenses incurred in exercising, enforcing or trying to exercise or enforce its rights under this Charge;

12.1.1.2 secondly, to pay all other outgoings that the Mortgagee or the representative of the Mortgagee or any Receiver decides to pay;

12.1.1.3 thirdly, to pay any Receiver's costs;

12.1.1.4 fourthly, to pay off the Secured Money; and

12.1.1.5 fifthly, to pay the money owing under any subsequent Charges in order of priority if this can be determined by the Mortgagee.

12.1.2 The Mortgagee may pay any money left over after payment of the Secured Money into court or into an account in the Company's name or, if the Company requests, directly to the Company. If the Mortgagee does any of these things with the left over money, the Mortgagee will have no further liability for it. In particular, the Mortgagee does not have to pay interest on it.

12.1.3 The rights of the Mortgagee in clauses 12.1.1 and 12.1.2 are subject to the rights of a Person having an interest in the Charged Property that ranks ahead of this Charge and any Law that says otherwise.

## **12.2 Payments**

12.2.1 The Company must pay the Secured Money without any deduction, withholding for tax, set-off or counterclaim.

12.2.2 If the Law says that the Company must take a deduction or withhold money from a payment, the Company must increase the amount of the payment so that the Mortgagee actually receives the amount that it would have received if the Company had not had to make a deduction or withholding.

12.2.3 If the Mortgagee receives a payment toward the Secured Money (no matter who makes the payment), the Mortgagee can apply the payment to any particular part of the Secured Money that it chooses.

12.2.4 In crediting the Company's account with a payment or any other amount received by the Mortgagee, the Mortgagee will only credit the net amount after deducting any costs, expenses and taxes incurred in obtaining the gross amount.

12.2.5 If the Company (or anyone else) makes a payment to the Mortgagee by cheque, or in any other way that is not cash, the payment is only taken to be made when the Mortgagee actually receives the amount of the payment in cash or cleared funds. The Mortgagee is only taken to have received purchaser money from a sale of the Charged Property when it actually receives the money.

## **13 ADDITIONAL RIGHTS AND PROTECTIONS FOR THE MORTGAGEE**

### **13.1 The Mortgagee may act as the Company's attorney**

13.1.1 For valuable consideration and to secure to the Mortgagee the performance of the Company's obligations under this Charge, the Company irrevocably appoints the Mortgagee and any Receiver as its attorney to execute any deed, sign any document and do any other thing that the attorney thinks is necessary or desirable:

13.1.1.1 to make sure that this Charge is as effective as possible including but not

limited to the attorney signing all documents which are required to give effect to any dealing under any Law or otherwise and doing anything necessary to obtain registration of any dealing, including any acts necessary to comply with any requisitions received;

13.1.1.2 to give the Mortgagee a legal mortgage over the Charged Property as further security;

13.1.1.3 to do anything that the Mortgagee or a Receiver could do under this Charge or by Law;

13.1.1.4 to do anything that the Company could do or ought to have done under this Charge;

13.1.1.5 to transfer any of the Charged Property to a Person who has purchased it from the Mortgagee or any Receiver.

13.1.2 Regardless of anything else in this clause, a Receiver can only act as the Company's attorney for purposes within the Receiver's powers.

13.1.3 If the Mortgagee requests the Company to, the Company must confirm in writing that anything done by a Person under this clause is binding on the Company.

### **13.2 The Mortgagee may remedy the Company's defaults**

13.2.1 If the Mortgagee decides that the Company has not done something that the Company should have done under this Charge or the Company has not done it properly, the Mortgagee may do it for the Company.

### **13.3 The Company indemnifies the Mortgagee**

13.3.1 To the full extent permitted by Law, the Company indemnifies the Mortgagee and any Receiver against all claims, liabilities, losses, damages, taxes, costs or expenses arising:

13.3.1.1 because the Mortgagee has an interest in the Charged Property; or

13.3.1.2 from the exercise, attempted exercise or non-exercise of any power under this Charge.

13.3.2 The Mortgagee may retain and pay out of any money received by it arising from the provisions of this Charge all sums necessary to effect the indemnity.

13.3.3 This indemnity continues even after this Charge has been discharged.

13.3.4 This indemnity does not extend to any wilful misconduct, fraudulent acts or gross negligence on the part of the Mortgagee or any Receiver.

### **13.4 The Mortgagee may exercise the Company's insurance and compensation rights**

13.4.1 The Mortgagee alone has full power to:

13.4.1.1 make, enforce and compromise every insurance or compensation claim; and

13.4.1.2 sue for, recover, receive and give discharges for all insurance or compensation money.

13.4.2 The Mortgagee may do any of these things in its name or the Company's name.

13.4.3 The Company must do everything that the Mortgagee decides is necessary or desirable so that the Mortgagee can recover any insurance or compensation money and to make sure that any insurance or compensation money is paid to the Mortgagee. The Mortgagee will apply that insurance or compensation money towards payment of the Secured Money.

13.4.4 If any insurance or compensation money is received by the Company before a final discharge of this Charge, the Company must hold that money on Trust for the Mortgagee and will immediately pay that money to the Mortgagee.

### **13.5 Sett-Off**

13.5.1 The Mortgagee may apply all or any part of any balance standing to the credit of any of the Company's accounts with it at any time, or any amount available to it by way of set-off, lien or counterclaim, towards payment of the Secured Money. The Mortgagee may do this without telling the Company first or without getting its consent. The Mortgagee's right to do this is in addition to any other right that it has. This clause applies regardless of whether the Company's accounts with the Mortgagee are located in more than one place.

### **13.6 How the Mortgagee can exercise its rights**

13.6.1 The Mortgagee and any Receiver

13.6.1.1 has absolute discretion as to what it does or does not do under or for the purposes of this Charge or any Collateral Security;

13.6.1.2 does not have to give any reasons for doing or not doing something under or for the purposes of this Charge;

13.6.1.3 may exercise a right, regardless of any previous delay or failure to exercise that right;

13.6.1.4 may, if a right has been exercised once or partially, exercise that right again or other rights later; and

13.6.1.5 may stop exercising a right at any time.

13.6.2 The only way in which the Mortgagee or any Receiver can waive any right under this Charge is by giving the Company a Notice in writing.

13.6.3 Unless a right has been waived in writing, the Mortgagee or any Receiver may exercise that right or any other right even though:

13.6.3.1 money has been accepted after this Charge has become enforceable;

13.6.3.2 there have been negotiations with the Company after this Charge has become enforceable;

13.6.3.3 any Collateral Security is held, either then or later; or

13.6.3.4 the Mortgagee would otherwise have been regarded as having waived that right.

### **13.7 Who can exercise the Mortgagee rights**

13.7.1 Any Receiver may exercise on behalf of the Mortgagee any of the Mortgagee rights relating to this Charge, the Charged Property and the Secured Money.

### **13.8 Acts purporting to be done on the Company's behalf**

13.8.1 The Mortgagee may assume, without having to check, that each of the Company's officers, and each Person purporting to act on its behalf, does in fact have the authority to act on the Company's behalf.

13.8.2 As between the Company and the Mortgagee or any Receiver, the Company must not dispute the validity of anything done, or purporting to be done, by the Company, any of its officers or anyone purporting to act on the Company's behalf.

### **13.9 The Mortgagee may give certificates**

13.9.1 The Mortgagee may give a certificate about any matter relating to this Charge, the Charged Property or the Secured Money including but not limited to:

13.9.1.1 how much the Company owes or has owed to the Mortgagee on a specified date;

13.9.1.2 the rate of Interest applicable during a specified period;

13.9.1.3 debits and credits made to any of the Company's accounts with the Mortgagee and the balances of those accounts on a specified date;

13.9.1.4 whether or not some specified thing has happened; and

13.9.1.5 whether the Company is in default.

13.9.2 To the full extent permitted by Law, a certificate given by the Mortgagee is conclusive evidence of the accuracy of its contents. Otherwise, it is sufficient evidence.

### **13.10 The Mortgagee not liable**

13.10.1 Neither the Mortgagee nor any Receiver is liable to the Company or any other Person for any loss, liability, cost or expense that is caused (directly or indirectly) by anything that the Mortgagee or any Receiver does or does not do under or for the purposes of this Charge or any Collateral Security save for any wilful misconduct, fraud or gross negligence on the part of the Mortgagee or any Receiver.

13.10.2 Nothing that the Mortgagee or any Receiver does or does not do under or for the purposes of this Charge:

13.10.2.1 makes the Mortgagee liable as a Mortgagee in possession or liable to account for anything but actual receipts; or

13.10.2.2 will cause the Mortgagee or any Receiver to be treated as a director or officer of the Company,

13.10.3 save for any wilful misconduct, fraud or gross negligence on the part of the Mortgagee or the Mortgagee or any Receiver.

13.10.4 Neither the Mortgagee nor any Receiver is responsible for any acts done by the Company during the time while the powers under this Charge are being exercised.

### **13.11 The Mortgagee may transfer this Charge**

13.11.1 The Mortgagee may transfer this Charge, any of its rights in connection with this Charge and any of the Company's obligations under it without telling the Company and without getting its consent.

13.11.2 The Mortgagee can give information about this Charge and the Company's obligations under it to anyone who is a surety for the Company's obligations (including but not limited to, a guarantor) or a transferee from the Mortgagee of this Charge, or to anyone who is considering becoming one of these.

### **13.12 The Mortgagee does not have to make advances**

13.12.1 The Mortgagee does not have to give, or continue to give any financial accommodation to the Company or to anyone else because it or the Company has executed this Charge.

### **13.13 Release of others does not affect the Company's liability**

13.13.1 The Mortgagee may discharge or compromise with anyone who has given Collateral Security without affecting its rights against the Company.

### **13.14 The Mortgagee can still rely on this Charge even if discharged**

13.14.1 If a claim is made that all or any part of a transaction in the Mortgagee's favour

(such as an assurance, security or payment) concerning the Secured Money is liable to be avoided, set aside, refunded or repaid and the claim is upheld, conceded or compromised, then:

13.14.1.1 The Mortgagee rights are reinstated and the Mortgagee may exercise all its rights (including its right to recover from the Company the full extent of the Company's liability) under this Charge as if the transaction had never taken place; and

13.14.1.2 the Company must immediately do anything (including the signing of documents) required by the Mortgagee to restore to the Mortgagee any security or guarantee which the Mortgagee held immediately before that transaction.

13.14.2 This clause continues even after this Charge has been discharged.

### **13.15 Continuing security**

13.15.1 This Charge is a continuing security for all the Secured Money. It continues until it is finally discharged by the Mortgagee. It will not be considered as satisfied or discharged by anything which happens in the meantime including but not limited to:

13.15.1.1 by any payments or credits towards the Secured Money;

13.15.1.2 by any settlement of account; or

13.15.1.3 even though an account may be in credit.

13.15.2 The Company is not entitled to discharge of this Charge at a time when, in the Mortgagee opinion, any liability (whether direct, indirect, contingent or otherwise) exists or may arise:

13.15.2.1 which falls within the definition of Secured Money; or

13.15.2.2 in respect of which the Mortgagee could seek recourse against or indemnity from the Company.

### **13.16 Effect of other documents**

13.16.1 This Charge is additional to any Collateral Security that the Mortgagee has now or may have later.

13.16.1.1 Unless the Mortgagee expressly agrees in writing to the contrary:

13.16.1.2 nothing in and nothing that the Mortgagee or any Receiver does under or for the purposes of any Collateral Security will prejudice the Mortgagee rights under this Charge;

13.16.1.3 nothing in and nothing that the Mortgagee or any Receiver does under or

for the purposes of this Charge will prejudice the Mortgagee rights under any Collateral Security or any other rights or remedies that the Mortgagee has now or may have later; and

13.16.1.4 the Mortgagee rights under this Charge are not merged in any Collateral Security.

13.16.2 The Mortgagee does not have to enforce this Charge or any Collateral Security it may hold in any particular order. The Company agrees that the doctrine of marshalling securities is excluded.

13.16.3 Until this Charge is discharged by the Mortgagee, the Company is not entitled to claim the benefit or ask for the transfer of any Collateral Security that the Mortgagee now or later holds.

### **13.17 Court orders**

13.17.1 If the Mortgagee obtains a court order against the Company for the Secured Money, the Mortgagee will hold the court order as Collateral Security. This Charge will not merge in the court order. The Mortgagee may charge Interest on any money owing under the court order at the rate agreed or determined under this Charge.

### **13.18 Power to complete documents**

13.18.1 The Mortgagee or any Receiver may under the powers given by this Charge at any time complete in favour of the Mortgagee or any Receiver or any purchaser all instruments of any kind executed by or on the Company's behalf in blank and deposited with the Mortgagee as Collateral Security to this Charge.

### **13.19 Conflict of interest**

13.19.1 The Mortgagee or any Receiver may exercise or agree to the exercise of the powers conferred by this Charge or by law even though that Person has a conflict of interest in exercising those powers or has a direct or Personal interest in the means or result of that exercise of those powers.

### **13.20 Calls**

13.20.1 The Company authorises the Mortgagee or any Receiver at any time after the Secured Money becomes due an payable to:

13.20.1.1 make calls on the Company's members in respect of the uncalled capital and uncalled premiums Charged under this Charge; and

13.20.1.2 sue in the Company's name or otherwise for the recovery of money becoming due in respect of calls.

13.20.2 The provisions contained in the Company's constitution about calls will, with any necessary changes, apply to calls made under this Charge.

13.20.3 The Company agrees that after the Secured Money becomes due and payable the Company's directors will not exercise any powers in respect of calls unless the Mortgagee agrees first in writing.

This authority may be assigned by the Mortgagee or any Receiver.

## **14 PROTECTION FOR PEOPLE DEALING WITH THE MORTGAGEE**

### **14.1 People dealing with the Mortgagee**

14.1.1 A Person dealing with the Mortgagee or any Receiver may assume that anything that the Mortgagee or any Receiver does in connection with this Charge, the Charged Property or the Secured Money is lawful and proper.

14.1.2 A Person dealing with the Mortgagee or any Receiver does not have to ask for evidence that this is the case. The Mortgagee can only do something if the Company is in default or if the Mortgagee gives a Notice of demand, and a third party may assume that the Company is in default or that the Notice has been given, and does not have to ask for a copy of the Notice.

14.1.3 The Company must not make a claim in connection with this Charge or the Charged Property against:

14.1.3.1 a Person dealing with the Mortgagee or any Receiver; or

14.1.3.2 a Person who gets an interest in the Charged Property from the Mortgagee or any Receiver or any successor in title of that Person.

### **14.2 Receipts for payments**

14.2.1 Any money which the Mortgagee is entitled to receive under this Charge may be paid to any Receiver. This includes but is not limited to money payable under a lease or a sale.

14.2.2 A receipt given by the Mortgagee or any Receiver for a payment is a complete discharge to the Person making the payment.

## **15 HOW TO GIVE A NOTICE UNDER THIS CHARGE**

### **15.1 Notices to the Mortgagee**

15.1.1 If the Company gives the Mortgagee a Notice regarding this Charge, the Notice will not be effective unless the Notice:

15.1.1.1 is in writing; and

15.1.1.2 is received by the Mortgagee at its registered office or such other address as

the Mortgagee has given to the Company written Notice of as being the address for service of documents upon it.

## 15.2 Notices to the Company

15.2.1 The Mortgagee may give the Company a Notice of demand regarding this Charge:

15.2.1.1 by leaving it at the Company's address;

15.2.1.2 by posting it in a pre-paid envelope to the Company at the Company's address;

15.2.1.3 by facsimile transmission to the facsimile number that the Person signing the Notice or demand believes (from the facsimile numbers for the Company that the Mortgagee has recorded in its Books) is the Company's most recent facsimile number;

15.2.1.4 by fixing it to some part of the land Charged under this Charge; or

15.2.1.5 in any other way that the law allows.

15.2.2 A Notice or demand by the Mortgagee will be taken to have been given and received:

15.2.2.1 if it is posted to the Company's address when it would have been delivered in the ordinary course of post or on the third day after the date of posting, whichever is the earlier (this applies even if the letter is returned undelivered);

15.2.2.2 if it is sent by facsimile transmission to the Company's facsimile number, on receipt of the correct and complete transmission report at the close of transmission; or

15.2.2.3 if it is left at the Company's address or fixed to some part of any land Charged under this Charge, when it is left or fixed.

15.2.3 A Notice or demand given in any of the ways provided for by this clause will be effective:

15.2.3.1 even though at the date of service the Company may be in liquidation or in the course of being wound up;

15.2.3.2 even though the Notice or demand may not actually be received by the Company; or

15.2.3.3 despite any other matter or event.

15.2.4 A Notice or demand from the Mortgagee may be signed for the Mortgagee by any Receiver.

15.2.5 In this part, **the "Company's address"** means any of the following:

Initial: \_\_\_\_\_

15.2.5.1 the Company's registered office;

15.2.5.2 the Company's usual place of business; or

15.2.5.3 the address that the Person signing the Notice or demand believes (from the addresses for the Company that the Mortgagee has recorded in its Books) is the Company's most recent address.

**SAMPLE ONLY**  
YOUR DOCUMENT WILL VARY DEPENDING ON THE ANSWERS YOU  
PROVIDE THROUGH THE BUILDING PROCESS

**Executed by the parties as a deed of charge on the day and year first mentioned.**

**Signed by Company Pty Ltd** )  
**ACN 111 222 333** pursuant to Section 127 )  
of the *Corporations Act* 2001 in the  
presence of:

\_\_\_\_\_  
Director

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

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

\_\_\_\_\_  
Director/Secretary

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

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

**Signed by Other Company Pty Ltd** )  
**ACN 333 222 111** pursuant to Section 127 )  
of the *Corporations Act* 2001 in the  
presence of:

\_\_\_\_\_  
Director

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

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

\_\_\_\_\_  
Director/Secretary

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

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

**SAMPLE ONLY**  
YOUR DOCUMENT WILL VARY DEPENDING ON THE ANSWERS YOU  
PROVIDE THROUGH THE BUILDING PROCESS