

➤ Chattel Mortgage Facility

Terms and Conditions



CHATEL MORTGAGE FACILITY

The offer we make

We provide chattel mortgage facilities. We also provide debtor finance and other commercial finance facilities. This document contains our usual terms and conditions for chattel mortgage facilities. A chattel mortgage facility allows you to borrow money from us to purchase vehicles, equipment and other capital items for your business. You can also use your existing vehicles, equipment and other capital items to borrow money for approved business purposes.

We may provide a letter of offer to you in which we offer to provide a chattel mortgage facility to you. You accept our offer by signing the acceptance provision in the letter of offer and returning it to us, or by accepting our offer in another way which is acceptable to us.

If you accept our offer and satisfy all applicable conditions, we will provide the chattel mortgage facility to you in accordance with the facility agreement. The facility agreement is this document as amended and supplemented by the letter of offer.

The letter of offer may refer to guarantors. Those guarantors are bound if they sign the acceptance provision in the letter of offer or agree to be bound in another way which is acceptable to us. They will then provide a guarantee, indemnity, other undertakings and representations to us. Those obligations are set out in the facility agreement.

You and the guarantors give security interests to us as specified in the facility agreement. In particular, see clauses 8 and 26.1. Other security documents may also need to be signed.

Overview of the facility we provide

You can send a Chattel Mortgage Schedule to us. The form of that schedule is at the end of this document. You can do that any number of times. The schedule needs to be completed and signed as required by the facility agreement.

When you send the schedule to us you offer to borrow the specified loan amount from us. If we accept that offer we will make the loan. The loan is made for a fixed term. You cannot end it earlier, unless we agree with you that it should end. The facility agreement specifies when we can end it earlier and the amount you will need to pay.

If the loan is made so that you can purchase the items specified in the schedule, a security interest is given to us over those items. Alternatively, if you already own the specified items, we take a security interest over them and the loan is made for the business purpose specified in the schedule. As noted above, security interests will also be given over other property.

We can accept or decline each offer you make at our discretion. If we accept your offer a contract arises between you and us. We will make the loan to you subject to agreed conditions and limitations. A separate contract arises for each offer and acceptance. The terms and conditions for each contract are found in the schedule and the facility agreement.

The guarantors give an unconditional and irrevocable guarantee and indemnity for all money you owe and all obligations you have to us, or a related company, under any document at any time. This includes all of your obligations under the facility agreement and each of those separate contracts. A guarantor is liable even if the guarantor did not know that a schedule had been sent to us, or had been accepted by us, or if you breach any of your obligations.

Our facility agreement

Some words which are used in the facility agreement and each Chattel Mortgage Schedule are given a special meaning and rules are applied for the interpretation of those documents. Those meanings and rules are in clauses 44 to 47 of this document. In particular, the meaning of words printed in italics is explained in clause 46.

The facility agreement and any schedule can change. How and when changes can be made is explained in clause 19. If a change is made you and the guarantors will be bound by it.

This page is only a summary of some features of the chattel mortgage facility we provide. It is essential that you and each person who is considering agreeing to be a guarantor obtain a copy of the letter of offer, this document and all other relevant documents. It is essential that you and each of those persons carefully read those documents before signing. In particular we draw to your attention that amounts can be payable under clauses 4.8 and 21.2 if a contract ends early, clause 18 excludes some of our liabilities and clause 39 allows us to disclose specified information.

We recommend that you and each person who is considering agreeing to be a guarantor obtain independent legal, financial, accounting and taxation advice before signing.

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CHattel Mortgage Facility Terms and Conditions

A. INTRODUCTION

1 Agreeing to the terms and conditions

- 1.1 The chattel mortgage facility is provided by Scottish Pacific Business Finance Pty Ltd (ACN 008 636 388) or Scottish Pacific (BFS) Pty Ltd (ACN 101 657 041). The *entity* which provides the facility is specified in a separate *letter of offer* and it is called "ScotPac". The terms and conditions of the facility are found in this document and the *letter of offer*. The *letter of offer* provides various details which this document states will be found in the *letter of offer*. The *letter of offer* can also include conditions precedent, special provisions and operating conditions and it can change this document. This document, as amended and supplemented by the *letter of offer*, is called the *facility agreement*.
- 1.2 The *letter of offer* explains how the *client* and each *guarantor* agree to the *facility agreement*. The *facility agreement* will come into force when the *client* has agreed to it.
- 1.3 The meaning of words printed in italics is explained in clause 46. As explained in clauses 45 and 47 some other terms are given a special meaning.

2 Agreement to lend

- 2.1 The *client* can from time to time give ScotPac a *schedule*. Before the *client* gives the first *schedule* it must satisfy any conditions precedent included in the *letter of offer* and give ScotPac any other documents or information ScotPac reasonably requires.
- 2.2 Each time the *client* gives ScotPac a *schedule* it offers to borrow the *loan amount* specified in the *schedule*. The *client* offers to do so on the terms and conditions in the *schedule* and the *facility agreement*. If there is any inconsistency between the *schedule* and the *facility agreement* the *schedule* prevails to the extent of the inconsistency.
- 2.3 ScotPac can accept or decline the *client's* offer at ScotPac's discretion. ScotPac accepts the offer by telling the *client* that the offer is accepted or by advancing the *loan amount*. If ScotPac accepts the offer a *contract* arises between ScotPac and the *client*. The terms and conditions of that *contract* are found in the *schedule* and the *facility agreement*. A separate *contract* arises each time an offer is accepted. Each of those *contracts* is a security agreement as defined in the *PPSA* which comes into force when the offer is accepted.
- 2.4 ScotPac will generally accept the offer if there is no *default event* or *potential default event* and the amount which is the total of the outstanding balance of all *loan amounts* under all existing *contracts* and the *loan amount* which is requested in the offer is less than the *facility limit*. However, ScotPac is not required to accept any offer.
- 2.5 When a *contract* arises ScotPac agrees to lend to the *client* the *loan amount*. However, ScotPac is only required to make the loan if each of the following requirements has been satisfied.
 - (a) All conditions specified in the *facility agreement* or the *schedule*, or which the *client* has been told will apply, have been satisfied. Those requirements include the conditions precedent specified in the *letter of offer*, any requirements in the *facility agreement* and any special provisions and operating conditions specified in the *letter of offer*.
 - (b) ScotPac has received (and, acting reasonably, is satisfied with):
 - (i) either:
 - the invoice for the *equipment* from the supplier of it. That supplier must be acceptable to ScotPac; or
 - evidence that the *client* is the sole owner of the *equipment* free of any *security interest* other than a *permitted interest*;
 - (ii) all identification details for the *equipment* and the *transaction parties* which ScotPac reasonably requires;
 - (iii) evidence of the insurance which the *facility agreement* requires or which ScotPac has said will be required; and

- (iv) any other information or documents ScotPac reasonably requires.
- (c) ScotPac, acting reasonably, is satisfied with the value of the *equipment* and the title to it. In particular ScotPac must be satisfied that the *client* is or will be the sole owner of the *equipment* and that ScotPac will have a first ranking *security interest* acceptable to ScotPac over the *equipment* by no later than the time the *loan amount* is advanced. If the *client* is purchasing the *equipment* and the price is more than the *loan amount* the *client* will need to pay the difference before the *loan amount* is advanced.
- (d) There is no *default event* or *potential default event*.
- 2.6 If ScotPac has accepted the *client's* offer and those requirements have been satisfied the *loan amount* will be advanced within ten *working days* of the *client* giving the *schedule* to ScotPac.
- 2.7 ScotPac can waive any of the requirements outlined in clauses 2.1 or 2.5. ScotPac can give to the waiver subject to any reasonable conditions ScotPac stipulates to the *client*.

B. LOAN TERMS

3 The advance and charges

- 3.1 When ScotPac advances the *loan amount* it will do so as directed in the *schedule*. Alternatively, ScotPac can act on the written or oral instructions of the *client*. In particular those instructions can be provided by telephone or e-mail; any *authorised officer* of the *client* can provide them; and if the *client* is more than one *entity* any of those *entities* can give the instruction.
- 3.2 Charges (including interest) are payable to ScotPac for the advance. They are specified in the *schedule*.
- 3.3 The *loan amount* is advanced for a fixed term and the interest which is payable on the *loan amount* is fixed. The *loan amount* is repaid and those charges (including interest on the *loan amount*) are paid by the fixed instalments described in clause 4. However, additional interest must be paid if any instalment is not paid when it should have been paid and some other amounts may have to be paid. That additional interest and those amounts are described in clause 5.

4 Repayment of loan and payment of charges

- 4.1 The *client* must repay the *loan amount* and pay the charges mentioned in clause 3.2 by the instalments specified in the *schedule*.
- 4.2 If an instalment is due on the 29th, 30th or 31st day of a *month* and that *month* does not have that date the *client* must pay on the last *working day* of the *month*. If an instalment is due on a day that is not a *working day* the *client* must pay on the next *working day*.
- 4.3 Unless ScotPac decides otherwise a payment by the *client* will be applied towards satisfaction of the *amount owing* in the following order:
- first, amounts payable under clause 5.3;
 - secondly, amounts payable under clause 5.2;
 - thirdly, interest payable under clause 5.1;
 - fourthly, instalments payable under clause 4.1; and
 - fifthly, any other amounts which are an *amount owing* and are presently due and payable. For example, if the *client* has a debtor finance facility a payment can be used to pay an amount due and payable under that facility.
- 4.4 If an allocation in accordance with clause 4.3 means that the instalment due under clause 4.1 is not paid or is not paid in full the *client* must pay the shortfall within two *working days* of ScotPac making a demand for payment.
- 4.5 If the *client* has two or more *contracts* and it makes a payment which is not sufficient to satisfy the amounts payable under each *contract* ScotPac may allocate the payment to the *contracts* in the proportions as ScotPac decides.
- 4.6 If an amount is payable by ScotPac (or an *entity* which is *related* to ScotPac) to the *client* under any other agreement ScotPac (or that *entity*) may use it towards satisfaction of any amount due and payable under the *facility agreement* or any *contract*. For example, if the *client* has a debtor finance facility ScotPac can decide to

use an amount otherwise payable to the *client* under that facility towards satisfaction of amounts due and payable under the chattel mortgage facility. This is the case despite any allocation the *client* may make and any provision of any document.

- 4.7 Each *contract* is for a fixed *term*. The *client* may only repay the *loan amount* and pay the charges mentioned in clause 3.2 by the instalments described in clause 4.1. However, ScotPac may, in its absolute discretion, allow the *client* to pay earlier on the terms and conditions as agreed between ScotPac and the *client*. The *client* can be required to pay earlier in accordance with clauses 4.8 and 21.2.
- 4.8 If any *equipment* is seized, stolen, lost, destroyed, defective or seriously damaged, ScotPac may give the *client* a notice, or the *client* may give ScotPac a notice, which ends the *contract* for that *equipment*. The *client* must then immediately pay to ScotPac an amount which is the total of:
- (a) any instalments which should have been paid but have not been paid together with, if the notice is given on a day which is not an instalment payment date, a pro rata portion of the next instalment to cover the period from the last instalment payment date to the day the notice is given;
 - (b) the introduction fee, brokerage or commission (see clause 6.2) which has not been reimbursed to ScotPac (see clause 45.9); and
 - (c) the early termination fee (see clause 45.10).

Interest is payable on that amount under clause 5.1 until it is paid.

- 4.9 The instalments described in clause 4.1 must be paid on the due date by using a direct debit authority. Other amounts due and payable by the *client* can also be paid by using that authority if this is permitted by the authority. The following applies in relation to the authority.
- (a) The *client* must establish and maintain an Australian dollar denominated account with an Australian branch of an *ADI* which is prepared to accept the authority and make the required transfer. That will be the nominated account for the purposes of the authority.
 - (b) The *client* authorises ScotPac to arrange for that *ADI* to irreversibly transfer to an account ScotPac nominates the amount ScotPac specifies. The *client* must do anything ScotPac reasonably requires so that the transfers occur. In particular the *client* must give ScotPac an authorisation to draw on the nominated account in a form ScotPac reasonably requires. ScotPac will give the *client* at least 14 days' notice of any changes to the direct debit arrangements.
 - (c) The *client* must ensure that its *ADI* will comply with the instruction to transfer funds – for example, the *client* must ensure that there are sufficient funds in the nominated account. The *client* must tell ScotPac if the nominated account is closed.
 - (d) The *client* should, in the first instance, contact ScotPac about anything concerning the direct debit arrangement. This includes requests for a deferment of the debit or a change to the arrangements.
 - (e) The *client* must not change the arrangements for the direct debit without ScotPac's approval.

5 Interest on overdue amounts, fees, charges and GST

- 5.1 Amounts which have fallen due to be paid and have not been paid on the due date bear interest at the *overdue rate* from the date they should have been paid until they are paid. For example, if an instalment mentioned in clause 4.1 is not paid on the due date it bears interest at the *overdue rate* from the due date to the date of payment. Similarly, all other overdue amounts bear interest at the *overdue rate*. This interest will be calculated daily and the *transaction party* must pay it on or before the date the next instalment is due to be paid unless it is paid in accordance with clause 4.3. If the amount becomes covered by a court order, the *transaction party's* payment obligation under this clause is a separate obligation although the *overdue rate* will be replaced by the rate in the court order if it is higher. Interest which should have been paid but has not been paid is added to other amounts owed by the *transaction party* and the total amount bears interest. A *transaction party's* obligation to pay on time is not affected by this clause.
- 5.2 ScotPac is entitled to any fees specified in the *letter of offer* or the *schedule*. They are in addition to the charges mentioned in clause 3.2 and are payable by the *client* to ScotPac at the time specified in the *letter of offer* or the *schedule*. If it is not specified, they are payable within two *working days* of ScotPac making a demand for payment.
- 5.3 ScotPac is entitled to payment by the *client* for all reasonable costs (including taxes), charges and expenses borne by ScotPac in relation to the *facility agreement* or a *contract*, in executing it, delivering it, amending it, performing it, administering it and discharging any *security interest* which arises under it. ScotPac is also entitled

to payment by the *client* for all costs (including taxes), charges and expenses borne by ScotPac in relation to enforcing the *facility agreement* or a *contract* (or a *security interest* which arises under either of them or at law), considering the enforcement of it, attempting to enforce it and ending it. The costs, charges and expenses do not include those which were borne by ScotPac due to ScotPac's mistake, negligence, fraud or wilful misconduct (see clause 45.6). The costs, charges and expenses include *ADI* charges; electronic funds transfer (including EFTPOS and BPay) charges; fees for a payment being made by direct debit; credit and debit card fees; stamp duty; transaction duty; all other taxes, duties, impositions and penalties (unless the penalty is incurred due to ScotPac's default); those ScotPac incurs in complying with the *PPSA*; those ScotPac bears by retaining consultants to evaluate matters of material concern to ScotPac; charges for the use of the *information connection*; and registration fees. In the case of legal costs and expenses, ScotPac's entitlement is for the full amount of the cost or expense and includes amounts for in-house lawyers charged at their usual rates. These costs, charges and expenses are not included in the charges mentioned in clause 3.2 and ScotPac may add them to the next instalment described in clause 4.1. If they are not added to an instalment the *client* must pay them within two *working days* of ScotPac making a demand for payment.

- 5.4 Where ScotPac is entitled to an amount for a supply made by ScotPac the amount is stated or calculated exclusive of GST. The entitlement can be under any *transaction document* or on any other basis. In addition to that amount, the *transaction party* must pay to ScotPac any GST chargeable in respect of the supply so that ScotPac will receive and retain, after payment of any GST, the amount otherwise payable by the *transaction party* for the supply. Any GST payable under this clause is payable by a *transaction party* when it is required to make the payment in respect of which the GST is chargeable. Where a *transaction party* is required to pay for, compensate for, reimburse or contribute to any loss, the amount required to be paid, compensated, reimbursed or contributed by the *transaction party* will be the sum of that amount (net of any input tax credits claimed by ScotPac in respect of that amount) and, if ScotPac's recovery from the *transaction party* is a taxable supply, any GST payable in respect of that supply.

6 Miscellaneous payments

- 6.1 If ScotPac believes on a reasonable basis that it is liable or may become liable to hand over any amount the *client*, a *guarantor* or any other *entity* has paid to ScotPac in connection with a *transaction document*, the *client* must pay that amount to ScotPac. ScotPac may treat the original payment as if it had not been paid.
- 6.2 If the *client* has been introduced to ScotPac by a third party (such as a broker), ScotPac may pay an introduction fee, brokerage or commission to the third party. If ScotPac introduces a third party (such as someone who could provide another commercial finance facility) to the *client* that third party may pay an introduction fee, brokerage or commission to ScotPac. In each case ScotPac will, as soon as possible following a request from the *client*, provide the *client* with details of the introduction fee, brokerage or commission. When the third party introduces the *client* to ScotPac it acts as the *client's* agent. ScotPac is not responsible for its selection or the assessment it undertakes. When ScotPac introduces the third party to the *client* it is not acting as agent for any *entity*. If ScotPac receives information from an *entity* or an *entity* assists in the processing of an application, ScotPac may pay a commission to that *entity*. The *client* consents to the arrangements referred to in, or described in, this clause 6.2.
- 6.3 If, at any time, the *amount owing* (but only to the extent it is owing under the *facility agreement* or a *contract*) is for any reason greater than the *facility limit* the *client* must pay the difference to ScotPac within two *working days* of ScotPac making a demand for payment. However, this does not apply if the *amount owing* is greater than the *facility limit* because of a reduction to the *facility limit* under clause 19.1(b). This clause 6.3 does not limit the *client's* other payment obligations. ScotPac will determine which *obligations* of the *client* are reduced by the payment.
- 6.4 The *client* must pay money payable to ScotPac in cleared funds. Except as required by law, it must do so without any set-off, abatement, counterclaim, withholding or deduction. Apart from those requirements, the *client's* rights against ScotPac are not affected. If the law does require a withholding or deduction (such as a withholding for tax) the *client* must pay an additional amount to ensure that ScotPac receives and retains a net amount equal to what it would have received and retained if no withholding or deduction had been required. Unless otherwise agreed, the *client* must make each payment in Australian dollars. The *client* must pay ScotPac by direct debit in accordance with clause 4.9. If that provision does not apply payment must be made by cheque delivered to ScotPac's *operations office*, or by transferring the money to an *ADI account* ScotPac specifies. Payment must be made immediately it is due. If the *facility agreement* or the *schedule* does not specify when it is due, it is payable within two *working days* of ScotPac making a demand for payment.
- 6.5 ScotPac is entitled to set-off any money that ScotPac (or an *entity* which is *related* to ScotPac) owes to a *transaction party* against any *obligations* that any *transaction party* or an *entity* which is *related* to a *transaction party* owes to ScotPac (or an *entity* which is *related* to ScotPac). This includes money owed (whether actually, contingently or prospectively) under any agreement or *obligation* or on any account. If an amount owed cannot be immediately ascertained, ScotPac is entitled to make a reasonable estimate. If ScotPac makes an estimate

it will promptly make any required adjustments when the amount owed can be ascertained. ScotPac may also combine any accounts recording transactions between the *client* and ScotPac. ScotPac's rights under this clause continue even if a *transaction party* is *insolvent* and despite anything else which may happen. ScotPac may exercise its rights under this clause without giving notice to any *entity* but it will, as soon as possible following a request from the *client*, give the *client* details of any exercise of its rights.

C. WARRANTIES AND OBLIGATIONS CONCERNING EQUIPMENT

7 Client's warranties in relation to equipment

- 7.1 The *client* warrants to ScotPac each of the following.
- (a) The *client* is the owner of the *equipment* or, if it does not already own the *equipment*, it will be the owner when the *loan amount* is paid in connection with that *equipment*.
 - (b) The *equipment* is not the subject of any *security interest* (except a *permitted interest*) and has not been leased, let or hired.
 - (c) The *equipment* is located in Australia and will be used in an enterprise (as defined in the *GST Act*) the *client* carries on.
 - (d) The *equipment* has not been deposited with any *entity* as security for the payment of money or performance of any *obligation*.
 - (e) All information the *client* has given to ScotPac in connection with the *contract* (including all information in connection with the *equipment*) is correct and not misleading in any material respect. This includes information received using the *information connection*. The *client* has not withheld any information from ScotPac which could reasonably be expected to affect the exercise of ScotPac's discretion under clause 2.3.
 - (f) The *client* has satisfied itself as to the merchantability, quality, suitability, safety and fitness for purpose of the *equipment*.
 - (g) Any serial number or other description which could be relevant for the purpose of identifying the *equipment* as disclosed to ScotPac is accurate. This includes a vehicle identification number, registration number, chassis number and manufacturer's number. If requested by ScotPac the *client* must promptly give that information to ScotPac.
- 7.2 ScotPac will rely on the warranties in clauses 7.1, 11.1 and 25.1 when it accepts an offer made by the *client* in accordance with clause 2.3.

8 Security given to ScotPac

- 8.1 By entering into a *contract* the *client* gives ScotPac a *security interest* in the *equipment*. The *security interest* also covers any documents and electronic data which concern the *equipment* (such as bills of lading, other title documents, records concerning the maintenance, service and use of the *equipment*, records concerning compliance with any law, and the chattel paper described in clause 40.6); rights and interests which the *client* may have in connection with the *equipment* (such as warranty claims against the supplier); the rights and interests of the *client* in each insurance policy which relates in any way to the *equipment*; and the proceeds of the *equipment* and those things. If for any reason it is necessary to determine the nature of that *security interest* it is a fixed charge. The *client* gives that *security interest* to secure the payment of the *amount owing* and the performance of all the *client's obligations* under each *transaction document*. The *security interest* which ScotPac obtains will be a purchase money security interest to the extent this is possible under the *PPSA*.
- 8.2 If the *client* owns the *equipment* or has an interest in the *equipment* in its own right it gives the *security interest* as beneficial owner. If it does so as trustee of a trust it gives the *security interest* in the exercise of its powers as trustee.
- 8.3 The *facility agreement*, each *contract* and each *security interest* mentioned in clauses 8.1 or 26.1 is a continuing security despite any payment or anything else and will not merge in any other *security interest*. When the *client* has paid all amounts owing in connection with a *contract* the *client* may require that ScotPac release the *equipment* which was the subject of that *contract* (together with the other associated items described in clause 8.1) from the *security interest*. However, ScotPac is only required to do so if there are no amounts then due and payable by the *client* to ScotPac on any account, there is no continuing *default event* and ScotPac is satisfied that it will not be required to hand over any amount it has received. A release does not affect ScotPac's *security*

interest in any other *equipment* (or other associated items), ScotPac's rights under any *transaction document* or a *transaction party's* rights and *obligations* under any *transaction document*.

- 8.4 In addition to the *security interest* in *equipment* and associated items ScotPac has other *security interests* as described in clause 26.

9 Obligations regarding equipment

- 9.1 The *client* must do each of the following.

- (a) Keep the *equipment* in good repair and working condition. If the manufacturer or supplier of the *equipment* has instructed or recommended that the *equipment* be used, maintained or serviced in any way the *client* must use, maintain or service it in accordance with the instruction or recommendation.
- (b) Repair the *equipment* in any way ScotPac, acting reasonably, may require. However, the *client* does not have authority to pledge ScotPac's credit or allow a lien (other than a *permitted interest*) to arise.
- (c) Tell ScotPac immediately if the *equipment* is seized, stolen, lost, destroyed, defective or seriously damaged.
- (d) Comply with all laws, licences, requirements, orders and notices in connection with the *equipment* and the use of the *equipment*.
- (e) Pay all taxes and fines and all registration, licence and other fees payable in connection with the *equipment* or its operation and ensure that all rent, rates, taxes, charges and other impositions payable in connection with the *business premises* are paid.
- (f) Ensure that the *equipment* is located at the *business premises* and is not moved from the *business premises* except in the ordinary course of business or for the purposes of service or repair. It must not be permanently moved from the *business premises* or taken out of Australia without ScotPac's consent.
- (g) Allow ScotPac to inspect the *equipment* at all reasonable times, enter any premises where the *equipment* is located or is believed to be located and exercise its rights over the *equipment*.
- (h) If the *client* is not the owner and sole occupier of those premises the *client* must ensure that ScotPac has the right to enter the premises and exercise its rights over the *equipment*. If ScotPac asks for it, the right must be confirmed in the way ScotPac, acting reasonably, requires. For example, ScotPac may require that each owner of those premises and an *entity* having a *security interest* in them sign a document allowing ScotPac to enter the premises and exercise its rights over the *equipment*, including by removing it.
- (i) Anything ScotPac, acting reasonably, requires to provide more effective security over the *equipment* or for the payment of the *amount owing*. The *client* could, for example, be required to obtain consents, sign and produce documents and produce receipts.
- (j) Give ScotPac all documents which evidence title to the *equipment* and any other information or documents ScotPac, acting reasonably, may require concerning the *equipment* or the *contract*. This includes evidence of any required registration or licence and that the amounts referred to in clause 9.1(e) have been paid.

- 9.2 The *client* must not do any of the following without ScotPac's consent.

- (a) Use the *equipment* or permit the *equipment* to be used predominantly for personal, domestic or household purposes or in any way which breaches any law.
- (b) Sell the *equipment*, give a *security interest* (other than a *permitted interest*) in the *equipment* or allow a *security interest* (other than a *permitted interest*) to arise or continue in the *equipment*.
- (c) Lease, let or hire the *equipment* or give any *entity* any interest (other than a *permitted interest*) in the *equipment*. If the *equipment* is leased, let or hired the terms of that arrangement must be approved by ScotPac, the *client* must ensure that the user complies with obligations equivalent to those in clause 9 and the *security interest* which is given by the third party to the *client* for the purposes of the *PPSA* must be registered by the *client* on the *PPSR* and be continuously perfected (including as a purchase money security interest if applicable). ScotPac may specify how it is to be registered and the required priority of the *security interest*.
- (d) Deposit the *equipment* with any *entity* as security for the payment of money or performance of any *obligation*.

- (e) Dispose of the *equipment* in any other way or enter into an agreement to dispose of the *equipment* or to do any of the things mentioned above.
- (f) Allow the *equipment* to be attached to land or buildings in a way that could mean the *equipment* becomes a fixture.
- (g) Allow the *equipment* to become an accession to any *property*, except *property* which is also *equipment*.
- (h) Permit any material alterations to be made to the *equipment* or permit any alteration to be made to any identifying marks on the *equipment* (such as vehicle registration number, chassis number, vehicle identification number, road vehicle engine number or other identifying number) which could identify the *equipment*.
- (i) Place, or allow to be placed, on the *equipment* any plates or marks that are inconsistent with the *client's* ownership of the *equipment* or ScotPac's *security interest* in it.
- (j) Allow anything to happen that means an *entity* (including a court) could lawfully seize or claim the *equipment*.
- (k) Anything that might reduce the value of the *equipment* or put at risk ScotPac's *security interest* in the *equipment*. In addition, the *client* must not allow anything to be done that might reduce the value of the *equipment* or put at risk ScotPac's *security interest* in the *equipment*. The reduction in value does not include a reduction due to fair wear and tear caused by the use of the *equipment* in the ordinary course of business.

10 Insurance obligations

10.1 The *client* must maintain insurance over the *equipment* in accordance with the following requirements.

- (a) The insurance must satisfy any reasonable requirements which ScotPac has specified. If ScotPac has not specified requirements the insurance must be for the full insurable value against fire, accident, theft and other risks as is customary for property of a like nature.
- (b) The insurer must be approved by ScotPac and the terms of the policy must be approved by ScotPac.
- (c) The *client* must ensure that the policy notes ScotPac's interest as mortgagee. Alternatively, ScotPac may require that it be designated as the loss payee, that the policy be transferred to it or that the policy be in the joint names of ScotPac and the *client* for their respective interests. The *client* must do so in the manner and form ScotPac, acting reasonably, requires. The *client* must not nominate any other *entity* as the loss payee, transfer the policy to any other *entity* or permit a *security interest* (other than a *permitted interest*) to arise in the policy or its proceeds without the approval of ScotPac.
- (d) The *client* must give ScotPac evidence of the insurance when ScotPac requests it. The evidence must be satisfactory to ScotPac, acting reasonably. If required by ScotPac the *client* must give ScotPac the insurance policy and certificates of insurance.
- (e) The *client* must pay the insurance premium before the due date and promptly produce receipts for premiums paid and other usual evidence of the insurance to ScotPac.
- (f) The *client* must comply with the requirements of the insurer to prevent the invalidation of the insurance or prejudice to the risk and must ensure that the cover is not reduced or cancelled. The *client* must tell ScotPac immediately if any of those things occurs or is likely to occur.

10.2 The *client* must give ScotPac any information or documents ScotPac, acting reasonably, may require concerning the insurance.

10.3 The *client* must tell ScotPac promptly if something happens which means that a claim could be made under the insurance policy. The *client* must make all claims it is entitled to make. ScotPac may, by notice to the *client*, make the claim or take over making a claim and can make, pursue or settle the claim and exercise rights under the policy in the way ScotPac, acting reasonably, chooses. If the *client* knows that a claim has been refused (in whole or in part) the *client* must promptly tell ScotPac.

10.4 The *client* must immediately tell ScotPac if it receives proceeds of an insurance claim. The *client* will hold those proceeds on trust for ScotPac and pay them as required by ScotPac.

10.5 If a notice is not given under clause 4.8 to end the relevant *contract* the proceeds will be used to replace or repair the *equipment* and the *client* must pay any shortfall between the cost of the replacement or repair and the proceeds. ScotPac can, subject to the rights of the insurer, require that the *client* arrange the replacement or the

repair and the *client* must then do so promptly, in accordance with any directions ScotPac, acting reasonably, may give.

- 10.6 If a notice is given under clause 4.8 the proceeds will be used to pay the amount due under clause 4.8 and the *client* must pay any shortfall. This does not affect the *client's* obligations under clause 4.8.
- 10.7 If there is any proceeds remaining after the replacement or repair (in the case of clause 10.5) or the payment of the amount due under clause 4.8 (in the case of clause 10.6) ScotPac will use it to pay the *amount owing* in the order in clause 4.3 and any balance will be paid to the *client*. There could, for example, be an amount remaining because the *client* has already paid for the replacement or repair or the *client* has already paid the amount which is due under clause 4.8. ScotPac's obligation to pay or apply money under clauses 10.5, 10.6 or 10.7 only arises when it receives the money and can be satisfied by crediting an *ADI account*. ScotPac has no further liability to the *client* in relation to the money.

D. GENERAL WARRANTIES AND OBLIGATIONS

11 Client's general warranties

11.1 The *client* warrants to ScotPac each of the following.

- (a) Each *schedule* given to ScotPac is validly signed by an *authorised officer* on behalf of the *client* and all information in the *schedule* is true, accurate and complete.
- (b) It has disclosed to ScotPac all of its existing *financial indebtedness*; all *security interests* in *property* in which it has an interest; and all *guarantees* given by it. It is not in breach of any material obligation in connection with *financial indebtedness*, *security interests* or *guarantees*.
- (c) All information and documents given to ScotPac and all statements made to ScotPac in connection with an application for a facility, the *facility agreement* or a *schedule* are true, accurate and complete in every material particular. This includes information received using the *information connection*. It also includes information and documents given and statements made by a third party (such as a broker) who introduced the *client* to ScotPac. The financial information which is given must give an accurate and up to date view of the financial position of each relevant *entity*.
- (d) It is not *insolvent*.
- (e) It is registered for *GST* or required to be registered for *GST*.
- (f) It has paid on time all taxes (including *GST*) payable by the *client* (except a liability approved by ScotPac), has disclosed to ScotPac all current and proposed arrangements for the payment of taxes and has lodged all tax returns (including Business Activity Statements) on time. If required by ScotPac, the *client* must provide a copy of those returns and evidence of payment of the tax to ScotPac. The *client* must comply with those arrangements and not change them without obtaining ScotPac's consent.
- (g) It enters into the *facility agreement* and each *contract* wholly for business or investment purposes and the *loan amount* is to be used for those purposes. Those investment purposes do not include investment in marketable securities and, when the *client* is an individual or strata corporation, do not include the purchase, renovation or improvement of residential property or the refinancing of credit which has been provided for any of those purposes. If the *client* is an individual, he or she also warrants that the acquisition of what is supplied under the *facility agreement* or a *contract* is not wholly or predominantly an acquisition for personal, domestic or household use or consumption.
- (h) Neither the *facility agreement* nor any *contract* violates or contravenes Part 2E (related party transactions) or Part 2J (transactions affecting share capital) of the Corporations Act 2001.
- (i) No *default event* is continuing and there is no *potential default event*.
- (j) It has an established place of business in Australia and is an Australian entity.
- (k) It has all licences, consents and permits which are required to conduct its business and it has complied with all laws when it conducts its business.
- (l) Its name and business characteristics (such as ABN, ACN or ARSN) as disclosed to ScotPac are correct and it does not have any other names or business characteristics which could be relevant for the purpose of identifying the *client*. If the *client* is an individual the *client* also warrants that his or her full name and date of birth as disclosed to ScotPac is correct.

- 11.2 The *client* must tell ScotPac if anything occurs which means that the *client* could not truthfully repeat each of the warranties in clause 11.1. It will not do anything, permit anything to be done or fail to do something which could cause a warranty which it gives in clauses 7 or 11.1 to be untrue or which could mean that it could not truthfully repeat a warranty.

12 Client's record keeping and reporting obligations

- 12.1 The *client* must keep proper and accurate books and records in accordance with the law and generally accepted accounting principles.
- 12.2 The *client* must, at its expense, allow ScotPac to inspect and take copies of any records, including books, accounts, ledgers, correspondence and any other documents. This includes any records and documents that relate to any *equipment*. ScotPac is entitled to take possession of the relevant records and documents or use computer systems to obtain the copies. ScotPac is entitled to take permanent possession of records and documents relating exclusively to any *equipment*. If any relevant records or documents are not in the *client's* possession or under its control, the *client* must do everything that is necessary to enable ScotPac to inspect and copy them and, where appropriate, take possession of them. The records and documents must be kept securely at the *business premises*. The records on a computer must be accessible by using computer equipment located at the *business premises*.
- 12.3 The *client* must give ScotPac a copy of its accounting records, including its statement of financial position (balance sheet), its statement of financial performance (trading and profit and loss accounts), its aged creditors ledger, bank data and any other records ScotPac requires, and any related information ScotPac asks for, promptly on request. The *client* must give all of them in the manner and form, and with the detail, ScotPac, acting reasonably, requires.
- 12.4 The information to be given under clause 12.3 must, if required by ScotPac, be certified as being accurate and complete by the *client* or, if the *client* is a *corporation*, by a director or the company secretary. If that information is provided electronically the *client* must comply with ScotPac's reasonable requirements so that it is compatible with the *information connection* and ScotPac's other systems. If ScotPac asks the *client* to do so, the *client* must cause each *guarantor* that is a *corporation* to promptly give ScotPac a copy of its accounting records, including its statement of financial position (balance sheet), its statement of financial performance (trading and profit and loss accounts), its aged creditors ledger and any other records ScotPac requires, and any related information ScotPac asks for.
- 12.5 The *client* must provide any evidence ScotPac may reasonably request to confirm that it is complying with each of its *obligations* under each *transaction document*.

13 Changes in names, ownership and particulars

- 13.1 The *client* must inform ScotPac and keep ScotPac informed of each of the following.
- (a) The name of the *client*; the name of any trust of which the *client* is the trustee; the name of any partnership in which the *client* is a partner; the business characteristics (such as an ABN, ACN or ARSN) of the *client*, trust or partnership; the *client's* business or trading name; the *client's* registered address; and the *client's* principal place of business.
 - (b) The *client's* telephone number, fax number, e-mail address and website.
 - (c) The serial number or other description described in clause 7.1(g).
 - (d) The ownership or control of the *client*, the shareholding in the *client* and the shareholding by the *client* in any *entity*, except a shareholding of less than 5% in a *corporation* listed on a stock exchange. Control includes the capacity to influence or determine the outcome of decisions about financial and operating policies.
 - (e) The nature of the *client's* business; its auditor and external accountants; and, if the *client* is a *corporation*, its directors and their Director Identification Number, company secretary and public officer; and, if the *client* is a partnership, the identity of the partners.
 - (f) Each *guarantor's* name, address, telephone number, fax number, e-mail address and business characteristics (such as its ABN, ACN or ARSN).
- 13.2 The *client* must obtain approval from ScotPac at least ten *working days* before any of the things mentioned in clauses 13.1(a) or 13.1(c) change. If a *guarantor* has given a *security interest* to ScotPac it must obtain approval from ScotPac at least ten *working days* before its name, the name of any trust of which it is the trustee or business characteristics change. A change to business characteristics includes there being new characteristics, such as

an ABN applying for a trust. For all other changes, the *client* must inform ScotPac about the change before it happens when this is possible and, when this is not possible, as soon as practicable after a *transaction party* is aware the change has occurred.

- 13.3 If the *client* is a *corporation*, the *client* must cause any new shareholder or director to sign any guarantee and indemnity and any security agreement ScotPac, acting reasonably, requires for the performance of the *transaction documents*. If the *client* is a partnership, the *client* must cause any new partner and all partners of any successor partnership to sign a document that ScotPac requires to bind those partners to the *transaction documents*. A retiring partner is not released from a *transaction document* unless ScotPac agrees although the continuing partners can continue to operate the chattel mortgage facility if ScotPac agrees. If a partnership is mentioned in the *letter of offer* the partners are liable personally and as partners of the partnership.

14 ScotPac must be told about things

- 14.1 The *client* must promptly tell ScotPac if any of the following occurs.

- (a) Something has happened which could have a material adverse impact on its financial condition or its ability to perform any of its *obligations* or its ability to give any of its warranties, or if a *default event* or *potential default event* occurs.
- (b) Any legal action is taken or threatened against a *transaction party* which could affect its ability to perform its *obligations* under a *transaction document*.
- (c) A notice (such as a notice concerning an application, proceeding or appointment mentioned in the definition of *insolvent*) is served on the *client* which it would be reasonable to expect could affect the *client's* ability to perform its obligations under the *facility agreement*.
- (d) Any *entity* does anything to enforce a *security interest* in *property* in which a *transaction party* has an interest.
- (e) There is any contamination of, or emanating from, the *client's property* or the *business premises*; or any penalty or clean up notice is issued under any environmental law in connection with the *client's property* or the *business premises*.

- 14.2 When the *client* or any *guarantor* is required to provide information to ScotPac (including bank data and accounting and financial information described in clauses 12.3 and 12.4) it must be provided by using the *information connection*, unless ScotPac acting reasonably has agreed to receive it in another way. Information can be manually uploaded to the *information connection* or information can be received by ScotPac by the *information connection* syncing with the *client's* or the *guarantor's* accounting software.

- 14.3 If information is to be received through the syncing process, the *client* or the *guarantor* must use its best endeavours to ensure the connection between the *client's* or the *guarantor's* accounting software and the *information connection* is always live. If the *client* or any *guarantor* is required to release information through the syncing process, so that ScotPac receives it, the *client* or the *guarantor* must release it when it is required to be provided and also on request by ScotPac.

15 Power of attorney

- 15.1 For valuable consideration and by way of security each *transaction party* irrevocably appoints ScotPac and each of its *authorised officers*, jointly and severally, as the *transaction party's* attorneys. The attorneys may: sign any documents and do anything necessary or desirable to give effect to the *transaction documents* or the transactions contemplated by any of them; do anything which the *transaction party* should have done but has failed to do; make a claim under and enforce insurance policies relating to the *equipment*; endorse any bills of lading, other shipping documents or any insurance documents which relate to *equipment*; complete or amend a *schedule* (including by completing or amending the description of the *equipment*); and do anything necessary or desirable to make a *contract* complete and enforceable. Whilst a *default event* is continuing the attorneys may also: perfect a security; make an arrangement or compromise; and do anything necessary or desirable so that the things described in clause 21.3 can be done. In particular the attorney can do anything (such as sign any document) to transfer the *equipment* to an *entity* that purchases it when ScotPac sells it under clause 21.3(b). The attorney may at any time register the power of attorney on any public register.

- 15.2 In addition to and separate from the appointment under clause 15.1, each *transaction party* irrevocably appoints ScotPac and each of its *authorised officers* as the *transaction party's* agent. As the *transaction party's* agent they may do any of the things mentioned in clause 15.1. In clauses 15.3 and 15.4 references to "attorney" means both the attorney appointed under clause 15.1 and the agent appointed under this clause 15.2 and references to "power of attorney" means both the power of attorney in clause 15.1 and the agency appointment in this clause 15.2.

- 15.3 The attorney, acting reasonably but otherwise at the attorney's discretion, will determine if and how a power should be exercised although it cannot be exercised in a way which would cause a *transaction document* to be breached or cause a *transaction party* to breach any law. The attorney may act despite any conflict of interest or duty. The attorney may delegate any of the attorney's powers (including this power to delegate) and may revoke a delegation. The attorney can exercise any powers, authorities, duties or functions as a trustee if the *transaction party* is a trustee and may do so even if it benefits ScotPac.
- 15.4 Anything done by the attorney under the above powers will be binding on the *transaction party* as if it had been done by the *transaction party*. The *transaction party* must, at its own cost, assist and cooperate fully with the attorney. Despite the *facility agreement* or any *contract* ending the power of attorney continues until all actions taken under it have been completed and all liabilities have been satisfied. Any *entity* dealing with an attorney or a person purporting to be an attorney may rely on the execution of any document by that person as conclusive evidence that the power of attorney has come into effect and not been revoked or suspended and that the right or power being exercised or purported to be exercised is properly exercised and the circumstances have arisen to authorise the exercise of that right or power.

16 Further obligations

- 16.1 Each *transaction party* must do everything which is required to safeguard its systems. In particular, it must ensure that its systems are not hacked and that e-mails and faxes purportedly sent by the *transaction party*, or on its behalf, are sent by authorised persons.
- 16.2 If a *transaction party* does not perform any of its *obligations* under a *transaction document*, ScotPac may remedy the default, in whole or in part. The *client* must pay to ScotPac on demand any amount which ScotPac, acting reasonably, sees fit to pay in relation to the default.
- 16.3 Each *transaction party* must cooperate fully with ScotPac to give effect to the *transaction documents*. In particular, the *transaction party* must execute and deliver any documents and do all things required by ScotPac to give effect to the *transaction documents* and the transactions contemplated by any of them, perfect ScotPac's *security interest* and defeat the *security interest* or other interests (other than a *permitted interest*) of a third party.
- 16.4 Each *transaction party* must comply with any procedures or rules that ScotPac may set at any time for the performance of the *transaction documents*. After they are set ScotPac can change them at any time. The procedures and rules will be provided, and any changes to them will be advised, to the *client* in a way ScotPac considers appropriate, such as by being made available on ScotPac's internet facility. If a change is material and adversely affects the chattel mortgage facility which the *client* receives the *client* is entitled, within ten *working days* of it being advised of the change or ScotPac releasing it on its internet facility, to give notice that it does not accept the change. If the *client* gives that notice the revised procedures or rules will not apply to it although it will not be entitled to give any more *schedules* to ScotPac. Nothing ScotPac does under clause 19.1 will be considered a change to a procedure or rule for the purposes of this clause.

17 Indemnities

- 17.1 The *client* must indemnify ScotPac against every *loss* and tax (but not including tax on ScotPac's overall income) of any kind that ScotPac may suffer or incur: in respect of any *transaction document* or something done in relation to any *transaction document* (including something done by ScotPac at the *client's* request); in relation to any failure by the *client* to perform any of its *obligations* under any *transaction document*; in relation to the *equipment* or the use of the *equipment*; because ScotPac hands over a payment which ScotPac has received from a *transaction party* or any other *entity*; because a payment which should have been made by a direct debit, EFTPOS, BPay or similar arrangement is not made, is reversed or ScotPac is required to repay, or considers it appropriate to repay, what it received; in connection with an enquiry or investigation which is conducted or in responding to a subpoena or similar order; in connection with the exercise or attempted exercise of a right, power or remedy including under the *PPSA* or any other law or under a *transaction document*; by doing something the *client* should have done; in connection with the *equipment* being removed from any premises, including making good damage caused to the premises; in relation to a *default event*; in relation to an indemnity ScotPac gives to a *receiver* or other controller, an administrator or liquidator; because a stay (including one imposed by the Corporations Act 2001) prevents ScotPac from enforcing a *transaction document* (in whole or in part); from acting in reliance upon information received by it (including by the use of the *information connection*); from the misuse of the *client's* login or password which give access to the *information connection* or as a result of the breach, inaccuracy or non-observance of a *transaction party's obligations* or warranties under a *transaction document*. The *client* must also indemnify ScotPac against each *loss* which arise from ScotPac acting in reliance upon information provided to it or on any instruction given to it by the *client's authorised officer*. The taxes include GST, such as any GST payable because any *equipment* is sold.

- 17.2 The *client* is not required to indemnify ScotPac against any *loss* which was caused or incurred by ScotPac's mistake, negligence, fraud or wilful misconduct (see clause 45.6). See clause 32.2 in relation to the correction of a calculation error.
- 17.3 An indemnity in the *facility agreement* is irrevocable. It is a continuing obligation which is separate and independent from all other *obligations*. It survives the ending of the *facility agreement* or any *contract* and the expiry of the *term*. It is also unconditional, except for any conditions specified in the *facility agreement* or a *schedule*. ScotPac can enforce an indemnity before an expense is incurred or payment made when it is reasonable to do so. An indemnity can be enforced on multiple occasions.

18 Releases

- 18.1 ScotPac will not be liable for any *loss* suffered or incurred by a *transaction party* as a direct or indirect result of: anything which ScotPac does or fails to do; any delay by ScotPac in giving effect to an instruction; any defect in any information provided by ScotPac to the *client*; any defect in the *equipment* or title to it; or any waiver of, exercise of, attempted exercise of, failure to exercise or delay in exercising a right, power or remedy. This does not include a *loss* which is caused by ScotPac's mistake, negligence, fraud or wilful misconduct (see clause 45.6) or a *loss* which was caused by ScotPac failing to do something which it is expressly required to do by the *facility agreement*. When the release does not apply because the *loss* is caused by any of those events or circumstances ScotPac is still not liable for consequential or economic loss.
- 18.2 All warranties and guarantees in relation to any services provided, or required to be provided, by ScotPac are excluded to the maximum extent permitted by law. However, those warranties and guarantees are not excluded where they are breached due to ScotPac's mistake, negligence, fraud or wilful misconduct (see clause 45.6). ScotPac's liability for a breach of a warranty or guarantee that has not been excluded due to the preceding sentence or for a breach of an implied warranty or guarantee that by law cannot be excluded is limited (at ScotPac's option) to the supplying of the service again or the payment of the cost of having the service supplied again when the law permits that limitation.
- 18.3 Each *transaction party* releases ScotPac from all claims of any kind which any of them may now have or, but for this clause 18.3, may at any time in the future have against ScotPac which arise out of or in connection with a *transaction document*, the *equipment* or the services which ScotPac provides or is required to provide. This release does not apply to a claim where and to the extent: the claim is for a *loss* for which ScotPac is liable in accordance with clause 18.1; or the claim is for the breach of a warranty or guarantee to the extent it has not been excluded or limited in accordance with clause 18.2.
- 18.4 If anyone inspects or values the *equipment* for ScotPac, they do so only for ScotPac's internal purposes. A *transaction party* may not use or rely on a valuation or any report which may be prepared.

E. CHANGING AND ENDING FACILITY AGREEMENT

19 Changing the facility agreement

- 19.1 ScotPac can change the *facility agreement* and any *contract*.
- (a) ScotPac can do so at any time and in any way (other than by changing the *facility limit* or the instalments mentioned in clause 4.1) by giving the *client* at least twenty *working days*' notice of the change. The change will take effect at the end of the notice period. Within ten *working days* of the notice being given to it the *client* can give ScotPac notice that it is ending the *facility agreement* and each *contract*. If the *client* gives that notice, neither the *facility agreement* nor the *contract* will be changed but the *facility agreement* and each *contract* will end sixty days after the *client* gave notice or on an earlier date specified by the *client*.
- (b) ScotPac can do so to change the *facility limit*. ScotPac will generally review the *facility limit* once each year although it can change the *facility limit* at any time. ScotPac can increase the *facility limit* without giving notice. ScotPac can decrease the *facility limit* (including so that it is zero) by giving the *client* notice. That decrease will apply from the time the notice is given or any later time specified in the notice but will not affect any existing *contract*.
- (c) ScotPac can do so if it considers, on a reasonable basis, the change necessary to: rectify errors, omissions or ambiguities; reflect changes to ScotPac's systems capabilities and routines; comply with legal, fiscal or regulatory requirements; or address any corporate reorganisation within the group of companies of which ScotPac is part. ScotPac changes the *facility agreement* and any *contract* by giving notice to the *client*.

The notice can be given at any time and will take effect when it is given or at any later time ScotPac specifies.

- 19.2 ScotPac and the *client* can, by agreement between them, change the *facility agreement* and any *contract* at any time and in any way. The agreement can be made in any way, including, if possible, by using ScotPac's internet facility or by a document which is entered into using electronic signatures. The *client* may ask ScotPac to agree to a change but ScotPac is not obliged to agree to it.
- 19.3 All changes to the *facility agreement* and any *contract* will be binding on each *transaction party*. A change under clause 19.1 does not require the agreement of any *transaction party*. A change under clause 19.2 only requires the agreement of the *client* and ScotPac. However, clauses 22 to 24 will not be changed without the approval of each *guarantor*. Except as specified above, ScotPac is not required to give notice of a change. The changes binding on a *transaction party* could be significant, the liability of some or all of the *transaction parties* could be increased and the changes could result in some or all of the provisions being changed.
- 19.4 The *client* must keep each *guarantor* informed of the changes and replacements referred to in clause 23.1(m). Each *guarantor* agrees that it will obtain all information concerning the chattel mortgage facility (including changes to the *facility agreement* and any *contract*) from the *client* not ScotPac. ScotPac will, however, give *transaction documents* (including any document which changes a *transaction document*) direct to a *guarantor* which requests it (also see clause 36.1).

20 Ending the facility agreement and default events

- 20.1 The *facility agreement* continues until it ends in accordance with the *facility agreement*. A *transaction party* has no right to end the *facility agreement* except, in the case of the *client*, as permitted by this clause or clause 19.1(a). If at any time there are no current *contracts* ScotPac or the *client* can end the *facility agreement* by giving two *working days*' notice to the other. A notice given by the *client* cannot be revoked without ScotPac's approval. If the *client* or a *guarantor* has a debtor finance facility with ScotPac (or an *entity* which is *related* to ScotPac) and that facility ends (or a notice is given to end that facility), ScotPac can end the *facility agreement* by giving notice to the *client* and it ends (at ScotPac's choice) when the notice is given, at a later time specified by ScotPac in the notice or when the debtor finance facility ends.

- 20.2 However, whilst a *default event* is continuing, ScotPac may end the *facility agreement* either:

- immediately, without prior notice; or
- at the end of any period ScotPac specifies in a notice to the *client*.

ScotPac will promptly tell the *client* if it ends the *facility agreement* under this clause 20.2.

- 20.3 Each of the following is a *default event*.

- (a) A *transaction party* has failed to pay on time any money due under a *transaction document*, ScotPac has given that *transaction party* notice of the failure and the money has not been paid within five *working days* of the notice being given.
- (b) A *transaction party* has failed to comply with any other *obligation* under any *transaction document*. It is only a *default event* if:
- the failure is a failure to perform a material *obligation* and it cannot be remedied;
 - the failure can be remedied but it has not been remedied within ten *working days* after the failure happens; or
 - the failure creates a risk that ScotPac will not be able to enforce a *security interest* arising under a *transaction document* and ScotPac needs to immediately enforce a *transaction document* to protect its legitimate interests.
- (c) A warranty by a *transaction party* under any *transaction document* is not true or is misleading when made or repeated. It is only a *default event* if the event or circumstance that led to the warranty being untrue or misleading:
- is material and cannot be remedied;
 - can be remedied so that the warranty will be true and not misleading but the event or circumstance is not remedied within ten *working days* of the warranty being made or repeated; or
 - creates a risk that ScotPac will not be able to enforce a *security interest* arising under a *transaction document* and ScotPac needs to immediately enforce a *transaction document* to protect its legitimate interests.

- (d) A *transaction document* (or any material part of it) is, becomes or is claimed by any *entity* (except ScotPac) to be, void, invalid or unenforceable. This does not apply if it becomes void, invalid or unenforceable solely due to something that ScotPac does.
- (e) Any event or circumstance referred to in any document between any *transaction party* and ScotPac or any *entity* which is *related* to ScotPac (including any *transaction document*) as a default event (or equivalent terminology, such as event of default) occurs or any event or circumstance however described occurs which gives ScotPac or any *entity* which is *related* to ScotPac a right to end any of those documents. If the document is not a *transaction document*, it is only a *default event* if the occurrence of the event or circumstance means ScotPac needs to immediately enforce a *transaction document* to protect its legitimate interests.
- (f) A *transaction party*, if it is a *corporation*, ceases to be under the same ownership or control as at the date of the *letter of offer*, ceases to have the same shareholding as at that date or the shareholding is or becomes the subject of a *security interest*, in each case without the consent of ScotPac. ScotPac will give that consent unless it needs to withhold its consent to protect its legitimate interests. Control includes the capacity to influence or determine the outcome of decisions about financial and operating policies. If a director dies, is of unsound mind or becomes incapable of managing his or her own affairs that will not be a change of control if he or she is, within ten *working days*, replaced by a person acceptable to ScotPac acting reasonably.
- (g) A *transaction party* is or becomes *insolvent*. However, for the purposes of this paragraph a *transaction party* will not be *insolvent* under paragraph (a)(i) of that definition if the application or proceeding is capable of being set aside and it is set aside within seven days of it being made or initiated and will not be *insolvent* under paragraph (b)(iv) of that definition if the relevant person is, within ten *working days*, replaced by a person acceptable to ScotPac acting reasonably.
- (h) The *client* has, in relation to a *contract*, on three or more occasions during any six *month* period failed to pay, on the due date, instalments specified in the schedule for that *contract*. It does not matter whether payment is made after the due date.
- (i) A *transaction party*, or if it is a *corporation*, any director or beneficial owner of a *transaction party*, is charged with a serious criminal offence. 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 fraud as defined in section 9 of the Corporations Act 2001, or an offence punishable by imprisonment for life or for a period, or maximum period, of at least three *months*.
- (j) A *transaction party* (or, if it is a *corporation*, any *authorised officer* or representative) assaults or threatens to assault an employee of ScotPac or an *entity* which is *related* to ScotPac or is threatening or abusive to any of those employees where the behaviour could have an impact on their right to work in a safe environment. ScotPac does not tolerate threatening or abusive behaviour.
- (k) Any event or series of events, whether related or not, occurs (including a change in the business, *property* or financial condition of a *transaction party* or the value of the *property* of a *transaction party*) which has, or is reasonably likely to have, a material adverse effect on the ability of a *transaction party* to perform its *obligations* under any *transaction document*, the effectiveness or priority of any *security interest* arising under any *transaction document* or the validity or enforceability of the whole or any material part of any *transaction document*. It is only a *default event* if the occurrence of the event or series of events means ScotPac needs to immediately enforce a *security interest* arising under any *transaction document* to protect its legitimate interests.

20.4 If a notice is given under clauses 19.1(a), 20.1, 20.2 or 29.3 to end the *facility agreement*, ScotPac is entitled during the notice period to end the *facility agreement* immediately on notice being given to the *client* if a *default event* occurs. If a *default event* has occurred and ScotPac has given the *client* notice under the second bullet point in clause 20.2, ScotPac is entitled during the notice period to end the *facility agreement* immediately on notice being given to the *client* if ScotPac considers it prudent to do so.

20.5 An event or circumstance listed in clause 20.3 is a *default event* irrespective of whether it is within the control of any *transaction party* and irrespective of whether notice of the event or circumstance has been given to ScotPac under a *transaction document*.

20.6 If a *default event* has occurred it is continuing (even if the event or circumstance which gave rise to the *default event* has ceased to apply) until ScotPac has told the *client* that it has been remedied to ScotPac's satisfaction or it has been waived by ScotPac and, in either case, the *client* has established to ScotPac's satisfaction that it is unlikely that the event or circumstance will be repeated. ScotPac will act reasonably when it makes a determination for the purposes of this clause 20.6.

21 Consequences of facility agreement ending

- 21.1 If a *default event* is continuing or there is a *potential default event* ScotPac need not advance the *loan amount* under a *contract*. At any time whilst a *default event* is continuing ScotPac may end the *facility agreement* in accordance with clause 20.2.
- 21.2 When the *facility agreement* ends (including under clauses 19.1(a), 20 and 29.3) the following will apply.
- (a) Each *contract* will also end. This is subject to clauses 21.2(f) and 21.2(g).
 - (b) The *facility limit* will be zero.
 - (c) The *client* must pay to ScotPac:
 - (i) any instalments which should have been paid but have not been paid together with, if the *facility agreement* ends on a day which is not an instalment payment date, a pro rata portion of the next instalment to cover the period from the last instalment payment date to the day the *facility agreement* ends;
 - (ii) the introduction fee, brokerage or commission (see clause 6.2) which has not been reimbursed to ScotPac (see clause 45.9);
 - (iii) the early termination fee (see clause 45.10); and
 - (iv) any other amount which is an *amount owing*, other than instalments included in (i) above, which were due to be paid after the day the *facility agreement* ends.
 - (d) ScotPac will give the *client* a statement of the amount owing if it decides to or if the *client* requests it. The statement may, if ScotPac chooses, take into account any set-off or withholding rights ScotPac has so only a net cash amount is payable.
 - (e) The *client* must immediately, without any further notice being required, pay to ScotPac all money to which ScotPac is entitled. Interest is payable under clause 5.1 until payment is made and further amounts may be payable such as under clause 5.3.
 - (f) ScotPac can rely on, and the *transaction parties* must continue to comply with, the *facility agreement* and each *contract* despite the *facility agreement* and the *contract* ending, until all liabilities have been satisfied.
 - (g) Clauses 22 to 24, clause 38.2, each indemnity in the *facility agreement* and each warranty in the *facility agreement* will continue until all liabilities have been satisfied. A liability under them is not confined to obligations or breaches arising or discovered before the *facility agreement* came to an end. This paragraph does not limit clause 21.2(f).
 - (h) The *client* must give ScotPac a written notice stating that if the *equipment* was supplied to a third party by the *client* that supply will not be a taxable supply. The notice must state fully and correctly why the supply would not be a taxable supply. If that notice is not provided ScotPac can assume that the supply would be a taxable supply. Terms used in this paragraph have the same meaning as in the *GST Act*.
- 21.3 When the *facility agreement* ends ScotPac can also do any of the following things whilst a *default event* is continuing.
- (a) Take possession of any *equipment* and exercise any right, power or remedy in relation to the *equipment*. For this purpose ScotPac may enter any premises and it may do so as the *client's* agent or in any other capacity. If required by ScotPac the *client* must at its own cost do everything necessary to deliver the *equipment* to a place reasonably required by ScotPac.
 - (b) Sell any *equipment* by any means and apply the sale proceeds in accordance with clause 4.3, although in clause 4.3 item fourthly will be changed to amounts payable in accordance with clauses 21.2(c)(i), (ii) and (iii). The *equipment* can be sold in association with any other property.
 - (c) Do anything and exercise any right which the *client* could do or exercise in relation to the *equipment*. ScotPac can do those things in its name or in the name of the *client*.
 - (d) Appoint any *entity* to be the *receiver* of any *equipment*. If two or more *entities* are appointed, they will be appointed jointly and severally and may exercise their powers jointly and severally, unless ScotPac specifies that they are only to act jointly or severally. The *receiver* will be the agent of the *client* unless the law prevents this. The *receiver* will (in addition to the powers conferred by law) have the power to:
 - (i) take possession of any *equipment*;

- (ii) sell or agree to sell any *equipment* by any means. The *receiver* may do so even if it has not taken possession of the *equipment* and may sell the *equipment* in association with any other property;
 - (iii) do anything which the *client* should have done and anything which the *receiver* thinks should be done, including anything the *receiver* thinks is in ScotPac's interest; and
 - (iv) delegate any of the *receiver's* powers if the *receiver* has approval from ScotPac to do so.
- (e) Anything the law allows ScotPac to do.
- 21.4 If a *default event* occurs and as a consequence any of ScotPac's employees or agents devote additional time to the administration of the chattel mortgage facility ScotPac will determine, in good faith, the amount which is required to compensate ScotPac for that additional administration. The *client* must pay that amount immediately on demand. ScotPac can make the determination and the demand on a number of occasions.
- 21.5 If rights, powers and remedies are available to ScotPac under Chapter 4 of the *PPSA* those rights, powers and remedies do not derogate from the rights, powers and remedies available to ScotPac under a *transaction document*, any other document or any other law. Subject to the provisions of the *transaction documents* and any mandatory laws, ScotPac can enforce its rights, powers and remedies when it decides to do so and if ScotPac has more than one *security interest* it can exercise rights, powers and remedies under them in any order or at the same time.
- 21.6 If the Credit (Rural Finance) Act 1996 (Qld), the Hire Purchase Act 1959 (WA) or any Farm Debt Mediation Act applies ScotPac will give any notice, pay amounts to the *client*, recover amounts from the *client* and comply with its obligations in accordance with that legislation.

F. GUARANTEE

22 Guarantee and indemnity

- 22.1 Each *guarantor*, unconditionally and irrevocably:
- (a) guarantees the due and punctual payment to ScotPac of the *guaranteed money*;
 - (b) guarantees the observance and performance of the *guaranteed obligations*; and
 - (c) indemnifies ScotPac, as a separate obligation, for each *loss* of any kind which ScotPac suffers or incurs at any time, directly or indirectly, as a consequence of: a breach of any *transaction document*; any *transaction document* (or any part of it) or any of the *guaranteed obligations* not being enforceable or a stay (including one imposed by the Corporations Act 2001) preventing them being enforced (in whole or in part); the *guaranteed money* not being recoverable; ScotPac entering into any *transaction document*, performing obligations under it or exercising or attempting to exercise any right, power or remedy under it; a payment received by ScotPac from any *entity* being or being claimed to be void or voidable; or any *guarantor* not being obliged to pay ScotPac an amount under clause 22.1(a). However, the *guarantor* is not required to indemnify ScotPac against a *loss* which was caused or incurred by ScotPac's mistake, negligence, fraud or wilful misconduct (see clause 45.6).
- 22.2 The obligations in clause 22.1 are principal obligations which continue until all liabilities have been satisfied. They continue despite any notice which any *guarantor* may give, any payment or discharge (in whole or in part) of any of the *guaranteed money* or *guaranteed obligations* or the *facility agreement* or any *contract* ending (in whole or in part). Clause 17.3 applies to the indemnities which the *guarantor* provides.

23 Guarantor's obligations are continuing

- 23.1 Each *guarantor's obligations* continue in full force and effect even if any of the following applies.
- (a) The *client* has no *obligations* to ScotPac at any time or any *transaction party's obligations* are unenforceable (in whole or in part).
 - (b) ScotPac makes an advance which causes the *facility limit* to be exceeded or when the *facility limit* has been exceeded, even if the *guarantor* was not aware of the advance or did not consent to it being made.
 - (c) ScotPac enforces, does not enforce or agrees not to enforce any *transaction document* or a *security interest* which arises under any *transaction document* (either strictly or at all) or waives or limits its rights against any *transaction party* in any way.

- (d) A stay (including one imposed by the Corporations Act 2001) prevents ScotPac from enforcing any *transaction document* (in whole or in part).
- (e) Any *transaction party* is discharged or released (by ScotPac, operation of law or in any other way) from its *obligations* (in whole or in part).
- (f) ScotPac gives credit, time or any indulgence or concession to any *transaction party* or any other *entity*.
- (g) ScotPac does not require any *entity* to enter into or agree to be bound, or any *entity* is not bound, by any *transaction document*.
- (h) ScotPac owes an amount or has any obligation to the *client* or any *guarantor*.
- (i) Any *transaction party* or any other *entity* is or becomes *insolvent* or there is a change in the shareholders, directors, partners or status of any of them. For example, if any of them becomes a trustee or ceases to be a trustee for any reason. In particular, a *guarantor's obligations* continue in full force and effect if it was a director of the *client* or held shares in the *client* and it ceases for any reason to be a director or shareholder.
- (j) ScotPac compounds with, compromises with or makes an arrangement with any *transaction party* or any other *entity*; or any *transaction party* or any other *entity* has any rights against ScotPac.
- (k) Any *security interest* is not perfected or registered, is incorrectly registered or is not enforceable (in whole or in part); any *property* which is subject to any *security interest* is dealt with in any way; or ScotPac does not enforce any *security interest* (either strictly or at all), releases or loses the benefit of any *security interest*, or does not obtain any *security interest* or a *security interest* with any particular value or priority.
- (l) Any *transaction document* is assigned, novated or extended.
- (m) Any *transaction document* is changed (in whole or in part) or replaced in any way which is permitted by any *transaction document* or is agreed to by the contracting parties. This includes a change or replacement which could increase the liability of a *guarantor* in any way (such as an increase in the *facility limit*). It also includes a change which a *guarantor* did not know about or which was made without the consent of the *guarantor*.
- (n) The *guarantor* is not aware of the *client* making an offer to ScotPac or that a *contract* is made.
- (o) ScotPac does something or fails to do something which could, under the law relating to guarantees or indemnities, have affected the *guarantor's* liability or anything else happens that, apart from this clause, could result in the *obligations* of the *guarantor* ending or being affected.

23.2 ScotPac's rights under clause 22 are in addition to and separate from any other rights which ScotPac may have at law or under any *transaction document* or any other document.

24 Guarantor's warranties and obligations

24.1 Each *guarantor* warrants to ScotPac each of the following.

- (a) It is an Australian entity (unless the *guarantor* told ScotPac it is not before the date of the *letter of offer*).
- (b) It has disclosed to ScotPac all of its existing *financial indebtedness*, all *security interests* (except *permitted interests*) in *property* in which it has an interest and all *guarantees* given by it. It is not in breach of any material *obligation* in connection with *financial indebtedness*, *security interests* or *guarantees*.
- (c) The warranties given by the *client* in any *transaction document* are true.
- (d) It has not taken a *security interest* from the *client* in connection with any *transaction document* and agrees not to do so unless ScotPac consents. Despite this, if at any time the *guarantor* does hold a *security interest* of that type it will hold it on trust for ScotPac.
- (e) It is aware of the financial position of each of the other *transaction parties*.

24.2 Each *guarantor* agrees each of the following with ScotPac.

- (a) It will tell ScotPac if anything happens which means it could not truthfully repeat each warranty in clause 24.1.
- (b) It will tell ScotPac as soon as it becomes aware of the occurrence of a *default event*.

- (c) It will pay any money which is due and payable to ScotPac under the *facility agreement*. ScotPac will always give the *guarantor* at least two *working days*' notice of the amount which must be paid. If a notice has to be given to the *client* before money is due and payable by the *client*, ScotPac can give notice to the *guarantor* at the same time that the notice is given to the *client*, or at any later time. Accordingly, ScotPac does not have to wait until the notice given to the *client* has expired before notice is given to the *guarantor*. Notices can be given on multiple occasions, each notice being for a different amount. It is sufficient if the notice specifies how an amount is determined, rather than specify a specific amount. The *guarantor* must pay in *cleared funds* without any set-off, abatement, counterclaim, withholding or deduction. Apart from those requirements, the *guarantor's* rights against ScotPac are not affected. ScotPac is not required to exercise any right, power or remedy ScotPac may have against any *entity* (including another *transaction party*) under any document before ScotPac exercises its rights against a *guarantor*.
 - (d) It will not exercise any right as surety in competition with ScotPac. A *guarantor* will not be entitled to claim the benefit of any *security interest* held by ScotPac at any time unless all liabilities have been satisfied.
 - (e) It will pay interest on any amount it owes in accordance with clause 5.1. However, it is not required to pay interest on an amount included in the *guaranteed money* which is bearing interest and that interest is itself *guaranteed money*.
- 24.3 A *guarantor* must exercise any right of subrogation or contribution; exercise or enforce a right or claim against another *transaction party*; and exercise any right of set-off or counterclaim against another *transaction party* as directed by ScotPac. This includes a right to prove for, or claim, or exercise any vote or other rights in respect of, indebtedness owed to the *guarantor* by a *transaction party* that is *insolvent*. The rights and claims (including a right of proof) will be held on trust for ScotPac, all amounts arising out of them must be paid to ScotPac and those amounts will be held on trust for ScotPac until they are paid to ScotPac. Until all liabilities have been satisfied the *guarantor* must not exercise or enforce any of the rights or claims unless ScotPac has given its approval and it must do so in accordance with any instructions ScotPac gives. Each *guarantor* irrevocably and unconditionally appoints, by way of security, ScotPac and each of its *authorised officers* as its attorney to exercise or enforce the rights and claims.
- 24.4 ScotPac may, in a *guarantor's* name, claim from any *entity* any money which is owed or payable to the *guarantor*, including a dividend or distribution of any kind, and do anything to collect it. ScotPac may retain the amount collected and any amount recovered from a *guarantor* in a suspense account and at ScotPac's discretion appropriate it until all liabilities have been satisfied. Each *guarantor* waives any right it may have to determine the appropriation of any money paid to ScotPac.
- 24.5 ScotPac does not have to provide information to a *guarantor* concerning any *contract* or the financial position, creditworthiness or honesty of another *transaction party*. The *guarantor* should ensure that it obtains all information which it requires from the *client* or another *guarantor*. ScotPac will, however, provide copies of *transaction documents* in accordance with clause 36.1.

G. TRANSACTION PARTY OBLIGATIONS

25 Transaction party's general warranties and obligations

- 25.1 Each *transaction party* warrants to ScotPac each of the following.
- (a) It has the power to enter into each *transaction document* to which it is a party and perform its *obligations* under them.
 - (b) If it is a *corporation*, it is duly incorporated and validly existing under the laws of its jurisdiction of incorporation with indefinite corporate existence, is capable of suing and being sued and has the power and authority to own its assets and to carry on its business as presently conducted.
 - (c) It has done everything necessary or desirable for it to enter into and be bound by those *transaction documents* and to perform those *obligations*.
 - (d) Its execution of the *transaction documents* and the performance of *obligations* under them will not breach any agreement binding on it or any other *entity* or breach any law.
 - (e) Its *obligations* under each *transaction document* are valid, binding and enforceable.
 - (f) Its business and affairs are being conducted in accordance with all applicable laws.

- (g) It has disclosed to ScotPac everything known to it which it is reasonable to expect might have influenced ScotPac's decision to issue the *letter of offer*, accept an offer made under clause 2.3 or enter into any *transaction document*.
 - (h) It does not act as the trustee of any trust (whether under a trust deed, deed of settlement or other instrument, or a trust arising by law or implication), except a trust specified in the *letter of offer*, a trust arising under the *facility agreement* or a trust arising under the will of a deceased person who is not a *transaction party*.
 - (i) It is not resident for tax purposes in the United States of America and no payments under a *transaction document* will be made from sources within the US for US federal income tax purposes.
- 25.2 A *transaction party* must tell ScotPac if anything happens which means that it could not truthfully repeat each of the warranties in clause 25.1. A *transaction party* must not do anything, permit anything to be done or fail to do something which could cause a warranty which it gives to be untrue or which could mean that it could not truthfully repeat a warranty.
- 25.3 A *transaction party* must maintain its corporate existence if it is not an individual.
- 25.4 A *transaction party* must not move or relocate to a place outside Australia except, in the case of an individual, temporarily. If it is a *corporation*, it must not change the place of its incorporation.
- 25.5 A *transaction party* which is a shareholder in another *transaction party* consents to that *transaction party* executing each *transaction document* to which it is a party.

26 General security obligations

- 26.1 As security for the *client's* and the *guarantor's obligations* under the *transaction documents*, the *client* and each *guarantor* unconditionally charge in favour of ScotPac all freehold, leasehold or other interests in land (including all interests in fixtures but excluding crops) which the *client* or the *guarantor* may have on the date of the *letter of offer* or may acquire or otherwise obtain before all liabilities have been satisfied. That charge will be a fixed charge. The *client* and the *guarantor* give that charge as beneficial owner and, if they are or become a trustee, in exercise of their powers as trustee of each trust (including a trust specified in the *letter of offer*) of which they are or become the trustee. If required by ScotPac the *client* or *guarantor* must sign a mortgage and other documents (each in a form and substance required by ScotPac acting reasonably) and do anything required by ScotPac, acting reasonably, to more satisfactorily secure the charges given by it.
- 26.2 If a *transaction party* has given or gives a *security interest* to ScotPac in connection with any other facility that *security interest* will secure the *obligations* of the *transaction party* under the *facility agreement* and each *contract* in addition to all *obligations* secured by the *security interest*. This could, for example, be the case if the *transaction party* has given or gives a *general security deed* to secure its *obligations* under a debtor finance facility or its *obligations* as a *guarantor* of a debtor finance facility. The other *security interest* will secure the *transaction party's obligations* under the *facility agreement* and each *contract* even if this was not contemplated by the document which sets out the terms of the *security interest*. Accordingly, the money secured by the other *security interest* (irrespective of how it is described) will include all amounts owing (whether actually, contingently or prospectively) by the *transaction party* under the *facility agreement* and each *contract*.
- 26.3 If the *client* has given or gives a *security interest* under another document (such as a *general security deed*) to ScotPac which could extend to the *equipment* the *client's obligations* under the *facility agreement* or a *contract* concerning the *equipment* prevail over anything in the other document which is inconsistent with them, to the extent of the inconsistency. In particular any right which the *client* may have to deal in any way with collateral under the other document will not extend to the *equipment*. If it is possible to comply with both the other document and with the *facility agreement* and the *contract* the *client* must do so, even if they concern the same or similar subject matter.
- 26.4 If any transaction (including a payment made to ScotPac) is void or voidable by any law (such as a law relating to liquidation or insolvency) ScotPac is immediately entitled, as against each *transaction party*, to the rights to which it was entitled in connection with the *transaction documents* immediately before the transaction. A *transaction party* must do anything ScotPac, acting reasonably, requires (including signing any document) to restore to ScotPac any *security interest* or other right held by ScotPac immediately before the transaction occurred. The *transaction party's obligations* under this clause are continuing obligations, independent of all other obligations, and continue until all liabilities have been satisfied.

27 Trust obligations

- 27.1 If a *transaction party* is the trustee of a trust, it is bound by the *transaction documents* to which it is a party both in its own right and as the trustee of each trust (including any trust specified in the *letter of offer*) of which it is the

trustee. A *transaction party* 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 a *transaction document*. However, a *transaction party* is not bound in relation to a trust if the *letter of offer* states that the trust is excluded or if the trust arises under the will of a deceased person who is not a *transaction party*. A *transaction party* 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 ScotPac before the date of the *letter of offer* and, if the *transaction party* is a company (as defined in the Corporations Act 2001) which gives a *security interest* in favour of ScotPac, ScotPac will still hold a *security interest* over substantially the whole of the property of the *transaction party*.

27.2 If a *transaction party* is or becomes the trustee of a trust, it warrants to ScotPac each of the following.

- (a) Its arrangements with ScotPac are for the benefit of the trust and the beneficiaries of the trust and will be binding on those beneficiaries.
- (b) It has been duly appointed as trustee and is the sole trustee of the trust.
- (c) The trust is duly constituted and validly existing under the law of an Australian state or territory.
- (d) It has authority to enter into the *transaction documents* to which it is expressed to be a party and it enters into those documents in the proper performance of its duties as trustee. If it becomes the trustee of a trust it will be bound by the *transaction documents* as the trustee.
- (e) All action has been taken which is necessary or desirable for it to enter into and be bound by the *transaction documents* to which it is expressed to be a party and to perform its *obligations* under them.
- (f) It has the right to be fully indemnified out of the trust assets for all *obligations* incurred under the *transaction documents* ahead of any beneficiaries' claims. ScotPac will be subrogated to its rights of indemnity, exoneration and recoupment out of the trust assets.
- (g) No action has been taken or proposed to end the trust.
- (h) A certified copy of the trust deed and other documents relating to the establishment of the trust or the powers of the trustee have been provided to ScotPac, and those documents are accurate and disclose all the terms of the trust.
- (i) It has complied with all of its *obligations* under the trust deed or those other documents, or which are imposed by law.
- (j) It has not delegated any of its powers as trustee or exercised any power of appointment.

27.3 The trustee must tell ScotPac if anything occurs which means that the trustee could not truthfully repeat each of the warranties in clause 27.2. The trustee must not do anything, permit anything to be done or fail to do something which could cause a warranty which it gives in clause 27.2 to be untrue or which could mean that it could not truthfully repeat a warranty.

27.4 The trustee must not release or otherwise prejudice its rights of indemnity and must not do, or allow to be done, or omit to do, anything that may prejudicially affect ScotPac's recourse against the assets of the trust. The trustee must exercise its rights of indemnity for the purposes of performing its *obligations* under the *transaction documents* and if ScotPac, acting reasonably, gives instructions as to what should be done it must comply with those instructions. The trustee must: do everything which it is able to do to ensure that no action of the type mentioned in clause 27.2(g) is taken; comply with the documents mentioned in clause 27.2(h) and ensure that they are not changed or revoked without ScotPac's approval (ScotPac will not unreasonably withhold that approval); comply with the obligations mentioned in clause 27.2(i); ensure that the things mentioned in clause 27.2(j) do not happen; do everything which it is able to do to ensure that the assets of the trust are not resettled or vested; ensure that the capital of the trust is not transferred or distributed without ScotPac's approval; and ensure that the income of the trust is not segregated, assigned or distributed if doing so could affect the trustee's ability to perform its *obligations* under a *transaction document* or if a *default event* is continuing or there is a *potential default event*.

27.5 The trustee must cause any successor trustee or *entities* who become a joint trustee to sign a document ScotPac requires to bind those persons to the *transaction documents*. A retiring trustee is not released from a *transaction document* unless ScotPac agrees.

27.6 If a *transaction party* is a unitholder in a trust; may exercise powers in relation to a trust (for example as an appointor); or is a director of the trustee, that *transaction party* must exercise its powers and discretions to ensure that the trustee complies with its *obligations*. A *transaction party* which is a beneficiary under a trust of which another *transaction party* is the trustee consents to that trustee executing each *transaction document* to which it

is a party and agrees to clause 27.2(f). A *transaction party* who is a director of the trustee warrants that, so far as the director is aware, the trustee can truthfully give the warranties in clause 27.2 and the director must do everything which he or she is able to do to ensure that the trustee complies with its obligations in clause 27.

28 Extended obligations

- 28.1 If a *transaction document* imposes an *obligation* on a *transaction party* not to do something, it must do everything it is able to do to make sure no other *entity* (including another *transaction party*) does it either.
- 28.2 If a *transaction document* imposes an *obligation* on a *transaction party* to do something, it must make sure that all *entities* (including another *transaction party*) do anything that is necessary for it to do that thing.

29 Anti-money laundering and counter-terrorism laws

- 29.1 Each *transaction party* warrants to ScotPac that it is not aware, and has no reason to suspect, that any financial accommodation provided under a *transaction document* or the performance of any transaction contemplated by a *transaction document* 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. The *transaction party* must tell ScotPac if it could not, for any reason, truthfully repeat that warranty.
- 29.2 Each *transaction party* must give ScotPac all additional information and assistance ScotPac requires so that it can comply with those sanctions, laws, conventions and agreements. In particular they must provide all documents, information and assistance ScotPac may require to carry out “know your customer” or similar checks.
- 29.3 ScotPac may delay or refuse to make a payment or delay or prevent the occurrence of any other transaction if ScotPac is concerned that it could breach any of those sanctions, laws, conventions or agreements. If ScotPac has reason to believe that the performance of any transaction contemplated by any *transaction document* could breach any of those sanctions, laws, conventions or agreements it can end the *facility agreement* by giving notice to the *client*. The *facility agreement* and each *contract* will then end one *month* after the notice is given or on an earlier date specified by the *client*. ScotPac will not incur a liability if it ends the *facility agreement* and the *contracts* or does any of the things mentioned in this clause 29.3.

H. MISCELLANEOUS

30 Assignment and agency

- 30.1 A *transaction party's* rights under the *transaction documents* are personal to it and may not be transferred or assigned without ScotPac's consent. ScotPac is entitled, without further approval, to assign, novate, transfer or otherwise deal with the *transaction documents*, any interests arising under them and any of its rights or obligations under them in any way ScotPac considers appropriate but an assignment, novation, transfer or dealing may not materially prejudice a *transaction party's* rights under the *transaction documents*. In the case of a novation the new party assumes ScotPac's obligations and ScotPac is released from its obligations. At ScotPac's request a *transaction party* must sign and deliver to ScotPac, or any other *entity* ScotPac specifies, any document ScotPac reasonably requires for this purpose.
- 30.2 If ScotPac does something mentioned in clause 30.1 a *transaction party* may not claim against the assignee or other *entity* any right of set-off, abatement, counterclaim or other rights the *transaction party* has against ScotPac before ScotPac did that thing. This does not affect the *transaction party's* rights against ScotPac.
- 30.3 Clause 1.1 explains that “ScotPac” can be one of two *entities* and which of those *entities* will be “ScotPac” for the purposes of the *facility agreement* and each *contract*. The *entity* which is at any time ScotPac may, by notice to the *client*, change this so that ScotPac is the other *entity*. Those documents and the rights and obligations on the part of ScotPac will then be novated so that “ScotPac” is the other *entity*. There is no change to the rights and obligations of any *transaction party* under any *transaction document*.
- 30.4 ScotPac is entitled to appoint an *entity* (including an *entity* which is *related* to ScotPac) to act on its behalf, to do anything ScotPac is entitled to do or to represent ScotPac in relation to anything ScotPac is entitled to do (or which a *transaction party* is obliged to do) under a *transaction document*. ScotPac will determine the terms of the appointment. If a *default event* has occurred ScotPac is entitled to be reimbursed by the *client* for all costs, charges and expenses incurred in engaging that *entity*.

31 Waivers, consents and approvals

- 31.1 If ScotPac waives a breach by a *transaction party* of a term of a *transaction document*, releases a *transaction party* from an *obligation* under a *transaction document* or does not apply any of its entitlements, that does not amount to a waiver of any other breach by the *transaction party* or a release of any other *transaction party* from any *obligation*; nor does it imply that ScotPac consents to any breach by any other *transaction party* or that ScotPac has agreed to give up any of its entitlements.
- 31.2 No delay or failure by ScotPac in exercising any right, power or remedy will operate as a waiver of that or any other right, power or remedy. The right, power or remedy can arise under any *transaction document* or any law.
- 31.3 To the extent the law permits, each *transaction party* waives any right it may have to receive any notice (including a notice given before a right, power or remedy is exercised) from ScotPac or a *receiver* under any law (including the *PPSA*), and also waives any time period that must otherwise lapse under any law (including the *PPSA*) before ScotPac or a *receiver* 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). ScotPac is not prohibited from giving a notice under the *PPSA* or any other law.
- 31.4 Where a *transaction document* requires that ScotPac consent to something, approve of something or agree to something, ScotPac's prior written consent, approval or agreement is required. The consent, approval or agreement must be signed by ScotPac or by one of ScotPac's *authorised officers*. ScotPac will act reasonably when it decides to give or withhold its consent, approval or agreement and ScotPac, acting reasonably, can give the consent, approval or agreement on any conditions. The *transaction parties* must comply with those conditions.
- 31.5 If ScotPac is satisfied in relation to something (such as the satisfaction of a condition precedent), consents to something or approves something, that does not provide any confirmation which a *transaction party* can rely on as to the appropriateness of that thing for the *transaction party's* purposes.
- 31.6 Where a *transaction document* requires that something be told to ScotPac or that something be disclosed or notified to ScotPac it must be told, disclosed or notified in writing.

32 Evidence and calculations by ScotPac

- 32.1 A certificate can be signed by ScotPac or one of ScotPac's *authorised officers* in relation to an *amount owing* by a *transaction party*, the amount mentioned in clause 21.2(d), the *guaranteed money*, the amount secured by any *security interest* held by ScotPac or anything arising out of a *transaction document* or the opinion of ScotPac in respect of anything relating to a *transaction document*. It is evidence of the amount, thing or opinion at a particular date. If the certificate concerns an amount ScotPac will, on request from a *transaction party*, give to the *transaction party*, in the format ScotPac considers appropriate, reasonable details as to how the amount was determined. A *transaction party* must not object to the admissibility of the certificate in any legal proceedings.
- 32.2 If ScotPac makes an error in any calculation or makes a payment in error it can correct the error. ScotPac will tell the *client* about the error and the payments which need to be made to rectify it promptly after ScotPac identifies the error. ScotPac and the *transaction parties* must make any required payment to ensure that the correct payment is made. The rights and obligations of ScotPac and the *transaction parties* will be the same as those which would have applied if the error had not been made. For example, if an amount referred to in clause 45.10 was miscalculated, it will be corrected. Similarly, if ScotPac does something, such as release a *security interest*, in the belief that all liabilities of the *client* had been satisfied (see clause 44.4) but liabilities had in fact not been satisfied, ScotPac and the *transaction parties* must do everything that is required to put them in the position they would have been in if the release had not occurred.

33 Joint and several liability

If the *client* comprises more than one *entity* each is bound by the *facility agreement* and each *contract* jointly and severally. If the *guarantor* comprises more than one *entity* each is bound by the *facility agreement* jointly and severally. A reference to those parties includes all *entities* as specified in the *letter of offer* or which become a party and also any one or more of them. Similarly, an *obligation* or warranty on the part of the *transaction party* in the *facility agreement* binds each *entity* comprising the *transaction party* jointly and severally and a reference to *transaction party* includes all *entities* comprising the *transaction party* and also any one or more of them.

34 Authority to fill in blanks, counterparts and signing schedules

- 34.1 The *client* can appoint an individual to be its *authorised officer* with authority to sign *schedules*, notices, certificates and other documents on behalf of the *client* and to give instructions in connection with a *contract* on

behalf of the *client*. If requested by ScotPac the *client* must give ScotPac written confirmation of the appointment in the form required by ScotPac. A *schedule*, notice, certificate or other document signed by an *authorised officer* and any instructions given by an *authorised officer* will be binding on the *client* and ScotPac will be entitled to act and rely on it without making any enquiry until the *client* has given ScotPac notice that the person's authority has been revoked. A revocation does not affect anything done before ScotPac has received notice of the revocation.

- 34.2 Each *transaction party* irrevocably authorises ScotPac, one of ScotPac's *authorised officers* or someone else authorised to act on ScotPac's behalf to date, fill in any blanks and correct any manifest errors in any *transaction document* at any time. This will be done so that the *transaction documents* properly record the agreement between the parties.
- 34.3 Any document (including the *letter of offer* and a *schedule*) which may be entered into between ScotPac, on the one hand, and all or any one or more of the *transaction parties*, on the other hand, or which is granted in favour of ScotPac, can be executed in any number of counterparts, each executed by one or more parties or by one or more representatives of a party. The signatures of the representatives of a party can be on different counterparts. All counterparts taken together will constitute the one instrument.
- 34.4 If an *entity* was intended to be a party to a *transaction document* (for example, it is named as a *client* or *guarantor*) but it does not become bound (for example, because it does not execute the *transaction document* for any reason, or it fails to do so properly) that does not affect the liability of each other *entity* which is bound as a *transaction party*. However, this may mean that a condition precedent is not satisfied (see clause 2.1) and each *entity* which is bound must cause those other *entities* to sign a document that ScotPac, acting reasonably, requires so that they are bound. That signing must occur within ten *working days* of ScotPac requiring it.
- 34.5 If an *entity* is a party to a *transaction document* in two or more capacities its execution will bind it in each of those capacities. Similarly, if an *entity* is a party to the *facility agreement* and another *transaction document* it can agree to both the *facility agreement* and the other *transaction document* by signing the *letter of offer* (or agreeing to it in another way) and it will then be bound by both the *facility agreement* and the other *transaction document* even though it did not separately sign the other *transaction document*.
- 34.6 If the required formalities have been satisfied in any relevant jurisdiction for a *transaction document* to be a deed in that jurisdiction (for example section 127(3) of the Corporations Act 2001 applies or the parties sign, seal and deliver the *transaction document* in a way which satisfies those formalities) the *transaction document* will be a deed in that jurisdiction. If those formalities have been satisfied in relation to some (but not all) of the parties, the *transaction document* will take effect as a deed poll given by those parties and will take effect as an agreement binding on the other parties. If a *transaction document* was intended to be a deed but the required formalities for it to be a deed are not satisfied in any relevant jurisdiction that document will take effect as an agreement in that jurisdiction. Each *transaction party* (other than the *client*) enters into each *transaction document* to which it is a party (if it is an agreement or is to take effect as an agreement) in consideration of, amongst other things, ScotPac agreeing to pay \$10 to that *transaction party*. ScotPac will pay the *transaction party* within ten *working days* of the *transaction party* requesting it. If a *transaction document* was intended to be a deed poll in favour of ScotPac but it takes effect as an agreement by virtue of this clause ScotPac's agreement to the document will, if it is not executed by ScotPac, be shown by the document being provided by ScotPac to the other party for execution by the other party. If a statute or other law would give ScotPac rights, powers, remedies or other benefits (such as representations) if a *transaction document* were a deed but that does not occur because the *transaction document* is not a deed, the *transaction parties* agree that ScotPac will still have those rights, powers, remedies and benefits. This does not affect any rights, powers, remedies or benefits set out in the *transaction document*.
- 34.7 Any document (including the *letter of offer* and a *schedule*) can be entered into by using electronic signatures or by the parties showing their agreement in another electronic way. An electronic signature is a digital signature or a visual representation of an individual's handwritten signature or mark which is placed on a physical or electronic form of the document by electronic or mechanical means. For example, ScotPac could issue the *letter of offer* in an electronic format and some or all of the *transaction parties* could sign it using a digital signature or otherwise show their agreement in an electronic form. The resulting agreement will be considered to be made "in writing" by a "document" which is "signed" by the relevant *entities*. If the *transaction party* is a *corporation* both it and the person who provides evidence of the signing warrants to ScotPac that the signing satisfies section 127(1) of the Corporations Act 2001 unless ScotPac is told that that section is not satisfied before the signing is advised to ScotPac.

35 Severability and recording the agreement

- 35.1 If any part of a *transaction document* is or becomes void, invalid or unenforceable in any jurisdiction, it is to be treated as not being included in the *transaction document* in that jurisdiction. It will continue to be included in all other jurisdictions. If any part is or becomes void, invalid or unenforceable in any jurisdiction only in relation to some, but not all, *transaction parties* it will still apply in that jurisdiction in relation to all other *transaction parties*.

In this clause 35.1 “part” means the smallest part of the document which needs to be excluded in the relevant jurisdiction for the balance of the document to bind the relevant parties in that jurisdiction.

- 35.2 A provision of a *transaction document* which is void under sections 301 or 302 of the Bankruptcy Act 1966 in relation to an individual will still apply in relation to all other *entities*. ScotPac’s rights under a *transaction document* cannot be enforced if and to the extent enforcement would contravene sections 415D, 434J, 451E, 454N or 454P of the Corporations Act 2001 (those provisions concern a stay on enforcing rights) or sections 440B or 453Q of the Corporations Act 2001 (those provisions concern the exercise of third party rights during the administration or restructuring of a company). This clause applies despite any other provision of a *transaction document*.
- 35.3 Before issuing the *letter of offer* ScotPac may have given the *client* an outline of the terms and conditions on which a chattel mortgage facility could be provided. The outline might be in an “approval letter”, “terms sheet” or something similar. The document containing the outline is not a *transaction document*. The *facility agreement* and other *transaction documents* replace the outline to the extent they cover a term in the outline. Important terms and conditions may have changed since the outline was provided. Accordingly, it is important that each *transaction party* be satisfied with all *transaction documents* before they agree to them as a term in an earlier outline may have changed.
- 35.4 A *transaction party’s obligations* under a *transaction document* are in addition to, and not in substitution for, other *obligations* (including those under other *transaction documents*, other documents, *security interests* and orders). Similarly, a *transaction party’s other obligations* are in addition to, and not in substitution for, *obligations* under a *transaction document*. A *transaction document* does not merge with a court judgment or order or any right, power or remedy ScotPac may have.

36 Receipt of documents and legal and financial advice

- 36.1 By agreeing to the *facility agreement* each *transaction party* confirms that it received a copy of each *transaction document* to which it is a party and each other *transaction document* which could affect its liability, other than the *schedules* and the confirmations mentioned in clause 34.1. If it requires a copy of any *schedule* or confirmation it will ensure that it is provided by the *client* or the *authorised officer*. Each *transaction party* also confirms that it had the opportunity to read each *transaction document* (other than the *schedules* and confirmations) before the *transaction party* agreed to the *facility agreement* and that it was prepared to agree to the *facility agreement* without there being any requirement for the *schedules* and confirmations to be disclosed to it. Each *transaction party* must ensure that those *transaction documents* meet its requirements and objectives. ScotPac can provide the *transaction documents* to the *client* (or an officer or other representative of the *client*) for distribution to the *transaction parties* and the *transaction parties* (or their officers or other representatives) will need to obtain them so that they can provide that confirmation. ScotPac will, however, give *transaction documents* direct to any *transaction party* which requests them. Instead of providing the documents, ScotPac can provide a link which can be used to obtain the documents. If a *transaction document* was provided electronically, the *transaction party* confirms that it agreed to it being provided that way and that it (or its officer or other representative) was able to access and read it.
- 36.2 Each *transaction party* acknowledges that it has had the opportunity to obtain independent legal, financial, accounting and taxation advice about its rights and *obligations* under the *transaction documents* and about the limitation on ScotPac’s liability in clause 18. They also acknowledge that ScotPac recommended that the advice be obtained. ScotPac will rely on those acknowledgments when it enters into the *transaction documents*.
- 36.3 ScotPac does not provide personal advice of the type referred to in section 766B of the Corporations Act 2001 and does not provide legal, taxation or accounting advice. Each *transaction party* acknowledges that it has not received advice of that type from ScotPac.
- 36.4 Each *transaction party* agrees that ScotPac can provide one set of executed *transaction documents* to the *client* (or an officer or other representative of the *client*). ScotPac can do so by providing hard or electronic copies of the *transaction documents*. If a *transaction party* requires its own copy it will obtain it from the *client* or it can ask ScotPac for a copy.

37 Privacy

- 37.1 By entering into the *facility agreement*, each *transaction party* agrees that their personal information will be collected, used and disclosed in accordance with ScotPac’s privacy policy which can be viewed on, or downloaded from <https://www.scotpac.com.au/privacy-policy/> (“ScotPac’s Privacy Policy”). Each *transaction party* acknowledges that it has read and understood ScotPac’s Privacy Policy at the time of entering into the *facility agreement*. If ScotPac changes ScotPac’s Privacy Policy, it will put a notice on its website or take reasonable steps to tell the *client* in another way. The *client* must keep each other *transaction party* that is an individual and all *authorised officers* of any *transaction party* informed of the changes to ScotPac’s Privacy Policy.

- 37.2 Each *transaction party* acknowledges and agrees that ScotPac may send personal information of the *transaction party* overseas including to its service providers and related *entities*, most likely to the overseas countries listed in ScotPac's Privacy Policy, for the purposes set out in ScotPac's Privacy Policy. Each *transaction party* consents to the disclosure of personal information to an *entity* not in Australia, meaning ScotPac will not be required to take reasonable steps to ensure that the overseas *entity* does not breach the Australian Privacy Principles in relation to the *transaction party's* personal information and if the overseas *entity* mishandles the *transaction party's* personal information, the *transaction party* will not be able to seek redress under the Australian Privacy Act 1988 against ScotPac.
- 37.3 The *client* must collect, store, use and disclose personal information as required by the Privacy Act 1988. It must also ensure that each individual who becomes a *transaction party* or is or becomes a director or shareholder of a *transaction party* which is a *corporation* is aware of ScotPac's Privacy Policy and agrees to the collection, use and disclosure of personal information as outlined in ScotPac's Privacy Policy and by the *facility agreement*; obtain any necessary approval so that the *client* can provide personal information to ScotPac as required by the *facility agreement* and ScotPac can collect, store, use and disclose that personal information as contemplated by the *facility agreement* and ScotPac's Privacy Policy.
- 37.4 This clause 37 continues until all liabilities have been satisfied.

38 Confidentiality

- 38.1 The *client* and ScotPac agree that neither of them will disclose to an interested person (as defined in section 275(9) of the *PPSA*), or any *entity* at the request of one of those interested persons, any information of the kind described in section 275(1) of the *PPSA*. However, ScotPac may make that disclosure if section 275(7) of the *PPSA* applies. The *client* must not request or authorise the disclosure of any information of the kind described in section 275(1) of the *PPSA* or waive any duty of confidence that would otherwise permit non-disclosure under section 275 of the *PPSA*.
- 38.2 The *transaction parties* must not, without ScotPac's approval, give a copy of the *facility agreement* or any *schedule* to any *entity*, except an *entity* which will become a *transaction party*, a *transaction party's* professional advisers (for the purpose of obtaining advice about it) or an *entity* to which it is required by any law to give it. Before they give it to any *entity* the intended recipient must agree with ScotPac that it will not give it to any *entity* without ScotPac's approval. In the case of the *client* this clause 38.2 only applies when the disclosure is not governed by clause 38.1.
- 38.3 Each *transaction party* appoints ScotPac and each of its *authorised officers* as its agent and authorised representative for the purpose of requesting information pursuant to section 275 of the *PPSA* from an *entity* which is a secured party holding a *security interest* in *property* in which the *transaction party* has an interest.

39 Disclosure of information

- 39.1 So long as ScotPac does not breach clause 38.1, ScotPac may disclose any *transaction document* and any information which ScotPac has obtained or obtains about a *transaction party* or which a *transaction party* provides or has provided to it if any of the following is satisfied.
- (a) The *transaction party* consents to the disclosure. A *transaction party* may not unreasonably withhold or delay its consent.
 - (b) The disclosure is required by a stock exchange or is allowed or required by any law.
 - (c) The disclosure is to ScotPac's officers, employees, agents, auditors, accountants, lawyers or advisers, or to any *entity* that provides services to or for ScotPac.
 - (d) The disclosure is to any *entity* which is *related* to ScotPac.
 - (e) The disclosure is to an *entity* which provides facilities, insurance or credit enhancement to ScotPac or a *transaction party* or if the disclosure is to a credit reporting body so long as the disclosure to that body will not breach any law.
 - (f) The information is generally and publicly available.
 - (g) The disclosure is to a *transaction party*, to an *entity* to which a *transaction party* has given a *security interest* or *guarantee* or to an *entity* which may give a *guarantee*.
 - (h) The disclosure is to the *transaction party's* auditors, accountants or *ADI* and they have requested information about dealings with ScotPac.

- (i) ScotPac considers the disclosure appropriate in connection with the registration and maintenance of any financing statement or financing change statement.
 - (j) ScotPac considers the disclosure appropriate in connection with ScotPac exercising rights, powers or remedies or assigning, novating or otherwise dealing with the *transaction documents*, any interests arising under them or any of its rights or *obligations*. This includes in connection with the enforcement of any *transaction document*, any *security interest* or any *guarantee*.
 - (k) ScotPac considers the disclosure appropriate in connection with the enforcement, operation or administration of a *transaction document*. This includes to an *entity* which provides services to ScotPac or when the disclosure is required so that ScotPac can make a payment as contemplated by a *transaction document*.
- 39.2 Clauses 37.2 and 39.1 do not limit any other consent which a *transaction party* has provided or may provide. The consent can be provided in any way, including by an online finance application. A permitted disclosure can be made to an *entity* which is located overseas.
- 39.3 The *client* and each *guarantor* irrevocably authorise ScotPac to obtain:
- (a) from any *entity* which provides the *information connection*, information to be provided using the *information connection*;
 - (b) from its *ADI*, any information which ScotPac may require concerning its *ADI accounts*;
 - (c) from an *entity* which provides insurance or credit enhancement to it, any information which ScotPac may require concerning the insurance or credit enhancement;
 - (d) from its accountants and auditors, any information ScotPac may require concerning its financial and business affairs; and
 - (e) from the *PPSR*, if the *client* or *guarantor* is an individual, disclosure of any registration in which the individual is registered as a grantor or a secured party. Other searches may be permitted by section 172 of the *PPSA*. Consent is not required when the *client* or *guarantor* is not an individual.

40 PPSA and other laws

- 40.1 The *client* must give ScotPac all information necessary for ScotPac to register and maintain a legally effective financing statement on the *PPSR* in respect of the *security interest* created by a *transaction document* and must ensure that the *security interest* has priority over all other *security interests* (except *permitted interests* which ScotPac has agreed can have priority). ScotPac may determine the number of financing statements which are registered, when they are registered and the collateral class against which the registration is made. The *client* authorises ScotPac to file all financing statements, financing change statements and other documents and to do all things which ScotPac considers appropriate to perfect and maintain ScotPac's *security interest* and to ensure it has priority over other *security interests*, to protect and preserve the *equipment* and to exercise any right, power or remedy in connection with ScotPac's *security interest*, which includes to realise ScotPac's *security interest*.
- 40.2 If sections 95, 118, 121(4), 123, 125, 130, 132(3)(d), 132(4), 135, 137, 142 and 143 of the *PPSA* would, apart from this clause, apply to the *facility agreement*, a *contract* or the *security interest* it creates, those sections will not apply to the maximum extent that it is possible to contract out of them under section 115 of the *PPSA*. If section 116(2) of the *PPSA* applies section 132 of the *PPSA* will not apply to the maximum extent that it is possible to exclude it under section 115(7) of the *PPSA*.
- 40.3 The *client* must not refuse any permission sought by ScotPac under section 94 of the *PPSA*; object to, or seek redress for, any damage or inconvenience caused by ScotPac removing an accession; make an application under section 97 of the *PPSA*; complain of any damage, cost or inconvenience caused by ScotPac taking apparent possession of property under section 126 of the *PPSA*, if that section applies; or object to ScotPac's proposal to purchase property under section 129(2)(b) of the *PPSA*, if that section applies. The *client* waives its right to receive a notice from ScotPac under section 135 of the *PPSA*, if that section applies.
- 40.4 As permitted by section 157(3) of the *PPSA*, the *client* waives its right to receive a verification statement or notice in relation to registration events. In clause 31.3 each *transaction party* waives the right to receive a notice from ScotPac to the extent this is possible.
- 40.5 Nothing in the *facility agreement* or a *schedule* should be construed as an agreement that a *security interest* arising under a *contract* attaches later than the time specified in section 19(2) of the *PPSA* or as an agreement by ScotPac to subordinate its *security interest* in any *equipment* to any other *security interest* (including a *permitted interest*) or as a consent to any other *security interest*, apart from *permitted interests*, attaching to any *equipment*.

- 40.6 If at any time the *client* has an interest in chattel paper which is connected with the *equipment* (such as writing that evidences a lease) the *client* must ensure that a potential purchaser cannot acquire the chattel paper; must not give possession of the chattel paper (including as contemplated in section 24(5) of the *PPSA*) to any *entity* except ScotPac; must include a notice on it (in a form required by ScotPac) which gives notice of ScotPac's interest in it; and must, if requested by ScotPac, give possession to ScotPac. Chattel paper which is in hard copy must be kept at the *business premises* until it is given to ScotPac. Chattel paper which is evidenced by an electronic record must be recorded on the system in a way which is acceptable to ScotPac and until ScotPac tells the *client* how this is to be done the *client* must ensure that there is not a single authoritative copy of the electronic record which is unique, identifiable and unalterable.
- 40.7 A *transaction party* must not register or maintain a financing statement on the *PPSR* under which ScotPac is the grantor of a *security interest*.
- 40.8 If ScotPac exercises a right, power or remedy, that exercise is not an exercise of a right, power or remedy under the *PPSA* unless ScotPac states otherwise at the time of exercise. However, this clause 40.8 does not apply to a right, power or remedy which can only be exercised under the *PPSA*.

41 Governing law, courts and complaints

- 41.1 The law of the state or territory specified in the *letter of offer* as being the governing law governs the *facility agreement* and each *contract* (including the *security interest* created by it and the contractual obligations between the parties under it).
- 41.2 Each *transaction party* submits to the non-exclusive jurisdiction of the courts having jurisdiction in that state or territory.
- 41.3 To the extent permitted by law, the *facility agreement* and each *contract* prevails to the extent it is inconsistent with any law. The rights, powers and remedies in the *facility agreement* or *contract* are in addition to those provided by law or any other document. However, anything ScotPac does under the *facility agreement* or *contract* is subject to any law unless that law has been lawfully excluded or modified by a provision of the *facility agreement* or *contract*.
- 41.4 ScotPac has an internal dispute resolution system that covers complaints made by the *client*. ScotPac will respond to the *client's* concerns promptly and fairly. Information regarding the complaint handling process is available from ScotPac.

42 Notices and service

- 42.1 A notice or demand from ScotPac to a *transaction party* must be in writing (which includes electronic communication) and be signed (directly or with a facsimile signature) or issued by ScotPac, one of its *authorised officers* or someone else authorised to act on its behalf. It may be served by: giving it to the *transaction party* or one of its *authorised officers*; sending it to the *transaction party* by e-mail or fax; posting it (by airmail when the parties are in different countries) in a pre-paid envelope to the *transaction party*; or delivering it to the *transaction party*.
- 42.2 A notice or demand sent by e-mail to a *transaction party's* e-mail address (or an e-mail address of an *authorised officer* or an e-mail address which ScotPac has been asked to use) last known to ScotPac is, if it was sent before 4.00pm on a *working day*, to be treated as having been received by the *transaction party* when sent unless ScotPac has received a message indicating that it has not been received. A notice or demand sent by fax to a *transaction party's* last known number is, if it was sent before 4.00pm on a *working day*, to be treated as having been received by the *transaction party* when ScotPac receives an error free transmission report. If it was sent by e-mail or fax after that time it is to be treated as having been received at the commencement of business on the next *working day*. A notice or demand sent by post to, or which is delivered to, a *transaction party's* address specified in the *letter of offer* or another *transaction document*, its registered office or its business or residential address last known to ScotPac is to be treated as having been received by the *transaction party* on the fourth *working day* after it was posted or when it was delivered. References to time in this clause 42.2 means the time where ScotPac's *operations office* is located.
- 42.3 Anything in connection with legal process (such as court documents) can be served in any of the ways mentioned in clause 42.2 if the law permits this. Nothing in clause 42 affects ScotPac's right to serve in any other way permitted by law.
- 42.4 Service is effective even if a *transaction party* or one of its partners is dead, incompetent, absent from the jurisdiction, *insolvent* or wound up. Service is effective despite anything else that might otherwise prevent it being effective. If the *client* comprises two or more *entities* a notice or demand can be given to each of them by being served on any one or more of them.

- 42.5 A notice from a *transaction party* to ScotPac must be in writing and signed by the *transaction party* or by one of its *authorised officers*. It must be delivered to ScotPac at its *operations office* unless it is in connection with a registration on the *PPSR*, in which case it must be sent to the address for service specified in the registration.

43 Special provisions and operating conditions

Any special provisions or operating conditions in the *letter of offer* prevail over anything else in the *facility agreement* which is inconsistent with them, to the extent of the inconsistency. If it is possible to comply with both this document and the special provisions or the operating conditions the *transaction party* must do so, even if they concern the same or similar subject matter.

I. INTERPRETATION AND DEFINITIONS

44 General interpretation rules

- 44.1 The contents and headings are for ease of reference only and do not affect the interpretation of the *facility agreement* or a *contract*. The overview which has been included before the contents is only a summary of some features of the *facility agreement*. Terms and conditions in the *facility agreement* apply to those outlined features.
- 44.2 Words implying the singular include the plural and vice versa. Words implying any one gender also include the other genders. A reference to any thing (including any right) includes the whole and each part of it, but the performance of part of an *obligation* does not constitute performance of the *obligation*.
- 44.3 A reference to law includes a statute, regulation, statutory instrument, rule of common law or equity and any official directive. A reference to a statute includes a regulation or statutory instrument issued under it. A reference to a statute, a provision of it or a definition in it includes a modification, re-enactment or substitution.
- 44.4 A reference to all liabilities being satisfied (or similar words) means ScotPac has told the *client* that it considers that all of the *client's obligations* to ScotPac and each *entity* which is *related* to ScotPac have been satisfied; there is no risk of ScotPac or any of those *related entities* having to hand over any payments a *transaction party* or any other *entity* has paid to ScotPac or any of those *related entities*; and the *facility agreement* has come to an end. ScotPac will act reasonably when it makes that determination.
- 44.5 A reference to a *transaction party* includes that party's legal personal representatives, successors in title, permitted transferees and permitted assigns. It also includes any controller, liquidator and administrator (as those words are defined in section 9 of the Corporations Act 2001) and trustee in bankruptcy appointed in relation to a *transaction party* or its *property*.
- 44.6 A reference to a document (such as any *transaction document*) includes it as amended, novated, supplemented or replaced from time to time, except to the extent the amendment, novation, supplement or replacement was prohibited by a *transaction document*. A reference to the enforcement of a *transaction document* include the enforcement of a *security interest* which arises under it.
- 44.7 If the *client* is required to give something to ScotPac, ScotPac can accept it in electronic form. If ScotPac accepts something electronically it will be considered to have been provided in writing, by a document which is signed by the *client*.

45 Meaning of particular words

- 45.1 A reference to "\$", "\$A" or "Australian dollars" means the lawful currency of Australia.
- 45.2 A reference to "document" includes anything on which there is writing and a record of information which is in electronic form.
- 45.3 The words "including" and "includes" when used to introduce an item do not limit the meaning of the words to which the item relates to items of a similar kind. Similarly, when the words "for example", "such as" and "in particular" are used to introduce an illustration that illustration does not limit the meaning of the provision to which the illustration relates. An illustration can extend the operation of the provision.
- 45.4 Where it is stated that something can or should be done to protect ScotPac's "legitimate interests" it can be done if it is reasonably necessary to protect ScotPac's legitimate interests.
- 45.5 A reference to "ScotPac" includes any person who is authorised to act on ScotPac's behalf, its successors in title, transferees and assigns and, where ScotPac is part of a GST group pursuant to section 48-5 of the GST Act, includes the representative member of that group.

- 45.6 A reference to “ScotPac’s mistake, negligence, fraud or wilful misconduct” includes the mistake, negligence, fraud or wilful misconduct of an *entity* which is *related* to ScotPac; that of an *entity* mentioned in clause 30.3; that of ScotPac’s agent (other than the *client*), contractor (including any *entity* which provides the *information connection*), officer or employee; and that of a *receiver*, in each case where appointed by, or acting on behalf of, ScotPac.
- 45.7 A reference to “shareholder” includes a member, such as a member as defined in section 9 of the Corporations Act 2001. This could, for example, apply if the relevant *entity* is a company limited by guarantee.
- 45.8 A reference to “warranty” or “warranties” includes representations. Accordingly, where it is stated that ScotPac gives no warranties that means ScotPac gives no warranties or representations and where it is stated that a *transaction party* warrants something that means the *transaction party* both warrants and represents that thing.
- 45.9 At any time the introduction fee, brokerage or commission which has not been reimbursed to ScotPac is an amount which is determined by ScotPac in accordance with this clause. ScotPac will determine the percentage which the introduction fee, brokerage or commission paid by ScotPac bears to the amount which is the total of the instalments referred to in clause 4.1. The fee, brokerage or commission which has not been reimbursed is that percentage of the instalments (or part of an instalment) which have not been paid less any refund which the introducer pays to ScotPac.
- 45.10 At any time, the early termination fee is the fee payable to ScotPac because a *contract* which was entered into for a fixed *term* ends early in accordance with clauses 4.8 or 21.1. It is a reasonable estimate of the loss which ScotPac will suffer due to the *contract* ending early. ScotPac will calculate the fee by using its standard formula which, amongst other things, takes into account the discounted future cash flow of the instalments (or part of an instalment) which have not been paid. The discount rate used to determine those cash flows will be advised by ScotPac on request. The fee may be significant and may not reflect actual funding transactions which ScotPac has entered into. Before the *client* provides a *schedule* it can request details of the formula and an example of the likely fee.

46 Definitions

In the *facility agreement* words in italics have the following meanings, except to the extent the context requires that they not be given that meaning.

ADI and **ADI account** have the same meaning as in the *PPSA*. A bank operating in Australia will be an *ADI* and most accounts with a bank will be an *ADI account*.

Amount owing means:

- (a) the total amount of the payments specified in any *schedule* which have not been paid plus interest payable under clause 5.1;
- (b) money owed or expressed to be owed (whether actually, contingently or prospectively) or from time to time remaining unpaid by the *client* in any capacity at any time to ScotPac or an *entity* which is *related* to ScotPac pursuant to a *transaction document* or otherwise; and
- (c) claims for damages (liquidated or unliquidated) by ScotPac or an *entity* which is *related* to ScotPac at any time under a *transaction document*.

Authorised officers:

- (a) in relation to ScotPac, means each of ScotPac’s directors and company secretaries; each person who is employed by ScotPac or an *entity* which is *related* to ScotPac whose title includes “director”, “manager”, “assistant manager”, “company secretary” or “accountant”; each person authorised to act under a power of attorney given by ScotPac; each lawyer who acts for ScotPac, including its in-house lawyers; and each person ScotPac has decided is an authorised officer; and
- (b) in relation to a *transaction party*, means each of its directors and company secretaries; each person who is employed by the *transaction party* or an *entity* which is *related* to the *transaction party* whose title includes “director”, “manager”, “assistant manager”, “company secretary” or “accountant”; each person who claims to be one of those employees; and each person authorised under clause 34.1.

Business premises means the business premises described in the *letter of offer* or substitute premises approved by ScotPac. ScotPac will not unreasonably withhold its approval. That is the place where the *equipment* is to be kept.

Client means the *entity* named in the *letter of offer* as the client and each *entity* that agrees at any time to be a *client*.

Contract means the agreement between the *client* and ScotPac. The terms and conditions of that contract are found in the relevant *schedule*, the *letter of offer* and this document. The *contract* arises when ScotPac accepts the offer the *client* makes by giving the *schedule* to ScotPac.

Corporation means a corporation as defined in the Corporations Act 2001.

Default event means any event or circumstance listed in clause 20.3.

Entity includes an individual, firm, partnership, joint venture, society, unincorporated body, trust (in each case irrespective of whether it has separate legal personality), a *corporation* and any other legal entity under any law.

Equipment, in relation to a *contract*, means all and any one or more of the following.

- (a) The equipment or other property described in the *schedule*.
- (b) Any property (even if it is not an accession) that is installed in, or affixed to, the equipment or other property described in the *schedule*.
- (c) Any equipment or other property the *client* acquires in replacement or substitution for the equipment or other property described in the *schedule*.
- (d) Any property the *client* acquires as additional parts for the equipment or other property described in the *schedule*. This includes spare parts which could be used to replace components of the equipment or other property.
- (e) Any interest in any of the things described above.

In clauses 8.1, 9.1(g), 9.1(i), 9.1(j), 9.2, 12.2, 21.3, 26.3 and 40.5 each reference to *equipment* also includes everything that is the subject of a *security interest* under clause 8.1.

Facility agreement means this document as amended and supplemented by the *letter of offer*. It can also mean the agreement between ScotPac, the *client* and any *guarantor* the terms of which are found in this document as amended and supplemented by the *letter of offer*. It means those documents as they may be changed, including a change which is made in accordance with clause 19. If there is any inconsistency between this document and the *letter of offer*, the *letter of offer* will prevail to the extent of the inconsistency.

Facility limit means the facility limit specified in the *letter of offer*. It can be increased or decreased in accordance with clauses 19.1(b), 19.2 and 21.2(b).

Financial indebtedness means any *obligation* or accommodation in respect of money borrowed or raised, or any other financial accommodation of any kind. The *obligation* or accommodation may be present or future.

General security deed means all and any one or more of the documents (other than the *facility agreement* or a *contract*) pursuant to which any *client* and/or any *guarantor* at any time gives a *security interest* in favour of ScotPac.

GST means any amount paid or payable under any GST law as that expression is defined in section 195-1 of the *GST Act* and any other goods or services tax, value added tax or similar tax and any related penalties and interest.

GST Act means A New Tax System (Goods and Services Tax) Act 1999.

Guarantee means a guarantee, indemnity, guarantee and indemnity (including the one in clause 22), letter of credit, legally binding letter of comfort or suretyship, or any other similar obligation (including an irrevocable offer) of any kind at all, whatever its nature or title. The *entity* providing the *guarantee* must be liable for the *financial indebtedness* of another although the *guarantee* can also extend to other *obligations*.

Guaranteed money, at any time in relation to a *guarantor* and without double counting, means:

- (a) all money owed or expressed to be owed (whether actually, contingently or prospectively) by any *transaction party* (other than that *guarantor*), whether alone or with any other *entity*, to ScotPac or an *entity* which is *related* to ScotPac pursuant to a *transaction document* or any other document or on any other basis;
- (b) all money remaining unpaid by any *transaction party* (other than that *guarantor*) in any capacity, whether alone or with any other *entity*, to ScotPac or an *entity* which is *related* to ScotPac pursuant to a *transaction document* or any other document or on any other basis;

- (c) claims for damages (liquidated or unliquidated) by ScotPac or an *entity* which is *related* to ScotPac pursuant to a *transaction document* or any other document or on any other basis; and
- (d) all money which is secured money as defined in any *general security deed* executed by the *guarantor* or any *land mortgage* executed by the *guarantor*.

Guaranteed obligations, in relation to a *guarantor*, means any *obligations* of a *transaction party* (other than that *guarantor*) to ScotPac or an *entity* which is *related* to ScotPac at any time under a *transaction document* or any other document or on any other basis, other than the obligation to pay the *guaranteed money*.

Guarantor means the *entity* named in the *letter of offer* as the guarantor and each *entity* that at any time gives or agrees to give a *guarantee* in favour of ScotPac or any *entity* which is *related* to ScotPac.

Information connection means the service by which information is received by ScotPac from the *client* or a *guarantor* either directly or via a service provider. The information which can be received using the *information connection* is described in clause 14.2. Clause 14.3 includes requirements for establishing and using the *information connection*.

Insolvent, in relation to an *entity*, means:

- (a) any of the following has occurred or occurs in relation to that *entity* if it is a *corporation*:
 - (i) an application is made, proceedings are initiated or a meeting (whether of shareholders, creditors or directors) is called with a view to winding up the *entity* or placing it or any part of its undertakings under administration;
 - (ii) a *receiver*, liquidator, provisional liquidator, controller or administrator is appointed to the *entity* or any of its assets or it is a Chapter 5 body corporate as defined in section 9 of the Corporations Act 2001;
 - (iii) a compromise or arrangement of the kind referred to in Part 5.1 of the Corporations Act 2001 is proposed;
 - (iv) the *entity* is or becomes deregistered, or an application is made or an action is initiated with a view to cancelling its registration or appointing an inspector or other officer to investigate any of its affairs pursuant to any law;
 - (v) the *entity* is, admits or may be deemed or presumed within the meaning of any applicable law to be, insolvent or unable to pay its debts;
 - (vi) the *entity* has stopped or suspended payment of its debts; or
 - (vii) circumstances exist which would enable a court upon application to order the *entity's* winding up pursuant to section 461 of the Corporations Act 2001;
- (b) any of the following has occurred or occurs in relation to that *entity* if the *entity* is an individual:
 - (i) he or she is an insolvent under administration as defined in section 9 of the Corporations Act 2001, or a *receiver* is appointed to any of his or her assets;
 - (ii) he or she is, or may be deemed or presumed within the meaning of any applicable law to be, insolvent or unable to pay his or her debts;
 - (iii) he or she has stopped or suspended payment of his or her debts; or
 - (iv) he or she dies, is of unsound mind or becomes incapable of managing his or her own affairs; and
- (c) the occurrence of any event analogous to or having a similar effect to any of the events described in paragraphs (a) or (b) under the laws of any relevant jurisdiction.

Land mortgage means all and any one or more of the real property mortgages granted by any *client* or *guarantor* in favour of ScotPac at any time over any land.

Letter of offer means the letter or similar document ScotPac, or someone with the approval of ScotPac, sends to the *client* containing an offer to provide a chattel mortgage facility to the *client*. It may also offer to provide other facilities. The *letter of offer* refers to this document. The *letter of offer* may change this document.

Loan amount, in relation to a *contract*, means the loan amount specified in the *schedule*.

Loss includes any liability, expense, loss (including consequential and economic loss), damage, cost or charge.

Month means calendar month.

Obligations includes actual, contingent and prospective obligations.

Operations office means ScotPac's operations office specified in the *letter of offer* or any substitute address which ScotPac specifies.

Overdue rate, applicable to a *contract*, means an annual percentage (calculated on the basis of a 365 day year) which is the interest rate applicable to the *loan amount* plus 4 per cent. ScotPac will determine the interest rate applicable to the *loan amount* by taking the charges mentioned in clause 3.2 and then deducting from that amount the introduction fee, brokerage or commission mentioned in clause 6.2 to give the total interest for the *term* which is then expressed as an annual percentage. When the *overdue rate* is used to determine interest on amounts which are not payable under a *contract* the *overdue rate* is the highest of those rates.

Permitted interest means a *security interest*, transfer or dealing which ScotPac has approved; a *security interest* in favour of ScotPac; a *security interest* in *equipment* so long as ScotPac is satisfied that it has a *security interest* in the *equipment* which has priority; and a charge or lien arising in favour of a government department or agency by operation of statute (other than the *PPSA*) or a lien arising in the ordinary course of business in favour of a mechanic or similar person, unless there is a default in payment of money secured by that charge or lien.

Potential default event means anything which, with the passing of time or the giving of notice, could become a *default event*.

PPSA means Personal Property Securities Act 2009.

PPSR means the Personal Property Securities Register established under the *PPSA*.

Property means all present and after-acquired property, including land, fixtures, rights, entitlements, authorities, personal property (as defined in section 10 of the *PPSA*), *PPSA* retention of title property (as defined in section 51F of the Corporations Act 2001) and rights and interests conferred by the *PPSA*.

Receiver means receiver, manager and receiver and manager.

Related, in relation to an *entity*, means a related body corporate within the meaning of section 50 of the Corporations Act 2001, but on the basis that "subsidiary" has the meaning given below and "body corporate" includes any *entity*.

Schedule means the Chattel Mortgage Schedule the *client* gives to ScotPac. It should be in the form included at the end of this document. It includes particulars of the loan which the *client* offers to borrow from ScotPac and the equipment or other property which is to be the specific security for that loan.

Security interest includes any kind of oral or written mortgage, pledge, lien, charge, encumbrance, hypothecation, security interest (including as defined in section 12 of the *PPSA*), preferential interest or any other arrangement having substantially the same economic effect; any entitlement under a trust or other right of, or arrangement with, a creditor to have its claims satisfied in priority to other creditors with, or from the proceeds of, any asset; and an interest (other than a security interest as defined in section 12 of the *PPSA*) held by any *entity* which could at any time, in any circumstance and to any extent, have priority over a *security interest* held by ScotPac.

Subsidiary, in relation to an *entity*, means a subsidiary within the meaning of section 46 of the Corporations Act 2001. However, an *entity* is also a *subsidiary* of an *entity* if it is controlled directly or indirectly by that *entity* and for this purpose control includes the capacity to influence or determine the outcome of decisions about financial and operating policies of the *entity*. In addition, a trust may be a *subsidiary* (in which case, a unit or other beneficial interest or being a member of the class of potential beneficiaries is to be regarded as a share) and an *entity* may be a *subsidiary* of a trust if it would have been a *subsidiary* if that trust were a *corporation*.

Term, in relation to a *contract*, means the term specified in the *schedule*.

Transaction document, at any time, means all and any one or more of the following entered into at that time.

- (a) The *facility agreement*.
- (b) Each *schedule*.
- (c) Each confirmation mentioned in clause 34.1.
- (d) Any document creating a *security interest* in favour of ScotPac or any *entity* which is *related* to ScotPac in connection with *obligations* of all or any one or more of the *client* and the *guarantor* under the *facility agreement* or any *contract*, even if it also creates a *security interest* in connection with other *obligations*.

- (e) Any document creating a *guarantee* in favour of ScotPac or any *entity* which is *related* to ScotPac in connection with *obligations* of all or any one or more of the *client* and the *guarantor* under the *facility agreement* or any *contract*, even if it also creates a *guarantee* in connection with other *obligations*.
- (f) Any document to which ScotPac or any *entity* which is *related* to ScotPac is a party which establishes the ranking of *security interests* referred to in paragraph (d).
- (g) Any other document, letter or instrument entered into between a *transaction party* (with or without other *entities*) and ScotPac or any *entity* which is *related* to ScotPac or granted by a *transaction party* (with or without other *entities*) in favour of ScotPac or any *entity* which is *related* to ScotPac.
- (h) Any document which ScotPac and the *client* agree is a *transaction document*.

Transaction party, at any time, means all and any one or more of the following at that time.

- (a) The *client*.
- (b) The *guarantor*.
- (c) An *entity* which has given, or should have given or gives, a *security interest* in favour of ScotPac or any *entity* which is *related* to ScotPac in connection with *obligations* of all or any one or more of the *client* and the *guarantor* under the *facility agreement* or any *contract*, even if it also creates a *security interest* in connection with other *obligations*.
- (d) An *entity* which has entered, or should have entered or enters, into a document creating a *guarantee* in favour of ScotPac or any *entity* which is *related* to ScotPac in connection with *obligations* of all or any one or more of the *client* and the *guarantor* under the *facility agreement* or any *contract*, even if it also creates a *guarantee* in connection with other *obligations*.

Working day means a day, other than a Saturday, Sunday or public holiday, ScotPac's *operations office* is open for business. A *working day* is not necessarily the same as a business day as defined in the *PPSA*. A reference to "day" means any day.

47 Important PPSA words

In the *facility agreement* the following terms have the meaning in the *PPSA*, except to the extent the context requires that they not be given that meaning. Those terms are: accession, Australian entity, chattel paper, financing change statement, financing statement, perfected, proceeds, purchase money security interest and verification statement.

48 Different versions of this document

ScotPac may issue revised versions of this document. The version which applies to the *transaction parties* is specified in the *letter of offer*, although this may change in accordance with clause 19.

CHATTEL MORTGAGE SCHEDULE



Chattel Mortgage Schedule

Name of Client:	
Agreement number:	
Date:	

Parties to the Agreement

Scottish Pacific Business Finance Pty Ltd (ACN 008 636 388) or Scottish Pacific (BFS) Pty Ltd (ACN 101 657 041) of Level 41, 25 Martin Place, Sydney, New South Wales 2000 (ScotPac) and the client named above (the Client).

Contract documents

The terms and conditions of the Client's contract with ScotPac are found in:

- this Schedule. The Table of Information below contains the details of the facility;
- Letter of Offer; and
- Chattel Mortgage Facility Terms and Conditions.

What happens when a Schedule is signed?

When the Client signs a Schedule it offers to borrow a loan amount in order to purchase equipment and gives security over the equipment. Alternatively, it offers to borrow a loan amount for business purposes and gives security over specified equipment. In each case it does so on the terms and conditions in the above documents. Each Schedule is signed by the Client as borrower and when accepted by ScotPac as lender will form a separate contract.

What you need to do

1. Check the details in this Schedule carefully. Please call ScotPac if any of the details are incorrect or the Client's circumstances have changed. ScotPac will then provide a new Schedule.
2. Read the Letter of Offer and the Chattel Mortgage Facility Terms and Conditions before signing this Schedule.
3. Sign the acknowledgement and acceptance section. You should obtain independent legal, financial, accounting and taxation advice.

By signing this Schedule the Client offers to enter into a contract with ScotPac.

Table of Information

Information in the table is correct on the above date.

<u>Description</u>	<u>Detail</u>
Loan amount:	\${amount}
Charges (including interest):	\${amount}
Total amount of payments:	\${amount}
Loan term:	[number] months
Purpose advance:	[Assist in purchase of equipment OR specify other approved business purpose]

Details of payments / instalments:

<u>Instalment Amount</u>	<u>Number of Instalments</u>	<u>Frequency</u>	<u>First Instalment Due Date</u>	<u>Last Instalment Due Date</u>
\$(insert amount)	[number]	[Monthly]	[date]	[date]

Note: The First Instalment Due Date is indicative only. All instalments will be due for payment on the same day of the month as the day on which ScotPac accepts the offer made by the Client in this Schedule, or if the month does not have that day the last day of the month. The loan amount will be funded on that date.

Security and Documentation Fees:

Security Registration Fee:	\$(amount)
Documentation Fee:	\$(amount)
Total Fees:	\$(amount)

Security

Description of Security:	First registered security interest over the equipment
Guarantee by:	[names of guarantors OR none specified if there are no guarantors]

The Equipment:

Description of Equipment:

Vehicle Registration Number (if a motor vehicle):

Chassis Number:

Vehicle Identification Number (VIN) (if a motor vehicle):

Road Vehicle Engine Number:

Identifying Number (if not a motor vehicle):

Make, Model, Year and Colour (if not a motor vehicle):

Business premises where equipment is kept:

Other requirements

[specify any special conditions or requirements]

Directions to pay

The Client authorises and directs ScotPac to pay the loan amount shown above to: [specify recipient of disbursement]

Client acknowledgement and acceptance

By signing this Schedule, the Client offers to enter into a contract with ScotPac to borrow the loan amount. The contract will be made up of this Schedule, the Letter of Offer and the Chattel Mortgage Facility Terms and Conditions.

The Client confirms it read all the terms of the proposed contract before signing this Schedule. Terms defined in the Chattel Mortgage Facility Terms and Conditions have the same meaning in this Schedule. The contract does not take effect until ScotPac accepts this Schedule.

SIGNED for and on the behalf of the Client this day of 20

X

Authorised officer

X

Authorised officer

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Talk to us

Find out more about
what ScotPac can
offer your business.

Call 1300 207 345 or
visit ScotPac.com.au

Office Locations

Sydney
Brisbane
Adelaide
Perth
Melbourne
Auckland
Guangzhou

