



Deed of Novation – Loan

October 2016 Version

This *deed* is made on the date in Item 1 of the *schedule*

BETWEEN *we / us*
 AND *you*
 AND *the remaining obligor*
 AND *the new obligor*
 AND *the guarantor*
 AND *the new guarantor*
 AND *the retiring guarantor.*

RECITALS:

- A. *We* and *you* have entered into a *contract* as detailed in Item 9 of the *schedule*.
- B. *We*, *you* and the *new obligor* have agreed to novate certain obligations under the *contract* from *you* to the *new obligor* on the terms of this *deed*.
- C. The *guarantor* (if any) has guaranteed *your* obligations under the *contract*, consents to the novation of the *contract* and agrees that the *guarantee* will continue to apply to the *new contract*.

1. *Novation date*

This *deed* and the obligations created by this *deed* take effect on and from the *novation date*.

2. *Consideration*

This *deed* is entered into in consideration of the parties incurring obligations and giving rights under this agreement and the *new contract* and for other valuable consideration.

3. *Novation*

- 3.1 With effect on and from the *novation date*, the parties agree that the *contract* is discharged and the *new contract* is created on the same terms and conditions as the *contract* except that:
 - 3.1.1 the *new obligor* is substituted for *you*; and
 - 3.1.2 each reference to *you* will be read as a reference to the *new obligor* in the *new contract*; and
 - 3.1.3 notices to the *new obligor* must be provided using its details specified in the *schedule*; and
 - 3.1.4 the *new contract* is amended as set out in clause 12.

4. *Rights and benefits*

- 4.1 With effect on and from the *novation date*, the *new obligor* together with the *remaining obligor*:
 - 4.1.1 is bound by each *new contract* as the *contract* relates to *you* and the *remaining obligor*;
 - 4.1.2 assumes all of *your* obligations and/or liabilities that are owed to *us* under or in respect of the *contract* (including without limitation, in respect of any amounts owing as a result of any financial accommodation provided by *us* under the *contract*) before the *novation date*; and

- 4.1.3 enjoys under the *new contract* all the rights and benefits conferred on *you* under the *contract*.

5. *Release from future performance*

5.1 On and from the *novation date*:

- 5.1.1 *we* release *you* from any obligation under the *contract* to be performed on or after the *novation date*; and
- 5.1.2 *you* release and discharge *us* from further performance in *your* favour under the *contract* and from all of *our* obligations and liabilities, and all of *your* claims and demands as against *us* which arise under the *contract* after the *novation date*.

6. *Acknowledgements*

- 6.1 *We* acknowledge that nothing in this *deed* or any of the transactions contemplated by this *deed* constitutes:
 - 6.1.1 a breach of any term of the *new contract*;
 - 6.1.2 an event of default under the *new contract*;
 - 6.1.3 any other event or circumstance in which, with the giving of notice, lapse of time, or fulfilment of any condition, would cause the acceleration of any payment to be made under, or the termination or enforcement of, the *contract* or the *new contract*.
- 6.2 *You* acknowledge that the novation and release in clause 3 above do not prejudice accrued rights, or claims arising under the *contract* in connection with the performance of the *contract* before the *novation date* which we may have against *you*.

7. *Guarantors*

- 7.1 The guarantor consents to this *deed* and agrees that the *guarantee* will continue to apply to the *new contract* (as amended by this *deed*).
- 7.2 The *new guarantor* agrees to be bound by the provisions set out in the Annexure in consideration of *us* entering into this *deed* and agreeing to novate the *contract* on the terms of this deed and other good and valuable consideration, and as if a reference to '*you*' in the Annexure were a reference to the *new guarantor* and a reference to '*customer*' in the Annexure were a reference to the *new obligor* and the *remaining obligor*.

8. *Retiring Guarantor*

- 8.1 Subject to the terms and conditions contained in this deed, *we* release and discharge the *retiring guarantor* from all and any of the obligations and covenants entered into on the part of the retiring guarantor in the *contract*.
- 8.2 The *retiring guarantor* releases and discharges *us* from any claim, demand, set-off, or cause of action which the *retiring guarantor* has or considers it may have against *us*.
- 8.3 The *guarantor* consents to the release of the retiring *guarantor* from the *contract*.
- 8.4 The release and discharge referred to in this clause shall not take place until such time as this

deed has been executed and completed to our satisfaction.

9. Indemnities

- 9.1 The *new obligor* and *remaining obligor* indemnifies *you* on demand against any claim, liability or loss arising from, and any costs and expenses arising out of, any act or omission by the *new obligor* in connection with the *contract* or *new contract* which occurs on or after the *novation date* (including all legal costs and expenses on the higher of a solicitor and own client basis or full indemnity basis).
- 9.2 *You* indemnify the *new obligor* on demand against any claim, liability or loss arising from, and any costs and expenses arising out of, any act or omission by *you* in connection with the *contract* which occurs before the *novation date* (including all legal costs and expenses on the higher of a solicitor and own client basis or full indemnity basis).
- 9.3 The indemnities in this agreement are continuing obligations.

10. Representations and warranties of parties

- 10.1 Each party represents and warrants to each other party that:
- 10.1.1 **(incorporation)** it is validly incorporated and has the power to carry on its business as it is now being conducted;
- 10.1.2 **(power)** it has the power to enter into and perform its obligations under this *deed* and, for the *new obligor*, *remaining obligor*, the *new guarantor* and *us* the *new contract* ;
- 10.1.3 **(authority)** it has taken all action which is necessary to authorise the entry into and performance of its obligations under this *deed* and, for the *new obligor*, the *remaining obligor*, the *new guarantor* and *us*, the *new contract*; and
- 10.1.4 **(binding obligations)** this *deed* and, for the *new obligor*, the *remaining obligor*, the *new guarantor* and *us* the *new contract* constitutes legal, valid and binding obligations, enforceable in accordance with their terms.

11. Representations and warranties of the *new obligor*

- 11.1 The *new obligor*, *remaining obligor* and *new guarantor* also represents and warrants to each other party that:
- 11.1.1 **(no contravention or exceeding power)** this *deed* and the *new contract* do not contravene its constituent documents (if any) or any law or obligation by which it is bound or to which any of its assets are subject or cause a limitation on its powers or the powers of its directors to be exceeded;

11.1.2 **(not a trustee)** unless stated in the *schedule*, it does not enter into this *deed* as trustee; and

11.1.3 **(no immunity)** it does not have immunity from the jurisdiction of a court or from legal process.

12. Amendment

- 12.1 As of and with effect from the *novation date* the *new contract* is amended to include the special conditions in Item 11 and such that the *new obligor*, *remaining obligor* and *new guarantor* must, and must ensure that each of the *guarantor*, *new guarantor*, *remaining obligor* and the *new obligor* do anything *we* ask and consider necessary (such as obtaining consents, signing and producing documents and getting documents completed and signed) to:
- 12.1.1 provide more effective security over any personal property over which *we* have a *security interest* for payment of money owing to *us* in connection with the *new contract* or any agreement;
- 12.1.2 bind the *new obligor*, the *remaining obligor* and any other person intended to be bound under the *new contract* or any agreement;
- 12.1.3 ensure that the *transaction documents* are not void, voidable or otherwise unenforceable by *us* in accordance with their terms; and
- 12.1.4 ensure that any *security interest* is enforceable, perfected (including registration and where possible, by control in addition to registration under the *PPS Act*) and otherwise effective;
- 12.1.5 stamp and enable *us* to apply for registration, or give any notification, in connection with any *security interest* so that the *security interest* has the priority *we* require; and
- 12.1.6 enable *us* to exercise *our* rights in connection with any *security interest*; and
- 12.1.7 show whether the *new obligor* is complying with the *new contract* or any agreement.
- 12.2 The *new obligor* agrees that this clause applies to anything *we* ask the *new obligor* to do in connection with the *PPS Act*.
- 12.2.1 Everything a *new obligor* or *remaining obligor* is required to do under this clause is at the *new obligor's* expense. The *new obligor* agrees to pay or reimburse *our* costs in connection with anything that the *new obligor* or *remaining obligor* is required to do under this clause.
- 12.2.2 All references to the *contract* contained in any documents delivered under or pursuant to the *contract* (including, without limitation, the *contract* itself) will

be construed as references to the *new contract* as amended by this *deed*.

contemplated by this clause 14 or in accordance with any applicable law.

13. Financier

We enter into this *deed* as the financier. The *security interest* and any securities we hold may be registered either in *our* name or in one of *our* subsidiaries, nominees or agent).

14. Notices

- 14.1 A notice or other communication connected with this *deed* (*notice*) must be in writing and given by a party, its *authorised officer* or its lawyer.
- 14.2 A *notice* must be:
 - 14.2.1 delivered to the recipient's address as set out in the *schedule*;
 - 14.2.2 posted to the recipient's address as set out in the *schedule* by prepaid ordinary post or airmail;
 - 14.2.3 faxed to the recipient's facsimile number as set out in the *schedule*; or
 - 14.2.4 sent by email to the recipient's email address as set out in the *schedule*.
- 14.3 Service of a *notice* is considered to have occurred, if sent as a:
 - 14.3.1 delivered letter – at the time it is delivered;
 - 14.3.2 posted letter – on the 2nd *business day* after posting or the 7th *business day*, if posted to or from a place outside Australia;
 - 14.3.3 facsimile – on production of a report by the sender's facsimile machine, confirming the successful transmission to the addressee's facsimile number of all pages comprising the *notice*; or
 - 14.3.4 email –
 - 14.3.4.1 when the sender receives an automated message confirming delivery; or
 - 14.3.4.2 four hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered,

whichever happens first.

- 14.4 A *notice* may be given and signed by a party's lawyer and delivered to a party's lawyer by any of the means listed in this clause or to the lawyer's business address, DX box, facsimile address or email address.
- 14.5 Any process or document relating to litigation, administrative or arbitral proceedings relating to this deed may be served by any method

15. Stamp duty and costs

The *new obligor* will pay *us* all stamp duty costs, charges and expenses to be incurred or paid by *us* in respect of this *deed*.

16. Further steps

Each of the parties agree to do anything another party under this *deed* may request (such as obtaining consents, signing and producing documents and getting documents completed and signed) to bind that party and any other person intended to be bound hereunder and to otherwise give full effect to this *deed*.

17. Counterparts

This *deed* may consist of a number of counterparts and if so the counterparts taken together constitute one and the same instrument.

18. Governing law

This *deed* is governed by the law of the State or Territory in which the *contract* was entered into and the parties submit to the non-exclusive jurisdiction of the courts of the *jurisdiction* and of the Commonwealth of Australia.

19. Definitions

In this *deed* unless the context otherwise requires:

authorised officer means:

- (a) for *us*:
 - (i) a company secretary or director of *us* or an employee of *ours* whose title includes the word manager or director;
 - (ii) a person who is acting temporarily in one of those positions; or
 - (iii) a person or a person holding a position nominated by *us* to *you* or the *guarantor*; and
- (iv) for *you*, the *guarantor* or any other party to this *deed*, a person appointed by that party to act as an authorised officer and whose appointment is notified in writing to *us* by that party.

business day means a day that is not a Saturday, Sunday or public or bank holiday in the *jurisdiction*.

contract means the Agreement described in Item 6 of the *schedule* as amended by any Amending Agreements also described in Item 9 of the *schedule* and attached as an annexure to this *deed*;

deed means this Deed of Novation;

guarantee means the Guarantee specified in Item 9 of the *schedule*;

guarantor means each person described in Item 5 of the *schedule* as a Guarantor;

jurisdiction means the State or Territory specified in the *contract*;

new contract means the agreement between the *new obligor* and *us* on the terms of the Agreement described in

Item 9 of the *schedule* as amended by any Amending Agreements as novated by this *deed* and amended by this *deed*;

new guarantor means each person described in Item 7 of the *schedule* as a New Guarantor;

new obligor means each person described in Item 4 of the *schedule* as a New Obligor;

novation date means the date of this *deed*;

PPS Act means the Personal Property Security Act 2009 (Cth);

remaining obligor means each person described in Item 6 of the *schedule* as a Remaining Obligor;

retiring guarantor means each person described in Item 8 of the *schedule* as a Retiring Guarantor;

schedule means the Schedule annexed to this deed;

security interest means any interest held as security for the payment of a monetary obligation or the performance of any other obligation, including:

- (a) a legal or equitable mortgage, charge, encumbrance, lien, pledge, hypothecation, bill of sale, assignment, title retention or deposit arrangement, caveat, trust or power held as security; or
- (b) a right, interest or arrangement which has the effect of giving another person a preference, priority or advantage over creditors including any right of set-off; or
- (c) a third party right or interest or any right arising as a consequence of the enforcement of a judgment; or
- (d) anything that is a 'security interest' as defined under the *PPS Act*,

or any agreement to create any of the above or allow them to exist;

we means BOQ Specialist – a division of Bank of Queensland Limited ABN 32 009 656 740 AFSL and Australian credit licence No. 244616 and *our and us* have corresponding meanings; and

you means each person described in Item 3 of the *schedule* as the Obligor and *your* has a corresponding meaning.

successors and permitted substitutes or assigns;

- 20.1.5 a statute, regulation or provision of a statute or regulation (*statutory provision*) includes that *statutory provision* as amended or re-enacted; a statute, regulation or provision enacted in replacement of that *statutory provision*; and another regulation or other statutory instrument made or issued under that *statutory provision*;
- 20.1.6 a clause, annexure or schedule is a reference to a clause of, or annexure or *schedule* to, this *deed*;
- 20.1.7 an Item is a reference to an Item in the *schedule* to this *deed* and the *schedule* annexed to this *deed* forms part of this *deed*;
- 20.1.8 an agreement or document including this *deed* is to the agreement or document as amended, novated, supplemented or replaced, except to the extent prohibited by this *deed*;
- 20.1.9 any thing (including an amount) is a reference to the whole and each part of it;
- 20.1.10 "writing" includes a facsimile transmission and any means of reproducing words in a tangible and permanently visible form;
- 20.1.11 conduct includes an omission, statement or undertaking, whether or not in writing;
- 20.1.12 an "asset" includes any real or personal, present or future, tangible or intangible property or asset (including intellectual property) and any right, interest, revenue or benefit in, under or derived from the property or asset;
- 20.1.13 an amount for which a person is contingently liable includes an amount that that person may become actually or contingently liable to pay if a contingency occurs, whether or not that liability will actually arise;
- 20.1.14 an obligation includes any warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
- 20.1.15 payment includes repayment, discharge or satisfaction; and
- 20.1.16 "law" includes a reference to common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them).

20. Interpretation

- 20.1 In this *deed*, unless the context indicates otherwise, reference to:
 - 20.1.1 one gender includes the others;
 - 20.1.2 the singular includes the plural and the plural includes the singular;
 - 20.1.3 a person is to be construed as a reference to an individual, body corporate, unincorporated association, partnership, joint venture or government body;
 - 20.1.4 a party to this *deed* or another agreement or document includes the party's executors, administrators,

- 20.2 The words “including”, “for example” or “such as” and similar expressions are not words of limitation.
- 20.3 Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- 20.4 Headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not form part of this *deed* or affect its interpretation.
- 20.5 A provision of this *deed* must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the document or the inclusion of the provision in the document.
- 20.6 An *event of default* subsists until it has been waived in writing by us or remedied.
- 20.7 The interpretation of any one *event of default* will not be restricted by reference to or inference from any other *event of default*.
- 20.8 Monetary references are references to Australian currency.

Executed as a deed.

Annexure – Guarantee and Indemnity

Does the Code of Banking Practice apply to this guarantee and indemnity? Some provisions of this deed are stated to apply only if the *Code of Banking Practice* applies, or does not apply, to this deed.

The *Code of Banking Practice* will apply to this deed in relation to a guarantor that is an individual if the *Code of Banking Practice* applies to the *new contract*.

The *Code of Banking Practice* will apply to the facility agreement if the borrower is an individual or a small business as defined in the Code of Banking of Practice.

1. Guarantee

- 1.1 *You* irrevocably and unconditionally guarantee to *us*:
 - 1.1.1 the due and punctual performance by the *customer* of all the *customer's* obligations under the *new contract*; and
 - 1.1.2 the payment of any loss, costs or damages *we* incur (including legal costs on a full indemnity basis) arising from any breach or termination of the *new contract*.
- 1.2 If the *customer* does not pay when due any amount payable to *us* under the *new contract*, *you* must immediately pay that amount to *us* when notified by *us*.
 - However, if a lesser maximum amount is specified in the *schedule*, *your* maximum liability under this guarantee is that lesser amount.
 - *You* are liable for all the obligations under this guarantee and indemnity both separately on *your* own and jointly with any or more other persons named in this guarantee and indemnity as "Guarantor".
 - Except to the extent *you* have a right conferred by the *Code of Banking Practice*, *you* cannot otherwise withdraw from, end or limit this guarantee and indemnity.

You may have rights under the *Code of Banking Practice* to end, withdraw from, or limit this guarantee and indemnity. Ask *your* legal adviser about this.

2. Future obligations

The guarantee in clause 1 applies to all obligations of the *customer* under the *new contract* arising after the execution of this deed, including obligations arising as a result of subsequent advances or accommodation by *us* (if provided for by the *new contract*). If this

guarantee and indemnity is one to which the *Code of Banking Practice* applies, *we* cannot increase *your* monetary liability under this guarantee and indemnity by changing the terms of the *new contract* except in accordance with the *Code of Banking Practice*.

3. Indemnity

- 3.1 As a separate and principal obligation, *you* irrevocably and unconditionally indemnify *us* against any loss, costs or damages *we* incur (including legal costs on a full indemnity basis) if:
 - 3.1.1 the *customer* is not bound by some or all of the *customer's* obligations under the facility agreement; or
 - 3.1.2 for any other reason the guarantee in clause 1 is not effective; or
 - 3.1.3 *we* are obliged to pay an amount to a trustee in bankruptcy or liquidation (of an insolvent person) in connection with a payment by the *customer* or *you*.

This obligation continues unless it is ended by law or *you* have exercised *your* rights under the *Code of Banking Practice* to end the guarantee. However, if a maximum amount is specified in the *schedule*, *your* maximum liability under this indemnity is that lesser amount.

4. Consideration

You acknowledge that *we* are acting in reliance on *you* incurring obligations and giving rights under this guarantee and indemnity.

5. No release of liability until payment in full

Except to the extent *you* have a right conferred by the *Code of Banking Practice*, the guarantee and indemnity given by this deed are irrevocable and *your* liability ceases only when *we* receive all of the *guaranteed money* and, in *our* reasonable opinion, no payment towards the satisfaction of the *guaranteed money* is void, voidable or otherwise unenforceable or refundable.

6. Matters not affecting *your* liability

- 6.1 *Your* liability under this deed is not discharged or in any way limited or diminished because *we* do any of the following things without *your* consent:
 - 6.1.1 provide further advances or accommodation to the *customer* under the *new contract* (if provided for by the *new contract*) or otherwise increase the amount for which the *customer* is liable to *us* under the *new contract*;
 - 6.1.2 give time or any other indulgence to an *obligated person*;
 - 6.1.3 make any compromise, composition or arrangement with, or release from liability, an *obligated person*;
 - 6.1.4 assent to, or accept a sum of money under, any composition, arrangement or scheme in respect of an *obligated person*;

- 6.1.5 hold or take any other guarantee, indemnity or security from an *obligated person*;
- 6.1.6 release, exchange, vary or deal in any other way with any other guarantee, indemnity or other security we hold;
- 6.1.7 agree to postpone the priority of any other guarantee, indemnity or other security;
- 6.1.8 obtain a judgment against an *obligated person* for payment of the whole or any part of the *guaranteed money*;
- 6.1.9 vary, renew or assign the *new contract*, even if this increases the liability of the *customer* under the *new contract*, and *your* liability under this deed (if the *Code of Banking Practice* applies to this guarantee and indemnity, we cannot increase *your* liabilities under this guarantee and indemnity by changing the terms of the *new contract* except in compliance with the *Code of Banking Practice*);
- 6.1.10 provide *our* consent to the *customer* novating or assigning the *customer's* rights under the *new contract*;
- 6.1.11 refuse or fail to obtain or enforce any other guarantee, indemnity or security for the payment of the *guaranteed money*;
- 6.1.12 accept a breach of the *new contract* by the *customer* as terminating the *new contract*;
- 6.1.13 transact any business with, for or at the request of an *obligated person*; or
- 6.1.14 act in any other way to *your* prejudice.

7. Other matters not affecting *your* liability

- 7.1 *Your* liability under this deed is not discharged nor in any way limited or diminished because of:
 - 7.1.1 any delay or failure by *us* to:
 - 7.1.1.1 take action; or
 - 7.1.1.2 make any inquiry into the powers or authorities of any *obligated person* or the directors or other agents acting or purporting to act on behalf of any *obligated person*;
 - 7.1.2 any guarantee, indemnity or security held by *us* for the *guaranteed money* being void or unenforceable;
 - 7.1.3 any change in the value of any security held or taken by *us* for the *guaranteed money*, or in the value placed on it by *us* where an *insolvency event* has occurred in relation to an *obligated person*;

- 7.1.4 an *insolvency event* occurring in relation to an *obligated person*;
- 7.1.5 the death or incapacity of an *obligated person*;
- 7.1.6 an *obligated person* being a trustee, nominee, partner, joint owner or joint venturer;
- 7.1.7 any change in constitution, membership, name, business or place of business of any partnership, joint venture or association (whether incorporated or unincorporated) of which an *obligated person* is a member;
- 7.1.8 *us* or an *obligated person* being reconstituted, amalgamated, reconstructed, merged, renamed or replaced or that person's powers or functions being transferred to or taken over by any person or place of business being changed;
- 7.1.9 the fact that any negotiable instrument, security, contract or other obligation is still current or has not matured or fallen due;
- 7.1.10 the *guaranteed money* or any of it ceasing to be recoverable from any other *obligated person* for any reason other than payment in full or due and punctual performance (as the case requires); or
- 7.1.11 the liability of any other *obligated person* being limited.

8. *Your* lack of notice

Except to the extent *you* have a right conferred by the *Code of Banking Practice*, *your* liability under this deed is not discharged or in any way limited or diminished because we do not give *you* or any other *obligated person* notice of any default by the *customer* or demand for payment, or a notice of default or demand for payment omits particulars of the default.

9. Payment in gross

All money received or recovered by *us* on account of the *guaranteed money* may be treated as payment in gross. We may later appropriate that money to or between principal, interest, costs or otherwise in *our* absolute discretion.

10. Notice of appropriation of money received

- 10.1 We are not obliged to disclose to *you*:
 - 10.1.1 any appropriation of money we receive from the *customer*, from the exercise of rights under any guarantee, indemnity or other security or due to *insolvency event* occurring in relation the *customer*; or
 - 10.1.2 any agreement between *us* and the *customer* about appropriation of money received by *us*.

11. Money not to be set-off

- 11.1 *You* are not entitled to have *us* apply against the *guaranteed money*:
- 11.1.1 any money held by *us* to the credit of the *customer* on any account other than that of the *guaranteed money*;
 - 11.1.2 any money that is or might be recoverable by *us* from the realisation of any security held by *us*; or
 - 11.1.3 any money that is or might be payable to *us* if an *insolvency event* occurs in relation to any other *obligated person*.

12. Money that may have to be repaid

Any money *we* receive for which *we* may, in an *insolvency event*, be obliged to account to any administrator of the insolvency (as a preference or otherwise), or for which in good faith so account, will not discharge or diminish *your* liability to *us*.

13. No derogation

This guarantee is in addition to and not in substitution for any other rights which *we* may have.

14. Guarantee not affected by release

We may release or compromise the obligations of any one or more guarantors, without affecting the liability of the remaining guarantors.

15. Party not bound

If for any reason any party to the *new contract* ceases to be bound by any of the terms or conditions of the *new contract* or the obligations of any party to the *new contract* are varied or discharged other than by the performance of them or by express written agreement, *you* must pay to *us* an amount equal to the total direct and indirect damage incurred by *us* as a result. *You* must do anything *we* reasonably require to place *us* so far as is possible in the same position as *we* would have been had that event not occurred. *Your* obligations under this clause 15 are original and independent and in addition to *our* other rights.

16. Marshalling

We are under no obligation to marshal or appropriate in favour of *you* or any other *guarantor*.

17. *You* must not claim benefits or enforce rights

- 17.1 Until the *guaranteed money* is paid in full and all obligations of the *customer* under the *new contract* are fully and finally discharged or released, *you* must not:
- 17.1.1 claim the benefit or seek the transfer (in whole or in part) of any other guarantee, indemnity or security held or taken by *us* in respect of the *guaranteed money*;
 - 17.1.2 make a claim or enforce a right against, or against the estate or any property of, any other *obligated person* (except for *our* benefit);

- 17.1.3 raise or claim any set-off, counterclaim or defence available to any other *obligated person* in reduction of *your* liability under this deed;
- 17.1.4 make a claim or enforce a right to claim, to be entitled (whether by way of subrogation or otherwise) (including, without limitation, to a *security interest* or to the benefit of another guarantee, indemnity (or another assurance against loss similar to a guarantee or indemnity) or a *security interest*) against the *customer* or any other *guarantor* or against their estate or property:

17.1.4.1 in connection with the *new contract* including the *debt* or any other amount payable under this guarantee (for example, the *guarantor* may not try to enforce or require the enforcement of any *security interest* *we* have taken that secured amounts including the *debt*); or

17.1.4.2 in favour of a person other than *us* in connection with any obligations of, or any other amounts payable, by the *customer* to, or for the account of, that other person;

- 17.1.5 prove in competition with *us* if an *insolvency event* occurs in respect of the *customer* or any other *guarantor* whether in respect of an amount paid by the *guarantor* under this guarantee and indemnity, in respect of another amount (including the proceeds of a *security interest*) applied by *us* in reduction of the *guarantor's* liability under this guarantee and indemnity, or otherwise; or
- 17.1.6 claim to be entitled by way of contribution, indemnity, subrogation, marshalling or otherwise to the benefit of a *security interest* or guarantee or a share in it now or subsequently held for the *debt* or other money payable under this guarantee and indemnity.

- 17.2 If we ask, *you* agree to notify any relevant person of the terms of this clause 17 and other parts of this guarantee that may be relevant. *You* also authorise *us* to do so at any time in *our* discretion and without first asking *you* to do it. This applies despite anything else in this guarantee.

- 17.3 This clause 17 continues after this guarantee ends.

18. Extent of guarantee - interest

This guarantee extends to and includes interest on the *guaranteed money* at the highest rates prescribed for that money (or, if none, as determined by *us* taking into account Bank of Queensland's current published overdraft rates for similar credit risks), for any periods

between any judgment obtained by *us* and payment of the *guaranteed money* in full to *us*.

19. Reinstatement of rights

- 19.1 If, under any law relating to an *insolvency event* or for any other reason, a person claims that a transaction (including a payment, conveyance or transfer) in connection with this guarantee, the *new contract* or the *guaranteed money* is void, voidable, unenforceable or defective for any reason and the claim is upheld, conceded, compromised or settled, then, despite any discharge, release, settlement or arrangement granted or made by *us* on the faith of that transaction:
- 19.1.1 *we* are immediately entitled as against *you* to the rights in respect of any money owing under this deed to which *we* were entitled immediately before the transaction;
- 19.1.2 *you* must immediately do anything (including signing any document) *we* request to restore *us* to *our* position immediately before the transaction (including, without limitation reinstating this deed or any other document); and
- 19.1.3 *we* are entitled to recover from *you* as a debt all costs and expenses *we* incur in connection with negotiations or proceedings in relation to that claim.
- 19.2 *Your* obligations under this clause are continuing obligations, independent of *your* other obligations under this deed and continue after this deed ends.

20. Retain security

If *we*, acting reasonably, consider that an *insolvency event* has occurred in relation to an *obligated person* at the time the *obligated person* intends to repay the *debt*, or if for any other reason *we*, acting reasonably, consider that the whole or any part of the repayment of the *debt* may be set aside, *we* may retain any security provided by *you* until seven months after the repayment of the *debt* unless some other arrangement is made to repay the *debt*, such that, in *our* opinion, the repayment of the *debt* is not subject to being set aside.

21. Efficacy of execution by *you*

- 21.1 *You* acknowledge that it is not a condition of any person who executes this deed being bound by it that any other person executes this deed or delivers it to *us*.
- 21.2 *You* acknowledge that there are no other conditions to the coming into effect or the remaining in effect of this deed and, in particular, the failure of any other guarantee, indemnity or security to come into effect does not prejudice the effectiveness of this deed.

22. Security held by *you* from the *customer*

- 22.1 *You* may not cause or permit to exist any guarantee, indemnity or security from the *customer* to *you* other than those to which *we* have expressly consented in writing.

22.2 *You* must:

- 22.2.1 on demand made by *us* exercise any of *your* rights in relation to any guarantee, indemnity or security from any person, including the *customer*, that secures the payment of money owing (whether actually, contingently or otherwise) by the *customer* to *you* in relation to this deed; and
- 22.2.2 if the proceeds of the exercise of any of those rights are received by *you* or any person on *your* behalf, hold that money on trust to be paid to *us* immediately on receipt.
- 22.3 *We* must apply the proceeds of the exercise of any of *your* rights as follows:
- 22.3.1 first, in payment or satisfaction of *our* costs and expenses in relation to the *new contract*;
- 22.3.2 secondly, in payment or satisfaction of the *guaranteed money*; and
- 22.3.3 thirdly, in payment to *you*.

23. Securities given by *you* to *us*

Every security already given or given in the future by *you* to *us* is security for the payment of the *guaranteed money*.

24. No reliance on representation

You acknowledge that:

- 24.1 except as expressly stated in this deed, *you* have not executed this deed as a result of any representation made or information given to *you* by *us*, and that *you* have made and will continue to make, without reliance on *us*, *your* own independent investigation of the financial condition and affairs of each *obligated person* and assessment of the credit worthiness of each *obligated person*; and
- 24.2 except as expressly provided under the *Code of Banking Practice* *we* have no duty or responsibility at any time to provide *you* with any information relating to the financial condition and other affairs of any *obligated person* or any other person.

25. No accounting required

Except as expressly provided under the *Code of Banking Practice*, *we* are not obliged to provide *you* with any statement of account between *us* and the *customer*, or particulars of the amount payable by the *customer* to *us*, before taking proceedings for recovery against *you*.

26. *Our* determination

We are not obliged to give reasons for any determination or opinion made by *us* under this deed.

27. Approvals and consent

Unless this deed expressly provides otherwise, any authority, consent, or other thing to be given, made or exercised by *us* under this deed will be done, given or

made by *us* acting reasonably and on such terms and conditions as *we* reasonably consider appropriate.

28. Use as cross-guarantee

- 28.1 This deed takes effect as a cross-guarantee and cross-indemnity when the *customer* is the same as some or all of the persons named in Item 3 of the *schedule* as the guarantor.
- 28.2 When this deed takes effect as a cross-guarantee and cross-indemnity, it must be construed as a separate guarantee and indemnity in relation to each person comprising the *customer* as if that person were:
 - 28.2.1 the only person comprising the *customer*; and
 - 28.2.2 not named in the *schedule* as a guarantor.

29. Cross-linking of guarantees

- 29.1 This deed and all other guarantees and indemnities given to *us* of the *customer's* obligations under the *new contract* must be read together as if they were one and the same instrument.
- 29.2 *Your* obligations are joint and separate with every other person who gives a guarantee or indemnity to *us* in respect of the *customer's* obligations under the *new contract*.

30. Advice

You acknowledge that *you* have obtained *your* own legal and financial advice in relation to *your* obligations under this deed.

31. Costs

- 31.1 Clause 23 ('Expenses') of the *new contract* applies to this deed as if set out in full in this deed.
- 31.2 Everything that *you* are required to do under this deed is done at *your* cost.

32. Insolvency event - declaration of trust

- 32.1 If an *insolvency event* occurs in relation to any other *obligated person* and as a result *you* have a right to lodge a proof of *debt* or enforce any security, *you* hold that right on trust for *us*. This applies even if there is no connection between that right and *you* being a guarantor under this deed.
- 32.2 *You* must not enforce any right referred to in this clause 32 without *our* prior written consent.
- 32.3 *You* must on request by *us* execute all documents and do all things required to enable *us* to receive the benefit of the rights referred to in this clause 32, including taking legal proceedings. *You* must not exercise or attempt to exercise any right of set-off against the *obligated person*.
- 32.4 Any money *you* recover from the enforcement of any right referred to in this clause 32 or pursuant to the realisation or enforcement of any security taken by *you* from an *obligated*

person must be paid immediately to *us* to the extent of *your* unsatisfied liability under this guarantee and until paid will be held by *you* on *our* behalf.

- 32.5 *You* irrevocably appoint *us* and each of *our authorised officers* (with power to appoint a substitute or substitutes) separately to be *your* attorney to execute and deliver all documents and do all things, including the signing and lodging of proofs of *debt*, that *we* require to enable *us* to obtain the benefit of the rights referred to in this clause 32.
- 32.6 If in any administration in relation to an *insolvency event* in respect of the *customer* the liability of the *customer* to pay all or any part of the *guaranteed money* is released, deferred or disclaimed, *you* indemnify *us* against any loss that *we* would otherwise suffer due to the release, deferral or disclaimer.

33. Trust

The "Trust" clause in the *new contract* applies to this deed as if set out in full in this deed.

34. Certificate as sufficient evidence

A certificate signed by *us* or any of *our authorised officers* is sufficient evidence of the matters set out in that certificate, unless the contrary is proved.

35. Binding certificates, awards, etc

To the extent permitted by law, any certificate, document, judgment, order, award or other thing that binds the *customer* binds *you*.

36. Assignment

- 36.1 *You* must not cause or permit any person to acquire an interest in *your* rights or obligations under this deed.
- 36.2 *We* may assign all or any of *our* rights and benefits under this deed to any person, including a securitisation or funding vehicle, or a sub-participant of *our* participation under this deed, without *your* consent. *We* may also novate or otherwise transfer all or any of *our* rights or obligations under this deed to any person. Except with *your* consent, any dealing under this clause 36.2 must not in *our* reasonable opinion materially prejudice *your* rights or obligations under this deed.
- 36.3 *We* may provide any person to which *our* rights or obligations may be assigned, novated or transferred with any information necessary to effect that securitisation so long as they agree to keep that information confidential.
- 36.4 *You* irrevocably authorise *us* to sign any documents on *your* behalf and do anything else *we* consider appropriate to effect a novation under this clause.

37. Confidentiality

We may, except to the extent prohibited by law, disclose to any person who proposes to enter into a contract with *us* in relation to this deed all information about *you* that in *our* reasonable opinion is appropriate.

38. Severability

If any term, agreement or condition of this deed or the application of any term, agreement or condition of this deed to any person or circumstance is or becomes illegal, invalid or unenforceable in any jurisdiction the document will be varied to the extent necessary to render the clause no longer illegal or void, or is if necessary severed and neither the remaining terms, agreements and conditions nor the application, validity or enforceability of the varied or severed term, agreement or condition in any other jurisdiction will be affected.

39. Time of the essence

39.1 Time is of the essence of this deed. If the parties agree to vary a time requirement:

- 39.1.1 the time requirement so varied is of the essence of this deed; and
- 39.1.2 the agreement to vary the time requirement must be in writing.

40. Waiver by you

To the extent permitted by law, *you* waive *your* rights as surety, whether legal, equitable, statutory or otherwise, that may be inconsistent with the provisions of this deed or in any way restrict *our* rights, remedies or recourse.

41. Waiver

- 41.1 The failure or delay to exercise a power, right or remedy under this deed does not operate as a waiver of that power or right.
- 41.2 The exercise of a power, right or remedy does not preclude:
 - 41.2.1 its future exercise; or
 - 41.2.2 the exercise of any other power, right or remedy.
- 41.3 Any waiver by *us* of a power, right or remedy under this deed:
 - 41.3.1 is not effective unless it is in writing and executed by *us* or any of *our* authorised officers; and
 - 41.3.2 is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

42. Moratorium provisions

- 42.1 Any present or future legislation that operates:
 - 42.1.1 to lessen or vary in favour of *you* or *your* obligations in connection with this deed; or
 - 42.1.2 to postpone, stay, suspend or curtail any of *our* rights under this deed,
 is excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.

43. Code of Banking Practice

- 43.1 This clause 43 applies to the extent that the *Code of Banking Practice* applies to this guarantee and indemnity.
- 43.2 The relevant provisions of the *Code of Banking Practice* apply to this guarantee and indemnity.
- 43.3 If:
 - 43.3.1 the *Code of Banking Practice* would otherwise make a provision of this guarantee and indemnity illegal, void or unenforceable; or
 - 43.3.2 a provision of this guarantee and indemnity would otherwise contravene a requirement of the *Code of Banking Practice* or impose an obligation or liability which is prohibited the *Code of Banking Practice*,
 this guarantee and indemnity is to be read as if that provision were varied to the extent necessary to comply with the *Code of Banking Practice* or, if necessary, omitted.
- 43.4 This guarantee and indemnity extends to the *new contract* as varied. However, despite anything else in this guarantee and indemnity, *your* liabilities are not increased or changed as a result of any change to a *new contract* if under the *Code of Banking Practice* we are required to give notice of the change, give information or documents, or obtain *your* acceptance to the change and have not done so in compliance with the *Code of Banking Practice*.

44. Privacy

This clause explains how we collect, use and disclose *your* personal information, including credit information. By entering into this guarantee and indemnity *you* agree that we may handle *your* personal information as detailed in this clause

Collection

We collect, use and disclose *your* personal information:

- to enable *us* to assess whether to accept *you* as a *guarantor* in relation to the *new contract*, including in assessing *your* credit worthiness;
- to verify *your* identity and carry out other checks as required by the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) and the *National Consumer Credit Protection Act 2009* (Cth);
- to enable *us* to undertake planning, product development, data mining or research;
- to produce *our* own assessments and ratings in respect of *your* credit worthiness;
- in connection with any potential or actual acquisition of any interest in BOQ Specialist; and
- for the investigation and prevention of crime, fraud and illegal conduct;

You acknowledge that not providing the personal information may result in *our* refusal to enter into the *new contract* with the *customer*.

If *you* provide personal information about any other person, *you* must ensure that *you* are authorised to do

so and also ensure each such person has seen this clause 47 and has understood its contents, and has separately agreed to their personal information being handled in the manner described.

Exchange generally

We may exchange *your* personal information to the extent permitted by law, with:

- other guarantors and the *customers* under the *new contract*;
- other financial institutions and credit providers for purposes including (i) assessing whether to accept you as a guarantor; (ii) notifying other credit providers of defaults; (iii) exchanging information about *your* credit status where you are in default with us or another credit provider; (iv) assessing *your* credit worthiness at any time during or after the life of the *new contract*; and (v) any other purpose authorised by law;
- *our* subsidiaries or related bodies corporate;
- *our* agents, credit managers and related service providers who assist us in the management and administration of the facility and this guarantee and indemnity;
- *our* other agents and service providers (including without limitation organisations providing debt collection, mailing house, legal, accounting, business and financial consulting, loan management, archival, auditing, banking, marketing, advertising, delivery, recruitment, customer contact, information technology, research, utility, valuation, insurance (including lenders' mortgage insurance), data processing, data analysis, investigation or security services);
- *your* agents and representatives, including, without limitation, referees, executors, administrators, trustees, guardians, attorneys or financial or legal advisors;
- partner organisations, including professional associations, organisations providing benefits to *our* clients and suppliers of products or services requested by you but not provided by us;
- other entities to whom we are, by law, required or permitted to provide information about you, including law enforcement authorities, government authorities, regulatory bodies, courts, and external dispute resolution schemes; and
- other entities that are authorised by you.

Some of the parties with which we exchange *your* personal information may be located outside Australia, in countries including South Africa, the United Kingdom, New Zealand, Philippines, India, Singapore and the United States of America. By entering into this *agreement*, you consent to overseas disclosures on this basis.

Exchange – credit reporting bodies

We may exchange *your* personal information with credit reporting bodies (**CRBs**) in order to, for example, obtain a credit report about you for the purposes of assessing whether or not to accept you as a guarantor or security provider.

CRBs may include information that we have provided them to other credit providers to assist them to assess

your creditworthiness. You can ask a CRB not to disclose the credit information that it holds about you without *your* consent for a "ban period" of 21 days if you believe on reasonable grounds that you have been or are likely to be a victim of fraud, including identity fraud. If a ban period is active at the time you submit *your* application to enter into this guarantee and indemnity, or any time during the life of this guarantee and indemnity, you consent to us accessing *your* credit information from a CRB.

CRBs may use *your* credit information to respond to requests from credit providers to "pre-screen" you for marketing. You can ask a CRB not to do this, although we may still (unless you request otherwise) provide you with direct marketing.

The credit reporting bodies we use may include:

- Veda Advantage, whose privacy policy and contact details are available at www.veda.com.au/contact-us
- Dun & Bradstreet, whose privacy policy and contact details are available at www.dnb.com.au
- Experian, whose privacy policy and contact details are available at www.experian.com.au
- Tasmanian Collection Service, whose privacy policy and contact details are available at www.tascol.com.au.

Marketing

Unless you opt out, you consent to us using and sharing information about you with *our* related corporations to contact you on an ongoing basis by any means including telephone, email and other electronic message, to provide you information about *our* other products and services which we think might be of interest to you. You have the option to call us at any time if you no longer want to receive such information.

Notifications

We may send you Short Messaging Service (SMSs) for any purpose related to this guarantee and indemnity. We will send these SMSs to any mobile phone number we have on record for you and that you need to contact us if you want to nominate a different mobile number to be used.

Recording

We may keep records of communications including emails and telephone calls for purposes including training and verification.

Further information

If you have any questions, concerns or feedback about privacy, you may contact BOQ Specialist's Privacy Officer at GPO Box 2539, Sydney NSW 2001; privacy@boqspecialist.com.au; or by calling 1300 160 160. Where you raise any concerns that we have interfered with *your* privacy, we will respond to let you know who will be handling *your* matter and when you can expect a further response.

You can access BOQ Specialist's Privacy Policy via www.boqspecialist.com.au or on request. The Privacy Policy contains further details about how we handle personal information and credit reporting information, and matters such as website privacy, credit reporting bodies used and *your* access, correction and complaint

rights in relation to BOQ Specialist and those credit reporting bodies.

45. Definitions

In this Annexure:

Code of Banking Practice means the Code of Banking Practice 2013 as published by the Australian Bankers' Association as amended and/or replaced;

debt means all money (and any part of that money) which directly, indirectly, contingently or otherwise at any time is or becomes due by an obligated person (whether alone or not) to us for any reason;

guaranteed money means all money owing under the guarantee and indemnity contained in clauses 1 and 3;

insolvency event has the meaning given to that term in the *new contract*;

obligated person means each and any 2 or more of the *customer*, *you* and any other person who is liable to *us* for payment of the *guaranteed money*;

PPS Act means the Personal Property Security Act 2009 (Cth);

security interest means any interest held as security for the payment of a monetary obligation or the performance of any other obligation, including:

- (a) a legal or equitable mortgage, charge, encumbrance, lien, pledge, hypothecation, bill of sale, assignment, title retention or deposit arrangement, caveat, trust or power held as security; or
- (b) right, interest or arrangement which has the effect of giving another person a preference, priority or advantage over creditors including any right of set-off; or
- (c) third party right or interest or any right arising as a consequence of the enforcement of a judgment; or
- (d) anything that is a 'security interest' as defined under the *PPS Act*,

or any agreement to create any of the above or allow them to exist;

trust means a trust of which *you* are trustee, even if the existence of the trust is not disclosed to *us* or the trust is not named in the *schedule*;

we means BOQ Specialist – a division of Bank of Queensland Limited ABN 32 009 656 740 AFSL and Australian credit licence No. 244616 and *our* and *us* have corresponding meanings; and

you means the person described in Item 7 of the *schedule* as the New Guarantor and *your* has a corresponding meaning.