

DECLARATION OF PURPOSES FOR WHICH CREDIT IS PROVIDED

[Borrower Name] ABN [Borrower ABN] in its/my own right and as trustee of any trust (**Declarant**) of [Borrower Address] and Business Fuel Finance Pty Ltd ACN 629 419 021 (**Credit Provider**):

I/We declare that the credit to be provided to me/us by the Credit Provider is to be applied wholly or predominantly for:

- business purposes; or
- investment purposes other than investment in residential property.

**IMPORTANT**

You should **only** sign this declaration if the loan is wholly or predominantly for:

- business purposes; or
- investment purposes other than investment in residential property.

By signing this declaration you may **lose** your protection under the National Credit Code.

This declaration is made before I signed, or entered into, a credit contract relating to the intended transaction with the Credit Provider.

**Executed** by the **Declarant**  
on [Date]

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

# Facility Agreement

Date: [Date]

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<b>BETWEEN</b>	Business Fuel Finance Pty Ltd ACN 629 419 021 of c/- PO Box 9237, GCMC in the State of Queensland 9726	<b>(BFF)</b>
<b>AND</b>	[Borrower Name] ABN [Borrower ABN] in its/my own right and as Trustee of any Trust of [Borrower Address]  (together the <b>Borrower</b> if more than one (1) Borrower)	<b>(Borrower)</b>
<b>AND</b>	1. [Guarantor Name] in its/my own right and as trustee of any trust of [Guarantor Address] <b>(Guarantor)</b>  (together the <b>Guarantor</b> if more than one (1) Guarantor)	

## Key Terms of the Agreement

Key terms of this Agreement are set out in the paragraphs A. to R. below (**Key Terms**). Borrower and Guarantor each acknowledge and agree that all Key Terms are binding and operative terms of this Agreement rather than non-binding recitals. In the case of a conflict between the Key Terms and any other terms of this Agreement, the Key Terms prevail.

- A. Borrower is the entity described in Schedule 1 at Item 1.
- B. Borrower has requested BFF to provide it with a business cash advance in the amount set out in Schedule 1 at Item 2 (**Facility Amount**) and BFF is willing to provide Borrower with the Facility Amount on the terms and conditions in this Agreement.
- C. The term of this Agreement is set out in Schedule 1 at Item 7 (**Term**).
- D. Borrower agrees to pay a Drawdown Fee to BFF in the amount set out in Schedule 1 at Item 5 (**Drawdown Fee**). The Drawdown Fee will be deducted from the Facility Amount and retained by BFF.
- E. Borrower agrees to pay a Facility Fee to BFF in the amount set out in Schedule 1 at Item 3 (**Facility Fee**).
- F. Borrower agrees to pay the Facility Amount plus the Facility Fee (together the **Facility Sum** set out in Schedule 1 at Item 4) to BFF by weekly instalments in the amount set out in Schedule 1 at Item 8 (**Due Amount**). Those weekly instalments are to be paid in the manner set out in Schedule 1 at Item 10. The date by which each payment of a Due Amount must be paid is referred to as the **Due Date**. Borrower must pay the Facility Sum to BFF in full within Fifty-Two (52) Weeks of the date on which the Facility Amount is advanced (**Advance Date**). The date by which the Facility Sum must be paid in full is referred to as the **Maturity Date**. If any part of the Facility Sum remains owing on the Maturity Date it must be paid on the Maturity Date.
- G. Provided each Due Amount is paid on or before the Due Date, BFF will not charge interest on the Facility Amount. Instead, BFF will charge the Facility Fee, which is a fixed amount. This is subject to BFF's rights if an Event of Default occurs.
- H. If there is an Event of Default, BFF can give Borrower notice which requires that Borrower pay the outstanding balance of the Facility Sum within 2 Business Days. Other amounts (such as interest, costs and expenses) may also be payable.
- I. The Facility Fee is payable in full even if the Facility Sum (or any part of it) is refinanced or paid earlier than the Maturity Date (or a Due Amount is paid earlier than the relevant Due Date). Under no circumstances is BFF required to refund, repay, discount or reduce any part of the Facility Sum, including the Facility Fee.
- J. Borrower provides representations, warranties, indemnities and other undertakings and gives Security as specified in this Agreement.
- K. Guarantor guarantees the due and punctual performance of all obligations Borrower has to BFF under or in relation to this Agreement. Guarantor also provides representations, warranties, indemnities and other undertakings and gives Security as specified in this Agreement.
- L. BFF agrees to provide the Facility Amount (after deduction of the Drawdown Fee) to (or at the direction of) Borrower on the terms and conditions in this Agreement.

- M. Borrower and Guarantor represent and warrant that they obtained (or had reasonable opportunity to obtain) independent legal and financial advice before entering into this Agreement. BFF recommends that they obtain that advice.
- N. The Facility Sum and all other amounts payable to BFF under this Agreement will be secured by Security Interests in property given by Borrower and Guarantor. The Security Interests given by Borrower are described in clause 10 or Schedule 1 at Item 11 and the Security Interests given by Guarantor are described in clause 10 or Schedule 1 at Item 12. Those Security Interests will also secure all obligations which Borrower or Guarantor have under this Agreement and all obligations Borrower or Guarantor have to ScotPac or a ScotPac Group Company (as defined in clause 16.2(a)) at any time. Borrower and Guarantor consent to BFF lodging a caveat over any property which is subject to a Security Interest.
- O. BFF is not liable for any loss or damage Borrower or Guarantor may suffer or incur in connection with this Agreement. Borrower and Guarantor release BFF, to the full extent permitted by law, from that liability. However, the release does not extend to any loss or damage caused by BFF's mistake, negligence, fraud or wilful misconduct (see clause 12). As stipulated in clause 12 "BFF" will, for this purpose, include some other persons.
- P. Borrower and Guarantor indemnify BFF against every expense incurred (including legal costs and internal costs) and any other loss or damage suffered by BFF that relates to any Event of Default, a failure to meet payment obligations or any other obligations under this Agreement (see clauses 14.3 and 14.7). The indemnity does not extend to an expense incurred or loss or damage suffered due to BFF's mistake, negligence, fraud or wilful misconduct. As stipulated in clause 12 "BFF" will, for this purpose, include some other persons.
- Q. Borrower and Guarantor must pay BFF all reasonable expenses (including the full amount of legal costs) that BFF incurs, pays or becomes liable to pay because of, or in relation to the establishment and/or enforcement of this Agreement or the establishment, perfection and/or enforcement of any Security Interest granted to BFF under this Agreement (see clause 18.2).
- R. Borrower and Guarantor irrevocably appoint BFF and its authorised representatives to be Borrower's and Guarantor's attorney and to exercise the powers set out in clause 15. This means that no further action or consent is required by Borrower or Guarantor in order for BFF to do any of the things set out in clause 15 on Borrower's or Guarantor's behalf. As specified in clause 15 some of those powers can only be exercised whilst an Event of Default is continuing.

## 1. Definitions and General Provisions:

1.1 In this Agreement the following terms have the following meanings unless the context otherwise requires:

- (a) **Advance Date** has the meaning in Key Term F;
- (b) **Agreement** means this agreement and all schedules, appendices, annexures and exhibits, as amended from time to time;
- (c) **Australian Privacy Act** means the *Privacy Act* 1988 (Cth);
- (d) **Business Day** means a day other than a Saturday, Sunday or public holiday in Queensland, Australia;
- (e) **Default Interest Rate** means the interest rate set out in Schedule 1 at Item 9;
- (f) **Drawdown Fee** means the amount set out in Schedule 1 at Item 5;
- (g) **Due Amount** means the amount set out in Schedule 1 at Item 8;
- (h) **Due Date** has the meaning in Key Term F;
- (i) **Event of Default** means each of the events in clauses 11.1;
- (j) **Facility Amount** means the amount set out in Schedule 1 at Item 2;
- (k) **Facility Fee** means the amount set out in Schedule 1 at Item 3;
- (l) **Facility Sum** means the amount set out in Schedule 1 at Item 4;
- (m) **Guarantee** has the meaning in clause 14.2;
- (n) **Guarantor Indemnity** has the meaning in clause 14.3;
- (o) **Insolvency Event** means, in respect of Borrower or Guarantor, that Borrower or Guarantor:
  - (i) becomes bankrupt;
  - (ii) is, or is deemed within the meaning of any applicable law to be, insolvent or unable to pay its debts, or states that it is unable, to pay its debts when they fall due;
  - (iii) is deemed to be insolvent by failing to comply with a statutory demand issued by any person;
  - (iv) has a garnishee order, distress, attachment or execution issued or levied against its assets;
  - (v) does not satisfy within 5 Business Days a judgment debt enforceable against it;
  - (vi) enters into a legally binding compromise or arrangement with all or a majority of its creditors (other than BFF);

(vii) has a receiver, receiver and manager, trustee in bankruptcy, trustee for the benefit of creditors, controller, administrator, provisional liquidator or liquidator appointed to it or any of its assets, or an application is made or proceedings commenced by a person other than BFF for one of those appointments and the application or proceeding is not set aside or stayed within 5 Business Days of the application being made or the proceedings being commenced;

(viii) is wound up, whether or not due to insolvency, or an application is made or proceedings commenced by a person other than BFF to wind it up and the application or proceeding is not set aside or stayed within 5 Business Days of the application being made or the proceedings being commenced; or

(ix) anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction;

(p) **Maturity Date** has the meaning in Key Term F;

(q) **Missed Payment Fee** has the meaning in Schedule 1 at Item 9;

(r) **PPSA** means Personal Property Securities Act 2009 (Cth);

(s) **Security** means any security granted by Borrower or Guarantor to BFF;

(t) **Security Interest** includes a mortgage, pledge, lien, charge, encumbrance and security interest as defined in section 12 of the PPSA;

(u) **Security Property** means property of Borrower or Guarantor in respect of which a Security has been granted to BFF under this Agreement;

(v) **Term** means the term of this Agreement as set out in Schedule 1 at Item 7; and

(w) **Trust** means any trust in respect of which Borrower or Guarantor enters into this agreement as a trustee, including any trust specified in Schedule 1 at Item 14.

1.2 In the interpretation of this Agreement the following applies unless the context otherwise requires.

(a) Where a party comprises more than one person, all undertakings, representations, warranties and agreements on their part bind those persons jointly and each of them severally. A reference to "Borrower and Guarantor" or "Borrower or Guarantor" means all and any one or more of Borrower and Guarantor.

(b) This Agreement is governed by the laws of Queensland, Australia and the parties irrevocably submit to the non-exclusive jurisdiction of the Courts having jurisdiction in that State.

(c) All provisions of this Agreement will so far as possible be construed so as not to be invalid, illegal or unenforceable in any respect. However, if any provision on its true interpretation and construction is invalid, illegal or unenforceable, that provision will so far as possible be read down to the extent necessary to ensure that it is not invalid, illegal or unenforceable and as may be reasonable in the circumstances to give it a valid operation. If any provision or part of it cannot be so read down, that provision or part will be severed and the remaining provisions of this Agreement will not be affected.

(d) Person includes a natural person, corporation, firm and any legal entity whether acting as a trustee or not.

## 2. Term of the Agreement

This Agreement will remain in full force and effect until all money owed by Borrower and/or Guarantor under this agreement or secured by this agreement have been paid in full.

## 3. Advance of the Facility Amount

3.1 BFF will advance the Facility Amount to Borrower within three (3) days of the date BFF, Borrower and Guarantor have executed this Agreement. This is subject to Borrower and Guarantor satisfying any pre-settlement conditions mentioned in clause 17.3.

3.2 Borrower acknowledges and agrees that it must pay the Drawdown Fee to BFF and it is to be paid by being retained by BFF from the Facility Amount at the time of the advance of the Facility Amount.

## 4. Disbursement Directions

Borrower and Guarantor authorise BFF to disburse the Facility Amount in the manner set out in Schedule 2.

## 5. Payment of Facility Sum

Borrower must pay the Facility Sum to BFF in full by Fifty-Two (52) weekly instalments in the amount set out in Schedule 1 at item 8. In any event, Borrower must pay the Facility Sum to BFF by the Maturity Date or, if it is earlier, when payment is required in accordance with Key Term H and clause 11.2.

## 6. Interest and Missed Payment Fee

6.1 If Borrower fails to pay an amount which it should have paid, Borrower must pay interest on the overdue amount from the day it should have been paid until it is paid. Interest is calculated and it accrues each day at the Default Interest Rate. Also see clause 11.3.

6.2 Interest which accrues under clause 6.1 must be paid within 2 Business Days of demand by BFF. If the amount which bears interest becomes covered by a court order, Borrower's obligation under this clause 6 is a separate obligation although the Default Interest Rate will be replaced by the rate in the court order if it is higher. Interest which should have been paid is added to the other overdue amounts payable by Borrower and the total amount bears interest.

6.3 If a Due Amount (i.e. a weekly payment) is not paid on or before the Due Date, Borrower must pay the Missed Payment Fee.

## **7. Statements and Credit Reports - Australian Privacy Act**

7.1 Each of Borrower and Guarantor irrevocably authorise BFF, its directors, employees, agents and representatives to make reasonable enquiries as they consider necessary to investigate the creditworthiness of, or obtain information about, Borrower and Guarantor from time to time, including by making of enquiries with persons nominated as trade references, the bankers of Borrower or Guarantor, any credit reporting agency and including personal credit and consumer credit information and property inquiries and name searches (Sources).

7.2 Borrower and Guarantor authorise the Sources to disclose to BFF information concerning Borrower and Guarantor which is in their possession or control, as requested by BFF from time to time. Borrower and Guarantor agree that the information provided by them and any relevant trading information arising from any dealings between Borrower, Guarantor and BFF may be disclosed to a credit reporting agency or any other relevant person, subject to BFF's privacy policy specified in clause 21.1.

7.3 Borrower authorises its bankers and financiers to provide bank account statements and information about Borrower to BFF on request by BFF.

## **8. Direct Debit Authority**

8.1 Borrower must sign a Direct Debit Authority in favour of BFF in the form appearing at Annexure "A", providing for the "Debit User" (as defined in the Direct Debit Authority) to transfer to BFF the weekly Due Amount set out in Schedule 1 at item 8 from the account held in the name of Borrower nominated in the Direct Debit Authority.

8.2 Borrower must ensure that there are at all times sufficient funds in the nominated account to make payment of the Due Amount to BFF.

## **9. Representations, Warranties and Agreements**

9.1 Borrower must use the money advanced under this Agreement only for business or investment purposes (other than investment in residential property). If Borrower has told BFF how the money will be used, Borrower must use it for that purpose. In addition, Borrower must not use it to acquire shares in Borrower or a holding company.

9.2 Borrower must:

- (a) conduct its business in a way which is consistent with its usual past practices;
- (b) not change its bank or bank account details advised to BFF and use its best endeavours to ensure that any funds received by Borrower are paid into its bank accounts as notified to and approved by BFF;
- (c) not take any action that may cause (whether directly or indirectly) the closure of any bank accounts relied upon by BFF for payment of the Due Amounts, unless the bank accounts are replaced by other bank accounts acceptable to BFF (acting reasonably) and a replacement Direct Debit Authority is signed;
- (d) not sell, dispose, convey or otherwise transfer any business it owns or operates or any of its assets (other than in the ordinary course of its ordinary business) without the express prior written consent of BFF;
- (e) not enter into a loan, factoring, financing, or other similar agreement (Finance Agreement) without the prior written consent of BFF (which consent will not be unreasonably withheld provided that the Finance Agreement does not, in the reasonable opinion of BFF, have an impact on (i) Borrower's ability to pay the Facility Sum or (ii) the Security granted to BFF in accordance with this Agreement);
- (f) not incur any further or additional debt (other than in the course of usual trade) without the prior written consent of BFF (which consent will not be unreasonably withheld provided that such additional debt does not, in the reasonable opinion of BFF, have an impact on (i) Borrower's ability to pay the Facility Sum or (ii) the Security granted to BFF in accordance with this Agreement);
- (g) not default on any of its payment obligations under any agreement or document to which it is a party;
- (h) maintain insurance over its business and assets in amounts and against risks which is usual best business practice for a business or assets of that type (which insurance must note BFF's interest if requested by BFF) and give BFF proof of insurance within 7 days of BFF's request;
- (i) not conduct its business under any name other than as disclosed to BFF in writing;
- (j) not buy back its own shares or effect any change in its share structure, without the prior written consent of BFF. BFF will not unreasonably withhold its consent;

(k) not change its management structure, including any change in directors or senior management, without the prior written consent of BFF (which consent will not be unreasonably withheld provided Borrower still has available to it the skills and experience required to conduct its business);

(l) if Borrower is a trustee of a trust, not cease to be the sole trustee of the trust or effect a change to the trust deed without the prior written consent of BFF. BFF will not unreasonably withhold its consent to a change to the trust deed; and

(m) give BFF all information BFF requests from time to time in connection with the facility provided by BFF to Borrower and Borrower's creditworthiness for the purposes of the facility, including but not limited to financial statements, bank account statements, processing statements and tax returns.

9.3 Borrower represents and warrants to BFF that:

(a) the information (financial and other) provided by or on behalf of Borrower to BFF is true and correct in all material respects. Borrower acknowledges that BFF has relied on that information in its decision to advance the Facility Amount to Borrower;

(b) it possesses and complies with all permits, licenses, leases, approvals, consents and other authorisations necessary to conduct its business;

(c) it complies with all applicable laws and regulations where a failure to do so could have an impact on (i) Borrower's ability to pay the Facility Sum or (ii) the Security granted to BFF in accordance with this Agreement; and

(d) neither it, nor any of its related entities, is in default of any of its payment or other obligations under any agreement or document where that default could have an impact on (i) Borrower's ability to pay the Facility Sum or (ii) the Security granted to BFF in accordance with this Agreement.

9.4 Borrower and Guarantor must:

(a) not seek to revoke any power of attorney granted in favour of BFF, including but not limited to the power of attorney in clause 15;

(b) inform BFF immediately upon becoming aware of any matter which may have a negative impact on Borrower's ability to pay the Facility Sum or the Security granted to BFF in accordance with this Agreement.

9.5 Borrower and Guarantor represent and warrant to BFF that it has full power and authority to enter into and perform its obligations under this Agreement, all of which have been duly authorised by all necessary and proper action.

## 10. Granting of Security

10.1 As security for the performance of all obligations imposed on Borrower or Guarantor under this Agreement, each of Borrower and Guarantor grant to BFF a Security Interest in accordance with clause 10.2 and Item 11 or 12 of Schedule 1. The security granted by Borrower or Guarantor will also secure other obligations as specified in clause 16. If Borrower or Guarantor is a trustee of a Trust, a Security is given by Borrower and Guarantor both in its own right and as trustee of the Trust.

10.2 Each of Borrower and Guarantor hereby grant to BFF:

(a) a charge over all of their present and after-acquired interests in land (including leasehold interests and interest in fixtures);

(b) a charge over all of their present and after-acquired property, including anything in respect of which either of them, has at any time a sufficient right, interest or power to grant a security interest (including any future receivables). However, if Borrower or Guarantor is an individual a charge is not given under this paragraph (b) in his or her consumer property (as defined in the PPSA) although in the case of the Borrower only, a charge is given in his or her interest in any partnership even if that interest is consumer property; and

(c) if Borrower or Guarantor is a trustee of a Trust, a charge over the property described in paragraphs (a) or (b) which is the subject of the Trust.

10.3 The Security will take effect upon execution of this Agreement and Borrower and Guarantor consent to BFF lodging a caveat over any land held by Borrower or Guarantor in reliance on the Security.

10.4 A charge given under clauses 10.2(a) or item 12 of Schedule 1 will be a fixed charge. A charge given under clause 10.2(b) will be a floating charge if it is over a revolving asset and if it is over any other property it will be a fixed charge. A revolving asset is inventory; machinery, plant and equipment which has a value less than \$10,000; negotiable instrument; and money. If an Insolvency Event occurs in relation to Borrower or Guarantor a floating charge given by it will immediately become a fixed charge.

10.5 If there is a floating charge over Security Property Borrower or Guarantor which gave that charge can deal with it in the ordinary course of business. If there is a fixed charge over Security Property Borrower or Guarantor which gave that charge cannot deal with it (including by sale, transfer or the grant of a Security Interest) in any way except with the prior approval of BFF. BFF will not unreasonably withhold that approval.

10.6 Borrower and Guarantor must, in connection with their Security Property, do each of the following.

(a) Insure and keep insured the Security Property for its full insurable value against all insurable risks as is customary for property of that type. If required by BFF, the interest of BFF must not be noted on the policy in the way BFF reasonably requires.

(b) Repair and maintain the Security Property in good order and promptly replace all items which are lost or are damaged beyond repair.

(c) Use the care of a cautious and prudent owner to prevent damage to, or loss of, the Security Property and to protect its value.

(d) Pay all rent, taxes and other liabilities payable in relation to the Security Property.

(e) If the Security Property is a receivable and an Event of Default is continuing, ensure that all receipts for it are paid into a bank account controlled by BFF which is specified by BFF. BFF may use those receipts as specified in clause 11.4(d).

10.7 If an Event of Default occurs, Borrower and Guarantor, on request by BFF, must:

(a) give BFF a mortgage in registrable form over all land which is subject to the Security; and

(b) do all things BFF asks to enable that mortgage to be registered.

10.8 If there is an Event of Default, BFF may exercise any or all of the rights and powers in respect of the Security in accordance with clause 11.4.

10.9 Nothing in this Agreement should be construed as an agreement by BFF to subordinate its security interest in any Security Property to any other Security Interest or as a consent to any other Security Interest, attaching to any of the Security Property. BFF's Security Interest continues, even if there is no money owing to BFF, until BFF has given Borrower or Guarantor an instrument which discharges the Security Interest in full. BFF will give that instrument when all amounts owing (whether actually, contingently or prospectively) by Borrower or Guarantor under this Agreement (including clause 16) or which are secured by this Agreement have been paid and there is no risk that an amount received will have to be repaid.

10.10 To the extent the law permits, Borrower and Guarantor waive any right it may have to receive any notice (including a notice given before a right, power or remedy is exercised) from BFF or a receiver or receiver and manager under any law, and also waives any time period that must otherwise lapse under any law before BFF or a receiver or receiver and manager can exercise a right, power or remedy. If the law which requires a period of notice or lapse of time cannot be excluded, but the law provides that the period of notice or lapse of time may be agreed, that period or lapse is one day or the minimum period the law allows to be agreed (whichever is longer). Nothing in this clause 10.10 or any other provision of this Agreement prohibits BFF or any receiver or receiver and manager from giving a notice under the PPSA or any other law.

## 11. Events of Default

11.1 Each of the following is an Event of Default.

(a) Borrower or Guarantor has failed to pay on time any money due under this Agreement, BFF has given Borrower or Guarantor that owes the money notice of the failure and the money has not been paid within 10 Business Days of the notice being given.

(b) Borrower or Guarantor fails to comply with any other obligation in this Agreement. That failure is only an Event of Default if one or more of the following is satisfied.

- The failure is a failure to perform a material obligation and it cannot be remedied.
- The failure can be remedied and it has not been remedied within 10 Business Days after the failure happens.
- The failure means that there is a material risk either (i) that Borrower will not be able to pay the Facility Sum when it is required to be paid or (ii) that BFF will not be able to enforce the Security and in each case BFF, acting reasonably, decides that it needs to enforce the Security to protect its legitimate interests

(c) Any representation or warranty given by Borrower or Guarantor in this Agreement is incorrect, untrue or misleading, whether on the date of this Agreement or at any other time during the term of this Agreement.

(d) If the circumstances that led to the representation or warranty being incorrect, untrue or misleading can be remedied it is only an Event of Default if the circumstances are not remedied within 10 Business Days of the representation or warranty being originally given. If those circumstances cannot be remedied it is only an Event of Default if the circumstances create a material risk either (i) that Borrower will not be able to pay the Facility Sum when it is required to be paid or (ii) that BFF will not be able to enforce the Security and in each case BFF, acting reasonably, decides that it needs to enforce the Security to protect its legitimate interests.

(e) An Insolvency Event occurs in respect of Borrower or Guarantor.

(f) Borrower terminates the direct debit arrangements referred to in clause 8 and before the termination does not establish replacement arrangements acceptable to BFF acting reasonably unless the replacement arrangement are not established due to an administrative error and such error is remedied within 2 Business Days.

(g) If Borrower is an individual: Borrower dies or is incapacitated or becomes unable to manage his or her affairs.

(h) Borrower or Guarantor give BFF information in relation to this Agreement which Borrower or Guarantor knows is incorrect or misleading in a material respect or they act fraudulently in relation to this Agreement;

(i) If Borrower is a company (other than a company listed on a stock exchange): there is a change to Borrower's directors or shareholders, without BFF's prior written consent (which consent will not be unreasonably withheld).

(j) In relation to any Security:

- (i) a requisition by any government body is not complied with by Borrower or Guarantor to the satisfaction of the government body within 10 Business Days of the requisition or, if it is longer, the period reasonably required to comply with it;
  - (ii) any document or information needed to register the Security is not produced to BFF within 5 Business Days of BFF asking Borrower or Guarantor for the document or information;
  - (iii) the Security is presented for registration to the appropriate government body but is not registered, to BFF's satisfaction, within a period which is reasonable for the registration to be completed;
  - (iv) a third party holds a Security Interest over the Security Property that ranks in priority to the Security and BFF did not consent in writing to the third party's Security Interest having priority over the Security; or
  - (v) Borrower or Guarantor lodges or allows another person to lodge a caveat over any Security Property, unless BFF has given its approval (which approval will not be unreasonably withheld).
- (k) A third party holding a Security Interest over any of the Security Property:
- (i) enforces that Security Interest; or
  - (ii) takes, or attempts to take, possession of any of the Security Property.
- (l) A change in the law or the withdrawal of a licence or permit prevents Borrower or Guarantor from complying with any material obligation imposed by this Agreement.
- (m) Borrower stops carrying on its usual business or indicates to any person that it will do so.
- (n) Borrower or Guarantor, or if it is a company, any director or beneficial owner of Borrower or Guarantor, is charged with a serious criminal offence or threatens to assault an employee of BFF or an entity which is related to BFF. A serious criminal offence means an offence which, if it results in a conviction, could affect the ability of the client to conduct its business. It also means serious or complex fraud as determined by the Serious Fraud Office under the Serious Fraud Office Act 1990, or an offence punishable by imprisonment for life or for a period, or maximum period, of at least three months.
- (o) In respect of any Trust:
- (i) Borrower or Guarantor ceases to be a trustee or beneficiary of the Trust, or a new trustee is appointed to the Trust, without BFF's prior written consent (which consent will not be unreasonably withheld);
  - (ii) the Trust is wound up or terminated;
  - (iii) there is a capital distribution to beneficiaries of the Trust or there is a transfer of trust assets to another trustee, without BFF's prior written consent (which consent will not be unreasonably withheld);
  - (iv) the trustee's right to be indemnified out of trust assets is changed, removed or limited, without BFF's prior written consent (which consent will not be unreasonably withheld); or
- (p) the trustee of the Trust deals with or disposes of trust assets which are Security Property other than as permitted by clause 10.6.

11.2 If there is an Event of Default, BFF may by notice to Borrower require payment of the outstanding balance of the Facility Sum and all other amounts outstanding under this Agreement. Payment must be made within 2 Business Days of the notice being given. If there is an Event of Default BFF may also exercise all of its rights and powers under this Agreement or conferred by law.

11.3 The outstanding balance of the Facility Sum and other amounts payable in accordance with clause 11.2 will bear interest in accordance with clause 6. However, before the Maturity Date the interest which accrues on the outstanding balance of the Facility Sum in relation to any day will be reduced by that portion of the Facility Fee which BFF (acting reasonably) determines is the Facility Fee attributable to that day.

11.4 If there is an Event of Default, BFF may (without limiting clause 11.3) exercise its rights and powers in respect of any Security including:

- (a) doing anything in relation to any Security Property that an absolute owner of the Security Property, or a receiver or receiver and manager of the Security Property, could do;
- (b) exercising the rights and powers of Borrower and/or Guarantor in relation to the Security Property, including carrying on any business conducted from any Security Property, and dealing with or disposing of rights and powers relating to any proprietary right, intellectual property, licence, permit or agreement which is Security Property;
- (c) doing anything in relation to any Security Property that BFF determines (acting reasonably) is desirable to protect the Security Property;
- (d) taking and retaining all receivables and receipts in respect of those receivables and applying them in reduction of all money owed to BFF without prejudice to any of its other rights and powers under this Agreement or at law;
- (e) operating any of Borrower's or Guarantor's bank accounts, alone or jointly with others, and withdrawing money, and signing, presenting and endorsing negotiable instruments, all in the name of Borrower and/or Guarantor and to the exclusion of Borrower and/or Guarantor;
- (f) appointing any Borrower and/or Guarantor as BFF's trustee with respect to money received as income by Borrower and/or Guarantor from the use, or right to use, any Security Property, and demanding that Borrower and/or Guarantor pay to BFF all money held on that trust;

- (g) obtaining a release or transfer of any Security Interest over a Security Property;
- (h) disposing of any Security Property in any way (whether by public auction, private contract, option or tender and including in association with or other property) or dealing with any Security Property, including selling it free from any rights or claims of Borrower and/or Guarantor;
- (i) initiating, prosecuting, defending or settling any legal proceedings relating to any Security Property, in the name of Borrower and/or Guarantor who owns the relevant Security Property, or in the name of BFF;
- (j) appointing one or more receivers or receivers and managers (Receiver) over any Security Property, including to the business or the income from the Security Property, or both, and authorise them, at any time, to:
  - (i) do anything Borrower, Guarantor or an absolute owner of the Security Property could do or lawfully authorise an agent to do;
  - (ii) do anything BFF may do under this Agreement in relation to any Security Property (other than appoint a receiver or receiver and manager);
  - (iii) do anything the law allows a receiver or receiver and manager to do;
  - (iv) do anything BFF may lawfully authorise a receiver or receiver and manager to do;
  - (v) borrow money from BFF to exercise any of the Receiver's rights or powers;
  - (vi) give receipts; and
  - (vii) terminate any receivership.

11.5 The Receiver, unless the appointing document states otherwise, will be appointed on the basis that:

- (a) the Receiver is the agent of Borrower or Guarantor, as the case may be, and the rights, powers and obligations of the Receiver will include those provided for under the Corporations Act 2001 (Cth); and
- (b) Borrower or Guarantor, as the case may be, is responsible for the Receiver's remuneration and BFF's rights and powers are not affected or limited by the appointment of a Receiver or any action taken by the Receiver.

11.6 If there is an Event of Default, BFF may do all things that BFF acting reasonably considers necessary or reasonably desirable to remedy or mitigate the Event of Default. Any money reasonably spent by BFF in exercising its right to remedy or mitigate an Event of Default is a further advance under this Agreement.

## 12. Limitation of Liability

BFF is not liable for any loss or damage Borrower or Guarantor may suffer or incur as a result of any transaction provided for or anticipated by this Agreement. Borrower and Guarantor release, indemnify and forever hold harmless BFF to the full extent permitted by law in that regard. This clause does not apply to the extent that any such loss or damage was caused by BFF's mistake, negligence, fraud or wilful misconduct. In this clause "BFF" includes a ScotPac Group Company (as defined in clause 16.2(a)); BFF's agent (other than Borrower or Guarantor), contractor, officer or employee; and a Receiver (as defined in clause 11.4(j)).

## 13. Refinancing

13.1 Borrower and Guarantor acknowledge and agree that BFF may during the term of this Agreement, at its sole election and subject to this facility being maintained in good order, contact Borrower and enquire about the willingness (or otherwise) of Borrower to refinance its indebtedness under this Agreement such that its indebtedness under this Agreement will be discharged and a further and separate agreement (New Agreement) will be entered into on terms and conditions to be negotiated and agreed by BFF Borrower and Guarantor.

13.2 Borrower may similarly contact BFF during the terms of this Agreement and enquire about the willingness (or otherwise) of BFF to refinance the indebtedness of Borrower under this Agreement.

13.3 The parties acknowledge and agree that:

- (a) Borrower will not be required to refinance its indebtedness under this facility if so approached by BFF and that Borrower may at its sole election and discretion elect not to refinance that indebtedness;
- (b) BFF will not be required to refinance the indebtedness of Borrower under this Agreement if so approached by Borrower, although BFF will at all times act reasonably in considering whether or not to refinance that indebtedness if requested by Borrower; and
- (c) if agreement is reached to refinance the indebtedness under this Agreement (regardless of who initiates the request), BFF will:
  - (i) be under no obligation to refund, repay, discount or reduce any part of the Facility Sum, including the Facility Fee payable under this Agreement; and
  - (ii) be entitled to charge its standard facility fees under the New Agreement.

## 14. Guarantee and Indemnity

14.1 Guarantor provides the Guarantee and the Guarantor Indemnity in consideration of BFF entering into this Agreement with Borrower. In addition, BFF will pay \$10 to Guarantor within 10 Business Days of Guarantor requesting it. Guarantor acknowledges that it has received valuable consideration for entering into this Agreement.

14.2 Guarantor unconditionally and irrevocably guarantees to BFF, as a primary obligation (Guarantee):

- (a) the payment, when due, of all money that Borrower must pay to BFF under this Agreement; and
- (b) the performance, when due, of everything Borrower must do under this Agreement.

14.3 Guarantor indemnifies BFF against every cost or expense incurred (including legal costs and internal costs), and any other loss, liability or damage suffered or incurred by BFF as a result of (Guarantor Indemnity):

- (a) any Event of Default;
- (b) any failure by Borrower to pay money to BFF as required by this Agreement;
- (c) any failure by Borrower to perform any obligation imposed by this Agreement;
- (d) any of the liabilities or obligations of Borrower under this Agreement being or becoming illegal, void, voidable or unenforceable; or
- (e) the Guarantee not being enforceable for any reason including due to a stay (such as one imposed by the Corporations Act 2001 (Cth)) which prevents it being enforced.

However, the Guarantor does not, under the Guarantor Indemnity, indemnify BFF against a cost, expense, loss, liability or damage suffered or incurred as a consequence of the mistake, negligence, fraud or wilful misconduct by BFF (as defined in clause 12).

14.4 The Guarantee and the Guarantor Indemnity operate even if BFF cannot effectively demand performance from Borrower or another person for any reason.

14.5 The obligations of Guarantor under this clause 14 will not be affected by an act, omission, matter or thing which, but for this clause, would reduce, release or prejudice any of its obligations under this clause 14 (without limitation and whether or not known to it or BFF) including:

- (a) any time, waiver or other concession or consent granted to, or composition with, Borrower or another person;
- (b) any amendment, novation, extension, restatement or replacement of this Agreement or any Security Interest granted under this Agreement;
- (c) any unenforceability, illegality or invalidity of any obligation of any person under this Agreement;
- (d) any set off, combination of accounts or counterclaim;
- (e) the occurrence of an Insolvency Event or any other Event of Default;
- (f) any insolvency or similar proceedings; or
- (g) this Agreement not being executed by or binding against Borrower or any other person.

14.6 BFF need not make any demand on Borrower or pursue any other rights under any Security before it demands that Guarantor:

- (a) make any payment due to BFF under this Agreement; or
- (b) perform when due any obligation imposed on Borrower by this Agreement.

14.7 If BFF incurs costs (including legal costs) to enforce the Guarantee or the Guarantor Indemnity, Borrower and Guarantor will be jointly and severally liable to pay the full amount of those costs.

14.8 The liability of Guarantor under this Agreement, including under the Guarantee and the Guarantor Indemnity, is not conditional on any further step by any person, including any demand by BFF being made on Borrower or another person.

## 15. Power of Attorney

15.1 Borrower and Guarantor each separately and irrevocably appoint BFF and its authorised representatives, to be their attorney to exercise the powers granted to that attorney under this Agreement.

15.2 Borrower and Guarantor authorise BFF to register this power of attorney as required or allowed by law and agree to do anything required to assist BFF to register this power of attorney.

15.3 An attorney appointed under this Agreement has the power, at any time, to do in the name of, or on behalf of, Borrower and Guarantor everything Borrower or Guarantor is required to do under this Agreement but which they have failed to do.

15.4 Without limiting clause 15.3, an attorney appointed under this Agreement has the power at any time to:

- (a) complete any blank or correct any manifest error in this Agreement;
- (b) delegate its power (including this power to delegate) to any person, including, without limitation, any successor or assignee of the attorney, or any receiver or receiver and manager; and
- (c) revoke any delegation of the power of attorney at any time.

15.5 Without limiting clauses 15.3 and 15.4, if there is an Event of Default, an attorney appointed under this Agreement has the power to:

- (a) do everything Borrower and/or Guarantor could do with respect to Borrower or any Security Property (including any real or personal property and any accounts held with any bank or other financial institution belonging to either of them);
- (b) execute all documents the attorney considers to be desirable to more effectively secure the performance of Borrower's and Guarantor's obligations under this Agreement;
- (c) do everything Borrower and/or Guarantor could do to:
  - (i) remedy any Event of Default; or
  - (ii) mitigate the loss to BFF from an Event of Default;
- (d) do everything that Borrower and/or Guarantor may lawfully do in respect of this Agreement or the Security Property; and
- (e) exercise the rights of Borrower and/or Guarantor who is a trustee of any Security Property, or who is a party to this Agreement in its capacity as a trustee, to be indemnified out of trust assets and exercise any rights against beneficiaries or subsequent trustees.

15.6 All powers granted to an attorney under this Agreement may be exercised in the name of Borrower or Guarantor, or in the name of BFF on their behalf.

15.7 This power of attorney is given for valuable consideration as security for:

- (a) the performance of all obligations of Borrower or Guarantor under this Agreement, including the payment of all amounts owing; and
- (b) any proprietary interests granted to BFF under this Agreement.

15.8 This power of attorney cannot be revoked by any person.

15.9 An attorney appointed under this Agreement may exercise its powers without any need for ratification or confirmation from Borrower or Guarantor. If an attorney asks Borrower or Guarantor to ratify or confirm any actions taken by an attorney under this power of attorney, they must do so promptly.

## 16. Monies owing to the ScotPac Group are secured by the Security

16.1 Borrower and Guarantor acknowledge that BFF is a subsidiary of Scottish Pacific Group Pty Ltd (ACN 164 013 110) (**ScotPac**).

16.2 Borrower and Guarantor agree that whilst BFF remains a subsidiary of ScotPac:

- (a) each Security Interest granted pursuant to, as contemplated by, or in connection with, this Agreement will, in addition to the obligations imposed under this Agreement, secure all money owing at any time to any of ScotPac's related bodies corporate (as defined in the Corporations Act 2001 (Cth)) (each of those related bodies corporate, other than BFF, is a **ScotPac Group Company**), under any facility provided by any ScotPac Group Company to Borrower or Guarantor or under any agreement or document between any ScotPac Group Company and Borrower or Guarantor;
- (b) BFF and any ScotPac Group Company are entitled to set-off any money that any of them owes to Borrower or Guarantor against any money that Borrower or Guarantor owes to BFF, ScotPac or any ScotPac Group Company;
- (c) any amount received by virtue of the enforcement of a Security Interest granted pursuant to, as contemplated by, or in connection with this Agreement, in favour of BFF will be applied by BFF towards satisfaction of money owing to BFF and thereafter to satisfy amounts owing to any ScotPac Group Company. For example, if Borrower or Guarantor has a chattel mortgage or debtor finance facility with a ScotPac Group Company, amounts received by BFF can be used to pay money owing under that facility.

16.3 The money owing referred to in this clause 16 is money owing (whether actually, contingently or prospectively) under any agreement or obligation or on any account. If an amount cannot be immediately ascertained, BFF or a ScotPac Group Company is entitled to make a reasonable estimate. If an estimate is made that estimate will be promptly adjusted when the amount can be ascertained.

16.4 Each of Borrower and Guarantor agree to clause 16 in consideration of BFF entering into this Agreement with Borrower and Guarantor, and acknowledge that they have received valuable consideration for entering into the provisions set out in clause 16.

16.5 This clause 16 does not in any way limit any other agreement between Borrower or Guarantor and BFF.

## 17. Further Representations

17.1 BFF will rely on the representations and warranties in this Agreement each time it advances money to Borrower under this Agreement. Borrower must promptly tell BFF if Borrower could not truthfully repeat any of those representations and warranties and must not do (or permit to be done) anything which could result in it not being able to truthfully repeat a representation or warranty.

17.2 In addition to the representations and warranties in clause 9, Borrower and Guarantor represent and warrant to BFF that:

- (a) it obtained (or had reasonable opportunity to obtain) independent legal and financial advice before entering into this Agreement;
- (b) it benefits from signing this Agreement;

- (c) it is not subject to any condition that might affect its ability to understand the nature or terms of this Agreement;
- (d) neither BFF, nor any representative of BFF, nor any person that Borrower or Guarantor believes or alleges acts on behalf of BFF, has promised or suggested to Borrower or Guarantor that any of them will or might secure refinancing for Borrower or Guarantor (or for any other person) so as to enable Borrower or Guarantor to meet its obligations under this Agreement;
- (e) it has capacity to agree to this Agreement;
- (f) it is able to comply with its obligations under this Agreement;
- (g) it has obtained all authorities, consents, permissions and ratifications from any person (including any partners, directors, shareholders or beneficiaries) necessary to allow Borrower and Guarantor to agree to this Agreement and comply with the obligations imposed by this Agreement;
- (h) complying with the obligations imposed by this Agreement does not contravene any laws, agreements, constitutional or trust documents or duties in connection with any trust;
- (i) it has obtained all licences, permits and insurances necessary for it to conduct its business, agree to this Agreement or comply with the obligations imposed by this Agreement and it has taken all other steps required to ensure that it is entitled to carry on its business;
- (j) it has obtained all government approvals (including any approvals required under the Foreign Acquisitions and Takeovers Act 1975 (Cth)) necessary for it to conduct its business, agree to this Agreement or comply with the obligations imposed by this Agreement;
- (k) it has complied with all of its tax obligations, unless has disclosed the non-compliance to BFF and BFF has given its consent. BFF can give that consent on any conditions (such as a requirement that a payment plan be made with the Australian Taxation Office) and Borrower and Guarantor must comply with those conditions;
- (l) it owns the property that it has told BFF that it owns;
- (m) it is not a trustee of any trust, except as disclosed in this Agreement;
- (n) it signs this Agreement without any intent to delay or defraud an existing or future creditor;
- (o) it is not aware of any current or threatened proceedings before a court, tribunal or administrative body against it, apart from those which have been disclosed to BFF;
- (p) it is not aware of any Event of Default that has already happened, apart from events which have been disclosed to BFF;
- (q) it has fully disclosed to BFF all information known to it which it would be reasonable to expect would be relevant to BFF's consideration of the risk associated with entering into this Agreement;
- (r) the representations and warranties that it makes to BFF in this Agreement are correct and not misleading, and it is not aware of any facts or circumstances that may lead to any representation or warranty in this Agreement becoming incorrect or misleading;
- (s) all information that it has given to BFF in relation to the transactions contemplated by this Agreement is, in all material respects, correct and not misleading; and
- (t) all financial statements that it has given to BFF fairly represent Borrower's or Guarantor's financial position as at the date of the financial statements, and were prepared according to generally accepted Australian accounting practices.

17.3 Borrower and Guarantor acknowledge that BFF is not required to advance any money to, or at the direction of, Borrower unless all of BFF's pre-settlement conditions have been complied with in full (or waived at the sole discretion of BFF) and the solicitors for BFF have certified to BFF that the transactions anticipated by this Agreement are ready to proceed (where solicitors have been engaged to provide the certification). Those pre-settlement conditions are listed in Schedule 1 at Item 13 or were advised to Borrower before Borrower executed this Agreement.

17.4 If Borrower or Guarantor is the trustee of a trust, it is bound by this Agreement and any Security to which it is a party both in its own right and as the trustee of each trust (including any trust specified in Schedule 1 at Item 14) of which it is the trustee. Each of Borrower and Guarantor is also bound as the trustee of each trust it may become the trustee of. These requirements are not affected by an Australian Business Number or a trust being, or not being, specified in this Agreement or any Security to which it is a party. However, each of Borrower and Guarantor is not bound in relation to a trust of which it is the trustee if this Agreement states that the trust is excluded or if the trust arises under the will of a deceased person who is not Borrower or Guarantor. Each of Borrower and Guarantor is also not bound in relation to a trust which is a fund as defined in the Superannuation Industry (Supervision) Act 1993 so long as the fund was disclosed to BFF before the date of this Agreement and, if Borrower or Guarantor is a company (as defined in the Corporations Act 2001) which gives a Security Interest in favour of BFF, BFF will still hold a Security Interest over substantially the whole of the property of Borrower or Guarantor (as applicable). If Borrower or Guarantor is the trustee of a trust, it also represents and warrants to BFF that:

- (a) it is the only trustee of the trust;
- (b) it is entitled to enter into this Agreement as trustee of the trust, and this Agreement constitutes a binding legal obligation enforceable against it;
- (c) it has disclosed to BFF all terms of the trust;
- (d) it is entitled to be fully indemnified out of trust assets in relation to liabilities arising under this Agreement;

(e) agreeing to this Agreement and complying with its obligations does not constitute a breach of trust and benefits the beneficiaries;

(f) BFF's rights under this Agreement have priority over the claims of beneficiaries of the trust.

17.5 Borrower and Guarantor represent and warrant to BFF that all insurance maintained over the Security Property is enforceable against the insurer.

17.6 Where Borrower purports to be an incorporated entity, it represents and warrants to BFF that it is duly incorporated according to law.

## 18. Costs and Expenses

18.1 If Borrower or Guarantor must do something under this Agreement, Borrower or Guarantor (as the case may be) must pay for it to be done. If Borrower or Guarantor fails to pay for something to be done by Borrower or Guarantor, BFF may make payment instead and that payment will be deemed a further advance and added to the Facility Sum without prejudice to any of BFF's other rights or remedies under this Agreement.

18.2 Borrower and Guarantor must pay to BFF all reasonable expenses (including the full amount of legal costs) that BFF incurs, pays or becomes liable to pay because of, or in relation to the establishment and/or enforcement of this Agreement or the establishment, perfection and/or enforcement of any Security Interest granted to BFF pursuant to this Agreement.

## 19. Personal Property Securities Act 2009

19.1 If this Agreement (or any transaction in connection with it) is or gives rise to a Security Interest for the purposes of the PPSA, Borrower or Guarantor must do everything reasonably required (including obtaining consents, signing and producing documents, getting documents completed and signed, and supplying information) to:

- (a) enforce or perfect the Security Interest (including, where possible, by control in addition to registration); or
- (b) give any notification in connection with the Security Interest,

so that the Security Interest has the priority which was intended when the parties entered into this Agreement or to enable BFF to exercise rights and powers in connection with the Security Interest.

19.2 BFF need not give any notice under the PPSA (unless the notice is required by the PPSA and cannot be excluded) and need not, to the full extent allowed under the PPSA, comply with any of the provisions of the PPSA that would otherwise apply to this Agreement.

19.3 For the purposes of sections 115(1) and 115(7) of the PPSA BFF need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d) or 132(4) and sections 142 and 143 are excluded. For the purposes of section 115(7) of the PPSA BFF need not comply with sections 132 and 137(3). Section 123(1) of the PPSA does not limit BFF's right to seize Security Property.

19.4 Borrower or Guarantor must not refuse any permission sought by BFF under section 94 of the PPSA; object to, or seek redress for, any damage or inconvenience caused by BFF removing an accession; make an application under section 97 of the PPSA; complain of any damage, cost or inconvenience caused by BFF taking apparent possession of property under section 126 of the PPSA; or object to BFF's proposal to purchase property under section 129(2)(b) of the PPSA. Borrower and Guarantor waive any right they may have to receive a notice from BFF under section 135 of the PPSA.

19.5 Borrower and Guarantor waive any right they may have to receive a verification statement or notice in relation to registration events under section 157(3)(b) of the PPSA and, to the extent the law permits, waives its right to receive any other notice that is required by the PPSA. Nothing in this Agreement prohibits BFF or any Receiver from giving notice under the PPSA or any other law.

19.6 Clauses 19.3, 19.4 and 19.5 do not apply in relation to a Security Interest in Security Property that is used predominantly for personal, domestic or household purposes.

19.7 If BFF exercises a right or power in connection with this Agreement that is not an exercise of a right or power under the PPSA unless either BFF states otherwise at the time of exercise or the right or power can only be exercised under the PPSA.

## 20. Commission and Referral Fees

20.1 Borrower and Guarantor acknowledge that BFF may pay commissions and/or other fees to an introducer or other third parties in relation to this Agreement. If BFF introduces a third party (such as someone who could provide another commercial finance facility) to Borrower that third party may pay an introduction fee, brokerage or commission to BFF. In each case BFF will, as soon as possible following a request from Borrower, provide Borrower with details of the commission and fees.

20.2 When the third party introduces Borrower to BFF the introducer or other third party acts as Borrower's agent. BFF is not responsible for the assessment it undertakes. When BFF introduces the third party to Borrower it is not acting as agent for any person. If BFF receives information from a person or a person assists in the processing of an application, BFF may pay a commission to that person. Borrower consents to the arrangements referred to in, or described in, this clause 20.

## 21. Website Terms and Conditions and Privacy

21.1 Borrower and Guarantor acknowledge that they have visited the website of BFF and read, understand and agree to all the terms and conditions and the privacy policy published at the following URLs:

<https://businessfuel.com.au/terms-and-conditions/> and <https://businessfuel.com.au/privacy-policy/> (Business Fuel Privacy Policy).

21.2 Borrower and Guarantor consent to the collection, use and disclosure of their personal information in accordance with the Business Fuel Privacy Policy.

21.3 Borrower and Guarantor acknowledge and agree that it is likely that BFF will send Borrower's and Guarantor's personal information overseas including to its service providers and related entities, most likely to the overseas countries listed in the Business Fuel Privacy Policy. Borrower and Guarantor agree to that disclosure of personal information to a person who is not in Australia, meaning that BFF will not be required to take reasonable steps to ensure that the overseas person does not breach the Australian Privacy Principles in relation to Borrower's and Guarantor's personal information and if the overseas person mishandles Borrower's or Guarantor's personal information, Borrower or Guarantor will not be able to seek redress under the Australian Privacy Act against BFF.

21.4 This clause 21 continues until all liabilities have been satisfied.

## 22. Anti-money laundering and counter-terrorism law

22.1 Borrower and Guarantor represent and warrant to BFF that they are not aware, and have no reason to suspect, that any financial accommodation provided under this Agreement or the performance of any transactions contemplated by this Agreement will violate any financial or other sanctions or will be applied or related to any money laundering, terrorism financing or similar activity illegal under any applicable laws or otherwise prohibited under any international convention or agreement. Borrower or Guarantor must tell BFF if anything occurs which means that they could not truthfully repeat that representation and warranty.

22.2 Borrower and Guarantor must give BFF all additional information and assistance BFF requires so that BFF can comply with those sanctions, laws, conventions and agreements. In particular they must provide all documents, information and assistance BFF may require to carry out "know your customer" or similar checks.

22.3 BFF may delay or refuse to make a payment or delay or prevent the occurrence of any other transaction if BFF is concerned that it could breach any of those sanctions, laws, conventions or agreements.

If BFF has reason to believe that the performance of any transaction contemplated by this Agreement could breach any of those sanctions, laws, conventions or agreements or monies advanced to it will or have been applied or relate to any money laundering, terrorism financing or similar activity illegal under any applicable laws or otherwise prohibited under any international convention or agreement, BFF can end this facility agreement by giving notice to Borrower and Guarantor. This Agreement will then end one month after the notice is given or on an earlier date specified by Borrower. Borrower must pay the outstanding balance of the Facility Sum when this Agreement ends. Other amounts (such as interest, costs and expenses) may also be payable BFF will not incur a liability if it ends this Agreement as contemplated by this clause. If there is an Event of Default, BFF can give Borrower notice which requires that.

## 23. Miscellaneous

23.1 Before this Agreement is entered into BFF may have provided an outline of the terms and conditions on which a facility could be provided. That outline might be in an "approval letter", "terms sheet" or something similar. This Agreement replaces the outline to the extent only that the outline covers the same terms. Important terms and conditions may have changed since the outline was provided. Accordingly, it is important that Borrower and Guarantor be satisfied with every provision in this Agreement before they sign this Agreement as any earlier outline, to the extent it covers the same subject matter as this Agreement, will not be relevant to the agreement which is reached.

23.2 No modification, amendment, or waiver of any provision of this Agreement will be effective unless it has been reduced to writing and consented to by the parties.

23.3 No set-off, counter claim or other deduction may be made or applied against BFF by Borrower or Guarantor (and Borrower and/or Guarantor must not assert such set-off, counter claim or other deduction) until payment in full of all amounts owing under this Agreement have been made to BFF. This clause may be used in court proceedings as a bar to any action taken prior to such payment in full.

23.4 All undertakings, representations, warranties and agreements in this Agreement will survive the execution and delivery of this Agreement and will continue in full force and effect until all obligations under this Agreement have been satisfied.

23.5 This Agreement is binding on Borrower, Guarantor and their respective successors and assigns.

23.6 Borrower must not assign its rights or interests under this Agreement without the prior written consent of BFF (which may be withheld at BFF's discretion). BFF is entitled, without further approval and without prior notice to or consultation with Borrower or Guarantor, to assign, novate, transfer or otherwise deal with this Agreement, any interests arising under it and any of its rights or obligations under it in any way BFF considers appropriate but an assignment, novation, transfer or dealing may not materially prejudice Borrower's or Guarantor's rights under this Agreement. In the case of a novation the new party assumes BFF's obligations. At BFF's request Borrower and Guarantor must sign any document BFF reasonably requires for this purpose.

23.7 The rights created by this Agreement in favour of BFF are cumulative with and not exclusive of the rights provided by law or otherwise independently of this Agreement.

23.8 The provisions of this Agreement which are capable of having effect after completion of any transaction referred to in this Agreement (including without limitation warranties and indemnities) do not merge on completion of any transaction referred to in this Agreement.

23.9 Borrower must pay any stamp duty, taxes, costs, levies or GST applicable to this Agreement or any Security Interest created pursuant to this Agreement.

23.10 Each party represents and warrants that immediately prior to entering into this Agreement, it has unconditionally consented to the requirement for a signature under any law being met and any other party to this Agreement executing it, by any method of electronic signature that other party uses, including signing on an electronic device or by digital signature.

#### 24. Notices

24.1 All notices, requests, demands and other communications under this Agreement must be in writing and may only be delivered by mail, email, courier or hand delivery to the respective parties to this Agreement.

24.2 A notice or demand sent by e-mail to Borrower's or Guarantor's e-mail address (or an e-mail address of an authorised officer or an e-mail address which BFF has been asked to use) last known to BFF is, if it was sent before 4.00pm on a Business Day, to be treated as having been received by Borrower or Guarantor when sent unless BFF has received a message indicating that it has not been received. If it was sent by e-mail after that time it is to be treated as having been received at the commencement of business on the next Business Day. A notice or demand sent by post to, or which is delivered to, Borrower's or Guarantor's address specified in this Agreement, its registered office or its business or residential address last known to BFF is to be treated as having been received by Borrower or Guarantor on the fourth Business Day after it was posted or when it was delivered.

24.3 A notice from Borrower or Guarantor to BFF must be in writing and signed by the Borrower or Guarantor or by one of its authorised officers. It must be delivered to BFF at its address specified in this Agreement, unless it is in connection with a registration on the register established under the PPSA, in which case it must be sent to the address for service specified in the registration.

24.4 Anything in connection with legal process (such as court documents) can be served in any of the ways mentioned in clause 24.2 if the law permits this. Nothing in clause 24 affects BFF's right to serve in any other way permitted by law.

EXECUTED as an agreement.

EXECUTED by **Business Fuel Finance Pty Ltd**  
(ACN 629 419 021) by its Attorney under Power  
of Attorney dated 28 July 2023

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

\_\_\_\_\_  
Name of Attorney

\_\_\_\_\_  
Title

#### EXECUTED by Borrower

Executed by [**Borrower Name**] (ABN [Borrower ABN]) by being signed by:

\_\_\_\_\_  
Signature of Sole Director and Sole Company Secretary

\_\_\_\_\_  
Name of Sole Director and Sole Company Secretary

#### Executed by Guarantor/s

Signed by **[Guarantor Name]** (Guarantor)

---

Signature

Name: [Guarantor Name]

Address: [Guarantor Address]

**SCHEDULE 1**

<b>Item 1 – Borrower</b>	<b>[Borrower Name]</b> ABN <b>[Borrower ABN]</b>
<b>Item 2 – Facility Amount</b>	<b>\$ [Facility Amount]</b>
<b>Item 3 – Facility Fee</b>	<b>\$ [Facility Fee]</b>
<b>Item 4 – Facility Sum</b>	<b>\$ [Facility Sum]</b> (Total payment amount assuming no Event of Default arises at any time)
<b>Item 5 – Drawdown Fee</b>	<b>\$ [Drawdown Fee]</b> (Deducted from the Facility Amount at the time of disbursement)
<b>Item 6 – Total Cost of Credit</b>	<b>\$ [Total Cost of Credit]</b> (Assumes no Event of Default arises at any time)
<b>Item 7 – Term</b>	<b>[Term] Weeks</b>
<b>Item 8 – Weekly payment (Due Amount)</b>	<b>\$ [Weekly Payment Due Amount]</b>
<b>Item 9 – Other Fees and Charges</b>	<p><b>Missed Payment Fee: \$[Missed Payment Fee]</b></p> <p>This fee may be charged for each Due Amount not received by BFF on or before the due date.</p>
	<p><b>Default Interest Rate: [Default Interest Rate]% per annum on a compounding basis</b></p> <p>Interest will be charged at the Default Interest Rate on all overdue amounts (such as Due Amount not paid on Due Date) outstanding from the day after the Due Date by applying the daily rate of <math>[Default\ Interest\ Rate/365]\%</math> to the unpaid daily balance.</p> <p>Also see clauses 6.1, 6.2 and 11.3</p>
<b>Item 10 – Payment of Facility Sum, [Default Interest and Missed Payment Fee]</b>	<p>The Facility Sum is to be paid by BFF deducting 52 weekly payments of <math>[\text{Weekly Payment Due Amount}]</math> from Borrower's nominated account.</p> <p>If there is an Event of Default the outstanding balance of the Facility Sum and other money can become due and payable as stated in clause 11.2.</p> <p>Borrower must paid interest on overdue amounts at the Default Interest Rate.</p> <p>See clauses 6.1, 6.2 and 11.3</p>
<b>Item 11 – Security Interest - Borrower</b>	In addition to the Security granted in accordance with clause 10.2, Borrower hereby grants to BFF a charge over all of the following property acquired before or after Borrower entered into this Agreement.
<b>Item 12 - Security Interest - Guarantor</b>	In addition to the Security granted in accordance with clause 10.2, Guarantor hereby grants to BFF a charge over all of the following property acquired before or after Guarantor entered into this Agreement.
<b>Item 13 - Pre-settlement Conditions</b>	
<b>Item 14 - Borrower or Guarantor Trust</b>	None specified

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**SCHEDULE 2 – DISBURSEMENT INSTRUCTIONS**

Borrower and Guarantor hereby irrevocably authorise BFF to disburse the Facility Amount as follows on Borrower's behalf.

<b>Disbursement</b>	<b>BSB</b>	<b>Account Number</b>	<b>Account Name</b>	<b>Reference</b>	<b>Amount</b>
D - 1	[BF BSB]	[BF Account]	[BF Account Name]	Drawdown Fee	\$ [Drawdown Fee Amount]
D - 2	[Recipient BSB]	[Recipient Account]	[Recipient Account Name]	BUSFUEL	\$ [Facility Amount <i>minus</i> Drawdown Fee Amount]

**Total Disbursement:\$ [Facility Amount]**

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## Direct Debit Request

Request and Authority to debit the account named below to pay Business Fuel Finance Pty Ltd

Name of Account:		
Address:	Suburb:	State:
Postcode:	Mobile:	

### Payment Agreement

I/We authorise and request the debit user detailed below to debit payments from my/our nominated account, specified below, at intervals and amounts as directed by **Business Fuel Finance Pty Ltd** (hereafter referred to as "the entity") as per the Terms and Conditions of the **Business Fuel Finance Pty Ltd Facility Agreement** and any subsequent agreements through the Bulk Electronic Clearing System (BECS).

### EQT ATF Business Fuel from Bank or Cheque Account, Building Society or Credit Union

The maximum amount to be debited at any one time is: \$ [Weekly Payment Due Amount]	
The first debit may be made on the day we agree with the entity and then weekly on the days we agree with the entity. If it is not agreed, the days will be advised by the entity.	
Financial Institution:	Branch:
BSB Number:	Account Number:
Account Name:	

**NOTE** – Direct Debiting through BECS may not be available on the full range of accounts – if in doubt please refer to your financial institution.

### Terms and Conditions

I/We hereby authorise Equity Trustees Limited as trustee of the ScotPac Business Fuel Warehouse Trust 2022 (ABN 16 988 091 719), (hereafter referred to as "EQT ATF Business Fuel", or the "Debit User"), User ID number 633347 to make periodic withdrawals from the financial institution specified above on behalf of the entity. This authority will be interpreted and enforced pursuant to the laws of Queensland. I/We request that, until I/we provide further notice in writing, to direct debit my/our account as stated above, any amounts which **EQT ATF Business Fuel User ID number 633347**, may debit or charge me/us through the system at the request of the entity.

1. The financial institution may, in its absolute discretion, determine the order of priority of payments by it of any money pursuant to this request or any authority or mandate.
2. The financial institution may, in its absolute discretion, at any time by notice in writing to me/us terminate this request as to future debits.
3. The entity may, by prior arrangement and advice to me/us vary the amount or frequency of future debits by giving not less than 30 days' notice. When the entity does so, if I/we are unable to make payment either of the amount requested or on the date selected, I/we should contact the entity **as soon as possible** and make an alternative arrangement.
4. I/we must verify account details against a recent bank statement and if uncertain I/we should contact my/our bank before completing the Direct Debit Request.
5. **It is my/our responsibility to ensure that I/we have sufficient clear funds** in my/our nominated account to enable the direct debit to be honoured by my/our bank. **Direct debits normally occur overnight; however, transactions can take up to three (3) days** depending on your bank.
6. Any dispute arising from this or subsequent direct debits should, in the first instance, be directed to the entity. If no resolution is forthcoming I/we must contact my/our bank.
7. EQT ATF Business Fuel and the entity will keep your information about my/our nominated account at the financial institution private and confidential unless this information is required to investigate a claim made, relating to an alleged incorrect or wrongful debit, or otherwise required by law.
8. By signing this form, I/we agree to give any notice of cancellation in writing to the entity.
9. I/we authorise the entity and the Debit User to verify the details of the abovementioned account with my/our financial institution.
10. I/we authorise the financial institution to release information to allow the entity and the Debit User to verify the account details specified above.

**This authority remains in force in accordance with the terms and conditions as described on these pages and the Direct Debit Request Service Agreement. I/We have been asked to read these pages and the Direct Debit Request**

**Service Agreement. If I/we had any questions they have been answered to our satisfaction.**

\_\_\_\_\_  
Signature of Sole Director and Sole Company Secretary

\_\_\_\_\_  
Name

**Date:** [Date]

Borrower(s) to Initial Here .....

# Direct Debit Request Service Agreement

For the purposes of this DDR Service Agreement, the terms “we” and “us” refer to Business Fuel Finance Pty Ltd, the Credit Provider.

## Direct Debit Request (DDR) Servicing Agreement

This DDR Service Agreement forms parts of the terms and conditions of the DDR Authority and should be read in conjunction with the DDR Authority.

### Direct Debits

Direct debits are a convenient payment mechanism and can be arranged for one off payments, ongoing payments, for fixed amounts or amounts that vary from time to time. The basis on which the direct debits will be processed is as follows:

#### Debiting Your Account

By signing a direct debit request, you have authorised us to arrange for funds to be debited from your account. You should refer to the direct debit request and this DDR Service Agreement for the terms of the arrangement between you and us. We will only arrange for funds to be debited from your account as authorised in the direct debit request.

#### Non Business Days

If the debit day falls on a day that is not a business day, we may direct your financial institution to debit your account on the following business day. If you are unsure about which day your account has or will be debited you should ask your financial institution. In the DDR Service Agreement a day is not a business day if it is a Saturday, Sunday or national bank holiday.

#### Changing Your DDR Authority

We will provide you with not less than 30 days' notice if we wish to change any of the details on which the basis of your DDR Authority is processed (For example – if we change the day of processing or the date on which the amount of your DDR is calculated).

#### Stopping or Cancelling your DDR

You may stop or cancel your DDR at any time by contacting either us or your financial institution and providing written notification to: - **The Manager, PO Box 9237 GCMC 9726** emailing us on **enquiries@businessfuel.com.au**, or telephoning us on **1300 660 681**. **Please note: if we have already processed the payment due, we are unable to stop it.**

**WARNING: If you do not make an alternative arrangement to pay us or fail to pay us, you will be in default under your contract.**

#### Clear Funds

You should ensure that you have sufficient clear funds in your account to enable the DDR to be honoured by your financial institution.

#### Returned or Dishonoured DDR's

If your DDR is dishonoured or returned unpaid by your financial institution for any reason, you will be responsible for payment of the debited funds together with any return fees and administration costs we incur **in addition to any fees charged to your account by your financial institution**. We reserve the right to cancel the drawing arrangements if three or more drawings are returned unpaid by your nominated financial institution and arrange with you an alternative repayment method.

#### Debit Identification

Debits will be identified on your bank (or credit card, where applicable) statement by the use of the name EQT ATF Business Fuel followed by your contract number.

#### DDR Dispute Resolution

If you wish to dispute any DDR transaction that we have processed, in the first instance, you should contact us **as soon as possible** by writing to – **The Manager, PO Box 9237, GCMC QLD 9726**, emailing us on **enquiries@businessfuel.com.au**, or telephoning us on **1300 660 681**.

We will then investigate your claims and if we ascertain that the account was debited erroneously, we will arrange to reimburse your account with your financial institution. We will advise you in writing of our findings and what we are doing to correct the situation. If you do not agree with us or if we fail to resolve any dispute you raise, you can contact the financial institution that holds your account and make a formal claim by completing a DDR Customer Claim form. Once you have done this, your financial institution will investigate whether the transaction was authorised by you and respond in writing whether the claim is accepted. If the claim is made within the first 12 months after the transaction date, you should receive a response within 30 days from the date of your claim.

#### Your records

No account records or account details will be disclosed to any person(s) except where such information is required in connection with any claim relating to an alleged incorrect or wrongful debit or unless we are required to do so by law.

#### Liability

Funds collected by EQT ATF Business Fuel are held in trust until disbursement to the entity. In the event of fraud where EQT ATF Business Fuel is not at fault, EQT ATF Business Fuel will be free of any legal liability.

#### Your Account

You should be aware that some financial institutions may not allow DDR's to be processed to certain types of accounts. You should check with your financial institution or recent statements to ensure correct details are provided on the DDR Authority.

#### Contact Us

If you wish to make any inquiries about your DDR you can contact us by writing at: - **The Manager, PO Box 9237, GCMC 9726** emailing us on **enquiries@businessfuel.com.au**, or telephoning us on **1300 660 681**.

Borrower(s) to Initial Here .....