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1 Definitions and interpretation

1.1 Definitions

The meanings of the terms used in this deed are set out below.

Term	Meaning
Acceleration Rights	a Beneficiary's rights under any of its Finance Documents to which it is a party to declare, or to instruct or request the Security Trustee or its Representative (as the case may be) to declare, by notice to any Obligor that the Secured Moneys owing to it, or any part of them, are immediately due and payable.
Accession Deed (Security Provider)	has the same meaning given in the Security Trust Deed.
Accounting Standards	<ol style="list-style-type: none"> 1 in the case of each Australian Group Member, the Australian equivalents to International Financial Reporting Standards, and in the absence of such, generally accepted accounting principles in Australia; and 2 in the case of any other Group Member, the equivalents to the International Financial Reporting Standards in the jurisdiction of incorporation of that Group Member and in the absence of such, generally accepted accounting principles in the jurisdiction of incorporation of that Group Member.
Attorney	an attorney appointed by an Obligor under a Security.
Australian Dollars and A\$	the lawful currency of the Commonwealth of Australia.
Australian Group Member	each Group Member incorporated in Australia.
Beneficiary	<ol style="list-style-type: none"> 1 any Senior Creditor; 2 any Subordinated Creditor, or any one or more of them as the context requires.

Term	Meaning
Borrower	<ol style="list-style-type: none"> 1 a Senior Borrower; or 2 the Subordinated Borrower.
Business Day	<ol style="list-style-type: none"> 1 a day on which banks are open for business in Sydney and Melbourne excluding a Saturday, Sunday or public holiday; and 2 in relation to anything done to or by the Subordinated Agent, also a day on which banks are open for business in London (excluding a Saturday, Sunday or public holiday).
Collateral Security	has the meaning given in the Security Trust Deed.
Compliance Certificate	the "Compliance Certificate" determined in accordance with clause 1.13.
Continuing Subordinated Creditor	has the meaning given in clause 9.2 (<i>Refinancing of Subordinated Debt</i>).
Control	control as defined in section 50AA of the Corporations Act.
Controller	a controller as defined in section 9 of the Corporations Act and includes any Receiver.
Core Business	hire and sale of equipment, machinery, vehicles and other business and domestic goods and the provision of associated services in Australia, Europe and Asia.
Corporations Act	the <i>Corporations Act 2001</i> (Cth).
Default	<ol style="list-style-type: none"> 1 an Event of Default; or 2 a Potential Event of Default.
Default Rate	2% per annum.
Distribution	<ol style="list-style-type: none"> 1 any dividend, charge, interest, fee, payment or other distribution (whether cash or assets) or redemption, repurchase, defeasance, retirement or repayment on or in respect of any share capital of the Initial Obligor; and 2 any interest payment, any repayment or prepayment of any amount of principal or any other payment in respect of any Shareholder Debt or any other liability of any Group Member to any holder of shares in Holdco (other

Term	Meaning
	than a liability in respect of services provided to any Group Member on arm's length terms in the ordinary course of business).
Dollars, A\$, AUD and \$	the lawful currency of the Commonwealth of Australia.
Enforcement Action	any action of the Security Trustee to appoint a Controller under any Security, to declare any Security enforceable or to otherwise exercise any Power to enforce any Security.
Enforcement Restriction Period	the period from the date of this deed until the earlier of: <ol style="list-style-type: none"> 1 the date on which the Senior Debt has been Finally Paid; and 2 the maturity date of the Subordinated Debt, or if that maturity date is earlier than 12 months after the maturity date of the Senior Debt, the date 12 months after the maturity date of the Senior Debt.
Event of Default	<ol style="list-style-type: none"> 1 a Senior Event of Default; or 2 a Subordinated Event of Default.
Finally Paid	in respect of any Secured Moneys or any other monetary liability, satisfaction of the following conditions: <ol style="list-style-type: none"> 1 payment or satisfaction in full; and 2 at that time, the person to whom those Secured Moneys or other liability are payable (or were payable prior to payment or satisfaction in full) has no reason to believe (acting reasonably and in good faith) that any person, including an Obligor, liquidator, provisional liquidator, administrator, official manager, trustee in bankruptcy, receiver, receiver and manager, administrative receiver, statutory manager, compulsory manager, other controller (as defined in the Corporations Act) or similar official, is reasonably likely to exercise a right to recoup or claim repayment of any part of the amount paid or satisfied, whether under the laws of preferences, voidable transactions, fraudulent dispositions or otherwise.
Finance Debt	any monetary liability or indebtedness (whether present or future, actual or contingent) for or in respect of financial accommodation including, without limitation: <ol style="list-style-type: none"> 1 making an advance or loan or raising amounts under or in connection with any bond, debenture, note, loan stock or similar instrument; 2 drawing, accepting, endorsing, discounting, collecting or paying a bill of exchange, cheque or other negotiable instrument; 3 any amount payable in connection with the redemption of redeemable preference shares issued by that person; 4 any amount due under any agreement for managing or hedging currency and/or interest rate and/or commodity risk provided that only where such

Term	Meaning
	<p>agreement provides for netting to occur this paragraph (4) shall include the net amount of the payment obligation outstanding from the relevant Group Member thereunder after such netting off has occurred;</p> <p>5 entering into any agreement or transaction of any kind as a result of which a debt or liability or a contingent debt or liability arises (including without limitation any Finance Lease and acquisition of assets where payment is deferred for more than 180 days); or</p> <p>6 forbearing to require immediate payment of any moneys owing or contingently owing on any account, for any reason whatsoever, but excluded Operating Leases.</p>
Finance Document	<p>1 in respect of any Senior Creditor, any Senior Finance Document; or</p> <p>2 in respect of any Subordinated Creditor, any Subordinated Finance Document.</p>
Finance Lease	<p>a Lease constituting a finance lease or capitalised lease under the Accounting Standards.</p>
Financial Close	<p>the date on which the first Subscription under (and as defined in) the Loan Note Deed Poll (Senior) or the Loan Note Deed Poll (Subordinated) (as each expression is defined in the Senior Facility Agreement) occurs.</p>
First Subordination Period	<p>the period from the date of this deed until the Senior Debt has been Finally Paid.</p>
Government Agency	<p>any government or any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.</p>
Group	<p>1 the Initial Obligor; and</p> <p>2 each Subsidiary of the Initial Obligor.</p>
Group Member	<p>a member of the Group.</p>
GST	<p>the goods and services tax levied under the GST Act.</p>
GST Act	<p>the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).</p>

Term	Meaning
Guarantee	has the meaning given in the Security Trust Deed.
Hedge Counterparty	<ol style="list-style-type: none"> 1 any Initial Hedge Counterparty; or 2 any person who is a party to a Secured Hedging Agreement who satisfies the requirements of clause 14.6(h) or clause 14.6(i) (<i>Assignment and new Obligors</i>) (as applicable), <p>in its capacity as a party to a Secured Hedging Agreement.</p>
Hedge Liabilities	means in respect of any Hedge Counterparty all present and future liabilities (actual or contingent) payable or owing by an Obligor to that Hedge Counterparty under or in connection with a Secured Hedging Agreement to which that Hedge Counterparty is a party, whether or not matured and whether or not liquidated or unliquidated.
Insolvency Event	<p>in respect of a corporation, any of the following events (other than for the purposes of a solvent reconstruction, merger or amalgamation which has the prior written consent of the Representatives of the Senior Creditors and the Representatives of the Subordinated Creditors (in each case such consent not to be unreasonably withheld):</p> <ol style="list-style-type: none"> 1 (dissolution): the corporation is dissolved (whether pursuant to Chapter 5A of the Corporations Act or otherwise); 2 (Controller or liquidator appointed): a Controller, liquidator, provisional liquidator or administrator is appointed in respect of the corporation or any of its assets; 3 (steps to dissolve or appoint liquidator or administrator): an application is made to a court, a meeting is convened or a resolution is passed for the corporation to be wound up or dissolved or for the appointment of a Controller, liquidator, provisional liquidator or administrator to the corporation or any of its assets and such application is not withdrawn or dismissed within ten Business Days; 4 (scheme of arrangement): the corporation: <ul style="list-style-type: none"> • resolves to enter into, or enters into, a scheme of arrangement, a deed of company arrangement or composition with its creditors or an assignment for their benefit; • proposes or is subject to a moratorium of its debts; or • takes proceedings or actions similar to those mentioned in this paragraph as a result of which the corporation's assets are, or are proposed to be, submitted to the control of its creditors; 5 (protection from creditors): the corporation seeks or obtains protection from its creditors under any statute or any other law; 6 (insolvent): the corporation is unable to pay all of its debts as and when they become due and payable, is insolvent within the meaning of section 95A of the Corporations Act or any analogous circumstances arises under any other statute or law; 7 (attachment, distress): any attachment, distress, execution or other

Term	Meaning
	<p>process is made or levied against any asset of the corporation in an amount in excess of \$5,000,000 (or its equivalent in another currency) and is not withdrawn, stayed or dismissed within ten Business Days; or</p> <p>8 (analogous process): an event occurs in relation to the corporation which is analogous to anything referred to above or which has a substantially similar effect.</p>
Lease	a lease, charter, hire purchase, hiring agreement or any other agreement under which any property is or may be used or operated by a person other than the owner.
Liquidation	includes receivership or other appointment of a controller, deregistration, amalgamation, administration, deed of arrangement, reconstruction, winding up, dissolution, assignment for the benefit of creditors, arrangement or compromise or composition with creditors, bankruptcy or death.
New Senior Facility	has the meaning given in clause 9.1(a)(1) (<i>Refinancing of Senior Debt</i>).
New Subordinated Facility	has the meaning given in clause 9.2(a) (<i>Refinancing of Subordinated Debt</i>).
Obligor	<ol style="list-style-type: none"> 1 the Initial Obligor; or 2 an "Additional Borrower" as defined in the Senior Facility Agreement; or 3 any other Security Provider (as defined in the Security Trust Deed), or any one or more of them as the context requires.
Operating Lease	a Lease constituting an operating lease under the Accounting Standards.
Payment Blockage	has the meaning given in clause 3.3(a) (<i>Payment Blockage</i>).
Permitted Payment	<ol style="list-style-type: none"> 1 in respect of any Subordinated Creditor, a payment permitted under clause 3.2(a) (<i>Permitted payments</i>); or 2 in respect of Holdco, a payment permitted under clause 4.2 (<i>Permitted payments</i>).
Potential Event of Default	<ol style="list-style-type: none"> 1 a Senior Potential Event of Default; or 2 a Subordinated Potential Event of Default.

Term	Meaning
Power	any right, power, authority, discretion or remedy conferred on a Beneficiary by any of the Finance Documents to which it is a party or of which it has the benefit.
Receiver	has the same meaning given in the Security Trust Deed.
Recognition Deed	has the same meaning given in the Security Trust Deed.
Refinanced Subordinated Debt	has the meaning given in clause 9.2(a) (<i>Refinancing of Subordinated Debt</i>).
Related Body Corporate	has the meaning given in the Security Trust Deed.
Representative	has the meaning given in the Security Trust Deed.
Second Subordination Period	the period from the day after the last day of the First Subordination Period until the Subordinated Debt has been Finally Paid.
Secured Hedging Agreement	has the meaning in the Security Trust Deed.
Secured Moneys	<ol style="list-style-type: none"> 1 the Senior Debt; and 2 the Subordinated Debt, or either one of them as the context requires.
Secured Property	any property subject to a Security.
Security	has the meaning given in the Security Trust Deed.
Security Interest	has the meaning given in the Security Trust Deed.
Security Trust	has the meaning given in the Security Trust Deed.

Term	Meaning
Security Trust Deed	the security trust deed dated on or before the date of this deed between the Initial Obligor, the Security Trustee and others constituting the "Orange Security Trust".
Senior Borrower	any "Borrower" as defined in the Senior Facility Agreement.
Senior Creditor	has the meaning in the Security Trust Deed.
Senior Debts	the "Senior Secured Moneys" as defined in the Security Trust Deed.
Senior Event of Default	an event of default (however described) under a Senior Finance Document.
Senior Facility Agreement	the agreement titled "Syndicated Senior Facility Agreement" dated on or about the date of this deed between the Initial Obligor, the Senior Agent, the Security Trustee, the Initial Senior Creditors and others.
Senior Finance Document	has the meaning in the Security Trust Deed
Senior Interest Cover Ratio	has the meaning given in the Senior Facility Agreement.
Senior Potential Event of Default	a potential event of default (however described) under a Senior Finance Document.
Shareholder Debt	any form of loan or financial accommodation from Holdco to any Obligor or other Group Member.
Subordinated Borrower	the "Borrower" as defined in the Subordinated Facility Agreement.
Subordinated Creditor	<ol style="list-style-type: none"> 1 any Initial Subordinated Creditor; and 2 each other Subordinated Creditor under, and as defined in, the Security Trust Deed.
Subordinated Debt	the "Subordinated Secured Moneys" as defined in the Security Trust Deed.

Term	Meaning
Subordinated Event of Default	an event of default (however described) under a Subordinated Finance Document.
Subordinated Facility Agreement	the agreement titled "Syndicated Subordinated Facility Agreement" dated on or about the date of this deed between the Initial Obligor, the Subordinated Agent, the Security Trustee and others.
Subordinated Finance Document	has the meaning in the Security Trust Deed
Subordination Period	<ol style="list-style-type: none"> 1 the First Subordination Period; or 2 the Second Subordination Period.
Subordinated Potential Event of Default	a potential event of default (however described) under a Subordinated Finance Document.
Subsidiary	a subsidiary as defined in section 46 of the Corporations Act.
Tax	<ol style="list-style-type: none"> 1 any tax including the GST, levy, charge, impost, duty, fee, deduction, compulsory loan or withholding; or 2 any income, stamp or transaction duty, tax or charge, <p>which is assessed, levied, imposed or collected by any Government Agency and includes any interest, fine, penalty, charge, fee or other amount imposed on or in respect of any of the above.</p>

1.2 Interpretation

In this deed, headings and bold type are for convenience only and do not affect the interpretation of this deed and, unless the context otherwise requires:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing a gender include any gender;
- (c) other parts of speech and grammatical forms of a word or phrase defined in this deed have a corresponding meaning;
- (d) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency;

- (e) a reference to any thing (including any right) includes a part of that thing but nothing in this clause 1.2(e) (*Interpretation*) implies that performance of part of an obligation constitutes performance of the obligation;
- (f) a reference to a clause, party, attachment, exhibit or schedule is a reference to a clause of, and a party, attachment, exhibit and schedule to, this deed and a reference to this deed includes any attachment, exhibit and schedule;
- (g) a reference to a statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws amending, consolidating or replacing it, whether passed by the same or another Government Agency with legal power to do so, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- (h) a reference to a document includes all amendments (however fundamental and including any increase in any existing facility, or any new facility, under the Senior Finance Documents or the Subordinated Facility Agreement) or supplements to, or replacements or novations of, that document where effected in accordance with the Finance Documents;
- (i) a reference to a party to a document includes that party's successors and permitted assigns;
- (j) a reference to an agreement other than this deed includes an undertaking, deed, agreement or legally enforceable arrangement or understanding whether or not in writing;
- (k) a reference to an asset includes all property of any nature, including, but not limited to, a business, and all rights, revenues and benefits;
- (l) a reference to liquidation includes official management, appointment of an administrator, compromise, arrangement, merger, amalgamation, reconstruction, winding-up, dissolution, assignment for the benefit of creditors, scheme, composition or arrangement with creditors, insolvency, bankruptcy, or any similar procedure or, where applicable, changes in the constitution of any partnership or person, or death;
- (m) a reference to a document includes any agreement in writing, or any certificate, notice, instrument or other document of any kind;
- (n) no provision of this deed will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this deed or that provision;
- (o) a reference to a body, other than a party to this deed (including an institute, association or authority), whether statutory or not:
 - (1) which ceases to exist; or
 - (2) whose powers or functions are transferred to another body,is a reference to the body which replaces it or which substantially succeeds to its powers or functions; and
- (p) a Senior Event of Default or a Senior Potential Event of Default with respect to any Senior Finance Document subsists until waived in writing by the Senior Agent or remedied.
- (q) a Subordinated Event of Default or a Subordinated Potential Event of Default subsists until waived in writing by the Subordinated Agent or remedied.

1.3 Inclusive expressions

Specifying anything in this deed after the words ‘includes’ or ‘for example’ or similar expressions does not limit what else is included unless there is express wording to the contrary.

1.4 Business Day

Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the preceding Business Day.

1.5 Security Trustee’s limitation of liability protection

- (a) The Security Trustee enters into this deed only in its capacity as trustee of the Security Trust and in no other capacity.
- (b) A liability arising under or in connection with this deed (whether that liability arises under a specific provision of this deed, for breach of contract or otherwise) can be enforced against the Security Trustee only to the extent to which it can be satisfied out of property of the Security Trust out of which the Security Trustee is actually indemnified for the liability.
- (c) The limitation of the Security Trustee’s liability under this clause 1.5 (*Security Trustee’s limitation of liability protection*) applies despite any other provision of this deed (other than clause 1.5(e)) (*Security Trustee’s limitation of liability protection*) and extends to all liabilities and obligations of the Security Trustee in relation to any representation, warranty, conduct, omission, agreement or transaction related to this deed.
- (d) The parties may not:
 - (1) sue the Security Trustee personally;
 - (2) seek the appointment of a liquidator, administrator, receiver or similar person to the Security Trustee; or
 - (3) prove in any liquidation, administration or arrangement of or affecting the Security Trustee.
- (e) The provisions of this clause 1.5 (*Security Trustee’s limitation of liability protection*) will not apply to any obligation or liability of the Security Trustee to the extent that it is not satisfied because there is a reduction in the extent, or an extinguishment, of the Security Trustee’s indemnification out of the assets of the Security Trust, as a result of the Security Trustee’s fraud, gross negligence or wilful misconduct.

1.6 Capacity of Senior Representative

Each Representative of a Senior Creditor enters into this deed as agent for that ‘Senior Creditor. Each Senior Creditor from time to time is bound by this deed as a principal. The obligations and liabilities of a Representative under or in connection with this deed are limited and protected to the extent set out in the Senior Finance Document under which it is appointed.

1.7 Dealings with Senior Agent

- (a) Unless expressly provided otherwise, all dealings and correspondence between the Security Trustee and a Senior Creditor will be conducted through its Representative.
- (b) The Security Trustee may rely on any instructions given by a Representative as being given on behalf of the Senior Creditors for which it is a Representative. It need not enquire whether any requirements under the Senior Finance Documents setting out the terms of its appointment have been complied with.
- (c) Any payment to be made by the Security Trustee to a Senior Creditor may be made as directed by its Representative.
- (d) Any notice, circular, communication, report or document required to be given by the Security Trustee to a Senior Creditor may instead be given to its Representative for its benefit.

1.8 Capacity of Subordinated Agent

Each Representative for a Subordinated Creditor enters into this deed as agent for that Subordinated Creditor. Each Subordinated Creditor from time to time is bound by this deed as a principal. The obligations and liabilities of a Representative under or in connection with this deed are limited and protected to the extent set out in the Subordinated Finance Document under which it is appointed.

1.9 Dealings with Subordinated Agent

- (a) Unless expressly provided otherwise, all dealings and correspondence between the Security Trustee and a Subordinated Creditor will be conducted through its Representative.
- (b) The Security Trustee may rely on any instructions given by a Representative as being given on behalf of the Subordinated Creditors of which it is a Representative. It need not enquire whether any requirements under the Subordinated Finance Documents setting out the terms of its appointment have been complied with.
- (c) Any payment to be made by the Security Trustee to a Subordinated Creditor may be made as directed by its Representative.
- (d) Any notice, circular, communication, report or document required to be given by the Security Trustee to a Subordinated Creditor may instead be given to its Representative for its benefit.

1.10 Beneficiaries Obligations

The obligations of the Beneficiaries under this deed are several and:

- (a) failure of a Beneficiary to carry out its obligations does not relieve any other Beneficiary of its obligations;
- (b) no Beneficiary is responsible for the obligations of any other Beneficiary; and
- (c) subject to the Finance Documents, each Beneficiary may separately enforce its rights under any Finance Document.

1.11 Security Interest

Nothing in this deed creates a Security Interest over any asset of a Beneficiary, Holdco or any other party.

1.12 Inconsistency

This deed prevails over the other Finance Documents to the extent of any inconsistency (in the sense that it is impossible to comply with both) unless otherwise expressly provided.

1.13 Compliance Certificate

- (a) A reference in this deed to “Compliance Certificate” means a “Compliance Certificate” as defined in the Senior Facility Agreement or:
- (1) if the Senior Facility Agreement has terminated, a “Compliance Certificate” as defined in any Senior Finance Documents; or
 - (2) if the Senior Facility Agreement has terminated and at the relevant time there is no Senior Finance Document which provides for a Compliance Certificate, it means a “Compliance Certificate” as defined in the Subordinated Facility Agreement, or if it has terminated, any Subordinated Finance Document which provides for a Compliance Certificate.
- (b) The Obligors must:
- (1) send each Representative for the Senior Creditors a copy of any “Compliance Certificate” (as defined in a Subordinated Finance Document) at the same time as it is sent to any Representative for the Subordinated Creditors;
 - (2) send each Representative for the Subordinated Creditors a copy of any “Compliance Certificate” (as defined in a Senior Finance Document) at the same time as it is sent to any Representative for the Senior Creditors.
- (c) Each Beneficiary consents to the Obligors complying with clause 1.13(b) (*Compliance Certificate*).

2 Priorities

The parties acknowledge and agree that the Senior Debt, the Subordinated Debt and the Shareholder Debt, and the rights and interests of the Senior Creditors and the Subordinated Creditors under or in respect of the Security Trust Deed and each Security, rank in the following order:

- (1) first, the Senior Debt; and
- (2) second, the Subordinated Debt; and
- (3) third, the Shareholder Debt,

on the terms of this deed, including clause 3 (*Subordination – Subordinated Debt*).

3 Subordination – Subordinated Debt

3.1 Subordination

- (a) All the Subordinated Debt and payment (from whatever source) of, and the rights and claims of the Subordinated Creditors in respect of, all the Subordinated Debt are, subject only to clause 3.2 (*Permitted payments*), subordinated and postponed and made subject in right of payment to all the Senior Debt and payment (from whatever source) of, and the rights and claims of the Senior Creditors in respect of, all the Senior Debt.
- (b) Subject only to clause 3.2 (*Permitted payments*), until the termination of the First Subordination Period:
- (1) the Subordinated Debt must not (without the prior written consent of the Senior Agent) be paid or repaid; and
 - (2) unless the consent referred to in clause 3.1(b)(1) (*Subordination*) has been obtained, a Subordinated Creditor may not receive, and the Obligors must not pay or repay (and each Obligor must ensure that no other Group Member pays or repays), any of the Subordinated Debt to, or at the direction of, a Subordinated Creditor or any person acting or purporting to act on behalf of a Subordinated Creditor; and
 - (3) neither the Subordinated Borrower nor any other Obligor which is a party to this deed may permit or require any Obligor to pay, prepay, redeem, repurchase, defease or otherwise acquire or satisfy in any manner, any Subordinated Debt, to or at the direction of, a Subordinated Creditor or any person acting or purporting to act, on behalf of a Subordinated Creditor (and each Obligor must ensure that no other Group Member does so).
- (c) The subordination effected by this clause applies at all times during the First Subordination Period, including if and while any Obligor is in Liquidation.
- (d) If, on Liquidation of an Obligor, there is a distribution of any of the Obligor's assets, including payment in cash, property or securities, to creditors of the Obligor on Liquidation, all of the Senior Debt must be paid in full in cash before a payment is made for or on account of the Subordinated Debt.
- (e) The obligation to make any payment under or in respect of the Subordinated Finance Documents which is not permitted under clause 3.2 (*Permitted payments*) will continue for all purposes including the definitions of "Secured Money" (in the Subordinated Facility Agreement) and the accrual of interest. Subject to clause 5.5 (*Deemed release of obligation*), this deed does not release a Subordinated Borrower or any Obligor from its liability in respect of the Subordinated Debt.

3.2 Permitted payments

- (a) Despite clause 3.1 (*Subordination*), if, and only if, the conditions set out in clause 3.2(b) (*Permitted payments*) are fully satisfied, a Subordinated Creditor may receive and retain all payments from any Obligor and from any other Group Member) in respect of any interest (including, for the avoidance of doubt, capitalised interest, deferred interest and default interest) and fees, expenses and other amounts (including legal fees and Taxes) but excluding any payments of principal, due and payable under the Subordinated Finance Documents of that Subordinated Creditor.

- (b) The conditions referred to in clause 3.2(a) (*Permitted payments*) are that immediately before and at the time of payment of any amount referred to in clause 3.2(a) (*Permitted payments*):
- (1) no amount of the Senior Debt (other than any amount due and payable under clause 12.2 (*Mandatory Prepayments – Excess Cashflow*) of the Senior Facility Agreement) is due and payable but unpaid;
 - (2) the Senior Interest Cover Ratio evidenced in the Compliance Certificate most recently provided before that time was greater than 115% of the relevant financial covenant level set out in clause 17.1 (*Senior Interest Cover Ratio*) of the Senior Facility Agreement; and
 - (3) no Payment Blockage subsists.
- (c) To the extent the conditions in clause 3.2(b) (*Permitted payments*) are satisfied and would continue to be satisfied after any such payment to the Subordinated Creditors is made, the Obligors must pay to the Subordinated Creditors any amount of interest that at any previous time became due and payable under the Subordinated Finance Documents but was not paid as a consequence of the conditions under clause 3.2(b) (*Permitted payments*) not being satisfied. If at the time an amount due under clause 12.2 (*Mandatory Prepayments – Excess Cashflow*) of the Senior Facility Agreement, the payment of interest permitted by this clause 3.2(c) will be made before any payment under that clause 12.2 (*Mandatory Prepayments – Excess Cashflow*) is made.
- (d) The obligation to make any payment under or in respect of the Subordinated Finance Documents which is not permitted to be paid under clause 3.1 (*Permitted payments*) will continue for the purpose only of accruing interest, including default interest, on those amounts in accordance with the Subordinated Finance Documents.
- (e) Nothing in this deed will, in any way, restrict the payment by any Obligor of any amount due and payable under any Subordinated Finance Document on Financial Close or the payment of the agency fee to the Subordinated Agent pursuant to the terms of the Subordinated Finance Documents as at the date of this deed.

3.3 Payment Blockage

- (a) A **Payment Blockage** subsists, and no payment is permitted under clause 3.2(a) (*Permitted payments*) to a Subordinated Creditor if, during the First Subordination Period, a Senior Event of Default or Senior Potential Event of Default (other than a Senior Event of Default or Senior Potential Event of Default which arises by operation of clauses 3.2(b)(1) or 3.2(b)(2) (*Permitted payments*)) subsists (**Original Payment Blockage**).
- (b) A Payment Blockage shall cease to subsist on the earliest of:
- (1) expiry of 179 days after the Senior Event of Default or Senior Potential Event of Default occurs;
 - (2) if the Senior Event of Default or Senior Potential Event of Default on which it was based ceases to subsist (except where a Senior Potential Event of Default ceases to subsist because it has become a Senior Event of Default); and
 - (3) each relevant Representative of the relevant Senior Creditors notifying the relevant Representative of the Subordinated Creditors that the Payment Blockage has ceased to apply.

- (c) A Representative of the relevant Senior Creditors must promptly notify the Representative of the relevant Subordinated Creditors upon it becoming actually aware that a Senior Event of Default or Senior Potential Event of Default, in respect of which a notice has been delivered under clause 3.3(b)(1) (*Payment Blockage*), has ceased to subsist (and that the Payment Blockage has therefore ended).
- (d) To the extent a Senior Potential Event of Default becomes a Senior Event of Default due to the expiry of a grace period or the giving of a notice the period elapsed for that Senior Event of Default for the purpose of clause 3.3(b)(1) (*Payment Blockage*) will be deemed to have commenced on the date the Senior Potential Event of Default occurred. A Representative of the relevant Senior Creditors must promptly notify the Representative of the relevant Subordinated Creditors upon it becoming actually aware that:
 - (1) a Senior Event of Default or a Senior Potential Event of Default has occurred and the date it occurred; and
 - (2) a Senior Event of Default or a Senior Potential Event of Default has ceased to subsist (and that the Payment Blockage has therefore ended).
- (e) A Representative of the relevant Senior Creditors may, only after 358 days from the occurrence of an Original Payment Blockage, initiate another Payment Blockage in relation to the Senior Event of Default or Senior Potential Event of Default which gave rise to that Original Payment Blockage. To avoid doubt, a further Payment Blockage may occur at any time in respect of the same type of Event of Default or Potential Event of Default if it arises due to any event or set of circumstances which were not existing at the time the initial Payment Blockage arose from that same type of Event of Default or Potential Event of Default.

3.4 Trust by Subordinated Creditors

- (a) Any amount paid to or received or recovered by a Subordinated Creditor in respect of its Subordinated Debt contrary to clause 3.1 (*Subordination*) or any other provisions of this deed whether in the Liquidation of an Obligor or for any other reason (including by payment, set-off, combination of accounts, counterclaim or abatement) will be held by the Subordinated Creditor in trust for the benefit of the Senior Creditors and the Subordinated Creditors and must be paid immediately and directly to the Security Trustee for application in accordance with the Security Trust Deed.
- (b) If, contrary to this deed, a Subordinated Creditor receives any money on account of its Subordinated Debt other than a Permitted Payment:
 - (1) from the Liquidation of any Obligor or any other person and the trust created under clause 3.4(a) (*Trust by Subordinated*) fails; or
 - (2) whether or not from the Liquidation of any Obligor or any other person and the money is not for any other reason subject to the trust created under clause 3.4(a) (*Trust by Subordinated*),it must immediately pay that money to the Security Trustee (for application in accordance with the Security Trust Deed).
- (c) If, after the commencement of the Liquidation of any Obligor, a Subordinated Creditor does not actually receive a dividend, payment or other distribution because of the application of any law or rule relating to set-off (including section 553C of the Corporations Act) and its Subordinated Debt is reduced by operation of that law or rule, then the Subordinated Creditor must nevertheless pay to the Security Trustee (for application in accordance with the Security Trust Deed) that amount which would

otherwise have been payable under any Liquidation had the set-off not applied and had the dividend, payment or other distribution actually been received.

- (d) The perpetuity period applicable to the trust contained in this clause 3.4 (*Trust by Subordinated Creditors*) is a period from the date of this deed until the earlier of:
- (1) the day before the date 80 years from the date of this deed; and
 - (2) the expiry of the First Subordination Period.
- (e) The Subordinated Agent acknowledges that on the date of this deed the Security Trustee has deposited in New South Wales the sum of \$10 with the Subordinated Agent (on behalf of the Subordinated Creditors) to establish the trust to which the Subordinated Creditors are to act as trustee under this deed.
- (f) The Subordinated Agent declares that it holds the sum mentioned in clause 3.4(e) (*Trust by Subordinated Creditors*), and the Subordinated Creditors will hold all amounts referred to in clause 3.4(a) (*Trust by Subordinated Creditors*), on trust for payment to the Security Trustee in accordance with this clause 3.4.

3.5 Liquidation

- (a) A Subordinated Creditor may, and must if required by a Representative of any relevant Senior Creditors, prove in any Liquidation of any Obligor for all or part of its Subordinated Debt nominated by the Senior Agent subject to that Representative making such requests to all Subordinated Creditors in respect of the same proportion of their Subordinated Debt, and any money recovered or received under or in respect of the Liquidation (other than a solvent liquidation, reconstruction, amalgamation, merger or consolidation that is permitted under the Senior Finance Documents or has previously been approved in writing by that Representative) will be dealt with in accordance with this deed. The Subordinated Creditors must vote as directed by the Senior Agent in any vote in any procedure, meeting or other decision making body in relation to the Liquidation of an Obligor.
- (b) If a Subordinated Creditor proves in any Liquidation pursuant to clause 3.5(a) (*Liquidation*), it must not withdraw or vary or attempt to withdraw or vary any proof or claim so lodged without the prior written consent of a Representative for any Senior Creditors.
- (c) If a Subordinated Creditor does not comply with clauses 3.5(a) and (b) (*Liquidation*) the relevant Representative may, and each Subordinated Creditor irrevocably authorises the relevant Representative to, prove in the Liquidation in accordance with those clauses (without limitation, by filing any claim or proof on behalf of the Subordinated Creditor).

3.6 Suspense accounts

- (a) The Security Trustee, a Representative for any Senior Creditors or any Senior Creditor may apply to the credit of an interest bearing suspense account:
- (1) any amounts received by it under and in accordance with this deed;
 - (2) any dividends, distributions or other amounts received in any Liquidation of any Obligor in respect of the Senior Debt or any money due or owing under this deed; and

- (3) any other amounts received from any Obligor, any Subordinated Creditor or any other person in respect of the Senior Debt or any money due or owing under this deed.
- (b) The Security Trustee, a Representative for any Senior Creditors or any such Senior Creditor may retain the amounts referred to in clause 3.6(a) (*Suspense accounts*) in a suspense account for as long as it determines (acting in good faith) is necessary in the circumstances where the Security Trustee, the Representative or any such Senior Creditor, acting reasonably, considers there is a risk that it will be required to disgorge the payment because of laws governing voidable preferences or insolvent transactions. The Security Trustee, the Representative or any such Senior Creditor is not obliged to immediately apply such amounts in or towards satisfaction of the Senior Debt or any money due or owing to it under this deed.

3.7 No prejudice

The Powers of a Senior Creditor to enforce subordination under this deed are not affected or prejudiced by any act or omission on the part of an Obligor or a Subordinated Creditor.

3.8 Termination of subordination

The subordination of the Subordinated Debt to the Senior Debt and the other provisions of this clause 3 (*Subordination – Subordinated Debt*) (other than clause 3.9 (*Rescission of payment*)) cease to be of any force or effect on the termination of the First Subordination Period.

3.9 Rescission of payment

Whenever a claim that all or part of any payment affecting or relating in any way to the Senior Debt or Subordinated Debt is void or voidable or subject to recovery is upheld, conceded or compromised:

- (a) each Senior Creditor immediately becomes entitled against Holdco, each Obligor which is a party to this deed and each Subordinated Creditor to all respective Powers that it would have had if payment of the amount of the Senior Debt which is void or voidable or recoverable or foregone or compromised, had not taken place; and
- (b) each Subordinated Creditor immediately becomes entitled against Holdco and each Obligor which is a party to this deed to all respective Powers that it would have had if Subordinated Debt of the amount of the payment which is void or voidable or recoverable or foregone or compromised, had not taken place;
- (c) each Subordinated Creditor, Holdco and each Obligor which is a party to this deed must immediately do everything a Representative of any Senior Creditors requests to restore each Senior Creditor to the position it held with respect to the Subordinated Creditor, Holdco, and each such Obligor immediately before any such payment; and
- (d) Holdco and each Obligor which is a party to this deed must immediately do everything the Subordinated Agent requests to restore each Subordinated Creditor to the position it held with respect to Holdco and each such Obligor immediately before any such payment.

4 Subordination – Shareholder Debt

4.1 Subordination

- (a) All the Shareholder Debt and payment (from whatever source) of, and the rights and claims of Holdco in respect of, all the Shareholder Debt are, subject only to clause 4.2 (*Permitted payments*), subordinated and postponed and made subject in right of payment to all the Secured Moneys and payment (from whatever source) of, and the rights and claims of the Beneficiaries in respect of, all the Secured Moneys.
- (b) Subject only to clause 4.2 (*Permitted payments*), until the termination of the First Subordination Period and the Second Subordination Period:
- (1) the Shareholder Debt must not (without the prior written consent of the Senior Creditors during the First Subordination Period or the Subordinated Agent after the end of the First Subordination Period) be paid or repaid; and
 - (2) unless the consent referred to in clause 4.1(b)(1) (*Subordination*) has been obtained, Holdco may not receive, and the Initial Obligor must not pay or repay (and each Obligor must ensure that no other Group Member pays or repays), any of the Shareholder Debt to, or at the direction of, Holdco or any person acting or purporting to act on behalf of Holdco.
- (c) The subordination effected by this clause applies at all times up and until the termination of the First Subordination Period and the Second Subordination Period, including if and while the Initial Obligor is in Liquidation.
- (d) If, on Liquidation of the Initial Obligor, there is a distribution of any of the Initial Obligor's assets, including payment in cash, property or securities, to creditors of the Initial Obligor on Liquidation, all of the Senior Debt and the Subordinated Debt must be paid in full in cash before a payment is made for or on account of the Shareholder Debt.

4.2 Permitted payments

Despite clause 4.1 (*Subordination*), Holdco may receive and retain all payments from the Initial Obligor in respect of any Shareholder Debt permitted in accordance with clause 16.12 (*Distributions*) of the Senior Facility Agreement and clause 11.12 (*Distributions*) of the Subordinated Facility Agreement.

4.3 Trust by Holdco

- (a) Any amount paid to or received or recovered by Holdco in respect of its Shareholder Debt contrary to clause 4.1 (*Subordination*) or any other provision of this deed whether in the Liquidation of the Initial Obligor or, for any other reason (including by payment, set-off, combination of accounts, counterclaim or abatement) will be held by Holdco in trust for the benefit of the Beneficiaries and Holdco and must be paid immediately and directly to the Security Trustee for application in accordance with the Security Trust Deed.
- (b) If, contrary to this deed, Holdco receives any money on account of its Shareholder Debt other than a Permitted Payment:
- (1) from the Liquidation of the Initial Obligor or any other person and the trust created under clause 4.3(a) (*Trust by Holdco*) fails; or

- (2) whether or not from the Liquidation of the Initial Obligor or any other person and the money is not for any other reason subject to the trust created under clause 4.3(a) (*Trust by Holdco*),

it must immediately pay that money to the Security Trustee (for application in accordance with the Security Trust Deed).

- (c) If, after the commencement of the Liquidation of the Initial Obligor, Holdco does not actually receive a dividend, payment or other distribution because of the application of any law or rule relating to set-off (including section 553C of the Corporations Act) and its Shareholder Debt is reduced by operation of that law or rule, then Holdco must nevertheless pay to the Security Trustee (for application in accordance with the Security Trust Deed) that amount which would otherwise have been payable under any Liquidation had the set-off not applied and had the dividend, payment or other distribution actually been received.

4.4 Liquidation

- (a) Holdco may, and must if required by the Relevant Agent, prove in any Liquidation of any relevant Group Member for all or part of its Shareholder Debt nominated by the Relevant Agent, and any money recovered or received under or in respect of the Liquidation (other than a solvent liquidation, reconstruction, amalgamation, merger or consolidation that is permitted under the Senior Finance Documents or the Subordinated Finance Documents or has previously been approved in writing by the Relevant Agent) will be dealt with in accordance with this deed. Holdco must vote as directed by the Relevant Agent in any vote in any procedure, meeting or other decision making body in relation to the Liquidation of any such Group Member.
- (b) If Holdco proves in any Liquidation pursuant to clause 4.4(a) (*Liquidation*), it must not withdraw or vary or attempt to withdraw or vary any proof or claim so lodged without the prior written consent of the Representatives for the Senior Creditors and, so long as the giving or withholding of any consent will not cause any detriment to a Senior Creditor, the Representatives for the Subordinated Creditors.
- (c) If Holdco does not comply with clauses 4.4(a) and 4.4(b) (*Liquidation*), the Relevant Agent may, and Holdco irrevocably authorises the Relevant Agent to, prove in the Liquidation in accordance with those clauses (without limitation, by filing any claim or proof on behalf of Holdco).
- (d) In this clause 4.4 (*Liquidation*) **Relevant Agent** means, during the First Subordination Period, a Representative for the Senior Creditors and after the end of the First Subordination Period, a Representative for the Subordinated Creditors, but if no Representative for the Senior Creditors has taken an action it is entitled to take under this clause 4.4 (*Liquidation*) within 10 Business Days after a notice from a Representative for the Subordinated Creditors asking it to take that action, then the Representative for the Subordinated Creditors may (but only if such action taken will not cause any detriment to a Senior Creditor) take action as the Relevant Agent.

4.5 No prejudice

The Powers of a Beneficiary to enforce subordination under this clause 4 (*Subordination – Shareholder Debt*) are not affected or prejudiced by any act or omission on the part of the Initial Obligor or Holdco.

4.6 Termination of subordination

The subordination of the Shareholder Debt to the Secured Moneys and the other provisions of which clause 4 (*Subordination – Shareholder Debt*) cease to be of any force or effect on the termination of the Second Subordination Period.

5 Rights and restrictions

5.1 Acceleration Rights – Subordinated Creditor

A Subordinated Creditor may exercise Acceleration Rights in respect of its Subordinated Debt under the Security Documents if, and only if, one or more of the following events occurs:

- (a) during or after the Enforcement Restriction Period, the Senior Creditors accelerate the Senior Debt or Enforcement Action has been taken under a Security;
- (b) without limiting any other paragraph of this clause 5.1 (*Acceleration Rights – Subordinated Creditor*) if a Subordinated Event of Default occurs, or continues to subsist, after the Enforcement Restriction Period;
- (c) the Senior Debt has not been repaid within 12 months of the maturity date under the Senior Finance Documents and the Senior Creditors have not instructed the Security Trustee to commence Enforcement Action under the Securities prior to the expiry of that 12 month period;
- (d) during or after the Enforcement Restriction Period, an Insolvency Event occurs unless waived by the Senior Creditors;
- (e) during or after the Enforcement Restriction Period:
 - (1) any payment which is due and payable under the Subordinated Facility Agreement and is permitted to be paid under clause 3.2 (*Permitted payments*) is not paid within 15 Business Days of written notice from the Subordinated Creditor to the Representatives for the Senior Creditors; or
 - (2) interest or other amounts payable under the Subordinated Finance Documents that would have become due and payable on a date (**Payment Date**) but for the suspension of that payment during a Payment Blockage under clause 3.3 (*Payment Blockage*) do not become due and payable (and are not paid) for more than 180 days after the Payment Date and:
 - (A) unless clause 5.1(e)(2)(B)(*Acceleration Rights – Subordinated Creditor*) applies, following the expiration of that 180 day period are not paid within 15 Business Days of notice given after the expiration of the 180 day period from the Subordinated Creditor or any Representative of the Subordinated Creditor to the Representatives for the Senior Creditors; or
 - (B) if before the end of that 180 day period, the Representatives for the Senior Creditors form the view (acting reasonably and in good faith based on information actually before them) and notify the Representative of the Subordinated Creditor that they have formed

the view (which notice must be given promptly after forming such view), that the Payment Blockage will subsist at the end of that 180 day period, following the expiration of that 180 day period are not paid within 5 Business Days of notice given after the expiration of the 180 day period from the Subordinated Creditor or any Representative for the Subordinated Creditor to the Representatives for the Senior Creditors (and each Representative for Senior Creditors agrees to do such things as are necessary to form, or not form, such a view if requested in writing by a Representative for Subordinated Creditors);

- (f) during or after the Enforcement Restriction Period, any Obligor or Senior Creditor breaches an undertaking given by it in clause 5.10 (*Amendments and releases of Senior Finance Documents*) or clause 9 (*Refinancing and additional debt*);
- (g) during or after the Enforcement Restriction Period, any person disposes of any shares in any Obligor or the Obligors dispose of all or substantially all of their assets or undertakings, or any steps are taken in respect of any such matter, in breach of the Subordinated Finance Documents, and a Representative for Subordinated Creditors has notified the Subordinated Borrower in writing (with a copy to the Security Trustee and each Representative for the Senior Creditors of which the Representatives for the Subordinated Creditors are aware) that the Representative for the Subordinated Creditors objects to the proposed disposal;
- (h) during or after the Enforcement Restriction Period, the Obligors (taken as a whole) cease or materially change the Core Business, or steps are taken for such purpose, in breach of the Subordinated Finance Documents, and the Subordinated Agent has, in accordance with the terms of this deed, notified the Subordinated Borrower in writing (with a copy to the Security Trustee and each Representative for the Senior Creditors of which the Representatives for the Subordinated Creditors are aware) that the Subordinated Creditors object to the proposed cessation or change; or
- (i) the Senior Creditors instruct the Security Trustee to commence an Enforcement Action.
A Representative of a Subordinated Creditor will only be taken to be aware of a Representative of a Senior Creditors if that Representative for Senior Creditors is:
 - (1) a party to this deed or the Security Trust Deed in that capacity;
 - (2) the Security Trustee has notified the Representative for Subordinated Creditors of the name and notice details of that Representative for Senior Creditors (which the Security Trustee agrees it will do as soon as reasonably practicable after such person has become such a Representative).

5.2 Enforcement Action

A Subordinated Creditor may only instruct the Security Trustee to take Enforcement Action:

- (a) if the Senior Debt has not been repaid in full within 12 months after the Senior Creditors have exercised their Acceleration Rights; or
- (b) if the Senior Debt has not been repaid in full within 6 months after the latest maturity date of the Senior Debt under the Senior Facility Agreement and the Senior Creditors have not instructed the Security Trustee to commence Enforcement Action in that period.

5.3 Preservation of Subordinated Debts

- (a) Despite any other term of this deed postponing, subordinating or preventing the payment of the Subordinated Debt, as between the Obligors and the relevant Subordinated Creditor the Subordinated Debt shall remain owing or payable (and interest or default interest shall continue to accrue at the Default Rate from the due date irrespective of whether a Payment Blockage subsists). For the avoidance of doubt, interest may be charged on the Subordinated Debt at the Default Rate (whether during or after the Enforcement Restriction Period) in accordance with the terms of the Subordinated Facility Agreement.
- (b) No delay in exercising rights and remedies under any of the Subordinated Finance Documents by reason of any term of this deed (other than clause 5.3(a) (*Preservation of Subordinated Debts*)) shall operate as a permanent waiver of any of those rights and remedies.

5.4 Waivers

- (a) Subject to clause 5.4(b) (*Waivers*), during the First Subordination Period, any waiver, consent, release, amendment or approval by the Senior Creditors under a Senior Finance Document and notified to the Subordinated Agent will bind the Subordinated Creditors and will have the same effect in relation to any equivalent provision of a Subordinated Finance Document during the First Subordination Period except if given in relation to:
 - (1) any Obligor's obligations to pay any Subordinated Creditor its Secured Moneys;
 - (2) waivers or consents given by the Senior Creditors in respect of the matters dealt with in clauses 5.1 (*Acceleration Rights – Subordinated*), 5.9 (*Permitted actions*) or 5.10 (*Amendments and releases of Senior Finance Documents*) or in respect of undertakings applying exclusively for the benefit of the Subordinated Creditors and not the Senior Creditors;
 - (3) waivers or consents given by the Senior Creditors in respect of any restriction imposed on any Obligor incurring Finance Debt (other than as contemplated by clauses 9.1 (*Refinancing of Senior Debt*) and 9.3 (*Additional Senior Debt*));
 - (4) any provision of this deed that is for the benefit only of the Subordinated Creditors; and
 - (5) any provision in the Subordinated Finance Documents limiting the amount which may be made available under any Additional Capex Facility (as defined in the Security Trust Deed) or any Transactional Debt Facility (as defined in the Security Trust Deed).
- (b) Any waiver, consent, release, amendment or approval under clause 5.4(a) (*Waivers*) will be disregarded for the purposes of determining whether a condition precedent has been satisfied under the Subordinated Finance Documents and, to the extent but for the deemed waiver under this clause 5.4 (*Waivers*) interest could have accrued on the Subordinated Debt at the Default Rate under the Subordinated Finance Documents without anything being done by a person other than the Subordinated Agent or a Subordinated Creditor, interest will accrue on the Subordinated Debt at that Default Rate.

5.5 Deemed release of obligation

- (a) If the Security Trustee (or any person nominated by it) is enforcing or seeks to enforce any Security against all the share capital of an Obligor (**Sale Company**) other than the Initial Obligor, any Subordinated Debt owed by the Sale Company or any of its Subsidiaries (**Sale Group**) may be offered by the Security Trustee or a Receiver on its behalf to be discharged by payment by any prospective purchaser of the Sale Company in conjunction with that purchase but, if no such offer is accepted or the Security Trustee considers in good faith it is unlikely that such offer will be accepted if made (and therefore is not made), the Subordinated Debt owed by each member of the Sale Group shall be deemed irrevocably and unconditionally released (as against those members only) at the time of the sale of all that share capital without any further action or documentation required on the part of the Subordinated Creditors as the case may be.
- (b) In the circumstances specified in paragraph (a), the Subordinated Creditors shall not be entitled to take any further action against any member of the Sale Group from the time of the deemed release and the Subordinated Creditors will, at the request of the Security Trustee, deliver to the Security Trustee an appropriate instrument confirming such release within three Business Days of request.
- (c) Any release under this clause does not release any Obligor which is not a member of the Sale Group from any of its obligations or liabilities with respect to the Subordinated Debt (whether under any Guarantee of the Subordinated Debt or otherwise).

5.6 Further restrictions

- (a) During the Enforcement Restriction Period, the Subordinated Agent and the Subordinated Creditors must not:
- (1) vary or otherwise amend any Subordinated Finance Document (whether directly or indirectly) in any manner which would have the effect of:
- (A) increasing the amount of interest or fees payable under any Subordinated Finance Document;
- (B) increasing the frequency of, or bringing forward the date for making, payments of interest or fees under any Subordinated Finance Document;
- (C) altering the currency, basis of calculation, capitalisation or deferral of any interest or fees under any Subordinated Finance Document (including any change from non-cash payment or capitalisation of interest to cash payment of interest),
- in each case which is not contemplated by the original form of the Subordinated Finance Documents as they may be amended in compliance with this deed (other than as a result of the exercise of a right permitted under clause 5.1 (*Acceleration Rights – Subordinated Creditor*));
- (D) bringing forward the maturity date for repayment of the principal amount of the Subordinated Debt or the date of any required repayment or prepayment of any principal amount comprised in the Subordinated Debt (except as a result of the exercise of a right permitted under clause 5.1 (*Acceleration Rights – Subordinated Creditor*)); or

- (E) amending any representations and warranties, undertakings, events of default (however described) or other provisions, except where corresponding amendments are made to the Senior Finance Documents;
- (2) accept the benefit of any Security Interest or Guarantee, indemnity or assurance against financial loss in respect of its Subordinated Debt other than the Subordinated Finance Documents (including the Securities) or, provided it reflects the priority principles referred to in clause 2 (*Priorities*), if the Senior Debt has the benefit of the same Security Interest or Guarantee;
- (3) permit its Subordinated Debt to be satisfied or extinguished except as expressly provided for in this deed;
- (4) apply any money or assets in discharge or in reduction of the Subordinated Debt or otherwise exercise any right of set-off, counterclaim, abatement or combination or similar right or procedure against, or realise any Security Interest from, any Obligor except as expressly provided for in this deed;
- (5) request or convene a meeting to consider a resolution for winding up or arrangement with creditors or appointment of an administrator to any Obligor, except in circumstances where the Subordinated Creditors would be permitted to take action under clause 5.8(c) (Permitted actions) or as otherwise expressly provided for in this deed;
- (6) apply to the court to wind up or prove in the winding up of any Obligor, except in circumstances where the Subordinated Creditors would be permitted to take action under clause 5.8(c) (Permitted actions) or as otherwise expressly provided for in this deed;
- (7) enter into any other agreement or arrangement which results in amounts owing in respect of its Subordinated Debt not being subordinated to the Senior Debt;
- (8) be subrogated to a Senior Creditor;
- (9) permit to exist of take, claim or receive the benefit of:
 - (A) any Security Interest, Guarantee or other document or agreement of which a Senior Creditor has the benefit;
 - (B) any money held by or received or receivable by any Senior Creditor (or any trustee or Senior Agent on behalf of such parties); or
 - (C) any Power of a Senior Creditor,except for the rights held by the Subordinated Creditors under the Securities in accordance with this deed and the Security Trust Deed;
- (10) either directly or indirectly claim or receive the benefit of any distribution, dividend or payment arising out of or relating to the Liquidation of the Subordinated Borrower or any other Obligor;
- (11) make a claim or take any action or exercise any right, power or remedy (including under any Subordinated Finance Document or in respect of any misrepresentation, misleading or deceptive conduct, breach of warranty, undertaking or other obligation or other conduct) against the Subordinated Borrower or any other Obligor;

- (12) challenge (and will not fund or facilitate any challenge by any third party to) the validity or enforceability of any claim by a Senior Creditor against, or any Security Interest or Guarantee held by a Senior Creditor, from any Obligor;
- (13) permit any Subordinated Debt to be evidenced by a negotiable instrument unless the instrument is expressed on its face to be subject to the subordination established by this deed or is deposited (prior to any negotiation of that instrument) with the Senior Agent for safe keeping; or
- (14) subordinate or otherwise postpone its rights or claims in respect of the Subordinated Debt in favour of any person other than pursuant to this deed, without the prior written consent of the Senior Creditors, and a Subordinated Creditor must not do, or seek, attempt or purport to do, or permit to be done, anything that is prohibited by this clause 5.6 (*Further restrictions*).

5.7 Enforcement by Senior Creditors

- (a) The subordination effected by this deed is in addition to and will not prejudice or affect any Security Interest or any right or remedy of any Senior Creditor in respect of the Senior Debt and each party agrees that, except as otherwise expressly provided in this deed:
 - (1) the obligations and liabilities of the Obligors, or any other party or parties for or in respect of the Senior Debt may, from time to time, in whole or in part, be renewed, extended, amended, supplemented, novated, accelerated, compromised, terminated, sold, transferred, exchanged, waived or released by the Senior Creditors in accordance with the Senior Finance Documents as they see fit in their own interests and without reference to the Subordinated Creditors or to any Obligor or Group Member or Holdco;
 - (2) to the maximum extent permitted by law the Senior Creditors may exercise or refrain from exercising any right, remedy or Power granted by the Securities in accordance with the Senior Finance Documents without regard to the interests of the Subordinated Creditors or any Obligor, Group Member or Holdco and as if the Subordinated Debt and Shareholder Debt did not exist (including the right to perfect any Security Interest created in connection with the Senior Debt);
 - (3) any and all Security Interests at any time, present or future, held, given or intended to be given for the Senior Debt and any rights or remedies of the Senior Creditors in respect of the Senior Debt may, from time to time, in whole or in part, be exchanged, sold, transferred, released, modified, waived or extended by the Senior Creditors or any Obligor, Group Member or Holdco in accordance with the Senior Finance Documents without regard to the interests of the Subordinated Creditors and as if the Subordinated Debt and Shareholder Debt did not exist;
 - (4) if the Senior Debt is wholly or partially paid out of any proceeds received in respect of the Subordinated Debt and/or Shareholder Debt, there will be no subrogation to the rights of the Senior Creditors, until the Senior Debt has been Finally Paid;
 - (5) the Senior Creditors and any Controller appointed by them may exercise their rights under the Senior Finance Documents in the manner and at the time they consider fit in accordance with the Senior Finance Documents and free of any constraint in the Subordinated Finance Documents (other than this deed) or with respect to any Shareholder Debt and, subject as required by applicable

law, solely having regard to their own interests and, following any enforcement action against any Obligor or enforcement of the Securities, may cease that enforcement;

- (6) any balance or balances of funds with the Senior Creditors at any time standing to the credit of any Obligor may, from time to time, in whole or in part, be surrendered or released to another Senior Creditor in accordance with the Senior Finance Documents; and
- (7) the undertakings of the parties to the Finance Documents will not restrict the sale, exchange, transfer or taking of any other action by the Security Trustee or any Controller or Attorney on the enforcement of the Securities pursuant to the Security Trust Deed,

and that all of the above shall be without impairing, abridging, diminishing, releasing or affecting the subordination of the Subordinated Debt and the Shareholder Debt to the Senior Debt provided for in this deed and without any of the Senior Creditors incurring any liability to any of the Subordinated Creditors or any Obligor.

- (b) Until the end of the First Subordination Period, except as otherwise expressly provided in this deed:
 - (1) each of the Senior Creditors and any Receiver or Attorney may exercise all Powers under or in respect of the Senior Finance Documents as though the Subordinated Creditors and Holdco had no rights or interest in relation to any Obligor, the Secured Property, any Security or the property or assets subject to the trusts under this deed or the Security Trust Deed;
 - (2) in enforcing any Senior Finance Document, the Senior Creditors and any Receiver or Attorney are entitled to act entirely in their own interests and are not required to, consult with or take into account in any way the interests of any Subordinated Creditor or any Obligor, Group Member or Holdco;
 - (3) the Senior Creditors and any Receiver or Attorney may take any action under or in relation to a Senior Finance Document they see fit in their absolute discretion in accordance with the Senior Finance Documents, even if taking such action would or might constitute a breach of the Subordinated Finance Documents, and they will not be liable for inducing a breach of contract for taking such action;
 - (4) none of the Subordinated Creditors have any rights in respect of any Security or the proceeds of any Security except as set out in this deed and the Security Trust Deed;
 - (5) none of the Senior Creditors nor any Receiver or Attorney owe any Subordinated Creditor any duties, obligations or standard of care except as expressly set out in the Security Trust Deed and this deed. In particular, any obligation or requirement in any Senior Finance Document in relation to reasonableness, good faith or timeliness is not owed to any Subordinated Creditor.

5.8 Enforcement by Subordinated Creditors

- (a) The subordination effected by clause 4 (*Subordination – Shareholder Debt*) of this deed is in addition to and will not prejudice or affect any Security Interest or any right or remedy of any Subordinated Creditor in respect of the Subordinated Debt and each Obligor agrees that, except as otherwise expressly provided in this deed:

- (1) the obligations and liabilities of the Obligors, or any other party or parties for or in respect of the Subordinated Debt may, from time to time, in whole or in part, be renewed, extended, amended, supplemented, novated, accelerated, compromised, terminated, sold, transferred, exchanged, waived or released by the Subordinated Creditors in accordance with the Subordinated Finance Documents as they see fit in their own interests and without reference to any Obligor or Group Member or Holdco;
- (2) to the maximum extent permitted by law the Subordinated Creditors may (subject to this deed) exercise or refrain from exercising any right, remedy or Power granted by the Securities in accordance with the Subordinated Finance Documents without regard to the interests of any Obligor and as if the Shareholder Debt did not exist (including the right to perfect any Security Interest created in connection with the Subordinated Debt);
- (3) any and all Security Interests at any time, present or future, held, given or intended to be given for the Subordinated Debt and any rights or remedies of the Subordinated Creditors in respect of the Subordinated Debt may, from time to time, in whole or in part, be exchanged, sold, transferred, released, modified, waived or extended by the Subordinated Creditors in accordance with the Subordinated Finance Documents without regard to the interests of any Obligor or Group Member or Holdco and as if the Shareholder Debt did not exist;
- (4) if the Subordinated Debt is wholly or partially paid out of any proceeds received in respect of the Shareholder Debt, there will be no subrogation to the rights of the Subordinated Creditors, until the Subordinated Debt has been Finally Paid;
- (5) the Subordinated Creditors and any Controller appointed by them may exercise their rights under the Subordinated Finance Documents in the manner and at the time they consider fit in accordance with the Subordinated Finance Documents and free of any constraint in respect of the Shareholder Debt (other than this deed) and, subject as required by applicable law, solely having regard to their own interests and, following any enforcement action against any Obligor or enforcement of the Securities, may cease that enforcement;
- (6) any balance or balances of funds with the Subordinated Creditors at any time standing to the credit of any Obligor may, from time to time, in whole or in part, be surrendered or released to another Subordinated Creditor in accordance with the Subordinated Finance Documents; and
- (7) the undertakings of the parties to the Finance Documents will not restrict the sale, exchange, transfer or taking of any other action by the Security Trustee or any Controller or Attorney on the enforcement of the Securities pursuant to the Security Trust Deed,

and that all of the above shall be without impairing, abridging, diminishing, releasing or affecting the subordination of the Shareholder Debt to the Subordinated Debt provided for in this deed and without any of the Subordinated Creditors incurring any liability to any Obligor or Group Member or Holdco.

- (b) Until the end of the Second Subordination Period, except as otherwise expressly provided in this deed:
 - (1) each of the Subordinated Creditors and any Receiver or Attorney may exercise all Powers under or in respect of the Subordinated Finance Documents as though Holdco had no rights or interest in relation to any Obligor, the Secured Property, any Security or the property or assets subject to the trusts under this deed or the Security Trust Deed;

- (2) in enforcing any Senior Finance Document, the Subordinated Creditors and any Receiver or Attorney are entitled to act entirely in their own interests and are not required to, consult with or take into account in any way the interests of Holdco;
- (3) the Subordinated Creditors and any Receiver or Attorney may take any action under or in relation to a Subordinated Finance Document they see fit in their absolute discretion in accordance with the Subordinated Finance Documents, even if taking such action would or might constitute a breach in relation to the Shareholder Debt and they will not be liable for inducing a breach of contract for taking such action;
- (4) Holdco has no rights in respect of any Security or the proceeds of any Security except as set out in this deed and the Security Trust Deed;

none of the Subordinated Creditors nor any Receiver or Attorney owe Holdco any duties, obligations or standard of care except as expressly set out in the Security Trust Deed and this deed. In particular, any obligation or requirement in any Subordinated Finance Document in relation to reasonableness, good faith or timeliness is not owed to Holdco.

5.9 Permitted actions

Without limiting any other right of a Subordinated Creditor under this deed, a Subordinated Creditor may seek an injunction, declaratory relief or other equitable remedy (other than claiming equitable damages) at any time either during or after the Enforcement Restriction Period:

- (a) to enforce the undertakings in clause 5.10 (*Amendments and releases of Senior Finance Documents*);
- (b) to enforce the undertakings in clause 9 (*Refinancing and additional debt*);
- (c) to enforce any covenant to pay all or any part of its Subordinated Debt if:
 - (1) an Obligor breaches any of its obligations to make any payment under the Subordinated Finance Documents of that Subordinated Creditor where such payment is a Permitted Payment;
 - (2) the Subordinated Creditor or Subordinated Agent gives notice to the Borrowers and the Senior Creditors requiring that payment breach to be remedied within 10 Business Days of the date of issue of that notice; and
 - (3) the payment breach is not remedied within 10 Business Days of the date of issue by the Subordinated Creditor or Subordinated Agent of that notice.

5.10 Amendments and releases of Senior Finance Documents

- (a) Subject to clause 5.10(b) (*Amendments and releases of Senior Finance Documents*), the Senior Creditors and the Obligors must not (whether directly or indirectly), without the prior written consent of the Subordinated Agent:
 - (1) make any amendment to the maturity date, repayment profile, currency of payment, interest rate (including methods for its calculation and requirements for payment), margin applicable to any amount under a Senior Finance Document;
 - (2) make any amendment to any provision in a Senior Finance Document:

- (A) relating to lock up or otherwise imposing restrictions on payments of the Subordinated Debt; or
 - (B) imposing restrictions on payments of Distributions; or
 - (C) relating to the definition of 'Senior Interest Cover Ratio' or of any element in the make-up of that definition.
- (3) for the avoidance of doubt, make any amendment to the definition of any term defined in any Senior Finance Document which is used in any of the provisions referred to in clause 5.10(a)(1) or (2) (*Amendments and releases of Senior Finance Documents*); or
- (4) release any Security, or any asset from any Security, other than:
- (A) an asset the disposal of which has received the consent of the Subordinated Agent where required under clause 5.4(a)(2) (*Waivers*); or
 - (B) on enforcement of the Securities in accordance with this deed.
- (b) The restrictions in clause 5.10(a) (*Amendments and releases of Senior Finance Documents*) do not apply to:
- (1) any technical, procedural or mechanical variations as part of the usual administration of the Senior Finance Documents which are not material; or
 - (2) other variations which are not materially adverse to the Subordinated Creditors; or
 - (3) any release of a Security, or asset from a Security, required or permitted by the terms of the Senior Finance Documents.
- (c) Until the end of the Second Subordination Period, Holdco will not make any amendment or variation to any document evidencing the terms of the Shareholder Debt without the consent of the Senior Agent and the Subordinated Agent.

5.11 Obligations of Senior Creditors

In exercising their rights in respect of enforcement of the Securities or in exercising any power to direct the Security Trustee under any Senior Finance Document, each Senior Creditor will act in good faith towards the Subordinated Creditors where that is not inconsistent with the best interests of the Senior Creditors and will not cause the Senior Creditor to suffer or incur any greater loss cost or expense than it otherwise would if it did not act in that manner.

Nothing in this clause obliges a Senior Creditor to consult with or seek the consent of a Subordinated Creditor before exercising any right or power.

5.12 Copies of Documents

- (a) The Obligors must ensure that each Representative of the Subordinated Creditors receives a copy of each Senior Finance Document within a reasonable time after each is entered into. Each Senior Creditor consents to the provision of such copies.

- (b) The Obligors must ensure that each Representative of the Senior Creditors receives a copy of each Subordinated Finance Document within a reasonable time after each is entered into. Each Subordinated Creditor consents to the provision of such copies.

6 Acceleration Rights – Holdco

Prior to the termination of the First Subordination Period and the Second Subordination Period, Holdco may not declare that the Shareholder Debt owed to it, or any part of the Shareholder Debt owed to it, is immediately due and payable or otherwise due and payable.

7 Distribution of proceeds by Security Trustee

The Security Trustee must apply any amounts received by it under this deed and available for distribution in or towards the payment or repayment of the Secured Moneys in the manner set out in the Security Trust Deed.

8 Meetings

- (a) If at any time during the First Subordination Period a Senior Event of Default subsists, the Security Trustee shall invite the Subordinated Creditors to attend any meeting held between the Senior Creditors and the Security Trustee which is scheduled to involve:

- (1) presentations by experts or a Borrower or other Obligor;
- (2) deliberations or decisions as to an enforcement strategy for the Security; or
- (3) deliberations or decisions as to the method of realisation or disposal of any Secured Property,

but the Subordinated Creditors shall not be entitled to remain in attendance during any part of that meeting where the Security Trustee or a Senior Creditor reasonably believes that there is, or is likely to be, a conflict of interest between the Senior Creditors (or any of them) including as to:

- (4) matters of priority of the Beneficiaries under the Security; or
- (5) considerations of the Subordinated Creditors as a secured class of financiers.

- (b) The Subordinated Creditors may present the Subordinated Creditors' point of view at any such meeting but, subject to the rights of Subordinated Creditors to exercise Acceleration Rights and enforce the Security in accordance with this deed, will not be entitled to vote or otherwise affect any resolution or matter before that meeting and decisions may be made without regard to any Representative of a Subordinated Creditor.

- (c) The Security Trustee shall give the Subordinated Creditors a copy of any written notice given to the Senior Creditors by the Security Trustee under the Security Trust Deed

concerning any actual Enforcement Action or concerning a Senior Event of Default or Senior Potential Event of Default.

- (d) A Subordinated Creditor must immediately notify the Senior Creditors if it becomes aware of any Subordinated Event of Default or Subordinated Potential Event of Default.

9 Refinancing and additional debt

9.1 Refinancing of Senior Debt

- (a) Unless all of the Subordinated Debt has been repaid in full or as otherwise agreed by the Subordinated Agent, an Obligor may only refinance the Senior Debt with the proceeds of any Finance Debt permitted under clause 16.5(b)(11) (*Finance Debt*) of the Senior Facility Agreement or if:
- (1) the new senior debt facility (**New Senior Facility**) is on terms consistent with this deed and each financier providing the New Senior Facility:
 - (A) by executing a Recognition Deed, assumes the obligations of a “Senior Creditor” under this deed; or
 - (B) enters into a deed with the Subordinated Creditors and the Obligors substantially on the terms of this deed (or such other terms as may be agreed between that financier and the Subordinated Creditors);
 - (2) the proceeds of Finance Debt incurred under the New Senior Facility are used only to refinance existing Senior Debt and pay associated fees, costs and expenses;
 - (3) the aggregate of the Finance Debt to which the Subordinated Debt is subordinated after the refinancing and any Senior Debt not Finally Paid does not exceed an amount equal to the aggregate of:
 - (A) the total principal amount outstanding under the Senior Finance Documents immediately prior to the refinancing;
 - (B) the amount of any undrawn commitments under the Senior Finance Documents immediately prior to the refinancing;
 - (C) all unpaid interest accrued on the Senior Debt to the date of repayment of the Senior Debt; and
 - (D) any costs, fees and expenses (including break costs) associated with the refinancing of the Senior Debt;
 - (4) the financiers providing the New Senior Facility are not granted any Security Interest or Guarantee by any Obligor or any other person in addition to the Security and Guarantees which are granted to the Subordinated Creditors, unless otherwise agreed by the Subordinated Agent;
 - (5) the covenant and default regimes under the New Senior Facility are on the then market terms for such facilities with the financial covenant levels for the New Senior Facility being set to allow for no less than 20% to 25% under

performance in EBITDA relative to the base case projections of the Initial Obligor at the time of the refinance and those covenant levels will apply to the maturity of the Subordinated Debt and to the exclusion of covenants previously existing in relation to the Subordinated Debt;

- (6) the financial covenant lock-up restricting payments of interest and fees to the Subordinated Creditors being set to allow for not less than 13.75% to 15% underperformance in EBITDA relative to the base case projections of the Initial Obligor at the time of the refinance and those lock-up levels will apply to the maturity of the Subordinated Debt to the exclusion of the lock-up levels previously existing in relation to the Subordinated Debt;
 - (7) the default lock-up restricting payments of interest and fees to the Subordinated Creditors is no more onerous to the Subordinated Creditors than that prevailing under the Subordinated Finance Documents immediately before the refinancing and such default lock-up will apply to the maturity of the Subordinated Debt and to the exclusion of those previously existing in relation to the Subordinated Debt (but to avoid doubt the actual terms of the Subordinated Events of Default will not be amended as a result);
 - (8) the Obligors give the Subordinated Creditors no less than 30 days' notice of the proposed refinancing date; and
 - (9) without the consent of the Subordinated Creditors, the maturity date of the New Senior Facility is no later than the last maturity date for the Subordinated Debt.
- (b) Each Subordinated Creditor must give its consent to any New Senior Facility even if clause 9.1(a)(9) (*Refinancing of Senior Debt*) is not satisfied if each financier providing the New Senior Facility agrees that, on and from the maturity date of that Subordinated Creditor's Subordinated Debt:
- (1) that Subordinated Creditor's Subordinated Debt will rank pari passu with the Senior Debt and clause 3 (*Subordination – Subordinated Debt*) will not apply to such pari passu ranking Subordinated Debt; and
 - (2) all the undertakings in this deed given by that Subordinated Creditor in favour of the Senior Creditors which are applicable during an Enforcement Restriction Period will cease.
- (c) Nothing in this clause 9.1 (*Refinancing of Senior Debt*) restricts the entering into, replacement or novation of any Secured Hedging Agreement.

9.2 Refinancing of Subordinated Debt

Unless otherwise agreed by the Senior Agent, an Obligor may only refinance Subordinated Debt if:

- (a) the new subordinated debt facility (which may include a retail note issue) (**New Subordinated Facility**) is on terms consistent with this deed (including the subordination terms applicable to that part of the Subordinated Debt being refinanced (**Refinanced Subordinated Debt**)) and each financier providing the New Subordinated Facility:
- (1) by executing a Recognition Deed, assumes the obligations of a "Subordinated Creditor" under this deed; or
 - (2) enters into a deed with the Senior Creditors and the Subordinated Creditors whose Secured Moneys are not being refinanced (**Continuing Subordinated**

Creditor) under the New Subordinated Facility and the Obligors substantially on the terms of this deed (or such other terms as may be agreed between that financier, the Senior Creditors and the Continuing Subordinated Creditor);

- (b) the proceeds of Finance Debt under the New Subordinated Facility are used only to refinance existing Subordinated Debt and pay associated fees, costs and expenses;
- (c) the financial accommodation available under the New Subordinated Facility after the refinancing do not exceed an amount equal to the aggregate of:
 - (1) the total principal amount outstanding under the Subordinated Finance Documents immediately prior to the refinancing;
 - (2) the amount of any undrawn commitments under the Subordinated Finance Documents immediately prior to the refinancing;
 - (3) all unpaid interest accrued to the date of repayment of the Refinanced Subordinated Debt; and
 - (4) any costs, fees and expenses (including break costs) associated with the refinancing of the Refinanced Subordinated Debt,which in the case of clauses 9.2(c)(1) and (2) (*Refinancing of Subordinated Debt*) must not exceed, in aggregate, A\$185,000,000;
- (d) the financiers providing the New Subordinated Facility are not granted any Security Interest by any Obligor or any other person in addition to the Security, unless otherwise agreed by the Senior Creditors and the Continuing Subordinated Creditor;
- (e) the Obligors give the Senior Creditors and the Continuing Subordinated Creditor no less than 30 days' notice of the proposed refinancing date;
- (f) the maturity date for the Refinanced Subordinated Debt must not be any earlier than 6 months after the latest maturity date for the Senior Debt under the Senior Facility Agreement; and
- (g) after any refinancing of the Subordinated Debt, in respect of any component of such Refinanced Subordinated Debt which exceeds A\$150,000,000:
 - (1) if there is no "PIK" pay margin, the maximum cash pay margin is 6.00%;
 - (2) if there is a "PIK" pay margin, the total margin does not exceed 9.00% comprising a cash margin of no greater than 5.00% and a "PIK" pay margin of the remainder; and
 - (3) in any case, the margins must be no greater than those in respect of the Subordinated Debt which is being refinanced.

9.3 Additional Senior Debt

- (a) Subject to clause 9.3(b) (*Additional Senior Debt*), the Obligors may not agree to increase any commitments with respect to the Senior Debt (including under a New Senior Facility) or incur any Finance Debt that is Senior Debt unless:
 - (1) the relevant Finance Debt is permitted under the Subordinated Facility Agreement; or

- (2) the additional Finance Debt and/or commitment when aggregated with any other Finance Debt or commitment to which this clause 9.3(a)(2) (*Additional Senior Debt*) has applied does not exceed \$50 million; or
 - (3) the Subordinated Debt ranks pari passu with the additional Senior Debt in excess of the amounts permitted under paragraphs (1) and (2) above; or
 - (4) the additional Finance Debt is subordinated to the Subordinated Debt on terms acceptable to the Subordinated Agent; or
 - (5) or all of the Subordinated Debt is repaid in full.
- (b) This clause 9.3 (*Additional Senior Debt*) shall not apply to:
- (1) commitments to provide any new Senior Debt that is to be used to refinance all or part of any existing Senior Debt in accordance with clause 9.1 (*Refinancing of Senior Debt*); or
 - (2) the provision of any Finance Debt under any Additional Capex Facility (which the Subordinated Creditors acknowledge and agree may be incurred by the Borrowers without the need for any consent or approval by the Subordinated Creditors).
- (c) As between the Obligors and the Subordinated Creditors only, nothing in this deed prohibits the Obligors incurring Finance Debt which is Permitted Finance Debt (as defined in the Subordinated Finance Documents) including such Permitted Finance Debt under clause 11.5(b)(16) of the Subordinated Facility Agreement.

10 Representations and warranties

10.1 Representations

Each party to this deed (other than Holdco) represents and warrants to each other party that:

- (a) **registration:** it is a corporation having limited liability, duly incorporated (or taken to be incorporated) or registered and validly existing in the jurisdiction of its incorporation;
- (b) **corporate power:** it has the corporate power to own its assets and to carry on its business as it is now being conducted;
- (c) **authority:** it has full power and authority to enter into and perform its obligations under this deed;
- (d) **authorisations:** it has taken all necessary action to authorise the execution, delivery and performance of this deed in accordance with its terms; and
- (e) **binding obligations:** this deed constitutes its legal, valid and binding obligations and, subject to any necessary stamping and registration, is enforceable in accordance with its terms subject to laws generally affecting creditors' rights and to principles of equity.

10.2 Senior Representatives

Each Representative of a Senior Creditor represents and warrants to the other parties to this deed that it has authority to enter into this deed on behalf of and so as to bind itself and that Senior Creditor to this deed.

10.3 Subordinated Representative

Each Representative of a Subordinated Creditor represents and warrants to the other parties to this deed that it has authority to enter into this deed on behalf of and so as to bind itself and that Subordinated Creditor to this deed.

10.4 Holdco representations

Holdco represents and warrants to and for the benefit of each other party that:

- (a) **status:** it is duly incorporated and validly existing under the laws of the place of its incorporation;
- (b) **due authority:** it has taken all necessary corporate action to authorise entry into, the delivery of and performance of the Finance Documents to which it is a party and carry out the transactions contemplated by those Finance Documents;
- (c) **binding obligations:** the obligations assumed by it in each Finance Document to which it is a party are legal, valid, binding and enforceable in accordance with their terms subject to any necessary stamping and registrations and subject to laws generally affecting creditors' rights and to principles of equity;
- (d) **transaction permitted:** the entry into and performance by it of any obligations under the Finance Documents to which it is a party does not (and will not) conflict with:
 - (1) any law or regulation applicable to it or any directive of any Government Agency;
 - (2) its constitutional documents; or
 - (3) any agreement or instrument binding on it or its assets,where, except in the case of paragraph (2), to do so would have a Material Adverse Effect (as defined in any Finance Document);
- (e) **power:** it has the power to enter into and perform its obligations under the Finance Documents to which it is a party, to carry out transactions contemplated by those documents and to carry on its business as conducted or contemplated;
- (f) **authorisations:** each authorisation, consent, permissions, approval, registration or licence which is required for:
 - (1) the execution, delivery and performance by it of the Finance Documents to which it is expressed to be a party and the transactions contemplated by those documents; and
 - (2) the validity and enforceability of those documents and the effectiveness or priority of any Security to which it is a party,

has been obtained or effected, is in full force and effect and has been complied with in all material respects where not to do so would have a Material Adverse Effect (as defined in any Finance Document);

- (g) **no Insolvency Event:** no Insolvency Event has occurred in relation to it;
- (h) **no breach of law:** to the best of its information, knowledge and belief after having made due inquiry, it has not breached any law which breach has or would have a Material Adverse Effect (as defined in any Finance Document);
- (i) **trustee:** it is not the trustee of any trust or settlement;
- (j) **benefit:** it will receive reasonable commercial benefits from entering into the Finance Documents to which it is a party;
- (k) **immunity:** its assets do not enjoy immunity from enforcement in relation to the Securities granted by it; and
- (l) **filings:** it has filed with ASIC all material corporate notices and other documents as required by the Corporations Act and all such filings are complete and accurate in all material respects where the failure to do so would have a Material Adverse Effect (as defined in any Finance Document).

10.5 Repetition

The representations and warranties in clause 10.4 (*Holdco representations*) (other than under paragraphs 10.4(f), (h), and (l) (*Representations and warranties*)) will be repeated at the time each Compliance Certificate is delivered (by reference to the then current circumstances) but are repeated subject to any disclosure made by any Obligor to the relevant Representative in writing on or before the date of such repetition and accepted by that Representative in writing on or before the date of such repetition.

10.6 Reliance

Holdco acknowledges that each Beneficiary has entered into each Finance Document to which it is a party in reliance on the representations and warranties given by Holdco under this deed.

10.7 Survival

The representations and warranties in this clause 10 (*Representations and warranties*) survive the execution of this deed.

11 Undertakings, consents and acknowledgments

11.1 Undertakings, consents and acknowledgments of the Obligors

Unless this deed specifically permits, each Obligor which is a party to this deed:

- (a) consents to this deed and confirms that each of its obligations, liabilities and undertakings under or in respect of the Finance Documents, in accordance with their respective terms,

is and will remain in full force and effect despite this deed, and are not discharged, impaired or otherwise affected by any of the provisions of this deed (except as expressly provided in this deed);

- (b) expressly authorises the enforcement of the Finance Documents in the manner provided for in this deed;
- (c) agrees to cooperate in the implementation of this deed;
- (d) agrees not to pay, prepay or repay, or make any distribution in respect of, or on account of, or purchase, redeem or acquire, any of the Subordinated Debt in cash or in kind except in accordance with this deed;
- (e) undertakes to the Senior Creditors and the Subordinated Creditors that no Obligor will take or omit any action whereby the ranking of the Senior Debt or the subordination of the Subordinated Debt contemplated by this deed may be impaired;
- (f) must not petition or apply for or vote in favour of any resolution for the Liquidation of any Obligor other than as contemplated under this deed;
- (g) must not exercise any right of set-off, counterclaim, abatement, combination or similar right or procedure against a Subordinated Creditor or agree to a set-off with a Subordinated Creditor or merge or combine any accounts so as directly or indirectly to reduce any Subordinated Debts;
- (h) must not exercise any right or take any other action which would cause any amount to become payable in connection with any Subordinated Finance Document; and
- (i) irrevocably waives any rights to challenge or have set aside any arrangement relating to the placing of the proceeds of the enforcement of the Finance Documents in a suspense account in a manner contemplated by the Senior Finance Documents.

11.2 Rights of Senior Creditors

Nothing in this deed affects or limits any rights or obligations of a Senior Creditor regarding the appropriation or application of money received by it in respect of the Senior Debt, unless done in breach of this deed.

12 Savings provisions

12.1 No impairment

- (a) No Power of the Senior Creditors is at any time or in any way prejudiced or impaired by any act or omission of a Obligor or a Subordinated Creditor under any Finance Document or otherwise in respect of the Senior Debt or the Subordinated Debt.
- (b) This clause 12.1 (*No impairment*) applies regardless of any actual or constructive knowledge of any fact or circumstance of the Senior Creditors.

12.2 Non-avoidance

- (a) Other than pursuant to an express release or discharge or as expressly provided otherwise in this deed, the Powers of the Senior Creditors will not be prejudiced, impaired or adversely affected by, and the obligations and liabilities of each Obligor and each Subordinated Creditor under the Finance Documents will not be released, discharged or otherwise affected by the provisions of this deed or anything which but for this provision might have that effect, including:
- (1) the grant to any Obligor, any Subordinated Creditor or any other person of any time, waiver, covenant not to sue or other indulgence or any consent or waiver given or not given under or in respect of any Finance Document;
 - (2) the release (including without limitation a release as part of any novation) or discharge of any Obligor, any Subordinated Creditor or any other person of its obligations under this deed, any other Finance Document or any other agreement or arrangement or of any property from any Security Interest or Guarantee;
 - (3) the cessation of the obligations, in whole or in part, of any Obligor, any Subordinated Creditor or any other person under any Finance Document or any other document or agreement;
 - (4) the Liquidation of any Obligor, any Subordinated Creditor or any other person or the appointment of a liquidator, receiver, receiver and manager, official manager or other similar officer to any Obligor, any Subordinated Creditor or any other person or to all or any part of the assets of or any other person;
 - (5) any arrangement, composition or compromise entered into by a Senior Creditor, any Obligor, any Subordinated Creditor or any other person;
 - (6) any Finance Document or any other document or agreement being in whole or in part illegal, void, voidable, avoided, unenforceable or otherwise of limited force or effect;
 - (7) any extinguishment, failure, loss, release, discharge, abandonment, impairment, compound, composition or compromise, in whole or in part of any Finance Document or any other document or agreement;
 - (8) any Security Interest or Guarantee being given to a Senior Finance Party by any Obligor or any other person;
 - (9) any alteration, amendment, variation, modification, supplement, renewal or replacement of any Finance Document or any other document or agreement;
 - (10) any moratorium or other suspension of any Power;
 - (11) any Beneficiary exercising or enforcing, attempting to exercise or enforce, delaying, failing or refraining from exercising or enforcing, or being not entitled or unable to exercise or enforce, any Power;
 - (12) any Beneficiary obtaining a judgment against any Obligor, any Subordinated Creditor or any other person for the payment of any of the Senior Debt or the Subordinated Debt;
 - (13) any transaction, agreement or arrangement that may take place with any Beneficiary, any Obligor or any other person;

- (14) any payment to any Beneficiary including any payment which at the payment date or at any time after the payment date is, in whole or in part, illegal, void, voidable, avoided or unenforceable;
- (15) any failure to give effective notice to any Obligor, any Subordinated Creditor or any other person of any default under any Finance Document or any other document or agreement;
- (16) any legal limitation, disability or incapacity of any Obligor, any Subordinated Creditor or of any other person;
- (17) any breach of any Finance Document or any other document or agreement;
- (18) the acceptance of the repudiation of, or termination of, any Finance Document or any other document or agreement;
- (19) any part of the Senior Debt or the Subordinated Debt being irrecoverable for any reason;
- (20) any disclaimer by any Obligor, any Subordinated Creditor or any other person of any Finance Document or any other document or agreement;
- (21) any assignment, novation, assumption or transfer of, or other dealing with, any Powers or any other rights or obligations under any Finance Document or any other document or agreement;
- (22) the opening of a new account of any Obligor (whether alone or with others) with any Beneficiary or any transaction on or relating to the new account;
- (23) any prejudice (including, but not limited to, material prejudice) to any person as a result of:
 - (A) any thing done, or omitted to be done by any Beneficiary, any Obligor or any other person;
 - (B) any Beneficiary or any other person selling or realising any property the subject of an Security Interest at less than the best price;
 - (C) any failure or neglect by any Beneficiary or any other person to recover the Senior Debt or the Subordinated Debt from any Obligor or any other person or by the realisation of any property the subject of an Security Interest; or
 - (D) any other thing;
- (24) the receipt by any Beneficiary of any dividend, distribution or other payment in respect of any Liquidation;
- (25) the capacity in which a party executed a Finance Document not being the capacity disclosed to any other party to the Finance Document before execution of the Finance Document;
- (26) the fluctuation (including, but not limited to, any reduction and subsequent increase) from time to time of all or any part of any of the Senior Debt or the Subordinated Debt, whether by the advance or re-advance of any money, the provision or re-provision of financial accommodation or otherwise;

- (27) a Beneficiary being, or not being, from time to time obliged to:
 - (A) make any advance or provide any other financial accommodation to, at the request of, or for the benefit of any Obligor or any other person;
 - (B) do anything which may cause money to become due by any Obligor or any other person to a Beneficiary;
 - (28) all or any part of any of the Senior Debt or the Subordinated Debt being contingent or prospective;
 - (29) any other act, omission, matter or thing whatsoever, whether negligent or not.
- (b) Clause 12.2(a) applies irrespective of:
- (1) the consent or knowledge or lack of consent or knowledge, of any Beneficiary, any Obligor or any other person of any event described in clause 12.2(a); or
 - (2) any rule of law or equity to the contrary.

12.3 Default by a Beneficiary

A breach of, or default under, this deed by a Beneficiary does not affect any obligation of any Obligor or any other Beneficiary to that Beneficiary.

12.4 Exclusion of moratorium

To the extent not excluded by law, a provision of any legislation which at any time directly or indirectly:

- (a) lessens or otherwise varies or affects in favour of any Obligor or any Subordinated Creditor any obligations under this deed or any Finance Document; or
- (b) stays, postpones or otherwise prevents or prejudicially affects the exercise by a Beneficiary of any Power,

is negated and excluded from this deed and all relief and protection conferred on any Obligor or any Subordinated Creditor by or under that legislation is also negated and excluded.

12.5 Conflict

Where any Power of a Beneficiary under any Finance Document is inconsistent with the powers conferred by applicable law then, to the extent not prohibited by that law, the powers conferred by applicable law are regarded as negated or varied to the extent of the inconsistency.

13 Hedge Counterparties

13.1 Undertaking of Hedge Counterparties

Except as the Senior Agent has previously consented in writing, no Hedge Counterparty will, until the Senior Debt in relation to the Senior Facility Agreement has been Finally Paid:

- (a) demand (other than as may be necessary in order to exercise any right to terminate or close out any hedging transaction as permitted under clause 13.1(b) (*Undertaking of Hedge Counterparties*)) or receive payment, prepayment or repayment of, or any distribution in respect of, or on account of, any Hedging Liabilities, or apply any money or property in or towards the discharge of any Hedging Liabilities except:
 - (1) for scheduled payments arising under any Secured Hedging Agreement (without regard to any amendments made after the date of those Secured Hedging Agreements other than those permitted by the Senior Agent); and
 - (2) for the proceeds of enforcement of the Securities received and applied in accordance with the terms of the Senior Finance Documents;
- (b) exercise any right to terminate or close out any hedging transaction under any Secured Hedging Agreement before its stated maturity unless;
 - (1) the relevant Borrower has failed to make any payment due under the relevant Secured Hedging Agreement after any grace periods applicable to that payment under the Secured Hedging Agreement and the default is not remedied within 5 Business Days of notice of the default being given to the Senior Agent;
 - (2) the Senior Agent has declared all or part of the Senior Debt prematurely due and payable in accordance with the Senior Facility Agreement;
 - (3) the relevant Borrower is required, or provides notice, to prepay or repay in full any participation in advances or utilisations under the Senior Facility Agreement provided by the relevant Hedge Counterparty (in the capacity as a Senior Financier) or any of its Related Bodies Corporate;
 - (4) the relevant Borrower provides notice to cancel, or there is a requirement to cancel, all of the commitment under the Senior Facility Agreement of the relevant Hedge Counterparty (in its capacity as a Senior Financier) or any of its Related Bodies Corporate under the relevant Hedging Agreement;
 - (5) in the case of a Secured Hedging Agreement based on the 2002 ISDA Master Agreement, the Hedge Counterparty is entitled to exercise such a right under sections 5(b)(i) (Illegality), 5(b)(ii) (Force Majeure Event), 5(b)(iii) (Tax Event) or 5(b)(iv) (Tax Event Upon Merger) of the Secured Hedging Agreement; or
 - (6) in the case of a Secured Hedging Agreement based on the 1992 ISDA Master Agreement, the Hedge Counterparty is entitled to exercise such a right under sections 5(b)(i) (Illegality), 5(b)(ii) (Tax Event) or 5(b)(iii) (Tax Event Upon Merger) of the Secured Hedging Agreement;
- (c) discharge all or any part of the Hedging Liabilities by set-off, any right of combination of accounts or otherwise except if and to the extent that those Hedging Liabilities are permitted to be paid under clause 13.1(a) (*Undertaking of Hedge Counterparties*); or

- (d) permit or receive any Security Interest or any financial support (including the taking of any participation, the giving of any guarantee, indemnity or other assurance against loss, or the making of any deposit or payment) for, or in respect of, any of the Hedging Liabilities other than under the Senior Finance Documents.

13.2 Notification of exposures

Each Hedge Counterparty that is party to this deed must, on request by the Security Trustee or Senior Agent, give notice to the Senior Agent or Security Trustee (as the case may be) certifying its Hedge Exposure, as at the date of the notice.

13.3 Assignments

Until the end of the First Subordination Period, no Hedge Counterparty will:

- (a) assign, transfer or dispose of any of the Hedging Liabilities owing to it or its proceeds or any interest in the Hedging Liabilities or its proceeds or any Security in relation to such Hedging Liabilities to or in favour of any person; or
- (b) transfer by novation or otherwise any of its rights or obligations under any of the Hedging Agreements to any person,

unless in each case that person has been approved by the Majority Senior Beneficiaries and the Borrower and agrees with the parties to this document that it is bound by all the terms of this document and the Intercreditor Deed as a Hedge Counterparty by the execution, and delivery to the Security Trustee, of a Recognition Deed under the Security Trust Deed.

14 General

14.1 Notices

Any notice or other communication including any request, demand, consent or approval, to or by a party to this deed must be given in accordance with the notice provisions of the Security Trust Deed.

14.2 Governing law and jurisdiction

- (a) This deed is governed by the laws of New South Wales.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales.
- (c) Each party irrevocably waives any objection to the venue of any legal process on the basis that the process has been brought in an inconvenient forum.
- (d) Each party irrevocably waives any immunity in respect of its obligations under this deed that it may acquire from the jurisdiction of any court or any legal process for any reason including the service of notice, attachment before judgment, attachment in aid of execution or execution.

14.3 Prohibition and enforceability

- (a) Any provision of, or the application of any provision of, this deed or any Power which is prohibited in any jurisdiction is, in that jurisdiction, ineffective only to the extent of that prohibition.
- (b) Any provision of, or the application of any provision of, this deed which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction.

14.4 Waivers

- (a) Waiver of any right arising from a breach of this deed or of any Power arising upon default under this deed or on the occurrence of a Default must be in writing and signed by the party granting the waiver.
- (b) A failure or delay in exercise, or partial exercise, of:
 - (1) a right arising from a breach of this deed or on the occurrence of a Default; or
 - (2) a Power created or arising upon default under this deed or on the occurrence of a Default,does not result in a waiver of that right or Power.
- (c) A party is not entitled to rely on a delay in the exercise or non-exercise of a right or Power arising from a breach of this deed or on a default under this deed or on the occurrence of an Event of Default as constituting a waiver of that right or Power.
- (d) A party may not rely on any conduct of another party as a defence to exercise of a right or Power by that other party.
- (e) This clause may not itself be waived except by writing.

14.5 Variation

A variation of any term of this deed must be in writing and signed by the parties.

14.6 Assignment and new Obligors

- (a) An Obligor must not assign or novate any of its rights or obligations under this deed without the prior written consent of each Beneficiary.
- (b) If a person who is not already a party to this deed as an Obligor grants a Collateral Security or becomes a "Guarantor" or a "Borrower" under and as defined in a Finance Document, each Obligor must ensure that the person immediately becomes bound by this deed and the Security Trust Deed by executing an Accession Deed (Security Provider).
- (c) The Senior Agent may assign, novate or transfer any of its rights and obligations under this deed to a successor under and in accordance with clause 24.14 (*Resignation and removal of Senior Agent*) of the Senior Facility Agreement.

- (d) The Subordinated Agent may assign, novate or transfer any of its rights and obligations under this deed to a successor under and in accordance with clause 19.14 (*Resignation and removal of Senior Agent*) of the Subordinated Facility Agreement.
- (e) A Senior Creditor may assign, novate or transfer any of its rights and obligations under this deed to a successor under and in accordance with clause 25.1 (*Assignment by Creditors*) of the Senior Facility Agreement.
- (f) A Subordinated Creditor may assign, novate or transfer any of its rights and obligations under this deed to a successor under and in accordance with clause 20.2 (*Assignment by Creditors*) of the Subordinated Facility Agreement.
- (g) The Security Trustee may assign, novate or transfer any of its rights and obligations under this deed to a successor under and in accordance with clause 7.3 (*Appointment of successor Security Trustee*) of the Security Trust Deed.
- (h) If a Hedge Counterparty assigns or novates any of its rights and obligations under any Secured Hedging Agreement (in accordance with the provisions of the relevant Finance Document) it must procure that the assignee or transferee becomes bound by this deed and the Security Trust Deed by executing an Accession Deed (Beneficiary).
- (i) If a person (other than an Initial Hedge Counterparty) enters into a Secured Hedging Agreement with a Obligor in accordance with the Finance Documents, the Borrowers must ensure that that person becomes bound by this deed and the Security Trust Deed by executing an Accession Deed (Beneficiary).

14.7 Further assurances

Each party must, upon request by the Senior Agent or the Subordinated Agent (in each case acting reasonably) do all things and execute all further documents necessary to give full effect to this deed.

14.8 Counterparts

- (a) This deed may be executed in any number of counterparts.
- (b) All counterparts, taken together, constitute one instrument.
- (c) A party may execute this deed by signing any counterpart.

14.9 PATRIOT Act

THE SUBORDINATED CREDITORS HEREBY NOTIFY, AND HOLDCO ACKNOWLEDGES, THAT PURSUANT TO THE REQUIREMENTS OF THE USA PATRIOT ACT (TITLE III OF PUB. L. 107-56) SIGNED INTO LAW OCTOBER 26, 2001) (THE **PATRIOT ACT**) IT AND EACH SUBORDINATED CREDITOR MAY BE REQUIRED TO OBTAIN, VERIFY AND RECORD INFORMATION THAT IDENTIFIES AMONG OTHERS, HOLDCO AND THE OBLIGORS, WHICH INFORMATION INCLUDES THE NAME AND ADDRESS OF HOLDCO AND EACH OBLIGOR AND OTHER INFORMATION THAT WILL ALLOW A SUBORDINATED CREDITOR TO IDENTIFY AMONG OTHERS, HOLDCO AND THE OBLIGORS, IN ACCORDANCE WITH THE PATRIOT ACT. THIS NOTICE IS GIVEN IN ACCORDANCE WITH THE REQUIREMENTS OF THE PATRIOT ACT AND IS EFFECTIVE FOR EACH SUBORDINATED CREDITOR.

14.10 Attorneys

Each of the attorneys executing this deed states that the attorney has no notice of the revocation of the power of attorney appointing that attorney.

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