

## NOTICE OF FILING

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### Details of Filing

Document Lodged: Affidavit - Form 59 - Rule 29.02(1)  
File Number: NSD616/2021  
File Title: WESTPAC BANKING CORPORATION ABN 33 007 457 141 & ANOR v  
FORUM FINANCE PTY LIMITED & ORS  
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF  
AUSTRALIA



A handwritten signature in blue ink that reads 'Sia Lagos'.

Dated: 1/10/2021 2:45:13 PM AEST

Registrar

### Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Form 59  
Rule 29.02(1)

## Affidavit

No. NSD 616 of 2021

Federal Court of Australia  
District Registry: New South Wales  
Division: General

**Westpac Banking Corporation ABN 33 007 457 141** and another  
Applicant

**Forum Finance Pty Limited ACN 153 301 172** and others named in the Schedule  
Respondents

Affidavit of: **Bianca Josephine Quan**  
Address: 114 William Street, Melbourne VICTORIA 3000  
Occupation: Solicitor  
Date: 28 September 2021

### Contents

Document number	Details	Paragraph	Page
1	Affidavit of BIANCA JOSEPHINE QUAN in support of Interlocutory Application filed contemporaneously with this affidavit sworn on 28 September 2021	1 - 29	3
2	Annexure BJQ-1, being copy of the Deed of Appointment executed on 13 August 2021 and a copy of the Form 504 lodged with ASIC	2	11
3	Annexure BJQ-2, being copy of the Business Transaction Facility letter of offer dated 27 September 2018 executed by Forum Group	5	22
4	Annexure BJQ-3, being copy of the terms and conditions of the Forum Group Facility	5	37

Filed on behalf of (name & role of party) Anthony Resnick and Mark Robinson, in their capacities as the joint and several receivers of Smartprint Fleet Management Pty Limited (receivers appointed) (in liquidation)

Prepared by (name of person/lawyer) Bianca Quan of Cornwalls

Law firm (if applicable) Cornwalls

Tel (03) 9608 2000 Fax (03) 9608 2222

Email [b.quan@cornwalls.com.au](mailto:b.quan@cornwalls.com.au); [a.lee@cornwalls.com.au](mailto:a.lee@cornwalls.com.au)

**Address for service** Cornwalls, 114 William Street, MELBOURNE VIC 3000  
(include state and postcode)

[Version 3 form approved 02/05/2019]

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*Adrian Lee*  
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Document number	Details	Paragraph	Page
5	Annexure BJQ-4, being copy of the General Security Deed executed by deed poll by Forum Group on 11 October 2018	8	117
6	Annexure BJQ-5, being copy of the verification statement of Octet's PPSR registration	9	174
7	Annexure BJQ-6, being copy of the Notice of Termination issued on behalf of Octet dated 5 July 2021	11	177
8	Annexure BJQ-7, being copy of the General Security Deed (Third Party) executed by deed poll by Smartprint on 2 April 2019	12	180
9	Annexure BJQ-8, being copy of copy of the verification statement of Octet's PPSR registration	13	247
10	Annexure BJQ-9, being copy of the Octet Guarantee and Indemnity executed 12 November 2020	14	250
11	Annexure BJQ-10, being copy of the Current & Historical Organisation Extract and PPSR Search for Smartprint dated 22 September 2021	15,22	280
12	Annexure BJQ-11, being copy of the letter from the Receivers to Westpac dated 13 August 2021	18	314
13	Annexure BJQ-12, being copy of the letter from MinterEllison dated 16 August 2021	19	316
14	Annexure BJQ-13, being copy of the Email from Compulsory Notices & Insolvencies at Westpac dated 16 August 2021	20	319
15	Annexure BJQ-14, being copy of the letter from the Receivers dated 16 August 2021	21	321
16	Annexure BJQ-15, being copy of the letter from Westpac dated 24 August 2021	22	323
17	Annexure BJQ-16, being copy of the letter from the Receivers dated 26 August 2021	23	326
18	Annexure BJQ-17, being copy of the letter from Cornwalls dated 1 September 2021	24	328
19	Annexure BJQ-18, being copy of the letter from Jones Day dated 3 September 2021	26	331
20	Annexure BJQ-19, being copy of the orders made in these proceedings on 2 July 2021	27(a)	335
21	Annexure BJQ-20, being copy of the judgment dated 9 July 2021	27(b)	372
22	Annexure BJQ-21, being copy of the orders made in these proceedings on 15 July 2021	27(c)	394
23	Annexure BJQ-22, being copy of the letter from the Receivers dated 5 July 2021	29(b)	422
24	Annexure BJQ-23, being copy of the Email from Cornwalls dated 5 July 2021 (the attachment is not reproduced)	29(c)	426
25	Annexure BJQ-24, being copy of the letter from MinterEllison dated 6 July 2021	29(d)	428

Document number	Details	Paragraph	Page
26	Annexure BJQ-25, being copy of the letter from Dentons dated 7 July 2021.	29(e)	430
27	Annexure BJQ-26, being copy of the letter from Cornwalls dated 8 July 2021	29(f)	434
29	Annexure BJQ-27, being copy of the letter from MinterEllison dated 8 July 2021	29(g)	437
29	Annexure BJQ-28, being copy of the Email from Cornwalls dated 8 July 2021 (the attachments are not reproduced).	29(h)	439
30	Annexure BJQ-29, being copy of the letter from Dentons dated 19 July 2021	29(i)	443
31	Annexure BJQ-30, being copy of the letter from MinterEllison dated 22 July 2021	29(j)	446
32	Annexure BJQ-31, being copy of the letter from Allens Linklaters dated 30 July 2021	29(k)	448
33	Annexure BJQ-32, being copy of the letter from MinterEllison dated 4 August 2021	29(l)	451
34	Annexure BJQ-33, being copy of the letter from Cornwalls dated 10 August 2021	29(m)	454
35	Annexure BJQ-34, being copy of the letter from MinterEllison dated 13 August 2021	29(n)	457

I BIANCA JOSEPHINE QUAN say on oath:

1. I am a Partner at Cornwalls, the solicitors for Antony Resnick and Mark Julian Robinson, the joint and several receivers of Smartprint Fleet Management Pty Limited ACN 132 807 080 (**Smartprint**), and I am authorised to make this affidavit on behalf of Messrs Resnick and Robinson in their capacities as receivers of Smartprint (**Receivers**). I swear this affidavit in support of the Application of the Receivers filed contemporaneously with this affidavit.

### Background

2. The Receivers were appointed by Octet Finance Pty Limited (**Octet**) on 13 August 2021 to property of Smartprint, including all bank accounts of Smartprint. Now produced and shown to me and marked **BJQ-1** is a copy of the Deed of Appointment executed on 13 August 2021, and a copy of the Form 504 lodged with ASIC.
3. The Receivers are also the joint and several receivers of Forum Finance Pty Limited (**Forum Finance**) and Forum Group Pty Limited (**Forum Group**).
4. Octet is in the business of providing supply chain, trade and debtor finance.
5. Octet and Forum Group were parties to a Business transaction Facility dated on or about 27 September 2018 (**Forum Group Facility**). Now produced and shown to me and

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- marked **BJQ-2** is a copy of the Business Transaction Facility letter of offer dated 27 September 2018 executed by Forum Group. Now produced and shown to me and marked **BJQ-3** is a copy of the terms and conditions of the Forum Group Facility.
6. Under the Forum Group Facility, Octet provided Forum Group with an online procurement portal and trade finance to purchase goods and services. Suppliers of goods and services upload invoices for payment on Octet's procurement portal, which may then be approved by Forum Group. Once approved, Octet makes payment to Forum Group's suppliers.
  7. On 30 June 2021, Forum Group defaulted under the Forum Group Facility following a dishonour of a monthly direct debit and a failure to make the minimum repayment due on 30 June 2021.
  8. Octet is a secured party under a general security deed executed by Forum Group in favour of Octet on or about 11 October 2018 (**Forum Group Security Deed**). Now produced and shown to me and marked **BJQ-4** is a copy of the General Security Deed executed by deed poll by Forum Group on 11 October 2018.
  9. Octet's security interest arising under the Forum Group Security Deed was registered on the Personal Property Securities Register (**PPSR**) in registration number 201810050021344 on 5 October 2018 (**Forum Group Security Interest**). The Forum Group Security Interest was granted by Forum Group as security for the payment of monies which are now or many from time to time be owing or remain owing pursuant to the Forum Group Facility. Now produced and shown to me and marked **BJQ-5** is a copy of the verification statement of Octet's PPSR registration.
  10. As a consequence of the event of default referred to in paragraph 7 above, the Forum Group Security Interest created by the Forum Group Security Deed has become enforceable, and all monies secured by the Forum Group Security Deed are immediately due and payable. Octet has terminated the Forum Group Facility. Now produced and shown to me and marked **BJQ-6** is the Notice of Termination issued on behalf of Octet dated 5 July 2021.
  11. The Notice of Termination at **BJQ-6** above referred to an outstanding amount due and payable of \$1,792,831.99 (excluding legal costs). I am instructed and verily believe that as at 31 August 2021, the amount due and payable under the Forum Group Facility is \$1,806,826.32 (excluding legal costs).

### Security interests in Smartprint

12. On 2 April 2019, Smartprint executed a General Security Deed with Octet (**Smartprint Security Deed**). Now produced and shown to me and marked **BJQ-7** is a copy of the

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General Security Deed (Third Party) executed by deed poll by Smartprint on 2 April 2019. At the time that document was executed on behalf of Smartprint, the company was known as Forum Group Finance Pty Limited. Basile Papadimitriou (**Mr Papas**) signed that document on behalf of the company. He is the sole director of Smartprint. I address this further in paragraph 15 below.

13. Octet's security interest arising under the Smartprint Security Deed was registered on the PPSR in registration number 201904020047633 on 2 April 2019 (**Smartprint Security Interest**). The Smartprint Security Interest was granted by Smartprint as security for the payment of monies which are now or many from time to time be owing or remain owing pursuant to the Forum Group Facility. Now produced and shown to me and marked **BJQ-8** is a copy of the verification statement of Octet's PPSR registration.
14. On 12 November 2020, Smartprint (and other entities) executed a Guarantee and Indemnity with Octet in respect of the Forum Group Facility (**Guarantee**). Now produced and shown to me and marked **BJQ-9** is a copy of the Octet Guarantee and Indemnity executed 12 November 2020.
15. Mr Papas is the sole director of Forum Group and Smartprint. Mr Papas signed the Guarantee on behalf of Smartprint. Now produced and shown to me and marked **BJQ-10** is a copy of a Current & Historical Organisation Extract and PPSR Search for Smartprint dated 22 September 2021.
16. I am instructed and verily believe that:
  - (a) On 13 August 2021, the Receivers sold the business of Smartprint (goodwill, customer names and inventory) to a third party, OneVend Group Limited.
  - (b) The business was sold for \$576,867.14 (exclusive of any goods and services tax).
  - (c) As part of that sale, Octet provided a partial release of its security interests over the assets that were sold but that release does not cover the funds in the bank account of Smartprint held with Westpac Banking Corporation (**Westpac**), which is addressed further below.
17. I am instructed and verily believe that the Receivers understand that Smartprint has no outstanding employee entitlements.

#### **Money in Smartprint Westpac Account and correspondence in relation to that account**

18. On 13 August 2021, the Receivers wrote to Westpac in relation to a Smartprint bank account held with Westpac. The Receivers asked Westpac to, amongst other things, freeze any account and forward the balance of any funds to an account nominated in their correspondence. Now produced and shown to me and marked **BJQ-11** is a copy of the letter from the Receivers to Westpac dated 13 August 2021.

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19. On 16 August 2021, MinterEllison wrote to Cornwalls on behalf of Westpac in relation to, amongst other things, recent events in relation to Smartprint. Now produced and shown to me and marked **BJQ-12** is a copy of the letter from MinterEllison dated 16 August 2021.
20. On 16 August 2021, Westpac wrote to the Receivers about the existence of a bank account held in the name of Smartprint ending 417, with an account balance of CR \$793,398.04 (**Smartprint Westpac Account**). Now produced and shown to me and marked **BJQ-13** is a copy of an Email from Compulsory Notices & Insolvencies at Westpac dated 16 August 2021.
21. On 16 August 2021, the Receivers responded to Westpac and, amongst other things, requested the transfer of the funds in the Smartprint Westpac Account to the bank account nominated in their letter. Now produced and shown to me and marked **BJQ-14** is a copy of the letter from the Receivers dated 16 August 2021.
22. On 24 August 2021, Westpac wrote further to the attention of Denysa Andriani. I am instructed and verily believe that Ms Andriani is a representative of dVT, the firm of the Receivers. Westpac wrote in relation to the Smartprint Westpac Account. Now produced and shown to me and marked **BJQ-15** is a copy of the letter from Westpac dated 24 August 2021 (the enclosed bank statements are not reproduced as part of Exhibit BJQ-15). The bank statements enclosed with that letter refer to Chilli Print Finance Pty Limited. Based on the Current & Historical Organisation Extract at **BJQ-10** above, I understand that between the period 28 August 2012 to 1 April 2014, Smartprint was known as Chilli Print Finance Pty Limited.
23. On 26 August 2021, the Receivers wrote further to Westpac in relation to the Smartprint Westpac Account. Now produced and shown to me and marked **BJQ-16** is a copy of the letter from the Receivers dated 26 August 2021.
24. On 1 September 2021, Cornwalls wrote to MinterEllison to, amongst other things, make a formal demand of its client, Westpac, to release the funds in the Smartprint Westpac Account to the account nominated by the Receivers. Now produced and shown to me and marked **BJQ-17** is a copy of the letter from Cornwalls dated 1 September 2021.
25. At the time of making this affidavit, Cornwalls has not received a response from MinterEllison to the letter dated 1 September 2021.
26. On 3 September 2021, the solicitors for SMBC Leasing and Finance, Inc. Sydney Branch ARBN 602 309 366, Jones Day, wrote to Cornwalls about asserted proprietary claims over the proceeds of the sale of Smartprint. Now produced and shown to me and marked **BJQ-18** is a copy of the letter from Jones Day dated 3 September 2021.

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## Freezing Orders

27. Based on the following documents, I understand that on 28 June 2021, his Honour Justice Lee made freezing orders in these proceedings, which have been varied and extended from time to time:
- (a) Orders made in these proceedings on 2 July 2021. Now produced and shown to me and marked **BJQ-19** is a copy of those orders.
  - (b) Judgment in *Westpac Banking Corporation v Forum Finance Pty Limited* [2021] FCA 807. Now produced and shown to me and marked **BJQ-20** is a copy of that judgment dated 9 July 2021.
  - (c) Orders made in these proceedings on 15 July 2021. Now produced and shown to me and marked **BJQ-21** is a copy of those orders.
28. I am not aware of any freezing orders made against Smartprint. Based on the document at **BJQ-21** above, I understand the original freezing orders made against Mr Papas were varied to include his shareholding or interest in a number of companies, including Smartprint. To the extent the extant freezing orders in these proceedings relate to the assets of Smartprint, including money held in the Smartprint Westpac Account, I am instructed that the Receivers respectfully seek the relief set out in the Application filed contemporaneously with this affidavit.
29. Cornwalls has been a party to correspondence in relation to freezing orders made in these proceedings in connection with a different bank account, being a bank account held by Forum Group with National Australia Bank (**NAB**). That correspondence includes but is not limited to the following:
- (a) As set out in paragraph 10 above, on 5 July 2021, Cornwalls wrote to Forum Group to give notice of the termination.
  - (b) On 5 July 2021, the Receivers wrote to NAB about an account held by Forum Group with NAB. Now produced and shown to me and marked **BJQ-22** is a copy of the letter from the Receivers dated 5 July 2021.
  - (c) On 5 July 2021, Cornwalls sent a copy of the letter in (b) above to MinterEllison, the solicitors for Westpac. Now produced and shown to me and marked **BJQ-23** is a copy of the Email from Cornwalls dated 5 July 2021 (the attachment is not reproduced).
  - (d) On 6 July 2021, MinterEllison replied to the Email from Cornwalls dated 5 July 2021. Now produced and shown to me and marked **BJQ-24** is a copy of the letter from MinterEllison dated 6 July 2021.

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- (e) On 7 July 2021, Dentons wrote to Cornwalls on behalf of NAB in respect of a request made by the Receivers (in their capacities as receivers of Forum Group), that funds be transferred from a NAB account into an account nominated by the Receivers. Now produced and shown to me and marked **BJQ-25** is a copy of the letter from Dentons dated 7 July 2021.
- (f) On 8 July 2021, Cornwalls wrote to MinterEllison. Now produced and shown to me and marked **BJQ-26** is a copy of the letter from Cornwalls dated 8 July 2021.
- (g) On 8 July 2021, MinterEllison replied to the letter from Cornwalls dated 8 July 2021. Now produced and shown to me and marked **BJQ-27** is a copy of the letter from MinterEllison dated 8 July 2021.
- (h) On 8 July 2021, Cornwalls sent a copy of the letters from MinterEllison dated 6 and 8 July 2021, to Dentons. Now produced and shown to me and marked **BJQ-28** is a copy of the Email from Cornwalls dated 8 July 2021 (the attachments are not reproduced).
- (i) On 19 July 2021, Dentons wrote to MinterEllison (copying in Cornwalls and others). Now produced and shown to me and marked **BJQ-29** is a copy of the letter from Dentons dated 19 July 2021.
- (j) On 22 July 2021, MinterEllison replied to the letter from Dentons dated 19 July 2021 and Cornwalls received a copy of that letter. Now produced and shown to me and marked **BJQ-30** is a copy of the letter from MinterEllison dated 22 July 2021.
- (k) On 30 July 2021, Allens Linklaters wrote to Dentons, the former administrators of Forum Group, MinterEllison, the Receivers (in their capacities as receivers of Forum Group), and Westlawn Finance Limited care of McCullough Robertson. Now produced and shown to me and marked **BJQ-31** is a copy of the letter from Allens Linklaters dated 30 July 2021. I am instructed and verily believe that the Receivers are not aware of any claim made by Westlawn in respect of the assets of Smartprint.
- (l) On 4 August 2021, MinterEllison wrote to Cornwalls (and others). Now produced and shown to me and marked **BJQ-32** is a copy of the letter from MinterEllison dated 4 August 2021.
- (m) On 10 August 2021, Cornwalls replied to the letter from MinterEllison dated 4 August 2021. Now produced and shown to me and marked **BJQ-33** is a copy of the letter from Cornwalls dated 10 August 2021.
- (n) On 13 August 2021, MinterEllison wrote to Cornwalls (and others). Now produced and shown to me and marked **BJQ-34** is a copy of the letter from MinterEllison dated 13 August 2021.

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*Adrian Lee*  
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SWORN by the deponent  
at PRAHRAN  
in the State of Victoria  
on 28 September 2021  
Before me:

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*Bianca Chan*  
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Signature of deponent

DocuSigned by:  
*Adrian Lee*  
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Signature of witness

Adrian Lee  
Level 10, 114 William Street, Melbourne Victoria 2000  
Australian Legal Practitioner within the meaning of the Legal Profession Uniform Law (Vic)  
A person authorised under s 19(1) of the *Oaths Affirmation Act 2018* to take an affidavit.

This affidavit, as signed and notated by the authorised affidavit taker, was signed by the deponent over audio-visual link.

The specified things in respect of the affidavit were done by means of audio-visual link. The affidavit is a scanned hard copy or an electronic copy, not an original.

**Annexure**

No. NSD616 of 2021


Federal Court of Australia  
District Registry: New South Wales  
Division: General

**Westpac Banking Corporation ABN 33 007 457 141** and another  
Applicant

**Forum Finance Pty Limited ACN 153 301 172** and others named in the Schedule  
Respondents

This is the Annexure marked "**BJQ-1**" shown and produced to **Bianca Josephine Quan** at the time of swearing her affidavit on 28 September 2021.

Deponent signature:

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Before me:

DocuSigned by:  
  
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Adrian Lee

Level 10, 114 William Street, Melbourne VIC 3000

An Australian Legal Practitioner within the meaning of the Legal Profession Uniform Law (Vic)

A person authorised under Section 19(1) of the Oaths and Affirmations Act 2018 to take an affidavit.

This affidavit, as signed and notated by the authorised affidavit taker, was signed by the deponent over audio-visual link.

The specified things in respect of the affidavit were done by means of audio-visual link. The affidavit is a scanned hard copy or an electronic copy, not an original.



**DEED OF APPOINTMENT OF RECEIVERS**

**BY:** **OCTET FINANCE PTY LTD ACN 124 477 916** of Level 3, 10-14 Waterloo Street,  
Surry Hills, NSW 2010

**(Secured Party)**

**OF:** **ANTONY RESNICK AND MARK ROBINSON** of Level 2, 151 Macquarie Street,  
Sydney NSW 2000

**(Receivers)**

**BACKGROUND:**

- 1 The Secured Party is the secured party under a general security deed dated on or about 2 April 2019 executed by Smartprint Fleet Management Pty Ltd (ACN 132 807 080) (in liquidation) (formerly known as Forum Group Finance Pty Ltd) of Level 1, Rothsay Accounting Services Pty Ltd, 12-14 O'Connell Street, Sydney, New South Wales, 2000 (**Grantor**) as a deed poll in favour of the Secured Party (**Security Deed**). The security interest arising under the Security Deed was registered on the Personal Property Securities Register in registration number 201904020047633 on 2 April 2019 (**Security Interest**).
- 2 The Security Interest was granted by the Grantor as security for the payment of the monies which are now or may from time to time be owing or remain owing pursuant to a Business Transaction Facility (incorporating Business Transaction Facility Terms and Conditions (Buyer S6/2017 version)) dated on or about 27 September 2018 as varied from time to time including by letters of variation dated on or about 22 March 2019, 13 July 2020 and 9 November 2020 between the Secured Party and Forum Group Pty Ltd ACN 153 336 997 (**Client**) (**Agreement**), as well as all monies which are now or may from time to time be owing or remain owing pursuant to a Guarantee and Indemnity dated on or about 12 November 2020 given by the Grantor in favour of the Secured Party (**Guarantee**).
- 3 An event of default as defined in the Security Deed has occurred, in that, amongst other things, there has been an event of default under the Agreement by virtue of the Client failing to make the minimum monthly payment due on 30 June 2021. As a consequence of the event of default (which continues to subsist as at the date of this Deed), each Security Interest created by the Security Deed has become enforceable.
- 4 It is provided by the Security Deed that upon such event of default the monies secured by the Security Deed will become immediately due and payable without any demand or notice being given by the Secured Party to the Grantor and the Security Deed shall become enforceable.
- 5 The Secured Party is entitled to appoint a receiver or receiver and manager of the whole or any part of the collateral (as defined in the Security Deed) at any time after an event of default (as defined in the Agreement) occurs.

Take notice that the Secured Party pursuant to the Security Deed and pursuant to all of the powers so enabling it to do so (whether contained in the Security Deed or not) hereby appoints the Receivers to be the joint and several receivers in respect of the property secured and/or charged by the Grantor pursuant to the Security Deed being the property set out in the Schedule hereto and to act in relation thereto in accordance with the powers conferred on the Secured Party or a receiver under the Security Deed or by law. This appointment is made without prejudice to, and with full reservation of, the provisions of the Security Deed as to the removal and replacement of the receiver and as to the powers, authorities and discretions of the Secured Party.

**SCHEDULE**

The following property of the Grantor:

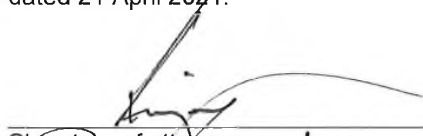
- (a) each attached receivable (as defined in the Security Deed) and each other receivable (as defined in the Security Deed) of the Grantor, and any residual or other rights of the Grantor in

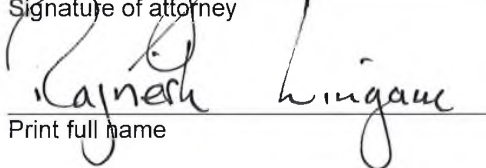
respect of each attached receivable (as defined in the Security Deed) and each other receivable (as defined in the Security Deed);


- (b) the goodwill of the Grantor's business, together with all stock, intellectual property and associated rights including all customer lists and records and any contracts with the Grantor's customers;
- (c) books of account, vouchers and other documents and records relating in any way to the business or other transactions of the Grantor or to any other property described in this schedule;
- (d) all bank accounts and ADI accounts (as defined in the *Personal Property Securities Act 2009 (Cth)* (PPSA)) of the Grantor; and
- (e) all proceeds (as defined in the PPSA) of any property described in this schedule.

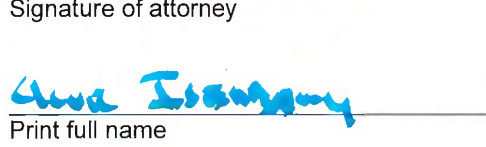
**EXECUTED AS A DEED** on this 13th day of August 2021

Executed by **Octet Finance Pty Ltd** (ACN 124 477 916) by being signed by its attorneys pursuant to Power of Attorney dated 21 April 2021:

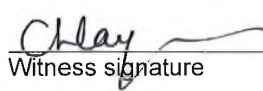
  
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 Signature of attorney

  
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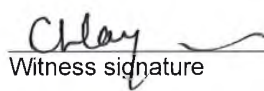
  
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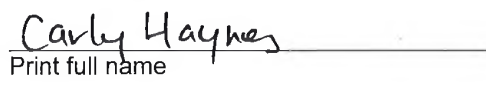
In the presence of:

  
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 Witness signature

In the presence of:

  
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 Witness signature

  
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 Print full name

**ACCEPTANCE OF APPOINTMENT**

I, **ANTONY RESNICK** of Level 2, 151 Macquarie Street, Sydney in the State of New South Wales accept this appointment.

**DATED:** 13 August 2021

**SIGNED** by **ANTONY RESNICK**



**ACCEPTANCE OF APPOINTMENT**

I, **MARK ROBINSON** of Level 2, 151 Macquarie Street, Sydney in the State of New South Wales accept this appointment.

**DATED:** 13 August 2021

**SIGNED** by **MARK ROBINSON**



---

Australian Securities &  
Investments Commission



**Form 504**  
Corporations Act 2001  
427(1), 427(1A), 427(1B)

## Notification that a person has been appointed controller/ entered into possession etc.

If there is insufficient space in any section of the form, you may photocopy the relevant page(s) and submit as part of this lodgement

### Details of company in receivership

Company name

Smartprint Fleet Management Pty Ltd (ACN 132 807 080) (in liquidation)

ACN/ABN/ARBN

132 807 080

This notice is being given by:

Tick one box

- |   | ASIC internal<br>form code |
|---|----------------------------|
| <input checked="" type="checkbox"/> the person who obtained an order for the appointment of, or who appointed, the receiver or receiver and manager under s427(1) | 504A & B                   |
| <input type="checkbox"/> the appointer of the controller under s427(1A)   | 504C                       |
| <input type="checkbox"/> the controller (other than receiver, receiver and manager or managing controller) under s427(1B)   | 504D                       |
| <input type="checkbox"/> the managing controller (other than receiver and manager) under s427(1B)   | 504E                       |

### Lodgement details

Who should ASIC contact if there is a query about this form?

Firm/organisation

C.S. & Co. Legal Services Pty. Limited

Contact name/position description

Bianca Quan, Partner

ASIC registered agent number (if applicable)

2050

Telephone number

(03) 9608 2000

Postal address or DX address

GPO Box 1466

MELBOURNE VIC 3001

### 1 Details of the appointment/entry into possession etc.

Tick one box

- Receiver of the property described in the Schedule to this form
- Receiver and manager of the property described in the Schedule to this form
- Controller (other than receiver, receiver and manager or managing controller) of the property described in the Schedule to this form
- Managing controller (other than receiver and manager) of the property described in the Schedule to this form

### 1 Continued... Details of the appointment/entry into possession etc.

If appointment by Court order, tick box to indicate the Court and provide details

**Appointment by Court order**

Federal Court of Australia  
State or territory registry

Family Court of Australia  
State or territory registry

Supreme Court  
State or territory

Date of obtaining order  
  /   /    
 [D] [D] [M] [M] [Y] [Y]

Proceeding-matter number  Year

If appointment by instrument, tick box to indicate the type of instrument and provide details

**Appointment by instrument**

Date of appointment/entry into possession etc.  
  /   /    
 [D] [D] [M] [M] [Y] [Y]

Date of instrument  
  /   /    
 [D] [D] [M] [M] [Y] [Y]

**Description of instrument**

Instrument registered in the Personal Property Securities Register  
 Security interest number

Description of instrument

Instrument registered in other register  
 Please specify details

Instrument not registered  
 Name of appointer

## 2 Details of the person(s) appointed

Family name	Given name
<input type="text" value="Resnick"/>	<input type="text" value="Antony"/>
Firm name (if applicable)	
<input type="text" value="DVT Group"/>	
Unit, level	
<input type="text" value="Level 2"/>	
Street number and street name	
<input type="text" value="151 Macquarie Street"/>	
Suburb/City	State/Territory
<input type="text" value="Sydney"/>	<input type="text" value="NSW"/>
Postcode	Country (if not Australia)
<input type="text" value="2000"/>	<input type="text"/>
Type of appointment	
<input type="checkbox"/> appointed singly <input type="checkbox"/> appointed jointly <input checked="checked" type="checkbox"/> appointed jointly and severally	

Type of appointment

Family name	Given name
<input type="text" value="Robinson"/>	<input type="text" value="Mark Julian"/>
Firm name (if applicable)	
<input type="text" value="DVT Group"/>	
Unit, level	
<input type="text" value="Level 2"/>	
Street number and street name	
<input type="text" value="151 Macquarie Street"/>	
Suburb/City	State/Territory
<input type="text" value="Sydney"/>	<input type="text" value="NSW"/>
Postcode	Country (if not Australia)
<input type="text" value="2000"/>	<input type="text"/>
Type of appointment	
<input type="checkbox"/> appointed singly <input type="checkbox"/> appointed jointly <input checked="checked" type="checkbox"/> appointed jointly and severally	

Type of appointment

## 3 Schedule of property

Refer to attachment

(If insufficient space) Further details are enclosed in the annexure marked ("A") of (2) pages.



ASIC Form 504

30 January 2012

Page 3 of 4

**Signature**

This form must be signed by:

- (a) where the form is lodged for the purposes of s427(1) or s427(1A), by the person who obtains an order for the appointment of, or who appoints, the controller, or
- (b) where the form is lodged for the purposes of s427(1B), by the controller or managing controller.

Name

Clive Isenberg

Capacity

Director

Corporation name (if applicable)

Octet Finance Pty Ltd ACN 124 477 916

Signature



Date signed

1	3	/	0	8	/	2	1
[D	D]		[M	M]		[Y	Y]

**Lodgement**

Send completed and signed forms to:  
Australian Securities & Investments Commission,  
PO Box 4000, Gippsland Mail Centre VIC 3841.

**For more information**Web [www.asic.gov.au](http://www.asic.gov.au)Need help? [www.asic.gov.au/question](http://www.asic.gov.au/question)

Telephone 1300 300 630

"A"

This is the annexure marked "A" of 2 pages referred to in Form 504 "Notification that a person has been appointed controller/entered into possession etc" signed by me.

Date: 13 August 2021



.....  
Name: Clive Isenberg

Capacity: Director of Octet Finance Pty Ltd ACN 124 477 916

No. NSD616 of 2021

Federal Court of Australia  
District Registry: New South Wales  
Division: General

**Westpac Banking Corporation ABN 33 007 457 141** and another  
Applicant

**Forum Finance Pty Limited ACN 153 301 172** and others named in the Schedule  
Respondents

This is the Annexure marked "**BJQ-2**" shown and produced to **Bianca Josephine Quan** at the time of swearing her affidavit on 28 September 2021.

Deponent signature:

DocuSigned by:  
*Bianca Quan*  
E3C6AC0D03C0401.....

Before me:

DocuSigned by:  
*Adrian Lee*  
BC4298F2AFED404.....  
Adrian Lee

Level 10, 114 William Street, Melbourne VIC 3000

An Australian Legal Practitioner within the meaning of the Legal Profession Uniform Law (Vic)

A person authorised under Section 19(1) of the Oaths and Affirmations Act 2018 to take an affidavit.

This affidavit, as signed and notated by the authorised affidavit taker, was signed by the deponent over audio-visual link.

The specified things in respect of the affidavit were done by means of audio-visual link. The affidavit is a scanned hard copy or an electronic copy, not an original.



27 September 2018

Mr Basile Papadimitriou  
 Managing Director  
 Forum Group Pty Ltd  
 Level 5, 141 Walker Street  
 North Sydney, New South Wales 2060

Dear Mr Papadimitriou,

### Business Transaction Facility

We are pleased to offer a Business Transaction Facility to you on the following terms.

#### BUYER AND GUARANTORS

Buyer:	Forum Group Pty Ltd ACN 153 336 997
Buyer's Registered Office:	Level 1 Rothsay Accounting Services Pty Ltd c/- Rothsay Ac, 12-14 O'Connell Street, Sydney, New South Wales, 2000
Buyer's Business Premises:	Level 5, 141 Walker Street, North Sydney, New South Wales, 2060
Lender:	Octet Finance Pty Ltd ACN 124 477 916 Level 3 10-14 Waterloo Street Surry Hills NSW 2010 Australia Telephone: +61 2 9356 6300 Fax: +61 2 9356 6333 Email: info@OctetFinance.com

Australia NSW  
 Level 3  
 10-14 Waterloo Street  
 Surry Hills, NSW 2010

Australia VIC  
 Level 8  
 Como Office Tower  
 644 Chapel Street  
 South Yarra, VIC 3141

Australia WA  
 19 Richardson Street  
 West Perth, WA 6005

Australia QLD  
 Level 36  
 Riparian Plaza  
 71 Eagle Street  
 Brisbane QLD 4000

China, Shanghai  
 1038 Nanjing Road West  
 Westgate Mall  
 Room 1608  
 Shanghai, 200041

T +61 2 9356 6300  
 F +61 2 9356 6333  
 www.octetfinance.com

T +61 3 9824 1330  
 F +61 3 9826 1761  
 www.octetfinance.com

T +61 8 9481 4982  
 www.octetfinance.com

T +61 7 3121 3102  
 www.octetfinance.com

T +86 21 5228 9781  
 F +86 21 5228 9780  
 www.octettrading.com

Guarantor: Basile Papadimitriou of 27 Malton Road, Beecroft, New South Wales, 2119

Vincenzo Frank Tesoriero of 44 Howitt Road, Caulfield North, Victoria, 3161

The Forum Group of Companies Pty Ltd ACN 151 964 626 of Level 1, Rothsay Accounting Services Pty Ltd, 12-14 O'Connell Street, Sydney, New South Wales, 2000

Forum Group (Qld) Pty Ltd ACN 103 609 678 of Level 1, Rothsay Accounting Services Pty Ltd, 12-14 O'Connell Street, Sydney, New South Wales, 2000

Forum Group (Vic) Pty Ltd ACN 153 062 018 of Level 1, Rothsay Accounting Services Pty Ltd, 12-14 O'Connell Street, Sydney, New South Wales, 2000

Imagetec Financial Services Pty Ltd ACN 111 978 182 of Level 1, Rothsay Accounting Services Pty Ltd, 12-14 O'Connell Street, Sydney, New South Wales, 2000

Forum Security Pty Ltd ACN 150 890 289 of Level 1, Rothsay Accounting Services Pty Ltd, 12-14 O'Connell Street, Sydney, New South Wales, 2000

Imagetec Finance Australia Pty Ltd ACN 155 655 897 of Level 1, Rothsay Accounting Services Pty Ltd, 12-14 O'Connell Street, Sydney, New South Wales, 2000

Forum Group Finance Pty Ltd ACN 132 807 080 of Level 1, Rothsay Accounting Services Pty Ltd, 12-14 O'Connell Street, Sydney, New South Wales, 2000

Forum Fleet Pty Ltd ACN 155 440 994 of Level 1, Rothsay Accounting Services Pty Ltd, 12-14 O'Connell Street, Sydney, New South Wales, 2000

Forum Finance Pty Ltd ACN 153 301 172 of Level 1, Rothsay Accounting Services Pty Ltd c/- Rothsay Ac, 12-14 O'Connell Street, Sydney, New South Wales, 2000

Forum Enviro Pty Ltd ACN 168 709 840 of Level 1, Rothsay Accounting Services Pty Ltd, 12-14 O'Connell Street, Sydney, New South Wales, 2000

Forum Direct Pty Ltd ACN 054 890 710 of Level 1, Rothsay Accounting Services Pty Ltd, 12-14 O'Connell Street, Sydney, New South Wales, 2000

Chilli Print Pty Ltd ACN 158 095 866 of Level 1, Rothsay Accounting Services Pty Ltd, 12-14 O'Connell Street, Sydney, New South Wales, 2000

Onesource Australia Holdings Pty Ltd ACN 120 463 541 of Level 1, Rothsay Accounting Services Pty Ltd, 12-14 O'Connell Street, Sydney, New South Wales, 2000

Imagetec Solutions Australia Pty Ltd ACN 074 715 718 of Level 1, Rothsay Accounting Services Pty Ltd, 12-14 O'Connell Street, Sydney, New South Wales, 2000

Imagetec Solutions Australasia Pty Ltd ACN 073 804 109 of Level 1, Rothsay Accounting Services Pty Ltd, 12-14 O'Connell Street, Sydney, New South Wales, 2000

Onesource Australia Pty Ltd ACN 120 463 836 of Level 1, Rothsay Accounting Services Pty Ltd, 12-14 O'Connell Street, Sydney, New South Wales, 2000

Imagetec Distributors Pty Ltd ACN 001 521 375 of Level 1, Rothsay Accounting Services Pty Ltd, 12-14 O'Connell Street, Sydney, New South Wales, 2000

Aramia Holdings Pty Ltd ACN 114 958 717 of Level 1, Rothsay Accounting Services Pty Ltd, 12-14 O'Connell Street, Sydney, New South Wales, 2000

Malton Enterprises Pty Ltd ACN 153 852 852 of Level 1, Rothsay Accounting Services Pty Ltd, 12-14 O'Connell Street, Sydney, New South Wales, 2000

Tesoriero Investment Group Pty Ltd ACN 161 088 115 of Level 1, Rothsay Accounting Services Pty Ltd, 12-14 O'Connell Street, Sydney, New South Wales, 2000

Buyer's Trust: None Specified

#### THE FACILITY WE OFFER

**Terms and Conditions:** The terms and conditions are set out in our enclosed Business Transaction Facility Terms and Conditions (Buyer S6/2017 version) and this facility offer. They should be read together. The particulars in this facility offer are the details which the Terms and Conditions state will be specified in the facility offer.

**Octet Limit:** A\$1,000,000

**Interest Rate:** The annual percentage which we decide is equal to the prevailing one month bank bill swap rate: mid applying on the fourth *business day* of each *month* as published on the ASX website plus 6.5%.

**Interest Free Period:** If the *advance* is disbursed to pay *sellers* in Australia for transactions in Australian dollars, the period ends 60 days after the *advance* was made. If the *advance* is disbursed to pay *sellers* outside Australia or for transactions not in Australian dollars, the period ends on the last *business day* of the *month* following the *month* in which the *advance* was made.



- Annual Facility Fee: 0.75% of the Octet Limit, payable at settlement of the facility and on each anniversary of that date. ✓
- Application Fee: \$5,000 (paid) ✓
- Transaction Fee: 2.4% (plus GST, if any) ✓
- Octet Express Payment Fee: The transfer fee and the card charge fee are stated on the *Octet platform*.
- Conditions Precedent:
1. General Security Deed from you must be given to us. ✓
  2. Guarantee and Indemnity from each Guarantor must be given to us. ✓
  3. ATO View Only Access must be given by you to us and maintained.
  4. Your ATO tax liabilities must be paid up to date.
- Special Provisions:
1. **90 Day Payment** ✓  
Clauses 21.2(a) and (b) of the Business Transaction Facility Terms and Conditions are amended to read:  
“(a) in relation to all *advances* disbursed to pay *sellers* outside of Australia or for transactions not in Australian dollars:
    - 15% of all *advances* during the statement period;
    - the outstanding balance of all *advances* during any statement period which is earlier than the statement period;(b) in relation to all *advances* disbursed to pay *sellers* in Australia for transactions in Australian dollars:
    - the outstanding balance of all *advances* during the previous statement period or any earlier statement period.”
  2. Despite clause 47.3 of the Business Transaction Facility Terms and Conditions you must give us your annual financial report by no later than 31 December each year. Without limiting your obligations under clause 47.3 of the Business Transaction Facility Terms and Conditions you must give us your quarterly management accounts within one month of the end of each quarter. ✓
  3. The loan made to Basile Papadimitriou and Vincenzo Frank Tesoriero, currently \$3,452,888, must be fully repaid to you by no later than 31 December 2018.
  4. We must obtain and be able to maintain insurance (on terms and conditions and covering risks acceptable to us) equal to 100% of the Octet limit. ✓

5. Your ATO tax liabilities must be maintained and paid up to date all times during the facility term. You must not enter into any payment plans with the ATO without our prior consent.
6. You must reimburse us for all legal costs that we incur in connection with the preparation of this facility offer and the security agreements, registration fees and the disbursements.

#### HOW TO ACCEPT

You may accept this facility offer by each person named as a buyer or guarantor signing the enclosed copy and returning it within 14 days of the date of this letter. If you do not, our offer is automatically withdrawn.

Should you have any questions, or if you would like to discuss any issues, please do not hesitate to contact Dennis Trautmann, your Business Transaction Specialist on 0488 700 136.

Yours sincerely



**Hugh Young**  
**General Manager**

**ACCEPTANCE**

By signing below the buyer and guarantor:


- 1 accept the lender's offer to provide the Business Transaction Facility on the terms and conditions set out in the facility offer and the "Business Transaction Facility Terms and Conditions" mentioned in the facility offer;
- 2 acknowledge that a legally binding contract is created between the buyer and the lender, the terms and conditions of which are set out in the facility offer and the "Business Transaction Facility Terms and Conditions" mentioned in the facility offer;
- 3 acknowledge that the guarantor must sign a guarantee and indemnity, in a form which we require, and the conditions precedent must be satisfied before the buyer is entitled to use the facility;
- 4 acknowledge the buyer and guarantor have made their own independent judgement and decision to accept the lender's offer and are not relying on any information given to them or any representations made by the lender, except those in the documents mentioned above;
- 5 make the representations in the documents mentioned above; and
- 6 make the representations in the documents mentioned above; and acknowledge that the buyer and the guarantor received a copy of the facility offer, the "Business Transaction Facility Terms and Conditions" and the other documents mentioned above before signing below.

The lender recommends that the buyer and guarantor obtain independent legal and financial advice before signing below to accept its offer.

Date of acceptance: 11 OCTOBER 2018

**Buyer:**

Executed by **Forum Group Pty Ltd** ACN 153 336 997 by being signed by:



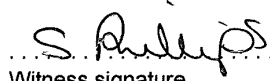
Signature of sole director and sole company secretary

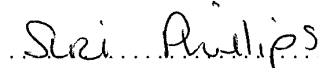
BASILE PAPA...MITRI...  
Print full name

**Guarantor:**

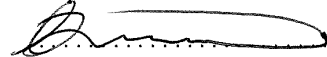
Signed by **Basile Papadimitriou** in the presence of:

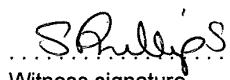
  
Signature

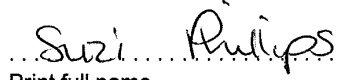
  
Witness signature

  
Print full name

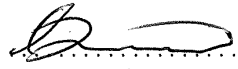
Signed by **Vincenzo Frank Tesoriero** in the presence of:

  
Signature


  
Witness signature

  
Print full name

Executed by **Forum Group of Companies Pty Ltd** ACN 151 964 626 by being signed by:

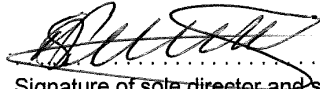
  
Signature of director

  
Print full name

  
Signature of \*director/\*company secretary  
\* Delete as appropriate

  
Print full name

Executed by **Forum Group (Qld) Pty Ltd**  
ACN 103 609 678 by being signed by:

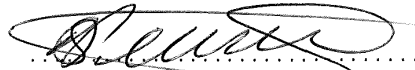


Signature of sole director and sole company secretary

BASILE PAPAIMITRIOU

Print full name

Executed by **Forum Group (Vic) Pty Ltd**  
ACN 153 062 018 by being signed by:



Signature of sole director and sole company secretary

BASILE PAPAIMITRIOU

Print full name

Executed by **Imagetec Financial Services Pty Ltd** ACN 111 978 182 by being signed by:

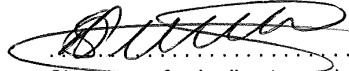


Signature of sole director and sole company secretary

BASILE PAPAIMITRIOU

Print full name

Executed by **Forum Security Pty Ltd** ACN  
150 890 289 by being signed by:



Signature of sole director and sole company  
secretary

BASILE PAPA...MITRI...  
Print full name

Executed by **Imagetec Finance Australia  
Pty Ltd** ACN 155 655 897 by being signed  
by:



Signature of sole director and sole company  
secretary

BASILE PAPA...MITRI...  
Print full name

Executed by **Forum Group Finance Pty Ltd**  
ACN 132 807 080 by being signed by:



Signature of sole director and sole company  
secretary

BASILE PAPA...MITRI...  
Print full name

Executed by **Forum Fleet Pty Ltd** ACN 155  
440 994 by being signed by:



Signature of sole director and sole company  
secretary

BASILE PAPADIMITRIOU

Print full name

Executed by **Forum Finance Pty Ltd** ACN  
153 301 172 by being signed by:



Signature of director

VINCE TESCRIERO

Print full name



Signature of \*director/\*company secretary

\* Delete as appropriate

BASILE PAPADIMITRIOU

Print full name

Executed by **Forum Enviro Pty Ltd** ACN  
168 709 840 by being signed by:



Signature of sole director and sole company  
secretary

BASILE PAPADIMITRIOU

Print full name



Executed by **Forum Direct Pty Ltd** ACN 054  
890 710 by being signed by:

.....  
Signature of director

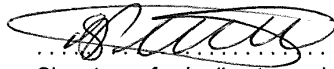
.....  
Print full name



.....  
Signature of \*director/\*company secretary  
\* Delete as appropriate

BASILE PAPADIMITRIOU  
.....  
Print full name

Executed by **Chilli Print Pty Ltd** ACN 158  
095 866 by being signed by:



.....  
Signature of sole director and sole company  
secretary

BASILE PAPADIMITRIOU  
.....  
Print full name

Executed by **Onesource Australia Holdings  
Pty Ltd** ACN 120 463 541 by being signed  
by:



.....  
Signature of sole director and sole company  
secretary

BASILE PAPADIMITRIOU  
.....  
Print full name

Executed by **Imagetec Solutions Australia Pty Ltd** ACN 074 715 718 by being signed by:




Signature of sole director and sole company secretary

BASILE PAPADIMITRIOU

Print full name

Executed by **Imagetec Solutions Australasia Pty Ltd** ACN 073 804 109 by being signed by:



Signature of sole director and sole company secretary

BASILE PAPADIMITRIOU

Print full name

Executed by **Onesource Australia Pty Ltd** ACN 120 463 836 by being signed by:

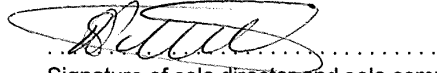


Signature of sole director and sole company secretary

BASILE PAPADIMITRIOU

Print full name

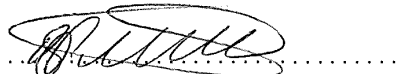
Executed by **Imagetec Distributors Pty Ltd**  
ACN 001 521 375 by being signed by:



Signature of sole director and sole company secretary

BASILE PAPADIMITRIOU  
Print full name

Executed by **Aramia Holdings Pty Ltd** ACN  
114 958 717 by being signed by:



Signature of sole director and sole company secretary

BASILE PAPADIMITRIOU  
Print full name

Executed by **Malton Enterprises Pty Ltd**  
ACN 153 852 852 by being signed by:



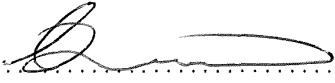
Signature of sole director and sole company secretary

BASILE PAPADIMITRIOU  
Print full name

Executed by **Tesoriero Investment Group  
Pty Ltd** ACN 161 088 115 by being signed  
by:

  
.....  
Signature of director

GIOVANNI TESORIERO...  
Print full name

  
.....  
Signature of \*director/\*company secretary  
\* Delete as appropriate

VINCE TESORIERO...  
Print full name

**Annexure**

No. NSD616 of 2021

Federal Court of Australia  
District Registry: New South Wales  
Division: General

**Westpac Banking Corporation ABN 33 007 457 141** and another  
Applicant

**Forum Finance Pty Limited ACN 153 301 172** and others named in the Schedule  
Respondents

This is the Annexure marked "**BJQ-3**" shown and produced to **Bianca Josephine Quan** at the time of swearing her affidavit on 28 September 2021.

Deponent signature:

DocuSigned by:  
*Bianca Quan*  
E3C8AC0D03C0401.....

Before me:

DocuSigned by:  
*Adrian Lee*  
BC4298F2AFED404.....

Adrian Lee

Level 10, 114 William Street, Melbourne VIC 3000

An Australian Legal Practitioner within the meaning of the Legal Profession Uniform Law (Vic)

A person authorised under Section 19(1) of the Oaths and Affirmations Act 2018 to take an affidavit.

This affidavit, as signed and notated by the authorised affidavit taker, was signed by the deponent over audio-visual link.

The specified things in respect of the affidavit were done by means of audio-visual link. The affidavit is a scanned hard copy or an electronic copy, not an original.



**Business Transaction Facility  
Terms and Conditions**

**OCTET FINANCE PTY LTD**

## BUSINESS TRANSACTION FACILITY

### The offer we make

We, Octet Finance Pty Ltd (ACN 124 477 916), can assist you when you make purchases for your business. The *sellers* can be in Australia or overseas.

We may issue a facility offer in which we offer to provide a business transaction facility to you. The facility offer may also include an offer to provide other facilities. This document must be read with the facility offer. The facility offer (to the extent it concerns the business transaction facility) and this document when read together are called the *facility agreement*.

If you accept the offer we make in the facility offer and satisfy all applicable conditions we will provide the business transaction facility. We will give you access to the *Octet platform* and provide loans to you. The facility will be provided on the terms and conditions in the *facility agreement*.

### Overview of the Business Transaction Facility

You use the *Octet platform* to communicate with *sellers*. The *sellers* are given access to the *Octet platform* under rules which reflect the relevant parts of this document. The *sellers* acknowledge to their local financial institution, called an *Octet financial institution*, that those rules apply. When the *seller* is in Australia we will, in addition to our role as outlined in this document, also be the *Octet financial institution*.

The *Octet platform* is used to assist you and the *sellers* to make a contract. The terms and conditions you agree with the *sellers* are recorded on the *Octet platform*. You must ensure that you are satisfied with the *sellers*, the goods or services which are to be provided and the terms you negotiate with the *sellers*. The *Octet platform* also includes a payment authorisation process.

You can agree with the *sellers* that an independent *trade relationship office* should be appointed to resolve documentary disputes. It will determine if the *seller* has uploaded onto the *Octet platform* the documents which evidence fulfilment of the contract by the *seller*.

The *Octet platform* gives you and the *seller* the flexibility to choose between two payment methods:

- Octet direct payment – The agreed price is paid to the *seller* if the *seller* has performed its obligations as evidenced by documents which it has uploaded onto the *Octet platform*. You will be given the opportunity to approve payment. If you give your approval the *seller* must be paid. If you do not give your approval and a *trade relationship office* has been appointed it will check the documents. The *seller* must be paid if the *trade relationship office* rules the uploaded documents provide evidence that the *seller* has fulfilled the contract with you. If you do not approve payment and either a *trade relationship office* has not been appointed or it does not provide the required ruling you and the *seller* must resolve the dispute.

The payment is made by us making a loan to you. The loan is disbursed to the *Octet financial institution* and it pays the *seller*. The money is transferred using the banking system. The commitment given by the *Octet financial institution* to the *seller* that it will pay the *seller* if sufficient funds are received from us may mean that an overseas *seller* will agree to ship goods or provide services without a letter of credit being provided by you. Our commitment to provide loans is subject to the *facility agreement*. If we do not make the loan, you must pay the *seller*.

- Buyer direct payment – You must pay the agreed price to the *seller* in accordance with your contract with the *seller*. We do not provide a loan to you and the *Octet financial institution* does not pay the *seller*. You will be given the opportunity to confirm that the *seller* has performed its obligations. If you do not provide the confirmation and a *trade relationship office* has been appointed it will check the documents which the *seller* has uploaded onto the *Octet platform* to ascertain whether they

provide evidence that the *seller* has fulfilled the contract with you. By doing this the *trade relationship office* may be able to determine if you should pay the agreed price.

We also provide three supplementary facilities:

- Pre-shipment deposit funding – we make a loan to you which is used to pay a deposit to an approved *seller*.
- Forward contract funding – you may decide to take out a forward contract with your bank or other provider to hedge against your foreign currency exposure. We can make a loan to you so you can pay the Australian dollar amount under that contract.
- Octet express payment – you can make payments to us using your credit card. An Octet express payment is particularly useful when the *seller* is overseas and will not accept credit card payments. When the *Octet direct payment* method applies you could use your credit card to repay the loan we have made. Alternatively, if the *buyer direct payment* method applies it could be changed to the *Octet direct payment* method and the loan we make is repaid by using the credit card.

We do not provide a payment system. We provide loans which are disbursed to pay the *seller*. In particular you cannot give us money for payment to the *seller*. All payments which we make are made using the banking system.

The loan facility which we provide has many advantages. One feature is that interest is only payable on the amount borrowed if it is not repaid by the end of an interest free period.

If the *Octet direct payment* method applies and the *seller* is to be paid in Australian dollars we make the advance in Australian dollars. If the *seller* is to be paid in another currency we make an Australian dollar advance which is equivalent to the payment amount. An exchange rate is generally shown on the *Octet platform* and you can elect to apply the rate which is shown immediately before you approve payment.

We do not provide currency or financial products (such as futures contracts, foreign exchange contracts or swaps) to you or any type of derivative. You bear exchange rate risks. If you require protection against adverse currency movements you can take out a forward contract or other protection with your bank or other provider.

### **Our facility agreement**

In the *facility agreement* some words are given a special meaning and rules are applied for the interpretation of the *facility agreement*. Those meanings and rules are in Part N (clauses 71 and 72). The meaning of words printed *like this* and some other important words are explained in those clauses.

The above overview is only a summary of some features of the *facility agreement*. It is essential that you read the whole of the *facility agreement* carefully before you accept our offer in the facility offer. We recommend that you obtain independent legal, financial and taxation advice before you accept our offer. In particular, we do not provide financial advice so you should ensure that you understand the currency risks.



## CONTENTS

<b>A</b>	<b>OUR AGREEMENT AND CLOSED COMMUNITY</b>	<b>1</b>
1	Agreeing to the terms and conditions	
2	The Octet closed community	
<b>B</b>	<b>MAKING THE CONTRACT TO PURCHASE</b>	<b>2</b>
3	You negotiate with the seller	
4	Terms and conditions for the purchase	
5	You make an offer to the seller	
6	The seller accepts or rejects your offer	
7	Amending the sale contract	
<b>C</b>	<b>PAYMENT TO THE SELLER</b>	<b>8</b>
8	The seller claims payment	
9	You determine if payment should be authorised	
10	Payment authorised by you	
11	Payment not authorised by you	
12	Completion of sale and payment to the seller	
<b>D</b>	<b>DOCUMENTS AND LIABILITIES</b>	<b>12</b>
13	We are not responsible for the sale contract	
14	We are not responsible for the underlying transaction	
15	Notifications and the resolution of disputes	
16	You must satisfy your liability to the seller	
<b>E</b>	<b>THE LOAN FACILITY</b>	<b>16</b>
17	Introduction	
18	Facility limit	
19	Drawings under the facility	
20	Monthly statements	
21	Payments you must make	
22	Direct debit authority	
23	Interest free days	
24	Interest charges	
<b>F</b>	<b>PRE-SHIPMENT DEPOSIT FUNDING</b>	<b>24</b>
25	Introduction	
26	Advances we make for pre-shipment deposits	
27	Utilisation of the advance and payment of the deposit	
28	Payment of the balance to the seller	
<b>G</b>	<b>FORWARD CONTRACT FUNDING</b>	<b>26</b>
29	Introduction	
30	Forward contracts you arrange	
31	Advances we make for forward contracts	
32	Utilisation of the advance	
<b>H</b>	<b>OCTET EXPRESS PAYMENT</b>	<b>29</b>
33	Introduction	
34	How a credit card can be used	
35	Payment using a credit card at any time	
36	Payment using a credit card when you authorise payment	
37	Change of payment method when using a credit card	

<b>I</b>	<b>FEES AND CHARGES</b>	<b>33</b>
38	We are entitled to fees	
39	Payment of fees	
40	Miscellaneous charges	
41	Trade relationship office fees	
<b>J</b>	<b>USING THE OCTET PLATFORM</b>	<b>36</b>
42	We will give you access to the Octet platform	
43	Use of the Octet platform	
44	Unauthorised access and loss of token	
<b>K</b>	<b>YOUR REPRESENTATIONS AND OTHER OBLIGATIONS</b>	<b>40</b>
45	Your representations	
46	Payments by you	
47	Your record keeping obligations	
48	Your other obligations	
49	You indemnify and release us	
50	Privacy and disclosure of information	
<b>L</b>	<b>VARYING AND ENDING THE AGREEMENT</b>	<b>49</b>
51	We may vary the facility agreement	
52	Ending the facility agreement	
53	Effect of the facility agreement ending	
<b>M</b>	<b>MISCELLANEOUS</b>	<b>53</b>
54	Conditions precedent	
55	Miscellaneous payment provisions	
56	Anti-money laundering and counter-terrorism financing law	
57	Assignment and agency	
58	Waivers, consents and approvals	
59	Power of attorney	
60	Notices, service and communication	
61	Governing law and courts	
62	Currency conversions	
63	Taxes	
64	Illegality, impossibility and unforeseen circumstances	
65	Evidence	
66	Joint and several liability	
67	Trusts	
68	Authority to fill in blanks, entire agreement and severability	
69	Making a complaint	
70	Legal and financial advice	
<b>N</b>	<b>DEFINITIONS AND INTERPRETATION</b>	<b>65</b>
71	Important words	
72	Interpretation	

## TERMS AND CONDITIONS

### A OUR AGREEMENT AND CLOSED COMMUNITY

#### 1 Agreeing to the terms and conditions

##### 1.1 What is the facility agreement?

The terms and conditions of the business transaction facility which we provide are found in a separate *facility offer* and in this document. This document, as supplemented and amended by the *facility offer*, is called the *facility agreement*.

If there is any inconsistency between the *facility offer* and this document the *facility offer* will prevail to the extent of that inconsistency.

##### 1.2 How our offer is accepted

The *facility offer* explains how you can accept our offer. If you do not agree with the *facility agreement* you should not accept our offer.

##### 1.3 Commencement of facility agreement

The *facility agreement* commences and you are bound by it when you accept our offer as required by the *facility offer*, unless the *facility offer* states that it commences at another time.

#### 2 The Octet closed community

##### 2.1 How can a business join the closed community?

You have told us that you will, in the course of your business, make various purchases for your business. The *sellers* can be in Australia or overseas. The business transaction facility can assist you in relation to those purchases. You, other buyers and *sellers* become members of a “closed community” to facilitate purchases of that type. An *entity* becomes a member of the closed community by being given access to the *Octet platform*.

We will give you access to the *Octet platform* when the *facility agreement* commences. You must ensure that the *Octet platform* is used only in accordance with the *facility agreement*.

##### 2.2 What is the closed community?

The closed community is the business relationship which is established to facilitate separate transactions between us, other *Octet financial institutions*, you and *sellers*. Many separate contracts are established. For example:

- you enter into a *sale contract* with the *seller* to buy goods or services from the *seller*;
- you contract with us in the *facility agreement* so that you can use the *Octet platform*. Similarly, the *seller* acknowledges to an *Octet financial institution* that the *seller rules* apply to it and it is given access to the *Octet platform* subject to those rules. You and the *seller* then use the *Octet platform* to enter into the *sale contract* with each other;
- if the *sale contract* stipulates that the *Octet direct payment* method applies an *Octet financial institution* will make payments to the *seller* in accordance with the *seller rules*; and
- you contract with us in the *facility agreement* so that we can, if the *Octet direct payment* method applies, make an *advance* to you. The amount you borrow from us is disbursed to the *Octet financial institution* so it can pay the *seller*. The *advance* can be repaid by a number of instalments.

It is only the contract between you and us which is documented in the *facility agreement*. Your *sale contract* with the *seller* will, however, require that you and the *seller* comply with various arrangements contemplated by the *facility agreement*.

### **2.3 Buyers and sellers must follow the rules**

The closed community arrangements can only work if you comply with your obligations in the *facility agreement*. Accordingly, each time you conclude a *sale contract* with the *seller* using the *Octet platform* you agree with the *seller* that you will comply with your relevant obligations in the *facility agreement*.

The *seller* agrees in the *seller rules* that it will comply with obligations concerning the use of the *Octet platform*. Each time you conclude a *sale contract* with the *seller* using the *Octet platform* the *seller* agrees with you that it will comply with relevant obligations regarding the *Octet platform*. We are not responsible for ensuring that the *seller* will, in fact, be bound by any obligations. Similarly, we are not responsible for ensuring that the *seller* will perform any obligations. You cannot require that the *Octet financial institution* enforce any rights it has against the *seller* (whether at all or in any particular way) and you will have no interest in those rights. That is why you and the *seller* should agree with each other to perform relevant obligations. In clause 4.2 we outline how this can be done.

## **B MAKING THE CONTRACT TO PURCHASE**

### **3 You negotiate with the seller**

#### **3.1 You are responsible for the orders you place**

You will negotiate each purchase with the *seller*. When you buy goods or services from a *seller* you and the *seller* take full responsibility for all aspects of the arrangement. The fact a *seller* has access to the *Octet platform* is not any representation or warranty from us or any *Octet financial institution* regarding the *seller*. You should assume that neither of us has made any enquiries regarding the *seller*, or the goods or services which it may supply.

#### **3.2 You can use the Octet platform to negotiate**

The *Octet platform* can be used to facilitate the negotiations by providing a way for you to communicate with the *seller*. You will use the “order tracking” screen to suggest terms and conditions which will appear in the “trading terms” section. You could scan various documents containing terms and conditions and attach them to that section or, in a simple transaction, type particulars directly into that section. You can also refer to documents (such as a purchase order) containing terms and conditions which are to be incorporated. The *seller* can add information to that section and change information which is already there. For example, the *seller* could scan a document specifying various terms, conditions and specifications and attach it to that section.

Some *sellers* may wish to issue a “pro forma invoice” or a similar document which contains the proposed terms and conditions. That document could be faxed or e-mailed to you. Instead of signing that document and sending it back to the *seller* you should ensure an electronic copy is attached to the “trading terms” section of the “order tracking” screen.

#### **3.3 Negotiations can result in a sale contract**

The final terms and conditions need to appear on the *Octet platform* or be in documents which are incorporated. Those final terms and conditions must comply with the requirements outlined in clause 4. When you are satisfied with the final terms and conditions you may make a formal offer to the *seller* (see clause 5) which, upon acceptance by the *seller* (see clause 6), will result in a binding *sale contract* between you and the *seller*.

## 4 Terms and conditions for the purchase

### 4.1 Details must be recorded on the Octet platform

If you wish to buy goods the following information must be recorded on the *Octet platform*.

- (a) A full description of the goods which are to be supplied, including the quantity.
- (b) The price (i.e. *order amount*), including the denominated currency. That currency must be one of our approved currencies as listed on the *Octet platform*.
- (c) Any specific delivery or shipping arrangements. When goods are to be imported it would be usual to specify when risk passes and the insurance requirements. (For example, will f.o.b., ex factory, f.o.r., c. and f. or c.i.f. terms apply?)
- (d) The *payment conditions* which must be satisfied before the *order amount* is paid to the *seller*.
- (e) The *transaction documents* which must be lodged by the *seller* on the *Octet platform* to evidence satisfaction of the *payment conditions*.
  - When goods are to be imported those documents must include the *invoice*, and either the bill of lading or the airway bill, unless we have agreed that they can be waived. The *invoice* and bill of lading / airway bill must be dated not earlier than thirty-five days prior to the date the *seller* claims payment. It can also be agreed that additional documents must be lodged to evidence satisfaction of the *payment conditions*. For example, the *seller* may need to present additional *transaction documents*, like a policy of insurance, packing list, packing declaration, inspection certificate, quality certificate, special certificate of warranty or audit inspection certificate, before it is entitled to be paid.
  - When goods are not to be imported those documents must include the *invoice*. The *invoice* must be dated not earlier than thirty-five days prior to the date the *seller* claims payment. It can also be agreed that additional documents must be lodged to evidence satisfaction of the *payment conditions*. For example, the *seller* may need to present additional *transaction documents*, like a delivery docket, time sheet or inspection certificate, before it is entitled to be paid.
- (f) The date which will be the *latest claim date*. That is the date by which the *seller* should lodge on the *Octet platform* the *transaction documents* which evidence satisfaction of the *payment conditions* and claims payment. The *latest claim date* must be a date which is no later than sixty days (or a longer period requested by you and the *seller* which is acceptable to us) after the date you make the offer to the *seller* (see clause 5).

Comparable information is required if you purchase services. In particular, the *transaction documents* must include documents which evidence the performance of the services.

The *sale contract*, together with any applicable law, will determine when title to the goods will pass to you and whether the *seller* has any interest in the goods.

### 4.2 Buyers and sellers agree consistent terms

Whilst the terms and conditions of the *sale contract* which you agree with the *seller* are solely a matter to be determined between you and the *seller* those terms and conditions must be consistent with the arrangements, transactions and obligations contemplated by the *facility agreement*. For example, it would not be appropriate for the agreed terms and conditions to require the delivery of a letter of credit when the *Octet direct payment* method has been selected.

Accordingly, you and the *seller* must ensure that the *required provisions* are included in the terms and conditions you agree with the *seller*. Those *required provisions* must be included in

the terms and conditions of each *sale contract* and must prevail over any inconsistent terms and conditions.

If you would like to see the *seller rules* please ask us for a copy.

#### 4.3 Selecting the payment method

The “order tracking” screen of the *Octet platform* allows you and the *seller* to agree how payment should be made. There are two possibilities, *Octet direct payment* and *buyer direct payment*. Depending on the selection the following will apply.

- *Octet direct payment* – when the *payment conditions* have been satisfied the *claimed amount* must be paid to the *seller*. We will *advance* the *claimed amount* to you, but it is disbursed to the *Octet financial institution*. The *Octet financial institution* pays the *seller* if it has received sufficient funds from us to cover the payment. We do not have to make that *advance*, and the *Octet financial institution* does not have to make that payment, if there is not a *completed order* by the *latest claim date*. If there is a *payment dispute* between you and the *seller* and a *trade relationship office* has not been appointed, or it has been appointed but it does not provide a ruling, that *advance* and payment will not be made. If there is a *payment dispute*, a *trade relationship office* has been appointed and it resolves the *payment dispute* by ruling in favour of the *seller* we will make the *advance* and disburse it to the *Octet financial institution* which will pay the *seller* if it has received sufficient funds. Any obligation to make an *advance* is subject to the conditions in the *facility agreement*.
- *Buyer direct payment* – when the *payment conditions* have been satisfied you must pay the *claimed amount* to the *seller*. We will not make an *advance* to you and the *Octet financial institution* does not pay the *seller*. If there is a *payment dispute* and a *trade relationship office* has been appointed it may be able to determine if the *payment conditions* have been satisfied.

The *facility agreement* includes some relevant conditions – see, for example, clauses 8 to 12. You may only select the *Octet direct payment* method if the Australian dollar equivalent of the *order amount* will be equal to, or less than, the *available credit* for purchases from that *seller*.

When the payment method is selected it may be agreed that *Octet direct payment* will apply in relation to part of the *order amount* and that *buyer direct payment* will apply to the balance. The Australian dollar equivalent of that part of the *order amount* which will be an *Octet direct payment* must be equal to, or less than, the *available credit* for purchases from the relevant *seller*. When you and the *seller* agree the terms and conditions of the *sale contract* you will agree the division of the *order amount* between *Octet direct payment* and *buyer direct payment* and that will need to be specified on the “trading terms” section on the “order tracking” screen of the *Octet platform* when you make an offer to the *seller*. That part of the *order amount* which will be an *Octet direct payment* is called the “*Octet funded portion*” and the balance is called the “*buyer payment portion*”.

#### 4.4 Appointing a trade relationship office

The “order tracking” screen of the *Octet platform* also allows you and the *seller* to agree whether a *trade relationship office* should be appointed. If a *trade relationship office* is appointed the following will apply.

- If there is a *payment dispute* between you and the *seller* the *trade relationship office* will determine if it is able to resolve the dispute as referred to in clause 11.
- The *trade relationship office* will have a very limited role. It deals with documents and does not deal with goods, services or any performance to which documents may relate. It will determine if the *seller* has lodged on the *Octet platform* copies of *transaction documents* which appear on their face to be the documents which you and the *seller* have agreed in the *sale contract* should be presented to evidence satisfaction of the *payment conditions*.

The *trade relationship office* will provide the ruling if it considers that the *transaction documents* appear, on their face, to comply with the requirements of the *sale contract*.

- Compliance of the *transaction documents* on their face with the requirements of the *sale contract* will be determined, so far as possible, in the same way as compliance with a letter of credit is determined under the Uniform Customs and Practice for Documentary Credits, 2007 Revision, International Chamber of Commerce Publication No. 600, except it is to be assumed that the *transaction documents* lodged on the *Octet platform* by the *seller* are genuine and that the original *transaction documents* will be released by the *seller* to you in accordance with the *sale contract*.
- *Transaction documents* which appear on their face to be inconsistent with one another will be considered as not appearing on their face to be in compliance with the *sale contract*. Documents not stipulated in the *sale contract* as being the required *transaction documents* will not be examined. If the *sale contract* contains conditions, without stating the documents to be presented to evidence compliance with the conditions, the *trade relationship office* will deem those conditions as not stated and will disregard them.
- The *trade relationship office's* ruling will be binding on you and the *seller*.
- The *Octet financial institution* may enter into an agreement with the *trade relationship office* for the purposes of making the services of the *trade relationship office* available to you and the *seller*. If you and the *seller* agree that a *trade relationship office* should be appointed the terms and conditions agreed between the *Octet financial institution* and the *trade relationship office* will apply.

## **5 You make an offer to the seller**

### **5.1 The sale contract is made by an offer and acceptance**

When the terms and conditions for a particular purchase have been settled a contract needs to be concluded between you and the *seller*. There are two steps. First, you use the *Octet platform* to make a final offer to buy. This is explained in clause 5.2. Secondly, the *seller* uses the *Octet platform* to respond. If the *seller* accepts the offer a *sale contract* is concluded between you and the *seller*. If the *seller* rejects the offer a *sale contract* is not concluded, but you could make a new offer. The acceptance or rejection is explained in clause 6.

You may only make an offer which nominates the *Octet direct payment* method if the Australian dollar equivalent of the *order amount* is equal to, or less than, the *available credit* for purchases from that *seller*.

### **5.2 How you make the offer**

When you are satisfied that the “trading terms” section on the “order tracking” screen of the *Octet platform* accurately records all of the terms and conditions which will apply to the particular purchase, including the items listed in clause 4.1, you may make an offer to the *seller*. You do this by digitally signing an “order confirmation” which is generated when you click the “place order” button on the “order tracking” screen. You have then lodged an *order confirmation* with the *seller*.

### **5.3 When you make the offer**

It is important that you make this formal offer as soon as possible. In any event you must do so by no later than fourteen days after your negotiations with the *seller* have been completed. If you have issued a purchase order or the *seller* has issued a “pro forma invoice” (see clause 3.2) you must make the formal offer by no later than fourteen days after the date of the purchase order or pro forma invoice.

## 5.4 You must make the offer in the ordinary course of business

Your offer must be made in the ordinary course of your ordinary business. In particular it must be made so that you will, if the *seller* accepts your offer, enter into an actual, bona fide and arm's-length contract for the sale and delivery of goods or performance of services. This means, for example, that the *sale contract* must be formed by you making the offer to the *seller* and the *seller* accepting that offer by using the *Octet platform* before the goods are sold or delivered (or before performance of the services has commenced). If we consider that the *sale contract* recorded on the *Octet platform* may not be an actual, bona fide and arm's-length contract for the sale and delivery of goods or performance of services, or that the *sale contract* may have been concluded after the goods were sold or delivered (or after performance of the services has commenced), we may (by notice to you and the *seller*) terminate any commitment we may have to make an *advance* to you and any commitment the *Octet financial institution* may have to make a payment to the *seller* will be terminated.

## 5.5 You can obtain independent advice

Since the terms, conditions and other information on the "order tracking screen" of the *Octet platform* will establish the *sale contract* between you and the *seller* you may wish to obtain legal, taxation and other professional advice regarding the appropriateness of the terms, conditions and other information before you lodge the *order confirmation* with the *seller*. You may also wish to obtain advice regarding the *seller* and other matters regarding the transaction.

## 6 The seller accepts or rejects your offer

### 6.1 How the seller accepts or rejects the offer

After you have made the offer the *seller* can agree to the terms and conditions of your offer, or the *seller* can reject them. The *seller* does this by doing one of the following.

- If the *seller* wishes to accept your offer it clicks the "accept order" button on the "order tracking" screen of the *Octet platform*. A *sale contract* is then concluded between you and the *seller* the terms and conditions of which are found in the *order confirmation*.
- If the *seller* wishes to reject your offer it clicks the "abandon order" button on the "order tracking" screen of the *Octet platform*. A contract is not concluded between you and the *seller*. You may, if you wish, make a new offer.

If the *seller* does not respond within seven days of you lodging the *order confirmation* we may, at any time, remove the *order confirmation* from the *Octet platform* so that your offer cannot be accepted. You must not, in your offer, include any term to the effect that the *seller* is deemed to have accepted the offer if a response is not made within any particular period.

### 6.2 You can withdraw the offer before it is accepted

Your offer to the *seller* in the *order confirmation* can be withdrawn by you at any time before it is accepted by the *seller*. You withdraw the offer by clicking the "abandon order" button on the "order tracking" screen. The *seller* can accept or reject your offer at any time before the offer is withdrawn by you or removed by us.

### 6.3 A sale contract is created

If the *seller* clicks the "accept order" button to accept your offer you will see the acceptance signified on the "order tracking" screen. Similarly, if the *seller* clicks the "abandon order" button to reject your offer you will see this signified on the "order tracking" screen.

If the *seller* accepts your offer it will have lodged an *accepted order confirmation* with you. You have a *sale contract* with the *seller* for the purchase of the specified goods or services.

The offer which you made to the *seller* by lodging the *order confirmation* is to be considered to be made "in writing" by a "document" which is "signed" by you and the acceptance of that offer



by the *seller* lodging the *accepted order confirmation* is to be considered to be made “in writing” by a “document” which is “signed” by the *seller*. The *sale contract* formed electronically by that offer and acceptance is a legally binding contract between you and the *seller*.

#### **6.4 The sale contract supersedes earlier contracts**

If you and the *seller* had, in any way, entered into an earlier contract for the purchase of the same goods or services the *sale contract* will supersede that earlier contract.

### **7 Amending the sale contract**

#### **7.1 Sale contract can only be amended in specified ways**

A *sale contract* made by the *seller* accepting your offer can be amended in one of the following ways. You must not do, or permit to be done, anything which could result in a *sale contract* being amended in any other way.

#### **7.2 The order amount can be reduced**

The *order amount* can be reduced. This reduction can be agreed between you and the *seller*. When the *seller* considers that the *payment conditions* have been satisfied the *seller* claims a reduced amount in accordance with clause 8. You may accept or reject that claim as explained in clause 9. If you accept the claim you agree to the *sale contract* being varied to reduce the price and agree that the *seller* is entitled to be paid the reduced amount.

If the *Octet direct payment* method applies in relation to only part of the *order amount* and the *sale contract* is varied to reduce the price the reduction is made against the *buyer payment portion* before the *Octet funded portion*, unless you and the *seller* agree otherwise and make the required adjustment on the *Octet platform*.

#### **7.3 The order amount can be increased**

If the *Octet direct payment* method applies the *order amount* can be increased by not more than ten per cent, but the *available credit* for purchases from the *seller* must not become a negative amount. When the *seller* considers that the *payment conditions* have been satisfied the *seller* claims an increased amount in accordance with clause 8. You may accept or reject that claim as explained in clause 9. If you accept the claim you agree to the *sale contract* being varied to increase the price and agree that the *seller* is entitled to be paid the increased amount. The *order amount* cannot be increased in that way by more than ten per cent and the *available credit* for purchases from the *seller* must not become a negative amount as we wish to monitor our commitment.

If the *buyer direct payment* method applies the *order amount* can be increased by any amount. When the *seller* considers that the *payment conditions* have been satisfied the *seller* claims an increased amount in accordance with clause 8. You may accept or reject that claim as explained in clause 9. If you accept the claim you agree to the *sale contract* being varied to increase the price and agree that the *seller* is entitled to be paid the increased amount.

If the *Octet direct payment* method applies in relation to only part of the *order amount* the *Octet funded portion* can be increased, subject to the above restrictions, due to a variation of the *sale contract* which increases the price. In addition, the *Octet funded portion* can be increased by not more than ten per cent, so long as the *available credit* for purchases from the *seller* does not become a negative amount, to permit a corresponding reduction in the *buyer payment portion*. The *buyer payment portion* can be increased to any amount as contemplated by the above paragraphs.

You can ask us to reduce the *buyer payment portion* and make a corresponding increase in the *Octet funded portion*, including a reduction to the *buyer payment portion* which reduces it to zero. We will generally agree to your request if the Australian dollar equivalent of the *order*

*amount* covered by the *Octet direct payment* method will be equal to, or less than, the *available credit* for purchases from the *seller*.

#### **7.4 The payment method can be changed**

You may at any time before the *seller* claims payment (see clause 8) and the *latest claim date* ask us to change the payment method from the *buyer direct payment* method to the *Octet direct payment* method. You do this by clicking the “convert to ODP” button on the “order tracking” screen of the *Octet platform*. We will generally agree to your request if the Australian dollar equivalent of the *order amount* is equal to, or less than, the *available credit* for purchases from that *seller*.

The payment method can also be changed from the *buyer direct payment* method to the *Octet direct payment* method when you pay us by using your *credit card*. This is explained in clause 37.

#### **7.5 Other amendments**

All amendments to the *sale contract*, except those covered by clauses 7.2 to 7.4, must be agreed by you and the *seller* entering into a new *sale contract*. You and the *seller* might, for example, wish to increase the *order amount* by more than ten per cent when the *Octet direct payment* method applies or change the description of the goods, the *payment conditions* or the agreed *latest claim date*.

The new *sale contract* is made in the usual way and all the usual requirements must be addressed. In particular, if the *Octet direct payment* method applies, the Australian dollar equivalent of the *order amount* must be equal to, or less than, the *available credit* for purchases from the *seller*. You submit an *order confirmation* which specifies the revised terms and the *seller* accepts those terms by submitting an *accepted order confirmation*. We suggest that the revised terms include a provision to the effect that the new *sale contract* replaces the first *sale contract*. Once the new *sale contract* has been established the *seller* will claim the *order amount* payable under the new *sale contract* by recording on the *Octet platform* that there is a *completed order* and you will authorise payment of that *order amount*.

## **C PAYMENT TO THE SELLER**

### **8 The seller claims payment**

#### **8.1 Seller requests payment of the claimed amount**

When the *seller* considers that it has satisfied the *payment conditions* it will require payment. The *seller* may claim the *order amount* as specified in the *order confirmation*, a reduced amount or an increased amount. The increased amount must satisfy the requirements in clause 7.3. The *order amount*, as reduced or increased, claimed by the *seller* is called the *claimed amount*.

#### **8.2 Conditions which seller must satisfy**

Since satisfaction of the *payment conditions* must be evidenced by the provision of the agreed *transaction documents* (see clause 4.1(e)) the *seller* must be able to establish that it can provide those documents to you as required by the *sale contract* before the *seller* is paid. The *seller* should scan or otherwise duplicate the *transaction documents*, put a copy of them on the *Octet platform* and enter any other required information. Those *transaction documents* must comply with the requirements in clause 4.1(e).

The *seller* should not claim payment after the *latest claim date*; if the *transaction documents* do not comply with the requirements in clause 4.1(e); if the *seller* has sold goods and thirty-five or more days have passed since shipment (if the goods are to be imported into Australia) or delivery (if the *seller* is located in Australia) or thirty-five or more days have passed since the

date of the *invoice*; or if the *seller* has provided services and thirty-five or more days have passed since performance or the date of the *invoice*.

### 8.3 How seller claims payment

The *seller* claims payment and records that it considers the *payment conditions* satisfied by clicking the “claim payment” button on the “order tracking” screen of the *Octet platform*. If the *seller* wishes to claim an amount which is less than the *order amount*, or an increased amount, the amount claimed must also be entered. There is said to be a *completed order* when the “claim payment” button has been clicked.

### 8.4 You are told when the claim is made

You will receive notification of the claim. On the *Octet platform* you will see the *claimed amount* and be able to view the *transaction documents* which the *seller* considers provide evidence that the *payment conditions* have been satisfied.

### 8.5 What happens if the claim is late?

If the *Octet direct payment* method applies and there is no *completed order* by the *latest claim date* we do not have to provide the *advance* to you and the *Octet financial institution* does not have to pay the *seller*. This is because the *seller* has breached an important obligation and should not have a right to be paid (see paragraph (d) of the *required provisions*). Any obligations between you and the *seller* will be determined in accordance with the *sale contract* and all applicable laws.

If the *buyer direct payment* method applies and there is no *completed order* by the *latest claim date* any obligations between you and the *seller* will be determined in accordance with the *sale contract* and all applicable laws.

## 9 You determine if payment should be authorised

### 9.1 How you authorise payment

Before 5.00 pm (Sydney, Australia time) on the third *business day* after the *seller* has claimed payment you should do one of two things.

- Authorise payment of the *claimed amount*. You do this by digitally signing a “payment authority” which is generated when you click the “authorise payment” button on the “order tracking” screen of the *Octet platform*. You have then confirmed that the *payment conditions* have been satisfied and that the *seller* is entitled to receive the *claimed amount*.
- Decline your authorisation. If you click the “dispute claim” button on the “order tracking” screen of the *Octet platform* you advise that you consider that the *payment conditions* have not been satisfied or that the *seller* is not entitled to receive the *claimed amount*.

It is not possible to give a qualified response. You should give or decline your authorisation for the entire claim made by the *seller*. You must not authorise payment if the *seller* was not authorised to claim payment.

If you have given your authorisation payment should be made to the *seller*. How payment is made depends on whether the *Octet direct payment* method or the *buyer direct payment* method has been selected. This is covered in clause 10.

### 9.2 What happens if you do not respond?

If you do not respond by that time it will be assumed that you have declined authorisation. Please see clause 43.5 regarding the possibility of an extension if the *Octet platform* is not working.

We consider that you should respond on time and that you should have procedures in place to ensure that this is done. The *sale contract* may well include a provision which applies if you fail

to respond or inappropriately decline authorisation – for example interest, damages or a penalty could be payable by you to the *seller*.

### **9.3 If authorisation declined there is a payment dispute**

If you decline your authorisation, or it is assumed that you have done so, a *payment dispute* will be deemed to exist between you and the *seller*. The *payment dispute* occurs when you decline your authorisation or, if you do not respond, at 5.00 pm (Sydney, Australia time) on the third *business day* after the *seller* has recorded on the *Octet platform* that there is a *completed order*. Please see clause 43.5 regarding the possibility of an extension if the *Octet platform* is not working.

If a *payment dispute* exists clause 11 will apply. If a *trade relationship office* has been appointed it may be able to make a ruling to resolve the dispute.

## **10 Payment authorised by you**

### **10.1 Payment when Octet direct payment method applies**

If you have authorised payment of the *claimed amount* and the *Octet direct payment* method applies we will *advance* the *claimed amount* to you, but it is disbursed to the *Octet financial institution*. The *Octet financial institution* pays the *seller* or the *seller's* representative if it has received sufficient funds to cover the payment from us. Our commitment to make the *advance* is subject to the provisions of the *facility agreement* and can be terminated at any time if we consider that the *sale contract* may not be an actual, bona fide and arm's-length contract – see clause 5.4.

### **10.2 Payment when buyer direct payment method applies**

If you have authorised payment of the *claimed amount* and the *buyer direct payment* method applies you must pay that amount to the *seller* or the *seller's* representative in accordance with the *sale contract*. There will be no commitment by us to make an *advance* and the *Octet financial institution* will not be required to pay the *seller*.

## **11 Payment not authorised by you**

### **11.1 Trade Relationship Office can resolve the dispute**

If there is a *payment dispute* and the *trade relationship office* has been appointed the *trade relationship office* may be able to determine whether the *seller* should be paid. As stated in clause 4.4 the *trade relationship office* will only perform a very limited role. It will consider the copy *transaction documents* which the *seller* has lodged on the *Octet platform* and provide a ruling as to whether those documents, on their face, comply with the requirements of the *sale contract*. If the *trade relationship office* rules within five *business days* of the *payment dispute* occurring that the *transaction documents* do, on their face, comply with the requirements of the *sale contract* payment must be made to the *seller*.

If the *Octet direct payment* method applies we will *advance* the *order amount* or the *claimed amount* whichever is lower to you, but it is disbursed to the *Octet financial institution*. The *Octet financial institution* pays the *seller* or the *seller's* representative if it has received sufficient funds to cover the payment from us. Our commitment to make the *advance* is subject to the provisions of the *facility agreement* and can be terminated at any time if we consider that the *sale contract* may not be an actual, bona fide and arm's-length contract.

If the *buyer direct payment* method applies you must pay the *order amount* or the *claimed amount* whichever is lower to the *seller* or the *seller's* representative as if you had authorised payment of that amount.

## 11.2 Trade relationship office does not resolve the dispute

If the *trade relationship office* has not been appointed or it does not rule within five *business days* of the *payment dispute* occurring that the *transaction documents*, on their face, comply with the requirements of the *sale contract* any further rights and obligations between you and the *seller* will be determined in accordance with the *sale contract* and all applicable laws. There will be no commitment by us to make an *advance* and the *Octet financial institution* will not be required to pay the *seller*.

## 12 Completion of sale and payment to the seller

### 12.1 When does title pass?

The *sale contract*, together with any applicable law, will determine when title to the goods will pass to you. When the goods are exported the *sale contract* and those laws will also determine when title to the relevant *transaction documents* will pass to you and when the *transaction documents* must be given to you (see paragraph (c) of the *required provisions*).

### 12.2 How is the seller paid?

Payment to the *seller* for a sale under a *sale contract* will be arranged as follows.

- (a) If the *Octet direct payment* method applies and there is no *payment dispute* or the *payment dispute* is resolved by the *trade relationship office* making a ruling in favour of the *seller* the following applies.
- We will, subject to the conditions in the *facility agreement*, make an *advance* to you which is denominated in Australian dollars. The amount *advanced* is the *claimed amount* authorised by you or the lesser of the *order amount* and the *claimed amount* which is payable as a result of the *trade relationship office's* ruling. If the currency in which the *order amount* is denominated is a currency other than Australian dollars the amount *advanced* is the Australian dollar equivalent of that *order amount* or *claimed amount* using the *Octet conversion rate*.
  - The *advance* is disbursed to the *Octet financial institution*. If the currency in which the *order amount* is denominated is Australian dollars we will remit the *advance* by paying it in Australian dollars to the *Octet financial institution*. If the currency in which the *order amount* is denominated is a currency other than Australian dollars we will remit the *advance* by paying to the *Octet financial institution* the *claimed amount* authorised by you or the lesser of the *order amount* and the *claimed amount* which is payable as a result of the *trade relationship office's* ruling. The disbursement is an incidental component of the facility we provide by making the *advance* and is made using the banking system.
  - The *Octet financial institution* will pay the *seller* or the *seller's* representative if it has received funds from us. Payment can be made without further reference to you and without further enquiries being made. Any commitment given by the *Octet financial institution* is subject to the *seller rules*.
- (b) If the *Octet direct payment* method applies and there is a *payment dispute* which is not resolved by the *trade relationship office* making a ruling in favour of the *seller* you will pay any amount due to the *seller* in accordance with clause 11.2. There will be no commitment by us to make an *advance* and the *Octet financial institution* will not be required to pay the *seller*.
- (c) If the *buyer direct payment* method applies and there is no *payment dispute* or the *payment dispute* is resolved by the *trade relationship office* making a ruling in favour of the *seller* you must pay to the *seller* the *claimed amount* authorised by you or the lesser of the *order amount* and the *claimed amount* which is payable as a result of the *trade relationship*

*office's* ruling. There will be no commitment by us to make an *advance* and the *Octet financial institution* will not be required to pay the *seller*.

- (d) If the *buyer direct payment* method applies and there is a *payment dispute* which is not resolved by the *trade relationship office* making a ruling in favour of the *seller* you will pay any amount due to the *seller* in accordance with clause 11.2. There will be no commitment by us to make an *advance* and the *Octet financial institution* will not be required to pay the *seller*.

### **12.3 How much is paid to the seller?**

If the *Octet direct payment* method applies and there is no *payment dispute* or the *payment dispute* is resolved by the *trade relationship office* making a ruling in favour of the *seller* we will make the *advance* and disburse it as required by clause 12.2 unless the *facility agreement* states that we do not have to or we are prevented by a *directive* from doing so. Deductions can be made from the amount disbursed to the *Octet financial institution*; for example, a deduction can be made under clause 38.2 if the *seller* is to pay part of the *transaction fee*. The amount paid by the *Octet financial institution* to the *seller* can be reduced on account of commissions, fees, costs, charges and expenses (including bank charges and electronic funds transfer charges) incurred or levied by the *Octet financial institution*.

The amount received by the *Octet financial institution* from us, after those deductions, is paid to the *seller* unless the *seller rules* state that it does not have to pay or it is prevented by a *directive* from doing so. However, we do not have any liability to you or the *seller* if the *Octet financial institution* fails for any reason to make that payment.

If a payment is to be made to the *seller* and the *seller* does not receive the relevant amount from the *Octet financial institution* you must ensure that the *seller* is paid. This could, for example, happen because we are not required to make an *advance* to you and as a consequence the *Octet financial institution* will not receive sufficient funds from us to cover the payment.

Under no circumstances will we make a payment to the *Octet financial institution* in connection with an *order amount* or *claimed amount* unless the payment is an *advance* which has been made to you, that is it is debited to your credit facility provided under the *facility agreement*. You irrevocably and unconditionally authorise us to pay the *advance* by disbursing it to the *Octet financial institution*.

### **12.4 Permitted currencies**

Due to possible currency issues (for example due to restrictions on convertibility) we or the *Octet financial institution* may restrict the currencies in which the *order amount* can be denominated. The permitted currencies will be listed on the *Octet platform*.

## **D DOCUMENTS AND LIABILITIES**

### **13 We are not responsible for the sale contract**

#### **13.1 You are responsible for the sale contract**

Apart from giving you access to the *Octet platform* to facilitate communication between you and the *seller*, we are not concerned with, or responsible for, the terms and conditions of the *sale contract* (or possible contract). Similarly, the *Octet financial institution* is not concerned with, or responsible for, those terms and conditions. In particular, neither of us has any responsibility if the *seller* breaches any of its obligations under the *sale contract* and neither of us has to do anything to force the *seller* to perform its obligations.

### **13.2 We can assume valid sale contract made**

We and the *Octet financial institution* are entitled to assume that a binding and enforceable contract is concluded between you and the *seller* by you making an offer which is accepted by the *seller* as evidenced by you lodging the *order confirmation*, followed by the *seller* lodging the *accepted order confirmation*. We and the *Octet financial institution* are also entitled to assume that the terms and conditions of that *sale contract* are found exclusively on the *order confirmation* or a document which is incorporated into the *order confirmation*. It is important to us that you ensure that the *sale contract* both evidences and creates actual, bona fide and arm's-length obligations (see your representation and warranty in clause 45.1(u)) as we would not provide *advances* to you if this was not the case.

### **13.3 Sale contract terms must be clear**

It is important that you ensure that the terms and conditions of the *sale contract* are clear and that all those terms and conditions are included in the *order confirmation* which you send to the *seller* or are in documents which are stated to be incorporated into the *order confirmation*. Whilst we and the *Octet financial institution* are able to see information on the *Octet platform* each of us (or either of us) may decide to not look at it. If we or the *Octet financial institution* do look at it, we or they do so to protect our respective interests. Neither of us will review the information to confirm that your interests are protected. Accordingly, you should always check the information to confirm that it is complete and in order.

If documents are to be incorporated (see also clauses 3.2 and 13.2) they must be clearly identified. If they are public documents the version should be stated and the place (such as a website) where they can be found stated. If they are not readily identifiable or are not readily available copies should be attached to the "trading terms" section on the "order tracking" screen of the *Octet platform*. If there is any inconsistency between a provision in the *order confirmation* and a provision of an incorporated document the former will prevail to the extent of the inconsistency.

## **14 We are not responsible for the underlying transaction**

### **14.1 You are responsible for your dealings with the seller**

We, the *Octet financial institution* and the *trade relationship office* are not responsible for, or have any liability arising from, the dealings between you and the *seller*.

### **14.2 We are not responsible for specified things**

We, the *Octet financial institution* and the *trade relationship office* do not assume any liability or responsibility to you, the *seller* or any other *entity* for:

- (a) the form, sufficiency, accuracy, genuineness, correctness, falsification, validity or legal effect of any documents, electronic records or obligations (including the *sale contract*, or purported contract, between you and the *seller* which was recorded, or should have been recorded, on the *Octet platform*; the *transaction documents*; any insurance policy; and any carriage, shipment, delivery, forwarding, consignment or storage contract);
- (b) the general or particular conditions stipulated in the *sale contract*, the *transaction documents*, other documents to be presented by the *seller* or any other documents or electronic records;
- (c) the general or particular conditions superimposed on any of those documents or included in any obligations, including any data content in, or which is supplementary to, an electronic record;
- (d) the description, quantity, weight, quality, condition, packing, delivery, value, existence, detention or loss of any goods or documents; any *security interest* or other rights existing in or over any goods or documents; any damage to any goods or documents; depreciation

in value of any goods or documents; or the transfer of title to, or possession of, any goods or documents. Similarly none of us assumes any liability or responsibility for the performance of any services;

- (e) the good faith, acts, omissions, existence, solvency, capacity, performance or standing of the *seller*, consignors, carriers, shippers, forwarders, storage providers, insurers, agents or any other *entity*;
- (f) any consequences arising out of delay or loss in transit of any messages (including any form of electronic communication), letters, notices, documents or electronic records (including any delay in any communication being recorded or reflected on the *Octet platform* and any delay in a response being received from you under clause 9);
- (g) any delay, omission, mutilation, corruption or other error in any communication (including any form of electronic communication) or by postal or tele-transmission companies or authorities;
- (h) any errors in translation or interpretation (including the translation or interpretation of technical terms);
- (i) any consequences arising out of the interruption of a service or business (including an interruption due to forces of nature, riots, civil commotions, insurrections, armed conflicts and labour disputes);
- (j) any instructions not being carried out. We will, however, have a responsibility to carry out instructions which we have expressly agreed to carry out so long as a *directive* or supervening event does not prevent us from carrying them out and you have performed your obligations to us;
- (k) any delay in any payment (including a payment by us to the *Octet financial institution* or by the *Octet financial institution* to the *seller*) being made or received;
- (l) the availability, transferability or convertibility of any currency;
- (m) any *directive* which prevents money being transferred or obligations from being performed, or which requires that any deduction (including on account of taxation) be made;
- (n) any dispute which may arise between any of you, the *seller*, consignors, carriers, shippers, forwarders, storage providers, insurers, agents or other *entities*;
- (o) any ruling made by the *trade relationship office* or a failure by the *trade relationship office* to make a ruling;
- (p) commissions, fees, costs, charges, expenses and any premium payable to any consignors, carriers, shippers, forwarders, storage providers, insurers, agents or other *entities*. If those amounts are payable by you, you must ensure that they are paid when they should be paid;
- (q) the shipment or delivery of any goods, including the importation of goods which may be prohibited by any law from being imported. You do, however, represent to us that the importation into Australia of all goods purchased under a *sale contract* is not prohibited or restricted and that you hold a valid import licence if it is required. You must produce that licence to us or the *Octet financial institution*, if you are asked to produce it;
- (r) the breach or non-observance of any agreement or obligation between any of you, the *seller*, consignors, carriers, shippers, forwarders, storage providers, insurers, agents or other *entities* or for the breach or inaccuracy of any representations or warranties given by any of you, the *seller*, consignors, carriers, shippers, forwarders, storage providers, insurers, agents or other *entities*; or
- (s) any consequences arising out of the exercise of a discretion (including under clause 15.2) or an advice or notification (including one mentioned in, or contemplated by, clause 15.1).



Clause 14.2 does not limit clauses 13.1 or 14.1.

## **15 Notifications and the resolution of disputes**

### **15.1 We can assume accuracy of information**

We, the *Octet financial institution* and the *trade relationship office* can assume that all information, documents and notifications which we or they receive or which is recorded on the *Octet platform* are genuine, accurate, complete and final. In particular we and they may, without any further enquiry, assume that:

- a confirmation or response that appears to have been provided by you was provided by you or with your approval and that you have not responded by the third *business day* mentioned in clauses 9.1 and 9.3 if the information available on the *Octet platform* does not indicate that you have responded. Our requirements regarding the *Octet platform* are found in clauses 42 to 44;
- a confirmation or response that appears to have been provided by the *seller* was provided by the *seller* or with the *seller's* approval;
- any notice of a ruling made by the *trade relationship office* is genuine and that the ruling is a final determination binding upon both you and the *seller* which may be acted upon without any further enquiry. This means, for example, that if the *trade relationship office* makes a ruling and sends a "trade relationship office payment authority" to us or the *Octet financial institution* we and the *Octet financial institution* may act upon it without further enquiry; and
- any advice or notification which any of us obtain (or which is provided to any of us) from a lawyer, court, arbitrator, mediator or similar person for any purpose is genuine and accurate. This means, for example, that any notification of the resolution of a *payment dispute* may be relied upon as confirming that it is a final resolution binding on both you and the *seller* which each of us may act upon without further enquiry. Similarly any notification that the *seller* has lost the right to enforce its claim (due, for example, to a failure to pursue its claim) may be relied upon by each of us without further enquiry.

### **15.2 A signed payment authorisation can be required**

If a *payment dispute* has occurred and we have been advised that the *payment dispute* has been resolved we may, at our discretion, decide not to make an *advance* to you or the *Octet financial institution* may decide not to pay money to the *seller* until both you and the *seller* have signed an authorisation, in the form we and the *Octet financial institution* require, which provides a direction that the payment be made. This does not limit our or the *Octet financial institution's* right to rely on an advice or notification mentioned in clause 15.1, but we or the *Octet financial institution* may decide to also require that both you and the *seller* provide an authorisation to clarify the position in case the resolution is in fact not final and binding. It might, for example, be reversed on appeal. You must sign the authorisation unless you commence an appeal and obtain a stay on the enforcement of the original order within thirty days of the order being made. The *seller* should provide an equivalent undertaking in the *seller rules*. If we know that it has refused to do so we will tell you.

### **15.3 Payment disputes should be resolved**

You should always do everything which could be reasonably expected to ensure that a *payment dispute* is resolved as soon as possible. If a *trade relationship office* has been appointed you must co-operate with its processes. If it has not been appointed or it does not resolve the *payment dispute* by making a ruling you must negotiate in good faith with the *seller* and ensure that the resolution process contemplated by the *sale contract* and applicable laws is invoked and progressed as soon as practicable. Neither we nor the *Octet financial institution* resolve, manage or are involved in the resolution of *payment disputes*.

## 16 You must satisfy your liability to the seller

You may, under the *sale contract* or any other agreement, have a liability to the *seller* which is not satisfied by a payment made by the *Octet financial institution*. For example, if the *buyer direct payment* method applied this would be all amounts due to the *seller*. Similarly, if the *Octet direct payment* method applied it would include any amounts (for example penalties, interest and expenses) in excess of the *claimed amount* or, if the *trade relationship office* ruled in favour of the *seller*, the lesser of the *order amount* and the *claimed amount*. You must satisfy those liabilities to the *seller*.

## E THE LOAN FACILITY

### 17 Introduction

If the *Octet direct payment* method applies we will make an *advance* to you under a loan facility. The *advance* is used to pay the *seller*. Clauses 18 to 24 apply to that facility.

### 18 Facility limit

#### 18.1 Your facility limit

A *facility limit* is determined by reference to each *seller*. It is the Australian dollar amount which is the aggregate of the *Octet limit* and any additional amount which we have at our discretion allocated for transactions with that *seller*. The *Octet limit* is the aggregate of the amount specified in the *facility offer* as being the “Octet limit” and, if you also have a Working Capital Facility, that part of your availability under that facility which you allocate to this facility or, if you also have a Debtor Finance Facility, that part of your availability under that facility which you allocate to this facility.

The *facility limit* applicable in relation to a *seller* determines your *available credit* in relation to that *seller*. As explained in clause 5.1 you may only lodge an *order confirmation* with a *seller* which nominates the *Octet direct payment* method if you have sufficient *available credit* in relation to that *seller*. The maximum amount which you may owe to us in relation to a *seller* under the *facility agreement* (whether actually, contingently or prospectively), including any accrued fees or interest, is the *facility limit* applicable in relation to that *seller*. Accordingly, you must, in accordance with clause 19.3, make a payment to us if your *available credit* in relation to a *seller* becomes a negative amount. That could, for example, happen if there is an adverse currency movement.

If the *Octet limit* component of the *facility limit* has been used for transactions with a *seller* it cannot, at the same time, be used for transactions with another *seller*.

For example, you could have an *Octet limit* of \$100,000 and two *sellers*. For seller A we have allocated an additional amount of \$10,000 so the *facility limit* is \$110,000 for transactions connected with seller A. For seller B we have not allocated an additional amount so the *facility limit* is \$100,000 for transactions connected with seller B. The *facility limit* determines your *available credit* for purchases from a *seller*. Accordingly, if there were no other relevant transactions you could send an *order confirmation* to seller A offering to enter into a *sale contract* with a price equal to or less than A\$110,000. However, if there was already an *order confirmation*, *accepted order confirmation* or *amount owing* for A\$50,000 in relation to transactions with seller B the maximum amount which could be specified in the *order confirmation* sent to seller A would be the Australian dollar equivalent of A\$60,000.

## **18.2 You can ask us to change the facility limit**

You may ask us to increase or reduce the *Octet limit*. Requests must be made by using the *Octet platform*. We will implement requests for a reduction as soon as practicable. We may agree to increases at our discretion.

The *facility limit* is not changed simply because it has, for any reason, been exceeded.

## **18.3 We can change the facility limit**

If we believe on a reasonable basis that an *event of default* or *review event* may have occurred we may reduce the *facility limit* to any amount (including a nil amount), but we will not do so if that would cause the *facility limit* to be less than the amount which is the total of the amounts determined in accordance with the two bullet points in paragraph (a) in the definition of *available credit*. We will notify you of reductions to the *facility limit*. When we are satisfied that there is no subsisting *event of default* or *review event* we will reinstate the *facility limit*.

We may increase the *facility limit* if we so choose. We can do this by allocating an additional amount or by increasing an allocated amount. We make the increase at our discretion and do not have to notify you of increases.

## **19 Drawings under the facility**

### **19.1 We will make advances**

If the *Octet direct payment* method applies and there is no *payment dispute* or the *payment dispute* is resolved by the *trade relationship office* making a ruling in favour of the *seller*, we will make an *advance* to you which is denominated in Australian dollars. We will make the *advance* to you, but it is disbursed to the *Octet financial institution*. The *Octet financial institution* pays the *seller* or the *seller's* representative if it has received sufficient funds from us (see clauses 10.1, 11.1 and 12.2(a)).

The amount *advanced* will not exceed the amount determined in accordance with clause 12.2(a). If the *seller* is entitled to an amount which is greater than the amount it receives from the *Octet financial institution* you must pay the difference to the *seller* so that the *seller* receives the total amount due to it.

### **19.2 Use of advances**

The *advances* cannot be used for any purpose except those described in, or contemplated by, clauses 19.1, 27, 32, 36 or 37 or a purpose specified in the *facility offer*. In particular, *advances* cannot be used to refinance or repay any loan from us or any other *entity*; for personal, domestic or household purposes; to purchase, renovate or improve residential property for investment purposes; to acquire or invest in marketable securities; for a purpose which could result in the facility we provide under the *facility agreement* not being a credit facility within the meaning specified in section 765A(1)(h) of the Corporations Act 2001; or if Part 2E (related party transactions) or Part 2J (transactions affecting share capital) of the Corporations Act 2001 would be violated or contravened.

### **19.3 Available credit should not be negative amount**

If at any time the *available credit* in relation to a *seller* is a negative amount you must, despite any other provision of the *facility agreement*, on demand by us pay to us an amount sufficient for it to become a positive amount.

### **19.4 When payments can be withheld**

If the *transaction documents* lodged by the *seller* on the *Octet platform* do not comply with the requirements in clause 4.1(e) or the *seller* has breached any of its obligations in the *seller rules*, we may refuse to provide an *advance*. We may also refuse to provide an *advance* in accordance with clause 55.2.

If the *Octet direct payment* method applies, an *advance* is due to be made so that the payments outlined in clause 12.2(a) can be made and all conditions in the *facility agreement* have been satisfied we cannot refuse to provide the *advance* merely because the *available credit* in relation to the *seller* would then become a negative amount. You can be required to make a repayment in accordance with clause 19.3.

## **20 Monthly statements**

### **20.1 We will provide a monthly statement**

We will send or make available to you a monthly statement showing the transactions between you and us during that *month*. The statement will be sent or made available by the seventh *business day* of the following *month*, but not always on the same day. We need not send or make available a statement to you if no amounts have been debited or credited to your account with us during the statement period and the amount outstanding is less than \$5.

We will post or e-mail the statement to you, or make it available to you on the *Octet platform*.

### **20.2 Details shown on monthly statement**

The monthly statement will include:

- the statement date (which will not always be the same day each *month*);
- the start and end dates of the statement period;
- the *account balance* on the start date of the statement period;
- the *due date* for payment. This is the last *business day* of the *month* following the *month* to which the statement period relates, unless we have told you it is another date;
- the interest charges debited to the account during the statement period;
- the fees and charges debited to the account during the statement period;
- other amounts debited or credited to the account during the statement period;
- the minimum amount which you must pay by the *due date*; and
- the *account balance* on the end date of the statement period.

All amounts requiring payment will be shown on the statement in Australian dollars. If you have a liability to us in another currency we may convert it into Australian dollars.

### **20.3 You should check monthly statement**

You should check the entries on each statement carefully and promptly report any error to us. You are not entitled to claim that there is an error in the statement unless you notify us about it in writing within twenty-one days of the statement date.

### **20.4 Credit balances on monthly statement**

In the unlikely event that the *account balance* shows a credit we will retain that balance and apply it against amounts which you may owe us in the future. Alternatively, we will, after exercising our set-off rights under clause 46.4, pay it to you if you ask us to. A credit balance is not a deposit with us and it does not bear interest.

## **21 Payments you must make**

### **21.1 The minimum amount you must pay**

On or before the *due date* specified on the monthly statement you must pay the amount which is stated to be the "minimum amount" which you must pay. If you wish, you may pay a greater amount up to the *account balance*.

## 21.2 How is the minimum amount calculated?

The minimum amount which you must pay will be the total of:

- (a) in relation to all *advances* disbursed to pay *sellers* outside of Australia or for transactions not in Australian dollars:
  - 15% of all *advances* during the statement period;
  - 15% of all *advances* during the previous statement period;
  - the outstanding balance of all *advances* during any statement period which is earlier than the previous statement period;
- (b) in relation to all *advances* disbursed to pay *sellers* in Australia for transactions in Australian dollars:
  - 30% of all *advances* during the previous statement period;
  - the outstanding balance of all *advances* during any statement period which is earlier than the previous statement period; and
- (c) the full amount of all amounts, other than *advances* covered by paragraphs (a) or (b), which you owe us or to which we are entitled.

We can agree with you that the minimum amount should be determined in another way. For example, the above percentages could be adjusted or the distinction between international and domestic transactions could be removed so that (a) or (b) applies to all transactions.

If on or before the *due date* you pay more than the minimum amount there will be a corresponding reduction to the minimum amount payable on the following *due date*. For example, if \$100 was *advanced* during a statement period and disbursed to an *Octet financial institution* for payment to a *seller* in China you must pay at least \$15 on the *due date*, followed by another \$15 on the following *due date* and \$70 on the next *due date*. If you paid \$20 on the first *due date*, \$10 is payable on the second and \$70 on the third.

If the minimum amount which you must pay would be more than the *account balance* you are only required to pay the *account balance*. This could, for example, be the case because you have paid more than the minimum amount which you must pay shown on the previous monthly statement.

## 21.3 Other required payments

If the *facility agreement* ends you may be required to pay the *amount owing* (including the *account balance*) – see clause 53.1. You may also be required to make other payments.

## 22 Direct debit authority

### 22.1 Minimum amount to be paid by direct debit

The minimum amount which you must pay (after accounting for any amounts which you have paid early) must be paid on the *due date* by using a direct debit authority. You must establish and maintain an Australian dollar denominated account with an Australian branch of a bank which is prepared to accept the direct debit authority and make the transfer required by the authority. That will be your nominated account for the purposes of the direct debit authority. You authorise us to arrange for that bank to irreversibly transfer to an account we nominate the amount we specify. You must do anything we reasonably require (including the signing of a further document) so that those transfers occur. In particular you must give to us an authorisation to draw on the nominated account (in a form we require) which accords with the signing instruction held by your bank for the nominated account.

## 22.2 Prior notice is given to you

You will know the amount which will be transferred from your nominated account to our account as it will be the minimum amount which you must pay stated on the monthly statement less any amounts which you have paid early since the statement date. The direct debit authority will be invoked on the *due date* which will never be less than twenty-one days after the statement date. Your receipt of the monthly statement gives you plenty of time to query the amount to be transferred (see clause 20.3).

## 22.3 You must ensure required amount is paid

You must ensure that your bank will comply with the instruction to transfer funds – for example, you must ensure that there is sufficient funds in the nominated account. You must not change or revoke the authority without our approval. You do not have the right to pay an amount which is less than the minimum amount which you must pay determined in accordance with clause 21.2 – that means we are not obliged to accept part or concessional payments. You do not have the right to defer a payment or change the date on which the direct debit authority will be invoked. If you wish to defer a payment or pay an amount which is less than the minimum amount which you must pay you can ask us for approval, which we may give at our discretion. Clause 60.4 tells you how to make the request. The interest which you must pay could be affected – see clauses 23 and 24.

If the minimum amount which you must pay is not transferred to our account or a transfer is reversed (for example because there is not sufficient money in your nominated account) you must pay a fee of \$100 to us. There may also be other consequences. For example, the *Octet limit* may be reduced (see clause 18.3), we may be entitled to end the *facility agreement* (see clause 52.2) and additional interest may be payable (see clauses 23 and 24).

## 22.4 You can increase amount paid

You may increase the amount which is to be paid using the direct debit authority. If you wish to pay a greater amount you must, at least one *business day* before the *due date*, tell us, in the way we require, the amount which is to be transferred.

## 22.5 You should check bank statements

You should check your bank account statements to verify the amounts debited. If you believe that there has been an error you should notify us promptly. Alternatively, you can take it up with your bank. If we conclude that your nominated account has been incorrectly debited and our account incorrectly credited, we will arrange for your nominated account to be adjusted and will notify you when the adjustment has been made. You will also be entitled to interest on the amount incorrectly credited to our account at the same rate as our bank pays on deposits to accounts of the type which was credited. If we conclude that your nominated account has not been incorrectly debited we will provide you with reasons. Please also refer to clause 69 which deals with the making of a complaint.

## 22.6 Stopping payment or cancelling authority

Within twenty-one days of the statement date you can stop a transfer under the direct debit authority if the minimum amount which you must pay as stated on the monthly statement is more than the amount which should have been specified in accordance with clause 21.2. A request to stop a transfer can be directed to us or your bank. You must not stop a transfer for any other reason, unless you have our approval.

Your direct debit authority will be cancelled when the *facility agreement* has been terminated (see clause 52), there is no *amount owing* (see clause 53.1) and the *available credit* is nil. If you wish you may tell your bank that the direct debit authority has been cancelled, but you may only do so when the *facility agreement* has been terminated, there is no *amount owing* and the *available credit* is nil.

If your nominated account is to be transferred or closed you must tell us before it is transferred or closed. You must also put in place replacement direct debit authority arrangements which are acceptable to us.

## **22.7 Business purposes and confidentiality**

The bank account which is debited under the authority you provide must be designed primarily for use by a business and must have been established primarily for business purposes. Similarly, all electronic funds transfers must be from and to accounts designed primarily for use by a business which were established primarily for business purposes.

We will keep all information concerning your nominated account with your bank confidential, although we may disclose that information in accordance with clause 50.

## **23 Interest free days**

### **23.1 Interest free period on advances**

We do not charge interest on an *advance* during your *interest free period*. Your *interest free period* is:

- when clauses 36 and 37 do not apply, the period commencing on the date the *advance* is made and ending on the expiration of the *interest free period* described in the *facility offer*; and
- when clauses 36 or 37 do apply, the period commencing on the date the *advance* is made and ending on the third *business day* after the *advance* was made.

If you do not pay the minimum amount which you must pay as specified on the monthly statement by the *due date*, or if an *event of default* has occurred, we may charge interest on the whole of the *advance* from the day it is made up to and including the day it is repaid. We may, at our discretion, waive your obligation to pay that interest from the date the *advance* was made up to the end of the period described above, however, the mere issue of a monthly statement which does not refer to interest being charged is not a waiver. Your obligation to pay the minimum amount which you must pay as stated on a monthly statement by the relevant *due date* is not affected by interest being charged or not being charged.

### **23.2 Interest free period on fees**

We do not charge interest on the *order placement fee*, the *transaction fee* or the *third party FX contract processing fee* which you must pay under clause 38 from the date we are entitled to the fee up to and including the last *business day* of the *month* following the *month* in which we became entitled to the fee, so long as you pay the fee in full by no later than the last *business day* of that following *month*. The fee will be included in the minimum amount which you must pay by the *due date* as stated on the monthly statement which we send or make available to you for the *month* during which we became entitled to the fee.

If you do not pay the minimum amount which you must pay as specified on the monthly statement by the *due date*, or if an *event of default* has occurred, we may charge interest on the whole of the fee to which we are entitled from the day we became entitled to the fee up to and including the day the fee is paid. We may, at our discretion, waive your obligation to pay that interest from the date we were entitled to the fee up to and including the last *business day* of the *month* following the *month* in which we became entitled to the fee, however, the mere issue of a monthly statement which does not refer to interest being charged is not a waiver. Your obligation to pay the minimum amount which you must pay as stated on a monthly statement by the relevant *due date* is not affected by interest being charged or not being charged.

There are no interest free days for any amounts which you owe us, or to which we may be entitled, except those specified in clauses 23.1 and 23.2.

## 24 Interest charges

### 24.1 Obligation to pay interest

Except as provided in clause 23, we charge interest at the end of a statement period on all amounts outstanding during the period.

### 24.2 Calculation of interest

We will calculate the interest by multiplying each daily balance which is to bear interest by the prevailing annual percentage *interest rate* on that day divided by 365 (including in a leap year).

The *interest rate* is specified in the *facility offer*. We may change that *interest rate*, the way it is determined or when it is determined at any time. If we make a change we will tell you (see clause 60.1) before the change takes effect. The change will then take effect from the date we specify. If the *interest rate* cannot be determined in accordance with the *facility offer* it will be determined by us in good faith using a rate we consider most nearly approximates the rate mentioned in the *facility offer*.

If we change the *interest rate*, the way it is determined or when it is determined in a way you do not like you will be entitled to end the *facility agreement*. You will be entitled to give us notice, within seven *business days* after the date of our notice to you, that you are ending the *facility agreement* and, if you do, the *interest rate* will not be changed and the *facility agreement* will end sixty days (or a shorter period you nominate) after you gave notice.

### 24.3 Payment of interest

The interest which you must pay will be debited to your account on the end date of the statement period. That interest becomes part of the *account balance* and is included in the minimum amount which you must pay by the *due date*. Accordingly, interest will itself bear interest if it is not paid by the *due date*, but this does not affect your obligation to pay on time.

### 24.4 Examples of interest calculation

The following examples illustrate how interest will be charged. These examples assume that the statement date was the first day of each *month*; the start and end dates of the statement period were the first and last days of the *month* respectively; the *due date* was the last day of the *month* following the *month* to which the statement period relates and clause 21.2(a) applies. These assumptions may in fact not apply – see, in particular, clause 21.2. The examples also assume that there will be twenty-eight days in February.

(a) Interest is payable on *advances*, except when you are entitled to interest free days.

- If you are entitled to interest free days, the *advance* bears interest only on and from the day which follows your *interest free period*.
- If you are not entitled to interest free days, the *advance* bears interest from the day the *advance* was made, unless we have waived our rights and decided that the *advance* may bear interest from the day which follows your *interest free period*.
- For example, if \$100,000 was *advanced* to pay an overseas *seller* on 7 January, the monthly statement issued on 1 February for the period 1 – 31 January would show a balance of \$100,000 and a minimum amount which you must pay of \$15,000. That minimum payment must be made by 28 February. If the *interest free period* expired on the last *business day* of the *month* following the *month* in which the *advance* was made and the minimum payment is made by 28 February, interest is not charged for the period from 7 January to 28 February. From 1 March interest is payable on the \$85,000 balance.

The monthly statement issued on 1 March for the period 1 – 28 February would show the \$15,000 paid on 28 February and the remaining \$85,000 owing of which \$15,000 must be paid by 31 March.



The monthly statement issued on 1 April for the period 1 – 31 March would show the \$15,000 paid on 31 March, the remaining \$70,000 principal which is owing and the interest which has accrued during March. That \$70,000 principal and accrued interest must be paid by 30 April.

The monthly statement issued on 1 May for the period 1 – 30 April would show the payment of \$70,000 principal and the payment of interest which accrued during March. It would also show the interest which accrued during April, which interest must be paid by 31 May. This example assumes there are no other relevant transactions and all minimum payments are made when due.

- If the full \$100,000 had been paid by 28 February no interest would have been charged.
- (b) Interest is payable on unpaid *order placement fees*, unpaid *transaction fees*, and unpaid *third party FX contract processing fees* except when you are entitled to interest free days.
- If you are entitled to interest free days, those fees bear interest only on and from the day which follows the last *business day* of the *month* following the *month* in which the fees were incurred.
  - If you are not entitled to interest free days, those fees bear interest from the day we become entitled to them, unless we have waived our right and have decided that the fees may bear interest from the day which follows the last *business day* of the *month* following the *month* in which the fees were incurred.
  - For example, if we were entitled to a *transaction fee* of \$2,000 on 7 January, the monthly statement issued on 1 February for the period 1 – 31 January would show a balance of \$2,000 which has to be paid in full by 28 February. That amount is included in the minimum payment. If it is paid, interest is not charged for the period 7 January to 28 February. This example assumes there are no other relevant transactions.
- (c) Interest is always payable on all amounts other than *advances*, the *order placement fees*, the *transaction fees* and the *third party FX contract processing fees*. There are no interest free days.
- Other amounts due to us may be included on the monthly statement. Like the *order placement fee*, the *transaction fee* and the *third party FX contract processing fee*, they will be included in the minimum amount which you must pay by the *due date*. They do, however, bear interest from the day we became entitled to them until they are paid.
  - For example, if we were entitled to be reimbursed \$50 for expenses on 7 January the monthly statement issued on 1 February for the period 1 – 31 January would show \$50, together with interest on it for the period 7 – 31 January, which has to be paid in full by 28 February. Interest is charged from 7 January to the date of payment. If \$50 and interest for the period 7 – 31 January was paid on 28 February the monthly statement issued on 1 March for the period 1 – 28 February would show the receipt and the interest which accrued 1 – 28 February. That interest would need to be paid by 31 March.

## **F PRE-SHIPMENT DEPOSIT FUNDING**

### **25 Introduction**

Under clauses 17 to 24 an *advance* can be made which is used to pay the *claimed amount* when the *Octet direct payment* method applies. If you wish you can also request an *advance* to fund a

deposit payable to an *approved seller*. Clauses 26 to 28 apply to that loan facility. Clauses 17 to 24 also apply unless they are inconsistent with the following terms and conditions.

## **26 Advances we make for pre-shipment deposits**

### **26.1 You can request an advance**

You can ask us to make an *advance* to you so that a deposit can be paid to an *approved seller*. That *advance* is made in relation to a particular *sale contract* entered into between you and the *approved seller*. It reduces the amount which is to be paid later to the *approved seller* under the *sale contract*.

You will be given access to the *Octet platform* so that you can request the *advance*.

### **26.2 Conditions for an advance**

We will only make an *advance* if:

- (a) we are satisfied that there is a *sale contract* between you and the *approved seller*. If the *buyer direct payment* method applies under the *sale contract* we will only make the *advance* if we have told you that this facility can be used when that payment method applies;
- (b) you have requested the *advance*. The request must be made in the currency in which the *order amount* is denominated and must be made by using the *Octet platform*, unless we have agreed that it can be made in another currency or be made in another way. When you make the request you must provide any information we require;
- (c) you request the *advance* before the earlier of the *latest claim date*, delivery of the goods or performance of the services;
- (d) we are satisfied that the *claimed amount* will not exceed the *order amount* minus the amount which is to be *advanced*;
- (e) we have not already made an *advance* to fund payment of a deposit to the *approved seller* under the *sale contract*. We will only provide funding for the payment of one deposit for each *sale contract*;
- (f) the *available credit* in relation to the *approved seller* will not become a negative amount by the *advance* being made; and
- (g) we are satisfied that there is no subsisting *review event*, no *event of default* has occurred and an *event of default* will not occur if the *advance* is made.

### **26.3 We will make advances**

We will make the *advance* if we consider that clause 26.2 has been satisfied.

We will make an *advance* to you which is denominated in Australian dollars. The amount *advanced* is an amount in Australian dollars which is, when converted at the *Octet conversion rate* into the currency in which the *order amount* is denominated, equivalent to the lesser of the amount which you requested and the pre-shipment funding percentage of the *order amount*.

The pre-shipment funding percentage, in relation to an *order amount*, is 30% or a substitute percentage which we have told you will apply to an *approved seller* which has entered into, or may enter into, a *sale contract* pursuant to which that *order amount* may have to be paid. We can at any time change the percentage by telling you.

To simplify the recording of the transaction on the *Octet platform* we may divide the *sale contract* into two transactions, one being for the deposit (which will be treated as if the *Octet direct payment* method applies even if the *sale contract* specifies that the *buyer direct payment* method applies) and the other for the balance of the *order amount* (to which the *Octet direct payment* method or the *buyer direct payment* method will apply in the usual way).

## **26.4 Advance is shown on monthly statement**

The *advance* will be shown on your monthly statement. The *advance* must be repaid by instalments in accordance with clause 21. The required payment will be included in the minimum amount which you must pay. You can benefit from interest free days. We are entitled to a *transaction fee* when we make the *advance*.

## **27 Utilisation of the advance and payment of the deposit**

### **27.1 Use of advances**

We will make the *advance* and disburse it to the *Octet financial institution* unless the *facility agreement* states that we do not have to or we are prevented by a *directive* from doing so. Deductions can be made from the amount disbursed to the *Octet financial institution*; for example a deduction can be made under clause 38.2 if the *approved seller* is to pay part of the *transaction fee*.

If the currency in which the *order amount* is denominated is Australian dollars we will remit the *advance* by paying it in Australian dollars to the *Octet financial institution*. If the currency in which the *order amount* is denominated is a currency other than Australian dollars we will remit the *advance* by paying to the *Octet financial institution* an amount in the currency in which the *order amount* is denominated which is equivalent, using the *Octet conversion rate*, to the *advance*. The disbursement is an incidental component of the facility we provide by making the *advance* and is made using the banking system.

The *Octet financial institution* will pay the *approved seller* or the *approved seller's* representative if it has received funds from us. The amount paid by the *Octet financial institution* to the *approved seller* can be reduced on account of commissions, fees, costs, charges and expenses (including bank charges and electronic funds transfer charges) incurred or levied by the *Octet financial institution*. Payment can be made without further reference to you and without further enquiries being made. Any commitment given by the *Octet financial institution* is subject to the *seller rules*.

### **27.2 Balance of the deposit is to be paid by you**

If a deposit is to be paid to the *approved seller* and the *approved seller* does not receive the relevant amount from the *Octet financial institution* you must ensure that the *approved seller* is paid.

## **28 Payment of the balance to the seller**

### **28.1 If the Octet direct payment method applies**

If a deposit has been paid to the *seller* your obligation to the *seller* will be for the balance outstanding. Accordingly, the amount which the *seller* claims in accordance with clause 8.1 should take the deposit into account. As explained in clause 26.3 the *Octet platform* may show the balance as a separate transaction.

If the *Octet direct payment* method applies the amount denominated in Australian dollars which we will *advance* under clauses 12.2(a) and 19.1 after you authorise payment, or the *trade relationship office* rules that the *approved seller* should be paid, will be reduced. The reduced amount is the *claimed amount* (which must recognise the deposit which has been paid) or the lesser of the *order amount* (from which the deposit is deducted) and that *claimed amount* which is payable as a result of the *trade relationship office's* ruling. If the currency in which the *order amount* is denominated is a currency other than Australian dollars the amount *advanced* is the Australian dollar equivalent of that balance using the *Octet conversion rate*. Our commitment to

provide the *advance* under clauses 12.2(a) and 19.1 is also subject to other provisions of the *facility agreement*.

If the *Octet direct payment* method applies and there is a *payment dispute* which is not resolved by a *trade relationship office* making a ruling in favour of the *seller* you will pay any balance due to the *approved seller* as contemplated by clause 12.2(b).

## **28.2 If the buyer direct payment method applies**

If the *buyer direct payment* method applies you will pay any balance due to the *approved seller* as contemplated by clauses 12.2(c) and 12.2(d). We will only provide an *advance* for the balance and the *Octet financial institution* will only pay the balance to the *approved seller* if you change the payment method to the *Octet direct payment* method in accordance with clause 7.4. The usual conditions for that *advance* and payment will apply.

## **G FORWARD CONTRACT FUNDING**

### **29 Introduction**

You can take out a forward foreign exchange contract to help manage risks arising from movements in exchange rates. We can make an *advance* so you can pay the Australian dollar amount payable under that contract. Clauses 30 to 32 will then apply. In those clauses the bank or other financial institution which provides the forward foreign exchange contract to you is called your "counterparty". Clauses 17 to 24 also apply unless they are inconsistent with the following terms and conditions.

We provide a credit facility. We do not provide the forward exchange contract.

### **30 Forward contracts you arrange**

#### **30.1 We are not responsible for the forward contract**

We are not responsible for, or have any liability arising from, the *forward contract* or your dealings with your counterparty. In particular we do not assume any liability or responsibility to you for the form, sufficiency, accuracy, validity or legal effect of the *forward contract* or the good faith, acts, omissions, existence, solvency, capacity, performance, liability or standing of your counterparty. You must decide for yourself if you should enter into the *forward contract*. We recommend that you obtain expert advice before you do so.

#### **30.2 You must record details of the forward contract**

You must record details of your *forward contract* on the *Octet platform*. We will specify the details which need to be recorded and how they are to be recorded. In addition you must scan or otherwise duplicate all documents which evidence the terms and conditions of the *forward contract* and put a copy of them on the *Octet platform*. This should be done promptly after the *forward contract* is entered into.

#### **30.3 You must perform your obligations under the forward contract**

You must perform all of your obligations under the *forward contract* and ensure that your counterparty performs all of its obligations under the *forward contract*. In particular you must pay to your counterparty all amounts to which it is entitled, including amounts payable as a result of the cancellation of the *forward contract* or a change to the value date, together with all commissions, fees, costs, charges, interest on overdue payments and expenses.

## **31 Advances we make for forward contracts**

### **31.1 You can request an advance**

You can ask us to make an *advance* to you so that you can pay an Australian dollar amount to your counterparty. Your counterparty then pays the foreign currency amount due under the *forward contract* to us or an *Octet financial institution* we specify. If the foreign currency amount is paid to us we will pay it to the *Octet financial institution*. The *Octet financial institution* pays it to the *seller*.

You will be given access to the *Octet platform* so that you can request the *advance*.

### **31.2 Conditions for an advance**

We will only make the *advance* if:

- (a) the *Octet direct payment* method applies under the *sale contract* with the *seller* and the *buyer direct payment* method does not apply to any extent to that contract (see clause 4.3), unless we agree otherwise;
- (b) the currency in which the *sale contract* is denominated is a currency which we have approved for forward contract funding;
- (c) you have authorised payment of the *claimed amount* or there was a *payment dispute* which has been resolved by the *trade relationship office* making a ruling in favour of the *seller*;
- (d) you have requested the *advance*. The request must be made by using the *Octet platform*, unless we have agreed that it can be made in another way. When you make the request you must provide any information we require;
- (e) we are satisfied with the *forward contract* which you have lodged on the *Octet platform* (including your counterparty) and we are satisfied that an amount is due to the *seller* under the *sale contract* which can be satisfied utilising foreign currency to be obtained under the *forward contract*;
- (f) the *available credit* in relation to the *seller* will not become a negative amount by the *advance* being made;
- (g) we are satisfied that there is no subsisting *review event*, no *event of default* has occurred and an *event of default* will not occur if the *advance* is made;
- (h) the foreign currency payable under the *forward contract* is equal to or greater than the foreign currency amount payable under the *sale contract*. If it is greater the *forward contract* will need to be amended – see clause 31.3; and
- (i) we are satisfied that there is no subsisting *review event* and that you will pay the amount mentioned in clause 32.1 to your counterparty and that your counterparty will pay the amount mentioned in clause 32.3 to us or the *Octet financial institution*.

### **31.3 We will make the advance**

The amount we *advance* will be an Australian dollar amount. Where possible it will be the same as the Australian dollar amount you are required to pay to your counterparty to obtain foreign currency equal to the amount payable to the *seller*. If the payment needs to be made to the *seller* earlier or later than the value date of the *forward contract* or the required foreign currency is less than the full amount payable by your counterparty under the *forward contract* you and your counterparty will need to agree consequential amendments to the *forward contract*. The amendments may result in a change to the exchange rate applied under the *forward contract*. If those amendments need to be made the amount we *advance* will be an Australian dollar amount which you estimate is the Australian dollar amount which will be payable by you to your counterparty under the amended *forward contract* to obtain foreign currency equal to the amount payable to the *seller*. You must not request an *advance* which is greater than the actual amount

or the estimated amount payable to your counterparty. If the amount is estimated you must make any enquiries which are necessary to ensure that it is a genuine estimate.

We will *advance* the amount you request if we consider that clause 31.2 has been satisfied and, if applicable, we are satisfied with your estimate under this clause. If we receive your request before 3:00pm Sydney, Australia time (or another time we specify) on a *business day* we will endeavour to make the *advance* to you on that day. If we receive it after that time or on a day which is not a *business day* we will endeavour to make the *advance* on the next *business day*, unless we decide to make it earlier.

#### **31.4 How the advance is made**

The *advance* is made by us arranging for our bank to transfer the amount to a bank account which you have nominated. That bank account must be an account which you have with a bank and it must be nominated in the way we require. When we instruct our bank to make the transfer we will rely on the bank account number you provided. We may arrange for the *advance* to be transferred to that bank account without further reference to you and without any enquiries being made. Charges levied by your bank are your responsibility. An *advance* is made when we instruct our bank to transfer the amount to your bank account.

If that *advance* is made we will not make an *advance* under clause 19.1 and clause 12.2 will not apply

#### **31.5 Advance is shown on monthly statement**

The *advance* will be shown on your monthly statement. The *advance* must be repaid by instalments in accordance with clause 21. The required payment will be included in the minimum amount which you must pay. The *advance* is made at the time specified in clause 31.4. Your interest free days are calculated from the time the *advance* is made as specified in clause 31.4. We are entitled to a *transaction fee* when we make the *advance*.

### **32 Utilisation of the advance**

#### **32.1 Payment of Australian dollar amount**

As soon as possible after you receive the *advance* you must:

- pay to your counterparty the Australian dollar amount which needs to be paid so that your counterparty will pay a foreign currency amount equal to the amount due to the *seller*; and
- scan or otherwise duplicate the acknowledgment provided by your counterparty which confirms the foreign currency amount payable by your counterparty upon receipt of the specified Australian dollar amount and put it on the *Octet platform*.

You must pay that amount even if it is greater than the *advance*. If for any reason the Australian dollar amount payable to your counterparty to obtain the foreign currency amount required to be paid to the *seller* is less than the *advance* you can use the difference for your working capital purposes so long as it does not exceed \$2,000 or another agreed amount. If it does exceed that amount you must repay the entire difference to us.

#### **32.2 Repayment of the advance**

You hold the *advance* on trust for us until it is applied in accordance with clause 32.1. If it is not so applied within five *business days* of receipt you must repay it to us. If, despite clause 32.3 your counterparty makes a payment to you, you must immediately pay it to us in the currency it was received and you hold it on trust for us until it is paid.

#### **32.3 Payment of foreign currency amount**

You must ensure that your counterparty pays direct to us or the *Octet financial institution* the full foreign currency amount which your counterparty should pay under the *forward contract* upon receipt of the Australian dollar amount. If that foreign currency amount is not paid to us or the

*Octet financial institution* for any reason or the amount received is less than the *claimed amount* (if you authorised payment) or the lesser of the *claimed amount* and the *order amount* (if a *payment dispute* was resolved by the *trade relationship office* making a ruling in favour of the *seller*) you must immediately pay the shortfall to us using your own funds.

The foreign currency amount must be transferred to the bank account we nominate. It must be paid as cleared funds without any set-off, abatement, counterclaim or deduction at all. You must give to your counterparty any notice we require for the purposes of directing your counterparty to make the payment direct to the bank account we nominate.

If your counterparty pays the foreign currency amount to us we will pay an equivalent amount to the *Octet financial institution*. Irrespective of whether the *Octet financial institution* receives the payment from us or direct from your counterparty the *Octet financial institution* will pay that amount to the *seller* or the *seller's* representative. Payments by us or the *Octet financial institution* are subject to the provisions of the *facility agreement*, the *seller rules* and any *directive* and deductions can be made as contemplated by the *facility agreement*. You irrevocably and unconditionally authorise those payments which will be made without further reference to you and without any enquiries being made. The *Octet financial institution* may tell the *seller* or the *seller's* representative about the arrangements under the *facility agreement* and, in particular, that a payment will only be made if your counterparty pays the foreign currency.

## **H OCTET EXPRESS PAYMENT**

### **33 Introduction**

We may allow a *credit card* to be used to make an Octet express payment. Clause 34 specifies the general requirements which apply when a *credit card* is to be used. Clauses 35 to 37 then specify how a *credit card* can be used. The amount charged or debited to the *credit card* can be applied in three ways.

- At any time, other than on the *due date*, the *credit card* can be used to pay an amount to us. That amount is credited to your account with us. This is explained in clause 35. A payment before the *due date* will reduce the *amount owing* which may increase your *available credit* which may, in turn, allow you to lodge a new *order confirmation* which nominates the *Octet direct payment* method.
- If the *Octet direct payment* method applies you can, when you authorise payment of a *claimed amount*, elect to pay us by using the *credit card*. This is explained in clause 36. The amount we *advance* is repaid shortly after the *advance* is made by the amount being charged or debited to the *credit card*. Again this will reduce the *amount owing* which may increase your *available credit* so that you can lodge a new *order confirmation* which nominates the *Octet direct payment* method.
- If the *buyer direct payment* method applies you can, when you authorise payment of a *claimed amount*, elect to pay us by using the *credit card*. The payment method changes to the *Octet direct payment* method. This is explained in clause 37.

Clauses 17 to 24 also apply to the *advances* we make under clauses 36 and 37 unless they are inconsistent with the following terms and conditions.

### **34 How a credit card can be used**

#### **34.1 You will use the payment gateway**

If you wish to pay us by using a *credit card* select the “pay using credit card” button on the *Octet platform*. That will take you to the *payment gateway*. You “check out” of our website and are re-

directed to a website hosted by the operator of the *payment gateway*. That operator is a bank which will comply with the Payment Card Industry Data Security Standard to the extent it applies. The *payment gateway* is used to process *credit card* payments via the internet.

You use the *payment gateway* to enter the *credit card* details. The operator of the *payment gateway* receives, stores, processes and transmits that information. We do not receive, store, process or transmit any of it. You may also be required to enter other information – for example, if clause 35 applies you will need to enter the amount you wish to pay. After the *credit card* transaction has been approved or declined you will be returned to the *Octet platform*.

You must comply with all requirements which the operator of the *payment gateway* imposes for the use of the *payment gateway*.

You may be allowed to use more than one *credit card*. These provisions will apply although you will need to allocate the amount to be charged or debited between the *credit cards*.

## **34.2 Payments and reversals**

If the operator of the *payment gateway* approves the transaction it is expected that it will transfer the applicable amount to us. If it does not do so we may reverse any credits we have made to your account with us in anticipation of that transfer and you must still pay to us all amounts to which we are entitled.

If the operator of the *payment gateway* does not approve the transaction you must still pay to us all amounts to which we are entitled.

You can ask us to reverse a transaction to the extent the amount we receive exceeds what you owe or may owe us. This might, for example, happen if there is a processing error which results in a transaction being inadvertently processed twice. Any issues with the goods or services provided, or which should have been provided, by the *seller* must be taken up with the *seller*.

## **34.3 We are not responsible for the payment gateway**

To the extent permitted by law, we will not be responsible for any loss or damage (including consequential loss or damage) suffered by you when you (or an *entity* acting on your behalf) use the *payment gateway* or an *entity* gains access to the *payment gateway* by using your *token*. If we do have a liability it will be limited in the same way that our liability is limited in relation to the *Octet platform* under clause 49.

If you use the *payment gateway* you must pay to us any additional fees shown on the *Octet platform*. The operator of the *payment gateway* may impose its own fees and you must pay them.

We may delay or block any transaction and the operator of the *payment gateway* may delay, block or refuse to process or refuse to settle any transaction if it may, or it is suspected that it may, breach any law.

## **34.4 Credit card issued to a third party**

If the *credit card* has been issued to an *entity* which is not you, you must ensure that that *entity* has unconditionally and irrevocably agreed to the amount being charged or debited to the *credit card* and to that amount being paid, as outlined in these terms and conditions, towards satisfaction of your liability to us.

## **35 Payment using a credit card at any time**

### **35.1 Payments to us using credit card**

At any time, other than on the *due date*, the *credit card* can be used to make a payment to us. When the operator of the *payment gateway* approves the transaction we will credit the amount you specified to your account with us. The amount will be credited by no later than the next *business day* and it will be shown on your next monthly statement.



## 35.2 Additional fees

In addition to our usual fees and charges we are entitled to the card charge stated on the *Octet platform*. The amount you specified and the card charge will be charged or debited to the *credit card*.

## 36 Payment using a credit card when you authorise payment

### 36.1 Amount charged to credit card

When the *Octet direct payment* method applies you can, after you have authorised payment of a *claimed amount* (see clause 9.1) charge or debit to the *credit card* an amount equal to the total of the *claimed amount* (or, if it is in a foreign currency, the Australian dollar equivalent), the transfer fee and the card charge.

### 36.2 We make an advance to you

If the *claimed amount* is denominated in Australian dollars and the operator of the *payment gateway* approves the transaction we will *advance* the *claimed amount* to you. The *advance* is disbursed to the *Octet financial institution*. The *Octet financial institution* pays the *seller* or the *seller's* representative in accordance with the usual arrangements.

If the currency in which the *order amount* is denominated is a currency other than Australian dollars and the operator of the *payment gateway* approves the transaction we will make an *advance* to you which is denominated in Australian dollars. The amount *advanced* will be the Australian dollar equivalent of the *claimed amount* using the *Octet conversion rate*. We will remit the *advance* by paying to the *Octet financial institution* the *claimed amount*. The *Octet financial institution* pays the *seller* or the *seller's* representative in accordance with the usual arrangements.

Payments by us or the *Octet financial institution* are subject to the provisions of the *facility agreement*, the *seller rules* and any *directive* and deductions can be made as contemplated by the *facility agreement*.

The *advance* will be shown on your next monthly statement.

### 36.3 Repayment of the advance

The *advance* must be repaid by you in full within three *business days* of the *advance* being made. It is expected that the *advance* will be repaid by the *credit card* receipt. If it is not, for any reason, paid in that way you must make payment in another way. The provisions of the *facility agreement* under which you can make the repayment by instalments do not apply.

### 36.4 Fees and interest

We will not charge the usual *transaction fee*. Instead we are entitled to the transfer fee and the card charge stated on the *Octet platform*. They should be paid from the money we receive from the operator of the *payment gateway*. If they are not, for any reason, paid in that way you must pay them to us on demand.

If the *advance* is not repaid by the third *business day* you must pay interest on the outstanding amount from that day until it is paid. The rate of interest will be the *interest rate*, we will calculate it daily and you must pay it on demand. Your obligation to pay on time is not affected by this clause. If you repay the *advance* on the *due date* you will not accrue interest.

### 36.5 Payment when both payment methods apply

If the *Octet direct payment* method applies in relation to only part of the *order amount* (see clause 4.3) this clause 36.5 applies. After you have authorised payment of a *claimed amount* (see clause 9.1) you can charge or debit to the *credit card* an amount equal to the total of the *Octet funded revised portion* (or, if it is in a foreign currency, the Australian dollar equivalent), the

transfer fee and the card charge. Clauses 36.1 to 36.4 then apply subject to “*claimed amount*” being changed to mean the *Octet funded revised portion*.

## **37 Change of payment method when using a credit card**

### **37.1 An additional way to change the payment method**

When the *buyer direct payment* method applies you may be able to change to the *Octet direct payment* method. Clause 7.4 explains one way in which this can be done. It can also be done if you pay by using the *credit card*.

After you have authorised payment of a *claimed amount* you can charge or debit to the *credit card* an amount equal to the total of the *claimed amount* (or, if it is in a foreign currency, the Australian dollar equivalent), the transfer fee and the card charge. Alternatively, if the *credit card* is an *approved US dollar card* you can charge or debit to that card an amount equal to the US dollar *claimed amount* (or, if the *claimed amount* is in Australian dollars, Euros, Sterling or another currency we have approved, the US dollar equivalent), the transfer fee and the card charge.

### **37.2 We make an advance to you**

If the *claimed amount* is denominated in Australian dollars and the operator of the *payment gateway* approves the transaction the payment method will change to the *Octet direct payment* method and we will *advance* the *claimed amount* to you. The *advance* is disbursed to the *Octet financial institution*. The *Octet financial institution* pays the *seller* or the *seller's* representative in accordance with the usual arrangements.

If the currency in which the *order amount* is denominated is a currency other than Australian dollars and the operator of the *payment gateway* approves the transaction the payment method will change to the *Octet direct payment* method and we will make an *advance* to you which is denominated in Australian dollars. The amount *advanced* will be the Australian dollar equivalent of the *claimed amount* using the *Octet conversion rate*. We will remit the *advance* by paying to the *Octet financial institution* the *claimed amount*. The *Octet financial institution* pays the *seller* or the *seller's* representative in accordance with the usual arrangements.

Despite the above, if the *credit card* is an *approved US dollar card* and the operator of the *payment gateway* approves the transaction the payment method will change to the *Octet direct payment* method and we will make an *advance* to you which is denominated in US dollars. The amount *advanced* will be the *claimed amount* (if it is in US dollars) or the US dollar equivalent of the *claimed amount* as determined by the issuer of the *approved US dollar card*. We will remit the *advance* by paying to the *Octet financial institution* the *claimed amount*. The *Octet financial institution* pays the *seller* or the *seller's* representative in accordance with the usual arrangements.

Payments by us or the *Octet financial institution* are subject to the provisions of the *facility agreement*, the *seller rules* and any *directive* and deductions can be made as contemplated by the *facility agreement*.

The *advance* will be shown on your next monthly statement. If the *credit card* is an *approved US dollar card* and we made the *advance* in US dollars there will be a separate monthly statement for your obligations denominated in US dollars. When there are two monthly statements the *account balance* will be the total amount you owe.

### **37.3 Repayment of the advance**

The *advance* must be repaid by you in full within three *business days* of the *advance* being made. It is expected that the *advance* will be repaid by the *credit card* receipt. If it is not, for any reason, paid in that way you must make payment in another way. The provisions of the *facility agreement* under which you can make the repayment by instalments do not apply.

If we receive the credit card receipt before we make the *advance* that part of the receipt equal to the *claimed amount* (or the applicable Australian dollar or US dollar equivalent of it) will be a prepayment of the *advance* which you must repay. That prepayment is not a deposit with us. We may decide to delay making a disbursement of the *advance* under clause 37.2 until we have received that prepayment.

#### **37.4 Fees and interest**

We will not charge the usual *transaction fee*. Instead we are entitled to the transfer fee and the card charge stated on the *Octet platform*. They should be paid from the money we receive from the operator of the *payment gateway*. If they are not, for any reason, paid in that way you must pay them to us on demand.

If the *advance* is not repaid by the third *business day* you must pay interest on the outstanding amount from that day until it is paid. The rate of interest will be the *interest rate* (or, if the *advance* was made in US dollars our prime lending rate for US dollars plus the margin specified on the *Octet platform*) we will calculate it daily and you must pay it on demand. Your obligation to pay on time is not affected by this clause. If you repay the *advance* on the *due date* you will not accrue interest.

#### **37.5 Payment when both payment methods apply**

If the *Octet direct payment* method applies in relation to only part of the *order amount* (see clause 4.3) this clause 37.5 applies. After you have authorised payment of a *claimed amount* (see clause 9.1) you can charge or debit to the *credit card* an amount equal to the total of the *buyer payment revised portion* (or the applicable Australian dollar or US dollar equivalent of it), the transfer fee and the card charge. Clauses 37.1 to 37.4 then apply subject to “*claimed amount*” being changed to mean the *buyer payment revised portion*. In accordance with clause 37.1 the payment method applicable to that portion becomes *Octet direct payment*.

## **I FEES AND CHARGES**

### **38 We are entitled to fees**

#### **38.1 Order placement fee**

We are entitled to an *order placement fee* when you lodge an *order confirmation* with the *seller* (see clause 5.2). That fee is specified in the *facility offer*. You must pay the *order placement fee* even if an *advance* is not made.

#### **38.2 Transaction fee**

We are entitled to a *transaction fee* when we make an *advance*. That fee is calculated by multiplying the amount *advanced* by the percentage stated in the *facility offer*. You must pay the *transaction fee*.

The *seller* could agree that it will pay all or part of the *transaction fee*. If the *seller* has so agreed the part payable by the *seller* is deducted from the *order amount* or *claimed amount* otherwise disbursed to the *Octet financial institution* for payment to the *seller* and it will be retained by us. The *transaction fee* payable by you will be reduced by the amount withheld from the *seller*.

If you make an Octet express payment the usual *transaction fee* may not be charged – see clauses 36.4 and 37.4. Instead we will be entitled to the transfer fee and the card charge described in clause 38.4.

#### **38.3 Order acceptance fee**

The *Octet financial institution* may require that the *seller* pay an *order acceptance fee* to it when the *seller* has lodged an *accepted order confirmation* by accepting your offer (see clause 6.3).

The *order acceptance fee* is charged by the *Octet financial institution* exclusively for it allowing the *seller* to use the *Octet platform* to enter into the *sale contract*. You are not liable for this fee.

#### **38.4 Octet express payment fee**

If clause 35 applies we are entitled to the card charge stated on the *Octet platform*. If clauses 36 or 37 apply we are entitled to the transfer fee and the card charge stated on the *Octet platform*. The card charge can be greater than the merchant service fee which we pay to the *credit card* issuer or the operator of the *payment gateway*.

#### **38.5 Third party FX contract processing fee**

We are entitled to a *third party FX contract processing fee* when you request an *advance* under clause 31. That fee is a fixed amount or a percentage of the amount you request, whichever is greater. We will tell you the amount or percentage or post it on the *Octet platform*. You must pay it even if the *advance* is not made.

#### **38.6 Other fees**

We are entitled to other fees, charges and interest as specified in the *facility agreement*. The *Octet financial institution* may also be entitled to other fees and charges from the *seller* under the *seller rules*.

### **39 Payment of fees**

#### **39.1 Calculation of fees**

The *order placement fee* is calculated by us in accordance with clause 38.1. The *transaction fee* is calculated by us in accordance with clause 38.2. The *Octet express payment fee* is calculated by us in accordance with clauses 35.2, 36.4 and 37.4. The *third party FX contract processing fee* is calculated by us in accordance with clause 38.5. You must pay them in Australian dollars except the *Octet express payment fee* levied when an *approved US dollar card* is used (see clause 37) must be paid in US dollars.

#### **39.2 Fees are debited to your account**

The fees will be debited to your account when we are entitled to them and they will be shown on the monthly statement. You will not pay interest on an outstanding *order placement fee*, *transaction fee* or *third party FX contract processing fee* if they are paid in full by the *due date* and the requirements in clause 23 are satisfied. You will not pay interest on the *Octet express payment fee* if it is paid within three *business days* of the *payment gateway* being used.

#### **39.3 We can change the fees**

We may change the *order placement fee*, the *transaction fee*, the *Octet express payment fee* and the *third party FX contract processing fee*, or the way they are determined, at any time. If we make a change to a fee you are required to pay we will tell you (see clause 60.1) before the change takes effect. The change will then take effect from the date we specify.

If we change any of those fees, or the way they are determined, in a way you do not like you will be entitled to end the *facility agreement*. You will be entitled to give us notice, within seven *business days* after the date of our notice to you, that you are ending the *facility agreement* and, if you do, the fee will not be changed and the *facility agreement* will end sixty days (or a shorter period you nominate) after you gave notice.

### **40 Miscellaneous charges**

#### **40.1 Expenses in administering facility**

We are immediately entitled to payment by you of all costs, charges and expenses we incur in relation to the *facility agreement*, and in administering it, giving effect to it, amending it,

performing it, considering the enforcement of it, attempting to enforce it, enforcing it and ending it. "Administering it" includes receiving, recovering and paying money, the conduct of investigations and inspections which can be conducted under the *facility agreement* and giving and considering approvals and consents. "Giving effect to it" includes the preparation, execution, stamping and enforcement of documents which must be provided to satisfy a condition precedent. We are also entitled to payment by you of all costs, charges and expenses we incur in connection with the occurrence of an *event of default*. In the case of legal, investigation and inspection expenses, our entitlement is on a full indemnity basis.

The costs, charges and expenses include mailing, telephone, courier bag, search and credit check charges, each at our standard rates; bank charges; electronic funds transfer charges; credit and debit card fees; stamp duty; transaction duty; GST and all other taxes, duties and impositions; penalties; registration fees; costs incurred in complying with the *PPSA*; and the amounts charged by an *entity* appointed under clause 57.3.

#### **40.2 GST**

Where we are entitled to an amount under the *facility agreement* or any other document between you and us for a supply made by us the amount is stated or calculated exclusive of *GST*. In addition to that amount you must pay to us any *GST* chargeable in respect of the supply so that we will receive and retain, after payment of any *GST*, the amount otherwise payable by you for the supply. Any *GST* payable under this clause is payable by you when you are required to make the payment in respect of which the *GST* is chargeable.

Since the *order placement fee*, the *transaction fee*, the *Octet express payment fee* and the *third party FX contract processing fee* are charged in consideration of us giving you access to the *Octet platform* (including, where appropriate, the link to the *payment gateway*) the supply we make is subject to *GST* and that *GST* will be charged in accordance with the preceding paragraph. We will provide a tax invoice to you. Our expectation is that the *advances* will be considered to be an input based supply so that the interest which we charge for supplying *advances* will not be subject to *GST*.

Where you are required to pay us for any of our liabilities, expenses, losses, costs or charges (including paying as compensation, a reimbursement or a contribution), the amount you pay us will be reduced by any input tax credit claimed by us that relates to our liabilities, expenses, losses, costs or charges (unless it is an expense which is reimbursed under clause 40.1), but will be increased by any *GST* that we must pay if our recovery from you is a taxable supply.

#### **40.3 Interest on overdue amounts**

If you fail to pay any amount on the due date for payment you must pay interest on that amount from the date payment should have been made until it is paid. If the amount is included in the *account balance* shown on a monthly statement the interest is determined and paid in accordance with clause 24. If the amount is not included in an *account balance* the rate of interest will be the *interest rate*, we will calculate it daily and you must pay it on demand. In all cases, if the amount becomes covered by a court order you must pay interest on it as a separate obligation and the rate of interest will be the *interest rate* or the rate in the court order if it is higher. We may add any overdue interest to the amount you owe and you will then be liable for interest on the total amount. Your obligation to pay on time is not affected by anything in this clause.

#### **40.4 Currency conversion commission**

In some cases we will convert foreign currency amounts at the *Octet conversion rate*. When that rate is used a single conversion commission will apply as explained in clause 62.2.

#### **40.5 Administration charges when you default**

If a *review event* or an *event of default* occurs and as a consequence any of our employees or agents devote time to the administration of the *facility agreement* or the transactions

contemplated by it which is greater than the time we reasonably consider would have been devoted if a *review event* or an *event of default* had not occurred, you must pay to us the amount which we determine, in good faith, is required to compensate us for that additional administration. We are entitled to the amount, by one or more payments, when it is determined.

## **41 Trade relationship office fees**

### **41.1 You or the seller pay fees**

You or the *seller* should specify in the terms and conditions governing the *sale contract* which of you will pay the costs, charges and expenses of the *trade relationship office*.

If it is agreed that you should pay those costs, charges and expenses you must pay the full amount levied by the *trade relationship office*, in the currency in which it is due, on or before the payment date stipulated by the *trade relationship office*. If it is agreed that the *seller* should pay those costs, charges and expenses (or any part of them) but it does not do so on or before the payment date stipulated by the *trade relationship office* you must, on demand by us or the *trade relationship office*, pay the outstanding amount. If it is not agreed who should pay those costs, charges and expenses (or any part of them) you must, immediately on demand by us or the *trade relationship office*, pay the outstanding amount.

### **41.2 If we pay you must reimburse us**

If you are required to pay an amount under clause 41.1 but fail to do so we or the *Octet financial institution* may, at our or its discretion, pay the amount to the *trade relationship office*. At our choice we may debit that amount to your account (in which case it will appear on the monthly statement and be included in the *account balance* which you must pay in accordance with clause 21 and bear interest in accordance with clause 24) or we may demand immediate reimbursement (in which case you must pay the amount we demand and until payment interest will accrue in accordance with clause 40.3).

## **J USING THE OCTET PLATFORM**

## **42 We will give you access to the Octet platform**

### **42.1 You can use the Octet platform for specified purposes**

You will be given access to the *Octet platform* so that you may:

- (a) use it to negotiate with the *seller* (see clause 3);
- (b) make an offer to the *seller* (see clause 5);
- (c) see whether the *seller* has accepted or rejected your offer (see clause 6);
- (d) change the payment method from *buyer direct payment* to *Octet direct payment* (see clause 7.4);
- (e) receive notification from the *seller* that the *payment conditions* have been satisfied and then either authorise payment to the *seller* or decline that authorisation (see clauses 8 and 9);
- (f) request an *advance* for pre-shipment deposit funding (see clauses 25 to 28);
- (g) request an *advance* for forward contract funding (see clauses 29 to 32);
- (h) make an Octet express payment (see clauses 33 to 37);
- (i) fix when the *Octet conversion rate* will be determined (see clause 62.2);
- (j) obtain information about any fees or charges payable to us; and

- (k) obtain information about your account with us. For example, the monthly statement may be made available to you using the *Octet platform* (see clause 20.1).

The information which is available through the *Octet platform* and the functions which can be carried out using it will be determined by us from time to time.

We can end, suspend or restrict your use of the *Octet platform* at any time without giving you notice. If we do this we will tell you how things will be done without the use of the *Octet platform*.

Arrangements between us and the *platform provider* allow us to give you access to the *Octet platform* and arrangements between the *Octet financial institution* and the *platform provider* allows the *Octet financial institution* to give the *seller* access to the *Octet platform*. If those arrangements end or change we may decide that you should not be able to use the *Octet platform* to negotiate with the *seller* or to lodge an *order confirmation* with the *seller*. Accordingly, new *sale contracts* will not be concluded.

## 42.2 How you obtain access to the Octet platform

To access the *Octet platform* you will need:

- (a) a digital signature (which may be on a smart card, a USB device or any other media) which is used with a personal identification number (PIN); or
- (b) a one-time personal identification number (one-time PIN).

The digital signature or one-time PIN is called a *token*. We will determine the *token* which should be used. You must provide all equipment which is necessary to receive or use the *token*.

## 42.3 Requirements when the token is a digital signature

If the *token* is a digital signature the following will apply.

- (a) To gain access to the *Octet platform* you must use the *token* in accordance with our instructions and enter the PIN given to you or entered by you on the system. You must ensure that the *token* and PIN are not misused. In particular you must ensure that:
- the *token* is always held by a person who is authorised by you to hold it, use it and use the *Octet platform*. Any use of the *Octet platform* will be binding on you;
  - the *token* is not copied or modified;
  - the *token* is removed from your equipment and safely stored when an authorised person is not using the *Octet platform*;
  - the PIN is not disclosed to an unauthorised person and any record (if you decide to make it) of the PIN is kept separate from the *token*; and
  - both the *token* and any record of the PIN are kept secure.
- (b) You must tell us in writing as soon as possible after you become aware of the loss, theft or misuse of the *token* or PIN or after you suspect the PIN has become known to an unauthorised person. You may change the PIN at any time subject to correctly quoting the current PIN and you must change the PIN we give you the first time you use it.
- (c) The *token* remains our property or the property of an *entity* we select. You must return it to us if we ask you to. You must not allow it to be stolen, lost or damaged.
- (d) If the *token* is defective, stolen, lost or damaged, or is not operational for any other reason, you must tell us immediately. At our choice we will arrange for it to be either repaired or replaced. We will do so as soon as practicable but will not be liable for any loss of any type arising from any delay. We will bear the cost of the repair or replacement if the *token* is not operational, unless it has been stolen, lost or damaged, in which case you must reimburse us for that cost. It is your responsibility to maintain all other necessary equipment and to ensure that that equipment is compatible with the *token* and the requirements of the *Octet platform*.

#### **42.4 Requirements when the token is a one-time PIN**

If the *token* is a one-time PIN the following will apply.

- (a) The one-time PIN will be sent to a mobile phone, tablet or other electronic device which you have nominated. It is called the “mobile device”. To gain access to the *Octet platform* you use that one-time PIN.
- (b) You must ensure that the mobile device is kept secure and is only held by a person who is authorised to use the *Octet platform*. If we require that the one-time PIN be used in association with some form of password you must ensure that the password is only known to a person authorised to use the *Octet platform*, is kept secure and a record of it is never kept on or in the mobile device. Any use of the *Octet platform* which is gained by the use of the one-time PIN sent to the mobile device will be binding on you.
- (c) If the mobile device is stolen, lost or held by a person who should not use the *Octet platform* you must tell us that the one-time PIN should no longer be sent to that mobile device.

#### **42.5 Conditions of use**

You will access the *Octet platform* through our internet site. That site includes conditions of use with which you must comply. If there is an inconsistency between those conditions of use and the *facility agreement*, instructions which we give under clause 43.3 or the procedures we set under clause 48.1, the *facility agreement*, instructions or procedures prevail to the extent of the inconsistency.

#### **42.6 Sellers also have access to the Octet platform**

The *Octet financial institution* will give *sellers* access to the *Octet platform* so that they may, amongst other things, negotiate with you, accept or reject your offers and claim payment. The *Octet financial institution* will give the *sellers* that access subject to the *seller rules*. The *Octet financial institution* may at its discretion terminate or restrict the *seller's* access to the *Octet platform* in accordance with those rules.

### **43 Use of the Octet platform**

#### **43.1 The Octet platform must only be used for specified purposes**

You must not use the *Octet platform* or the *token* except for a purpose listed in clause 42.1 or another purpose approved by us.

#### **43.2 Links to other websites**

The *Octet platform* provides a link to the *payment gateway* and may provide links to other websites. Those links are provided as a service to users of the *Octet platform*. We, the *Octet financial institution* and the *platform provider* do not accept responsibility for, or endorse the content of, any linked website; give any representation or warranty as to the reliability, accuracy or completeness of the information contained in those websites; have any responsibility for the privacy practices or policies of those websites; or have any liability to anyone for anything which may happen as a result of the use of, or access to, those websites. In particular none of us will be liable in any way for any loss or damage however arising out of or in connection with those websites.

#### **43.3 We can specify further requirements**

We can provide instructions which specify our further requirements regarding the *token* and the *Octet platform*. You must ensure that those requirements are adhered to. If you fail to comply with our requirements or the *seller* fails to comply with the *Octet financial institution's* requirements for the use of the *Octet platform* (for example by not providing required



information) we or the *Octet financial institution* may require that the requirements be complied with before a transaction proceeds to the next stage.

#### **43.4 We are not responsible for interruptions or viruses**

We, the *Octet financial institution* and the *platform provider* are not responsible for any interruptions to the operation of the *Octet platform*, including interruptions due to the failure of interconnecting operating systems or telecommunications, forces of nature, riots, civil commotions, insurrections, armed conflicts, labour disputes, the undertaking of repairs, maintenance or up-grades and any defect in the system. None of us have any responsibility in relation to computer viruses and you must ensure that you have appropriate protections in place.

#### **43.5 What happens if the Octet platform is not available?**

If the *Octet platform* is not available for any reason our liability to you is governed by clause 49. You may, however, telephone us on 1300 8 OCTET (1300 862 838) (or any additional or replacement phone number we notify to you) and we will endeavour to answer your question or provide information to you, although the unavailability of the *Octet platform* will limit the information available to us.

If the *Octet platform* is not available to all users in Australia during the last two hours of a period specified in clauses 9.1 or 9.3 the period will be extended so that you have at least two hours (during normal business hours in Sydney, Australia) on the following *business day* to decide if payment of the *claimed amount* should be authorised. You may telephone us on 1300 8 OCTET (1300 862 838) (or any additional or replacement phone number we notify to you) if you wish to determine if the *Octet platform* is not available to all users in Australia.

For example, if the *seller* on a Tuesday records on the *Octet platform* that there is a *completed order* because it considers the *payment conditions* satisfied you normally have until 5.00 pm (Sydney, Australia time) on the following Friday to make the choice under clause 9.1. If the *Octet platform* is not available to all users in Australia at any time between 3.00 pm and 5.00 pm on that Friday you have, in that example, until 11.00 am on the following Monday to make your choice. If, in that example, you do not provide the authorisation by 11.00 am on the Monday there will be a *payment dispute*. The extension would not have applied if you could not access the *Octet platform* due to a problem with your system or your internet service provider.

### **44 Unauthorised access and loss of token**

#### **44.1 We are not liable for unauthorised access**

We, the *Octet financial institution* and the *platform provider* will not have any obligation in relation to any liability, expense or loss caused by unauthorised access to the *Octet platform*. This is subject to mandatory laws. Our liability to you is governed by clause 49.

#### **44.2 Authorised persons must use the token**

You must ensure that the only people who hold or use the *token*, know the PIN or hold the mobile device to which one-time PINs are sent are people who are authorised to bind you. In particular they must be people who can use the *Octet platform* for the purposes outlined in clause 42.1. We, the *Octet financial institution* and the *seller* will be entitled to assume, without any qualification of any type, that a person who uses the *Octet platform* ostensibly to do things on your behalf has your total authority to do so. Anything done by that person will be binding on you.

#### **44.3 You bear the risks in connection with the Octet platform**

You bear all risks arising from the misuse or unauthorised use of the PIN, the one-time PIN or the *token*. You acknowledge that all transactions conducted using the *Octet platform* are (without the need for written confirmation) binding on you and they are irrevocable. Instructions provided to us using the *Octet platform* can be treated as written documents signed by you and

you must not dispute or challenge those instructions. Those transmissions will be treated as satisfying any legal requirement for a communication to be in writing. You waive any right to challenge the validity of any transmission on the ground that it was prepared, sent or received only in electronic form.

#### 44.4 Currency of information on the Octet platform

The data or information available on the *Octet platform* (such as the *available credit*) may not be conclusive. For example, the *available credit* could be affected by a repayment or the debiting to your account of an amount (such as interest, fees, costs and charges) to which we are entitled. The data or information provided is therefore not binding unless it is explicitly declared by us to be binding.

## K YOUR REPRESENTATIONS AND OTHER OBLIGATIONS

### 45 Your representations

#### 45.1 The representations you give

You represent and warrant to us each of the following.

- (a) You have disclosed to us everything known to you which might have influenced our decision to enter into or rely on the *facility agreement* or provide an *advance*.
- (b) You have disclosed to us all your existing *financial indebtedness*, all *security interests* (other than *permitted interests*) in property in which you have an interest, and all *guarantees* which you have given in relation to *financial indebtedness*.
- (c) You will not incur any further *financial indebtedness*, create any further *security interests* (other than *permitted interests*), or allow any further *financial indebtedness* or *security interests* (other than *permitted interests*) to continue, without obtaining our consent.
- (d) Each *advance* made by us under the *facility agreement* can be disbursed as required by the *facility agreement*.
- (e) You are and will remain able to pay all your debts as and when they become due and payable, and you do not have, and will not have, any creditors account (except an account we approve) which is more than ninety days overdue.
- (f) You have paid, and will pay on time, any tax (including *GST*) and superannuation contributions payable by you in respect of your business activities, your employees or contractors, and you will lodge all tax returns (including Business Activity Statements) on time. If we ask you to you must provide a copy of those returns and evidence of payment of the tax to us.
- (g) You will not do any of the following without our consent.
  - Lend any money or arrange to lend money to any *entity*, or give a *guarantee* in relation to *financial indebtedness*.
  - Subscribe for, or take an option on, share or loan capital of any type, or agree to do so.
  - Pay any dividend or make any distribution except in the ordinary course of your ordinary business.
  - Repay a shareholder loan; a loan made by a director, a guarantor or (if you are or become a trustee of a unit trust) a unitholder; a loan made by an *entity* which is or becomes *related* to you; or (if you are or become a partnership) a loan made by any of you to the firm.

- (h) You have the power to enter into the *facility agreement* and perform your obligations under it, and will continue to have that power.
- (i) By entering into the *facility agreement* and performing your obligations under it neither you nor any other *entity* will breach any agreement or any law.
- (j) The payment of all money under or as contemplated by the *facility agreement* will not breach any law.
- (k) All necessary authorisations have been obtained for you to enter into the *facility agreement*, perform your obligations under it and conduct your business.
- (l) You benefit by entering into the *facility agreement*.
- (m) No *review event* or *event of default* has happened.
- (n) You have an established place of business in Australia and you are an Australian entity.
- (o) Your name and business characteristics (such as ABN, ACN or ARSN) as disclosed to us are correct and you do not have any other names or business characteristics which could be relevant for the purposes of identifying you. If you are an individual you also represent and warrant that your date of birth as disclosed to us is correct.
- (p) You do not act and will not act as the trustee of any trust (whether under a trust deed, deed of settlement or other instrument, or a trust arising by law or implication), except a trust specified in the *facility offer*, a trust arising under the will of a deceased person or a trust approved by us.
- (q) You are not a superannuation fund or a trustee of a superannuation fund.
- (r) You do not use, handle or transport radioactive material, weapons of war, explosive devices or devices employing nuclear fission or fusion.
- (s) There is no litigation, proceeding or dispute pending or, to your knowledge threatened, against you or any other *entity* the adverse determination of which might affect your ability to comply with your obligations under the *facility agreement*.
- (t) Each of your obligations under the *facility agreement* is and will continue to be valid, binding and enforceable.
- (u) Each *sale contract* will be made in the ordinary course of your ordinary business and will result in an actual, bona fide and arm's-length sale and delivery of goods or performance of services in the ordinary course of your ordinary business.
- (v) All information, documents and notifications which you have provided to us or which you provide to us or record on the *Octet platform* are genuine, accurate and final and all information, documents and notifications which the *seller* provides to us or the *Octet financial institution* or records on the *Octet platform* are, so far as you are aware, genuine, accurate and final.
- (w) The *facility agreement* does not violate or contravene Part 2E or Part 2J of the Corporations Act 2001.
- (x) You enter into the *facility agreement* wholly for business or investment purposes. Those investment purposes do not include the purchase, renovation or improvement of residential property or investment in marketable securities. If you are an individual you represent and warrant that the services acquired under a *facility agreement* are not acquired wholly or predominantly for personal, domestic or household use or consumption.

#### 45.2 You must tell us if a representation is not true

You must immediately tell us if you could not, at any time, truthfully repeat each of those representations and warranties with respect to the facts and circumstances existing at that time. In addition you must not do anything, permit anything to be done or fail to do something which

could cause a representation or warranty to be untrue or which could mean that you could not truthfully repeat a representation or warranty.

## **46 Payments by you**

### **46.1 You must pay the full amount owed**

You must pay money to which we are entitled by providing us with the relevant amount in cleared funds without any set-off, abatement, counterclaim or deduction at all. This means, for example, that if a deduction is made for withholding taxes or other taxes, imposts or charges you must ensure that we receive and retain a net amount equal to the full amount which is due to us; however your liability to gross up for foreign taxes will be determined in accordance with clause 63.

If, for any reason, we are or believe that we may become liable to hand over any amount that you, a *guarantor* or any other *entity* has paid to us, you must pay that amount to us.

### **46.2 When and how you must pay**

You must pay the *account balance* to us in accordance with clause 21 and any other amounts included in the *amount owing* must, unless otherwise stated, be paid to us immediately on demand.

If an amount is due on a day which is not a *business day* you must pay it to us on the next *business day* unless that day falls in the next *month*, in which case you must pay it to us on the preceding *business day*.

You must, unless payment is made by the direct debit authority mentioned in clause 22, pay us at our office specified in the *facility offer* or by transferring the money to an account we nominate immediately it is due.

Unless otherwise stated, payments which are required to be made by you to us under the *facility agreement* must be made in Australian dollars. If you or a *guarantor* give us an amount in one currency in respect of an amount due in another currency and the amount received by us after conversion is less than the amount due, you must indemnify us against our loss. Currency conversion is addressed in clause 62.

### **46.3 Allocation of payments**

We may allocate any payment we receive against any money you owe (including contingently or prospectively) us or an *entity* which is *related* to us. Accordingly, if you owe an amount which bears interest and an amount which does not, we may allocate a payment first against the amount which does not bear interest. We may, however, give you the ability to use the *Octet platform* to suggest how any payments you make in excess of the minimum amount (see clause 21) should be allocated. That does not affect our right to make the allocation.

### **46.4 We can apply set-off**

Against any money that we, the *Octet financial institution* or an *entity* which is *related* to either of us owe you, we are entitled to set-off the *amount owing* and any other money that you or an *entity* which is *related* to you owe us, the *Octet financial institution* or an *entity* which is *related* to either of us. This includes money owed contingently or prospectively. It includes money which is owed on any account or basis. If an amount cannot be immediately ascertained, we are entitled to make a reasonable estimate. On request we will tell you about any set-off effected under this clause. We may also combine any accounts recording transactions between you and us.

If we have a security interest in an account which is the proceeds of inventory sold by you and there is also a perfected purchase money security interest granted by you in that account we cannot set-off any new value mentioned in section 64 of the *PPSA* payable to you for the *security interest* granted by you to us in that account against any debt or liability which was owed

to us before we obtained that security interest. Terms which are defined in the *PPSA* have the same meaning in this paragraph.

#### **46.5 You waive subrogation rights**

You waive all rights of subrogation which you have or may obtain. In particular, you must not claim the benefit of, or share in, any *guarantee* or *security interest* which we may hold or obtain until the *facility agreement* has been terminated, there is no *amount owing*, the *available credit* is nil, we have been fully indemnified against all matters referred to in clause 49.1 and we consider there is no risk of us having to hand over any payments made to us. You must not claim any set-off, abatement or counterclaim against any *entity* which has a liability to us or claim or prove in competition with us in the bankruptcy, liquidation, winding-up or insolvency of that other *entity*.

### **47 Your record keeping obligations**

#### **47.1 You must keep proper records**

You must keep proper and accurate books and records as required by the law and the accounting standards (as defined in section 9 of the Corporations Act 2001).

#### **47.2 You must give to us information we request**

You must, at your expense, give us any information we require and allow us to inspect any records, including books, accounts, ledgers, letters and any other documents. We may copy anything we want to and to take a printout or electronic copy of any records on computer. We can take possession of the relevant records and documents or use computer systems to do so. If any relevant records or documents are not in your possession or under your control, you must do everything that is necessary to enable us to inspect and copy them and, where appropriate, take possession of them. The records and documents must be kept at your business premises specified in the *facility offer*, or at a substitute address with our approval. The records on a computer must be accessible by using computer equipment located at those premises.

#### **47.3 You must give us accounts and reports**

You must give us a copy of your management accounts (including your balance sheet and your trading and profit and loss accounts), any other accounts we require, any related information we ask for, a list of your outstanding debtors and a list of your outstanding creditors. You must give all of them in the manner and form and with the detail we require when specified in the *facility offer* and whenever we ask you to.

You must give us a copy of your annual financial report (including your balance sheet, your trading and profit and loss accounts and your statement of cash flows), any other accounts we require, and any related information we ask for. You must give all of them in the manner and form and with the detail we require no more than four *months* after the end of the period to which they relate. Each financial report must comply with the accounting standards. If we ask you to, you must arrange for the financial report, other accounts and related information to be audited.

You must give us, within seven days after we ask for it, a statement setting out all your outstanding liabilities, including contingent and prospective liabilities, as at the date we specify.

#### **47.4 Information must be certified**

The information to be given under clauses 47.2 and 47.3 must be certified as being accurate and complete by you or, if you are a *corporation*, by a director. If that information is provided electronically you must comply with our requirements so that it is compatible with our system and the certification must be provided in a way we consider satisfactory.

## **47.5 We can confirm compliance**

You must give us any documents and information we may require to confirm your compliance with the *facility agreement*. You must co-operate with us or an *entity* we engage so that we, or that *entity*, may verify the accuracy of the documents and information.

We may enter land and buildings owned or occupied by you, your places of business, your registered office and any place where any records or documents referred to in clauses 47.1 or 47.2 may be located. We may do so to find out if you are complying with the *facility agreement*; to carry out our rights; to review your records and documents and audit or investigate your financial and business affairs; and to use computer systems. If you are not the owner and sole occupier of those places you must obtain, in the form we require, the right for us to enter those places and, if we believe on a reasonable basis that an *event of default* may have happened, remove records and documents.

## **48 Your other obligations**

### **48.1 We can specify procedures**

You must co-operate fully with us to help us obtain the benefits we seek under the *facility agreement*. You must follow any procedures which we set from time to time for the performance of the *facility agreement*.

### **48.2 You must tell us about changes to your business**

You must inform us, and keep us informed, of each of the following.

- (a) Your name; the name or style under which you trade; your registered address, your principal place of business and, if you are an individual, your residential address.
- (b) Any change to your business characteristics (such as ABN, ACN or ARSN) which could be used to identify you.
- (c) Any change in the nature of your business, or in your auditor or external accountants; and, if you are a *corporation*, any change in your directors, company secretary, or public officer; and, if you are a partnership, any change in the identity of the partners.
- (d) Any change in control or ownership, whether direct or indirect, of you. For this purpose, control includes the power to direct or determine management or policies.
- (e) Any change to your telephone number, fax number or e-mail address.
- (f) If you are a business that employs fewer than twenty persons. For this purpose a casual employee is not counted unless he or she is employed by the business on a regular and systematic basis.

Where possible you must inform us about a change before it happens.

### **48.3 All partners are bound**

If you are members of a partnership, firm or joint venture the *facility agreement* continues to bind you even if the members change (including if you cease to be a member) or the partnership, firm or joint venture is dissolved or ceases to carry on business. You must cause any new partner or new member of the firm or joint venture and all partners of any successor partnership to sign a document we require to bind those *entities* to the *facility agreement*. A retiring partner is not released from the *facility agreement* or any other agreement or document unless we agree.

### **48.4 Other obligations concerning your business**

You must:

- (a) comply with each of your obligations to us and each of your obligations to the *seller*;

- (b) take any steps and use your best endeavours to do anything which we may require to avoid or minimise any loss to us or the *Octet financial institution*;
- (c) tell us if any circumstances arise which could, in the reasonable opinion of a person in your position, give grounds for the belief that you may not (or may be unable to) perform or comply with your obligations to the *seller*;
- (d) ensure that no *review event* or *event of default* occurs;
- (e) tell us if any *review event* or *event of default* occurs;
- (f) on request give us any evidence we may require that you have performed, and will perform, all obligations under the *facility agreement* and that the representations or warranties you make in the *facility agreement* are correct and will remain so;
- (g) conduct your business in a proper, orderly and efficient manner;
- (h) not (without our consent) stop payments generally, cease conducting your business or change the general character of any business you conduct (or threaten to do any of those things);
- (i) maintain your corporate existence (if you are not an individual); if you are a *corporation* you must not change the place of your incorporation; and you must not move or relocate to a place outside Australia except, in the case of an individual, temporarily;
- (j) obtain, renew on time and comply with each authorisation necessary for you to enter into and perform your obligations under the *facility agreement* or conduct your business; and
- (k) comply with the requirements of all laws, orders and decrees.

#### **48.5 Extended obligations**

If the *facility agreement* imposes an obligation on you not to do something, you must make sure that no one else does it either.

If the *facility agreement* imposes an obligation on you to do something, you must make sure that everyone does anything that is necessary for you to do that thing.

## **49 You indemnify and release us**

### **49.1 You indemnify us in relation to certain things**

You must continuously, both before the *facility agreement* ends and after it ends, immediately on demand, indemnify us against all actions, claims, demands, payments, liabilities, damages, costs, expenses and losses of any kind that we may sustain, suffer, incur or become liable for (directly or indirectly) arising out of, in respect of, in connection with or in relation to something done, not done or arising in any way out of or in relation to the *facility agreement* (including something done or not done by us at your request) or in relation to any failure by you to perform your obligations under the *facility agreement*. This includes a liability, expense or loss which we sustain, suffer or incur (including due to an action or claim being made against us):

- (a) to the *Octet financial institution*, the *seller* or the *trade relationship office*;
- (b) in connection with a *sale contract*;
- (c) because we hand over a payment received from you or any other *entity* (irrespective of whether we were obliged to hand over the payment);
- (d) in connection with a *payment dispute*;
- (e) in connection with any disputes between any of you, the *seller*, the *trade relationship office* or any other *entity* (for example consignors, carriers, shippers, forwarders, storage providers, insurers and agents);
- (f) by you using the *Octet platform* or the *token*;

- (g) by any other person using the *Octet platform* or the *token*, including without your authority;
- (h) to your counterparty under a *forward contract* or in connection with your *forward contract*, including due to you or your counterparty failing to make a payment as required or contemplated by clauses 29 to 32;
- (i) when you (or any *entity* acting on your behalf) use the *payment gateway* or an *entity* gains access to the *payment gateway* by using your *token*. In particular, if for any reason we refund a payment to the operator of the *payment gateway* or the issuer of a *credit card* or a transaction using the *credit card* is reversed you must immediately reimburse us;
- (j) if a *credit card* is used without the authority of the cardholder or in a way which was not authorised by that cardholder;
- (k) as a result of the breach, inaccuracy or non-observance of your obligations, representations or warranties under the *facility agreement* or by acting on any representations or warranties made or provided by you; and
- (l) in enforcing or attempting to enforce the *facility agreement*.

It does not, however, include a liability, expense or loss which we sustain, suffer or incur due to our gross negligence or because we wilfully breach an obligation.

#### **49.2 We are not liable for certain losses**

We will not be liable for any loss (including indirect, special, consequential, incidental and economic loss, but not including a loss caused by our gross negligence or which occurs because we wilfully breach an obligation) suffered by you as a direct or indirect result of:

- (a) anything which we do or fail to do. We will, however, make *advances* to you if we are required to do so by the *facility agreement*, unless a *directive* stops us;
- (b) anything which any other *entity* does or fails to do;
- (c) your use of the *Octet platform*, the *token* or the *payment gateway*;
- (d) any person using the *Octet platform*, the *token* or the *payment gateway*, including without your authority;
- (e) the *Octet platform* or the *payment gateway* not being provided or any defect in, interruption to the operation of, or delay in the operation of, the *Octet platform* or the *payment gateway*, including anything which results in the loss of any data;
- (f) any defect in, or failure of, any *token*;
- (g) your dealings with the *seller* or any other *entity*;
- (h) any transactions between the *Octet financial institution* and the *seller*, including a breach of any obligations or duty between them;
- (i) the *seller rules*, including the *seller rules* not being binding (in whole or in part) on the *seller* for any reason;
- (j) any ruling of the *trade relationship office* or the failure by the *trade relationship office* to make a ruling;
- (k) any defect in any information or documents provided by us, a failure to process any information or a delay in the processing of any information;
- (l) any defect in the information or documents available on the *Octet platform*; or
- (m) any waiver of, exercise of, attempted exercise of, failure to exercise or delay in exercising any of our rights, powers, authorities, discretions or remedies.



### **49.3 Implied conditions are excluded**

All conditions, warranties, representations or other terms implied by law (if any) and guarantees imposed by law (if any) in relation to the services (including the *Octet platform* and the *token*) provided, or required to be provided, by us or the information or documents provided by us are excluded to the maximum extent allowed by law. Our liability for a breach of a condition, warranty, representation or other term implied by law (if any) and guarantees imposed by law (if any) that cannot be excluded by law is limited, at our choice, to the supplying of the service, information or documents again or the payment of the cost of having the service, information or documents supplied again.

### **49.4 You release us from claims**

You release us from all claims and actions of any kind (including any right to claim payment on account of damages, liabilities, costs, expenses, charges and losses) which you may now have or, but for this clause 49.4, may at any time in the future have against us which arise out of or in connection with the *facility agreement* or the services, information or documents which we provide or are required to provide or the information or documents available on the *Octet platform*. However, if we fail to make an *advance* to you which we should have made under the *facility agreement* we will make the *advance* and disburse it in accordance with the *facility agreement* but will have no other liability. This release does not apply to a claim for a service, information or document to be supplied again or the payment of the cost of having the service, information or document supplied again when we have breached an implied condition, warranty, representation, term or guarantee that cannot be excluded.

### **49.5 Application of this clause**

The provisions in clauses 49.1 to 49.4 apply regardless of the form or type of action, damage, claim, liability, cost, expense or loss and whether the claim or action would have arisen in contract, at law (including a claim in negligence) or otherwise.

In clauses 49.1 to 49.4 “we” and “us” includes us, the *Octet financial institution*, the *platform provider* and any *entity* which is *related* to us, the *Octet financial institution* or the *platform provider*. It also includes our, the *Octet financial institution’s* and the *platform provider’s* representatives, agents, sub-contractors, licensors and sub-licensors (including an *entity* appointed under clause 57.3), and the *trade relationship office*. Those words also include our, the *Octet financial institution’s* and the *platform provider’s* officers, members, employees and other personnel and the officers, members, employees and other personnel of those *related entities*, representatives, agents, sub-contractors, licensors and sub-licensors, and of the *trade relationship office*. To the extent that clauses 49.1 to 49.4 thereby apply to *entities* other than us we hold the benefit of the clauses on trust for them.

## **50 Privacy and disclosure of information**

### **50.1 Our privacy policy**

Our privacy policy can be viewed on, or downloaded from, [www.OctetFinance.com](http://www.OctetFinance.com). Alternatively, you can ask us for a copy. It is incorporated into the *facility agreement*. It is the policy about the management of credit information and credit eligibility information which we are required to have by Part IIIA of the Privacy Act 1988 and the policy about the management of personal information which we are required to have by Australian Privacy Principle 1.

The collection, use and disclosure of personal information by us is subject to the Privacy Act 1988 and the privacy policy. You consent to the collection, use and disclosure of personal information as outlined in the privacy policy. This clause continues until all of your liabilities to us have been satisfied and there is no *amount owing*.

## 50.2 Your privacy obligations

You must collect, use and disclose information as required by law; ensure that each individual who becomes a *guarantor* or is or becomes a director or shareholder of you or a *guarantor* is aware of our privacy policy and agrees to the collection, use and disclosure of personal information as outlined in that privacy policy; and obtain any necessary approval so that you can provide information to us as required by the *facility agreement*.

## 50.3 We can disclose certain information

We may disclose any document (including the *facility agreement*) and any information which we have or obtain about you, or which you provide or have provided to us if:

- (a) you consent to the disclosure. You may not unreasonably withhold or delay your consent;
- (b) the disclosure is required by any stock exchange or is allowed or required by any law;
- (c) we consider the disclosure reasonably necessary in connection with our exercising rights or assigning or otherwise dealing with rights or obligations. This includes a disclosure to an assignee, transferee or sub-participant. It also includes a disclosure in connection with the enforcement of any *security interest* or any *guarantee* and in connection with any preparatory steps like negotiating with a potential assignee or potential participant of our rights, or with any other *entity* who is considering contracting with us;
- (d) the disclosure is to the *Octet financial institution*; to our or the *Octet financial institution's* officers, employees or agents; to our or the *Octet financial institution's* auditors, lawyers, advisers, banks or accountants; or to an *entity* which is *related* to us or the *Octet financial institution*;
- (e) the disclosure is to the operator of the *payment gateway*, participants in the payment system to which that operator is a party and the *credit card* issuers;
- (f) the disclosure is to an *entity* which provides or may provide facilities, insurance or credit enhancement to us, the *Octet financial institution* or you; the disclosure is to an *entity* with which we share or may share the obligations and risks under the *facility agreement*; or the disclosure is to an *entity* which provides services (such as audit or debt collection services) to us;
- (g) the disclosure is to an *entity* which introduced you to us;
- (h) the disclosure is to an *entity* to which you or a *guarantor* has given a *security interest*;
- (i) the information is generally and publicly available;
- (j) the disclosure is to any *guarantor* or to any *entity* which may become a *guarantor*; or
- (k) we consider the disclosure appropriate in connection with the operation or administration of the *facility agreement*. This includes a disclosure to the *trade relationship office* or the *seller*.

The disclosure can be made to an *entity* which is located overseas and we will not be responsible for the way that *entity* handles the information it receives. If you ask us, we will tell you where an *entity* is located to which we transfer information.

We may disclose to the *Octet financial institution* any document and any information which we have or obtain about you or which you provide or have provided to us, even though the disclosure may be made overseas. Similarly, the *Octet financial institution* may disclose to us any document and any information which it has or obtains about you or which you provide or have provided to it.

Clauses 50.1 and 50.3 do not limit any other privacy acknowledgement and consent which you have provided or may provide.

## 50.4 We can obtain certain information

You irrevocably authorise us to obtain:

- (a) from your bank, any information which we may require concerning your account with the bank if we consider, on a reasonable basis, the information relevant to confirm that you have performed, and will continue to perform, your obligations under the *facility agreement*. We will contact you before we ask the bank for any information as it may be appropriate for you to ask the bank for the information;
- (b) from an *entity* which provides insurance or credit enhancement to you, any information which we may require concerning the insurance or credit enhancement;
- (c) from your accountants and auditors, any information we may require concerning your financial and business affairs;
- (d) from the Australian Taxation Office, information about your lodgements and tax payments;
- (e) from the *trade relationship office*, the *seller* or the *Octet financial institution*, any information which we consider would be appropriate in connection with the operation or administration of the *facility agreement*; and
- (f) from the Personal Property Securities Register established under the *PPSA*, disclosure of any registration in which you are registered as a grantor or a secured party.

You authorise the *entities* referred to above to give the relevant information to us. You must do whatever we may reasonably require so that we obtain any information which we are authorised to obtain. In particular, you must give us “view only” access to the ATO platform so that we can check that you do not have overdue taxes.

You appoint us and each of our *authorised officers* as your agent and authorised representative for the purpose of requesting information pursuant to section 275 of the *PPSA* from an *entity* which is a secured party holding a *security interest* in property in which you have an interest.

## L VARYING AND ENDING AGREEMENT

### 51 We may vary the facility agreement

#### 51.1 We can vary terms

We may vary the *facility agreement* by giving you at least fourteen days’ notice of the variation. The variation will take effect at the end of the notice period. However, if we consider the variation necessary to comply with legal, fiscal or regulatory requirements; to rectify errors, omissions or ambiguities; to take account of any corporate reorganisation within the group of companies of which we are a part; or to reflect alterations to our systems capabilities, routines and terminology or those of the *Octet financial institution* or the *platform provider*, the notice can be given at any time and can take effect at any later time we specify, unless the variation affects clause 22. We will always give you fourteen days’ notice before we vary clause 22.

In addition we have the right to vary specific provisions as set out in the *facility agreement* – see, for example, clause 18.3 (changes to the *facility limit*), clause 24.2 (changes to the *interest rate*) and clause 39.3 (changes to fees).

#### 51.2 Your rights if we do vary terms

You will be entitled to end the *facility agreement* if we change it in a way you do not like. If we have to give you prior notice of a proposed change in accordance with the first sentence in clause 51.1 you will be entitled to give us notice, within seven *business days* after the date of our notice to you, that you are ending the *facility agreement* and, if you do, the agreement will end sixty days (or a shorter period you nominate) after you gave notice. If we do not have to give

you prior notice (see the third sentence in clause 51.1) you will be entitled to give us notice, within seven *business days* after we have told you about the change, that you are ending the *facility agreement* and, if you do, the agreement will end sixty days (or a shorter period you nominate) after you gave notice.

## **52 Ending the facility agreement**

### **52.1 We or you can end the agreement**

We can end the *facility agreement* by giving you sixty days' notice. You can end the *facility agreement* by giving us sixty days' notice.

### **52.2 We can also end the agreement if you default**

We may also end the *facility agreement* either:

- immediately, without the necessity for any prior notice from us; or
- at the end of any period we, in our discretion, specify in a notice to you,

if an *event of default* has occurred (whether it is within your control or not). Even if we have given you a period of notice to end the *facility agreement*, we are entitled during that period, at our discretion, to end the *facility agreement* immediately, by notice to you, if we consider it prudent to do so.

### **52.3 The events of default**

Each of the following is an *event of default*.

- (a) You fail to repay an *advance* on time as required by the *facility agreement* or any other agreement with us.
- (b) You fail to comply with any other obligation (including the obligation to pay any other money) under the *facility agreement* or any other agreement with us and we believe:
  - that the failure cannot be remedied; or
  - that the failure can be remedied, but you do not do so within seven days after the failure happens.
- (c) A representation or warranty by you under the *facility agreement* or any other agreement with us is not true or is misleading in any material respect.
- (d) Any part of the *facility agreement* is, becomes or is claimed to be, void, invalid or unenforceable or ceases to be fully binding.
- (e) Your business or a *guarantor's* business has ended or been suspended or it seems likely that it will end or be suspended.
- (f) Any debt which is part of your *financial indebtedness* or that of a *guarantor* is not paid when due (or within an applicable grace period) or becomes due and payable or capable of being declared due and payable before its stated maturity or expiry.
- (g) You fail to pay any taxes when they should have been paid or enter into a payment arrangement with the ATO.
- (h) A negotiable instrument, other instrument or authorisation of a direct debit in respect of any of your indebtedness to us is at any time dishonoured by the *entity* on which it is drawn or to which it is directed, whether or not it is subsequently represented and met.
- (i) Any payment you make or purport to make to us is not made or is reversed and you do not immediately reimburse us. For example if we do not receive a payment from the *credit card* issuer or the operator of the *payment gateway* or we have to make a payment to the *credit card* issuer or the operator of the *payment gateway* and you do not immediately reimburse us.

- (j) Any *security interest* given by you or a *guarantor* becomes enforceable or is enforced.
- (k) You or a *guarantor* without our consent:
- cease to be under the same ownership or control, or cease to have the same shareholding, as at the date of the *facility offer*;
  - reduce or attempt to reduce authorised or issued capital;
  - vary in any way the rights or obligations attached to shares in you or the *guarantor*; or
  - do any of the things contemplated by Part 2B.7 (change of company type), Part 2J.2 (self-acquisition and control of shares) or Part 2J.3 (financial assistance in respect of shares) of the Corporations Act 2001.
- (l) A partnership, firm or joint venture of which either you or a *guarantor* is a member has a change in membership or the partnership, firm or joint venture is dissolved.
- (m) You or a *guarantor* die or become legally incapacitated.
- (n) There is a breach of any covenant or undertaking given by any *entity* in reliance upon which we entered into or continued the *facility agreement*, or a withdrawal or attempted withdrawal of any waiver or release given to us.
- (o) Your constitution or other constituent documents, or those of a *guarantor*, are amended or any replaceable rules applicable to you or a *guarantor* are displaced or modified without our consent (which will not be withheld unreasonably).
- (p) Any authorisation which is material to the performance by you or a *guarantor* of obligations in our favour or to the validity or enforceability of the *facility agreement* or a *guarantee* or *security interest* in our favour, is revoked, expires or ceases to confer the necessary authority.
- (q) Any change occurs, any circumstances arise or any event or series of events (whether related or not) occurs which in our opinion may have a material adverse effect on:
- the effectiveness, validity or enforceability of the *facility agreement*, or our rights and remedies under the *facility agreement*; or
  - your ability or a *guarantor's* ability to perform obligations to us or on your or the *guarantor's* financial condition or business.
- (r) You or a *guarantor*, without our approval, are the trustee of any trust except, in your case, a trust specified in the *facility offer*, or in the case of the *guarantor*, a trust disclosed to us in writing before the date of the *facility offer*, or in either case a trust arising under the will of a deceased person; or any new or additional trustee is appointed in relation to any such trust or you or a *guarantor* breach any of your obligations, representations or warranties to us in relation to any trust.
- (s) All or a substantial part of your assets or those of a *guarantor* are compulsorily acquired under law or an order is made for the sale or compulsory acquisition of all or a substantial part of your assets or those of a *guarantor*.
- (t) Any property subject to a *security interest* which arises under a *transaction document* is damaged, disposed of or otherwise dealt with in a way that is contrary to a *transaction document* or we consider that there is a risk that any of that property could be damaged, disposed of or otherwise dealt with in a way that is contrary to a *transaction document*.
- (u) A person is appointed to investigate all or any part of your or a *guarantor's* affairs.
- (v) An *insolvency event* occurs in relation to you or a *guarantor*.

- (w) You or a *guarantor* give any *security interest* (other than a *permitted interest*) or a *guarantee* in relation to *financial indebtedness* or dispose of the whole or a substantial part of your or the *guarantor's* assets without our approval.
- (x) You or a *guarantor* give us any accounts or information, whether before or after the date of the *facility offer*, which are incorrect in any material particular.
- (y) Any event or circumstance referred to in any other agreement between you and us as being an event of default happens or any event or circumstances however described occurs which gives us the right to terminate any of those other agreements. Other *entities* can be a party to those agreements and those agreements include a document under which you or a *guarantor* give a *security interest* to us.

#### **52.4 Our rights if we believe a default may have occurred**

If we believe on a reasonable basis that a *review event* or an *event of default* may have occurred we may appoint a person to investigate whether this belief is accurate. You must co-operate with, and comply with every reasonable request made by, that person and pay to us all costs, charges and expenses in connection with the investigation. Any report we obtain from the investigator is for our use only and you cannot rely on it, even if we give a copy of it to you.

We may also reduce the *facility limit*, see clause 18.3.

### **53 Effect of the facility agreement ending**

#### **53.1 Requirements when the facility agreement ends**

When the *facility agreement* ends:

- (a) you will not be able to use the *Octet platform* to lodge an *order confirmation* with the *seller* and the *seller* will not be able to lodge an *accepted order confirmation*. Accordingly, new *sale contracts* will not be concluded;
- (b) existing *sale contracts* can be completed in accordance with clause 53.2;
- (c) we will give you a statement of the *amount owing* which may, if we choose, take into account any set-off or withholding rights we have so that only a net cash amount is payable;
- (d) you must immediately pay to us the amount specified in that statement; and
- (e) we can still rely on, and you must continue to comply with, the provisions of the *facility agreement* until there is no *amount owing*, the *available credit* is nil and there is no risk of us having to hand over any payments you, a *guarantor* or any other *entity* has made to us.

If we give you a statement under clause 53.1(c) and, at any time, there is an *amount owing* which was not included in the statement you must pay that additional amount to us immediately on demand.

#### **53.2 Effect of termination on all sale contracts**

If the *facility agreement* ends for any reason the following will apply in relation to outstanding *sale contracts*.

- (a) If the *buyer direct payment* method applies you will pay any amount due to the *seller* in accordance with clauses 12.2(c) and (d). Neither we nor the *Octet financial institution* will have an obligation to make a payment.
- (b) If the *Octet direct payment* method applies and there is no *payment dispute* or the *payment dispute* is resolved by the *trade relationship office* making a ruling in favour of the *seller* payment will not be made to the *seller* in accordance with clause 12.2(a). Instead you must pay any amount due to the *seller* by paying the *seller* direct. Neither we nor the

*Octet financial institution* will have an obligation to make a payment. However, we may, at our discretion, decide to make an *advance* to you.

If we decide to make the *advance* the following applies.

- We *advance* the *claimed amount* authorised by you or the lesser of the *order amount* and the *claimed amount* which is payable as a result of the *trade relationship office's* ruling. If the currency in which the *order amount* is denominated is a currency other than Australian dollars the amount *advanced* is an amount denominated in Australian dollars equivalent of that *order amount* or *claimed amount* using the *Octet conversion rate*.
  - The *advance* is disbursed to the *Octet financial institution*. If the currency in which the *order amount* is denominated is Australian dollars we will remit the *advance* by paying it in Australian dollars to the *Octet financial institution*. If the currency in which the *order amount* is denominated is a currency other than Australian dollars we will remit the *advance* by paying to the *Octet financial institution* the *claimed amount* authorised by you or the lesser of the *order amount* and the *claimed amount* which is payable as a result of the *trade relationship office's* ruling. The disbursement is an incidental component of the facility we provide by making the *advance* and is made using the banking system.
  - The *Octet financial institution* will pay the *seller* or the *seller's* representative if it has received funds from us. The amount paid by the *Octet financial institution* to the *seller* can be reduced on account of commissions, fees, costs, charges and expenses (including bank charges and electronic funds transfer charges) incurred or levied by the *Octet financial institution*. Payment can be made without further reference to you and without further enquiries being made. Any commitment given by the *Octet financial institution* is subject to the *seller rules*.
  - You must immediately on demand repay that *advance* and the *advance* bears interest at the *interest rate* from the date it was *advanced* until it is repaid. There are no interest free days.
- (c) If the *Octet direct payment* method applies and there is a *payment dispute* which is not resolved by the *trade relationship office* making a ruling in favour of the *seller* you will pay any amount due to the *seller* in accordance with clause 12.2(b). Neither we nor the *Octet financial institution* will have an obligation to make a payment.

## **M MISCELLANEOUS**

### **54 Conditions precedent**

#### **54.1 Requirements to be satisfied by you**

Before you submit an *order confirmation* to the *seller* or borrow any money from us you must satisfy any conditions precedent specified in the *facility offer* and give to us any other document or information we reasonably require. For example, each *guarantor* named in the *facility offer* will need to sign a guarantee and indemnity and, if you are a trustee, we may require that you, your directors (if you are a *corporation*) and certain beneficiaries sign a deed which contains representations, warranties and undertakings regarding the trust. A similar deed may be required if a *guarantor* is a trustee.

Those conditions, together with the conditions in clauses 26.2 and 31.2, are for our benefit. We can waive them at our discretion. If we are satisfied in relation to something, that does not provide any confirmation which you can rely on.

## 54.2 Documents must be satisfactory to us

Any documents, certificates, insurance policies and similar things must be in a form and substance satisfactory to us, our lawyers and our consultants. Each item which is not an original must be certified in a way acceptable to us to be a true and up-to-date copy, if we have agreed to accept a copy.

## 55 Miscellaneous payment provisions

### 55.1 Payments we make

If you have been introduced to us by a third party, we may pay an introduction fee, brokerage or commission to the third party. If you ask us to we will, as soon as reasonably practicable, provide you with details of any introduction fee, brokerage or commission that we have paid, or agreed to pay, to the third party. You acknowledge that the third party acted as your agent.

When we make a payment to the *Octet financial institution* we will do so using the banking system. In essence we direct our bank to transfer money to the *Octet financial institution* or to the *Octet financial institution's* bank or other financial institution or give effect to the transfer by an equivalent transaction. You have no right to require that we or the *Octet financial institution* make a payment to the *seller*. Our only commitment to you is to make *advances* subject to the terms of the *facility agreement*.

### 55.2 We can withhold certain payments

Despite any other provision in the *facility agreement* we do not have to provide an *advance*, we may withhold any payment which is due to you and may cancel or suspend a service if:

- (a) you have not complied and continue not to comply with any of your obligations under the *facility agreement*, even if the obligation is of a non-monetary nature;
- (b) there is a subsisting *review event* or an *event of default* has occurred;
- (c) we have given you notice under clause 52.2 that the *facility agreement* is to end; or
- (d) you or an *entity* which is *related* to you owe any money to us or an *entity* which is *related* to us, which money has fallen due for payment but has not been paid.

If this means that we do not make an *advance* to you, you must still honour your obligations to the *seller* and must satisfy your obligations to reimburse us or pay money to us.

We will not have to pay an amount if we are prevented by a *directive* from paying it.

A *directive* may require that we make a deduction from any amount otherwise payable to the *Octet financial institution* (for example due to a withholding tax or other taxes, levies, imposts, stamp duty, transaction duty and charges being imposed). We will only be obligated to pay to the *Octet financial institution* the net amount which is available after the deduction is made. If the *seller* is entitled, whether under the *sale contract* or under any applicable law, to a greater amount you must pay that additional amount to the *seller*.

### 55.3 Payments by Octet financial institution

The *Octet financial institution* will not have to pay an amount if it is prevented by a *directive* from paying it. Similarly, the *Octet financial institution* will not have to pay an amount if we are prevented by a *directive* from paying a corresponding amount to the *Octet financial institution* or if we are prevented by a *directive* from converting an Australian dollar amount into the currency in which a corresponding payment by the *Octet financial institution* is denominated.

If the *Octet financial institution* is required by a *directive* to make a deduction from any amount otherwise payable to the *seller* (for example due to a withholding tax or other taxes, levies, imposts, stamp duty, transaction duty and charges being imposed) the *Octet financial institution* will only pay to the *seller* the net amount which is available after the deduction is made. If the



*seller* is entitled, whether under the *sale contract* or under any applicable law, to a greater amount you must pay that additional amount to the *seller*.

#### **55.4 Payments to the seller**

The *seller* should nominate a bank account to which money should be transferred. The *Octet financial institution* may, without any further enquiry, pay money to the account which the *seller* has nominated to the *Octet financial institution*. You must not claim that money which has been transferred by the *Octet financial institution* for the credit of that account has not been properly paid to the *seller*. If the *seller* has not nominated a bank account in a way which is satisfactory to the *Octet financial institution*, the *Octet financial institution* may withhold a payment until the bank account has been nominated.

### **56 Anti-money laundering and counter-terrorism financing law**

#### **56.1 AML representations**

You represent and warrant to us and the *Octet financial institution* each of the following.

- (a) No *advance* under the *facility agreement* or the performance of any transaction contemplated by it will be related or applied to any money laundering, terrorism financing or similar activity illegal under any *AML/CTF law*, *anti-corruption law* or *sanctions law*.
- (b) None of you, your *affiliates* or an *entity* acting on behalf of you or any of your *affiliates* is aware of, or has knowingly taken, any action, directly or indirectly, that would result in a violation by any *entity* of any *AML/CTF laws*, *anti-corruption laws* or *sanctions laws*, including making an offer, payment, promise to pay or authorising the payment of any money or anything of value to any government official in relation to a *sale contract* or the *facility agreement* or any activity taken in relation to a *sale contract* or the *facility agreement*.
- (c) You, your *affiliates* and each *entity* acting on your behalf or on behalf of an *affiliate* in relation to a *sale contract* or the *facility agreement* or any activity taken in relation to a *sale contract* or the *facility agreement* complies with applicable *AML/CTF laws*, *anti-corruption laws* and *sanctions law*.
- (d) None of you, your *affiliates* or an *entity* acting on behalf of you or any of your *affiliates* is a *designated person* or engages in any transaction with or involving a *sanctioned country* which would result in a violation of any *sanctions law*.
- (e) A transfer to a bank account nominated in accordance with clause 55.4 will not result in a violation of any *AML/CTF law*, *anti-corruption law* or *sanctions law*. In particular, the bank which provides the account has carried out all “know your customer” or similar checks necessary to comply with those laws.

#### **56.2 AML obligations**

You must tell us:

- (a) if you become aware of any investigation or proceeding against you, an *affiliate* or an *entity* acting on behalf of you or any of your *affiliates* in respect of any breach or alleged breach of *AML/CTF laws*, *anti-corruption laws* or *sanctions laws* in relation to an *advance*, a *sale contract* or the *facility agreement* or any activity taken in relation to an *advance*, a *sale contract* or the *facility agreement*; and
- (b) if anything happens which means that you could not truthfully repeat a representation and warranty in clause 56.1.

You must provide us with all information and assistance we may request in order for us to comply with any *AML/CTF law*, *anti-corruption law* or *sanctions law* or to comply with any other law in any country. In particular you must give to us all documents and other evidence we

request so that we may carry out all “know your customer” or other similar checks we consider necessary under any *AML/CTF law*.

If you or we are required to verify a *seller’s* identity for the purposes of an *AML/CTF law* you must carry out that identification process and carry out all “know your customer” or other similar checks which are required by any of those laws.

You acknowledge that we may disclose any information to any law enforcement, regulatory agency or court where required by any *AML/CTF law*, *anti-corruption law* or *sanctions law*.

### 56.3 Transactions can be delayed

We or the *Octet financial institution* may decide to delay or refuse any payment, request or transaction if we or the *Octet financial institution* are concerned that the payment, request or transaction may breach any obligation, or cause us or the *Octet financial institution* to commit or participate in an offence, under any *AML/CTF law*, *anti-corruption law* or *sanctions law* or involve or be directly or indirectly connected with a *designated person* or a *sanctioned country*. Neither we nor the *Octet financial institution* will incur any liability to you or the *seller* if we or they do so.

### 56.4 AML definitions

In this clause 56:

- (a) *affiliate*, in relation to an *entity*, means a *subsidiary* of that *entity* or a holding company of that *entity* or any other *subsidiary* of that holding company or any *entity controlled*, directly or indirectly, by the *entity*, any *entity* that *controls*, directly or indirectly, the *entity* or any *entity* directly or indirectly under common *control* with the *entity*;
- (b) *AML/CTF law* means each law, regulation, convention and agreement related to money laundering, terrorism financing or similar activity illegal under applicable laws or regulations or otherwise prohibited under any international convention or agreement. The Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Commonwealth), the Anti-Money Laundering and Counter-Terrorism Financing (Financial Institutions) Ordinance (Chapter 615 of the laws of Hong Kong), the Drug Trafficking (Recovery of Proceeds Ordinance) (Chapter 405 of the laws of Hong Kong), the Organised Serious Crimes Ordinance (Chapter 455 of the laws of Hong Kong), the Bank Secrecy Act 1970 (United States) and Patriot Act 2001 (United States) are examples;
- (c) *anti-corruption law* means each law and regulation that prohibits corruption or bribery. The Criminal Code Act 1995 (Commonwealth) and the Foreign Corrupt Practices Act 1977 (United States) are examples;
- (d) *control* means the power to direct the management and policies of an *entity*, whether through the ownership of voting capital, by contract or otherwise. *Controlled* has a corresponding meaning;
- (e) *designated person* means an *entity* that is, or that is owned or *controlled* by, an *entity* that is:
  - located in, incorporated or organised under the laws of, a resident of, or a government instrumentality of, a *sanctioned country*; or
  - identified in any order or notice of any country, the European Union or the United Nations that prohibits or restricts dealings with *sanctioned countries* or specified *entities*;
- (f) *sanctioned country* means any country which is subject to economic sanctions or trade restrictions which prohibit or restrict dealings with that country. Those sanctions or restrictions are imposed by a country the *buyer* is located in, incorporated or organised under the laws of, a resident of or a government instrumentality of; and

- (g) *sanctions law* means any law concerning trade embargoes, economic or financial sanctions, export restrictions or import restrictions imposed, administered or enforced by any relevant jurisdiction. The Autonomous Sanctions Act 2011 (Commonwealth) and the Charter of the United Nations Act 1945 (Commonwealth) are examples.

## **57 Assignment and agency**

### **57.1 You must not assign**

Your rights under the *facility agreement* are personal to you and may not be assigned without our consent. You may not create a *security interest* over those rights without our consent.

### **57.2 We can assign**

We are entitled, without further approval, to novate, assign or otherwise deal with the *facility agreement* or any of our rights or obligations under it in any way we consider appropriate but a novation, assignment or dealing may not materially prejudice your rights under the *facility agreement*. In the case of a novation the new party assumes our obligations. At our request you must sign and deliver to us or any other *entity* we specify any document we reasonably require for this purpose.

### **57.3 We can use agents**

If the *facility agreement* imposes an obligation on us, or allows us, to do something we may arrange for another *entity* (including the *Octet financial institution*) to do it. Similarly, we are entitled to appoint someone else to act on our behalf or to represent us in relation to anything contemplated by the *facility agreement*. We will determine the terms of the arrangement or appointment. In particular we will determine the extent to which that other *entity* or the appointee may, as our agent, bind us.

We do not represent the *Octet financial institution*, are not the agent of the *Octet financial institution* and cannot enter into any contracts on behalf of the *Octet financial institution* unless it has authorised us to do so. The *Octet financial institution* does not represent us, is not our agent and cannot enter into any contracts on our behalf unless we have authorised it to do so.

## **58 Waivers, consents and approvals**

### **58.1 Waivers by us**

If we waive a breach by you of a term of the *facility agreement* or release you from an obligation under it, that does not amount to a waiver of any other breach or a release from any other obligation. Nor does it imply that we consent to any other breach. To be effective, a waiver or release by us must be in writing, and must be signed by us or one of our *authorised officers*.

No delay or failure by us in exercising any right, privilege or option will operate as a waiver of that or any other right, privilege or option.

### **58.2 Obligations not affected by other documents**

None of your obligations under the *facility agreement* or any other document will be affected by you having, not having or ceasing to have, obligations under any negotiable instrument or rights against the *seller*, us, the *Octet financial institution* or the *trade relationship office*.

### **58.3 Consents we provide and our decisions**

Where the *facility agreement* requires that we consent to something, or approve of something, our prior written consent or approval is required. The consent or approval must be signed by us or by one of our *authorised officers*. We will act reasonably when we decide to give or withhold our consent or approval. We may give our consent or approval on any conditions we like.

We do not have to give you any reasons for decisions which we may make under the *facility agreement*.

## **59 Power of attorney**

### **59.1 You give power of attorney**

For valuable consideration and by way of security you irrevocably and unconditionally appoint us, each of our *authorised officers*, and any lawyer acting on our behalf, jointly and severally, as your attorneys to:

- (a) sign any documents and do anything necessary or which the attorney considers desirable to give effect to the *facility agreement* or the transactions contemplated by it;
- (b) more effectively secure to us the due performance of your obligations under the *facility agreement*;
- (c) perfect a security or *security interest*;
- (d) make an arrangement or compromise;
- (e) do anything in any way relating to you in the *facility agreement* or any transaction contemplated by it;
- (f) take, conduct or defend legal proceedings (in your name or otherwise);
- (g) make a claim under and enforce insurance policies;
- (h) deal with money and cheques, money orders, negotiable instruments and other instruments;
- (i) complete, negotiate, endorse and deal with any notes, acceptances, cheques, drafts, money orders, negotiable instruments, other instruments and other evidence of payment of any debt and to deposit or collect them;
- (j) endorse any bills of lading, other shipping documents or any insurance documents;
- (k) delegate the attorney's powers (including this power) and revoke a delegation;
- (l) discharge a debt owed to you or which you owe to someone else;
- (m) register this power of attorney in any public office; and
- (n) do anything else contemplated by the *facility agreement*.

### **59.2 Exercise of attorney's discretion**

The attorney will determine, at the attorney's discretion, if and how a power should be exercised. If an attorney discharges a debt or other obligation you owe, we are entitled to immediate payment of the relevant amount from you.

An attorney may act despite any conflict of duty or interest and may do any of the things mentioned in clause 59.1 as the attorney sees fit. Anything done by an attorney under the powers given to the attorney will be binding on you as if those things had been done by you. An attorney is not liable to you for anything done by the attorney.

## **60 Notices, service and communication**

### **60.1 Notices from us to you**

A notice or demand from us to you must be in writing and be signed by us, one of our *authorised officers*, any lawyer acting on our behalf or someone else authorised to act on our behalf. It may be served by giving it to you; by sending it to you by e-mail or fax; by posting it in a pre-paid

envelope to you at your business premises specified in the *facility offer*, your registered office, or your business address last known to us; or by delivering it to any of those places.

A notice, demand or other notification sent by e-mail to your or an officer's or employee's e-mail address last known to us is to be treated as having been received by you twenty-four hours after we send it unless we have, in the meantime, received a message indicating that it has not been received. A notice or demand sent by fax to your last known number is to be treated as having been received by you when we receive an error free transmission report. A notice or demand sent by post is to be treated as having been received by you the next *business day* after it is posted. A notice or demand which is given or delivered is to be treated as having been received by you when it is given or delivered. However, if you are treated as having received a notice or demand on a day which is not a *business day* or after 5:00pm on a *business day* you will be treated as having received it at 9:00am on the next *business day*.

When the *facility agreement* requires that we tell you something, or advise or notify you about something, we may do so by e-mail, fax or post. We may also do so by posting the information on the *Octet platform*. If we use the *Octet platform* to tell you something we will be considered to have told you about that thing when the information is made available on the *Octet platform* even if you have not accessed the *Octet platform*.

## **60.2 Service of legal process**

Anything in connection with legal process (such as court documents) can be served in any of the ways described in clause 60.1 if the law permits this. Nothing in this clause 60.2 affects our right to serve process in any other way permitted by law.

## **60.3 Service is always effective and can be on one of you**

Service is effective even if you or one of your partners is dead, incompetent, absent from the jurisdiction, the subject of an *insolvency event* or wound up. It is effective despite anything else, as well. Service on one of you is service on all of you.

## **60.4 Notices from you to us**

A notice (including a request that we approve something) from you to us must be in writing and signed by you, by an officer of yours or someone claiming to be an officer of yours. You must deliver the notice to us at our office specified in the *facility offer* or any substitute address which we specify.

Where it is stated that we must be told something, or that something must be disclosed or notified to us, it must be told, disclosed or notified in writing.

## **60.5 English to be used**

Communication between us and you will be in the English language.

## **61 Governing law and courts**

### **61.1 Governing law**

The *facility agreement* is governed by the law of New South Wales. To the extent permitted by law, the *facility agreement* prevails to the extent it is inconsistent with any law.

### **61.2 Courts**

You submit to the non-exclusive jurisdiction of the courts having jurisdiction in New South Wales. You will not object to the venue or claim that it is an inconvenient forum.

## 62 Currency conversions

### 62.1 How currencies are converted

If it becomes necessary to convert an amount in any currency into an amount in another currency, the conversion will be made as follows.

- (a) If the *facility agreement* states that the conversion will be made at the *Octet conversion rate*, the conversion will be made at that rate.
- (b) If the *facility agreement* states that the conversion will be made at the *daily exchange rate*, the conversion will be made at that rate.
- (c) If the *facility agreement* does not specify how the conversion will be made, the conversion will, at our choice, be made at either the *Octet conversion rate* or the *daily exchange rate*.

The conversion may be done through a third currency.

If an amount has been converted by a third party before being submitted to us the rate of exchange will be determined by that third party.

### 62.2 What is the Octet conversion rate?

The *Octet conversion rate* is the rate of exchange at which we are able to buy the required currency from our bank or other counterparty at its selling rate of exchange for payment in another currency adjusted by a single conversion commission of up to 0.50 per cent.

The *Octet conversion rate* can vary significantly during any period; even during the course of a day. When the *Octet conversion rate* is to be applied to make the conversion the time at which it is applied is determined as follows.

- (a) When you authorise payment of the *claimed amount* (see clause 9.1) the *Octet conversion rate* is used to determine an amount denominated in Australian dollars which we will *advance*. We may give you the ability to click on one of the following buttons:
  - “pay as part of daily batch” – when the *Octet conversion rate* is applied will be determined by us;
  - “use the current Octet conversion rate” – the *Octet conversion rate* shown on the *Octet platform* after you click that button is applied; and
  - “pay using credit card” – the *Octet conversion rate* which is applied will be determined in accordance with paragraph (b).
- (b) If clauses 36 or 37 apply the *Octet conversion rate* which is applied will be the rate which was applicable when you selected “pay using credit card”. That *Octet conversion rate* is not shown on the *Octet platform* but you will see the total amount to be charged or debited to the *credit card*, including an amount denominated in Australian dollars (determined by the *Octet conversion rate*) which is to be *advanced*. The *Octet conversion rate* which may be displayed on the *Octet platform* for the purposes of the second bullet point in paragraph (a) may not be the same as that used for the purposes of this paragraph.
- (c) If the *Octet conversion rate* needs to be applied in any other circumstances we will determine when it should be applied to make the conversion.
- (d) If the circumstances described in paragraphs (a) or (b) apply but the *Octet conversion rate* cannot be applied in accordance with those paragraphs (for example, because the *Octet platform* is not operational or we consider that it is not possible to determine the *Octet conversion rate* at that time) we can, at our discretion, determine in good faith the rate which will be the *Octet conversion rate* or allow you to make the relevant election later.

### **62.3 Additional payments if rates change**

If there is a change in the rate of exchange between when the conversion is done and payment, you must pay any additional amount that is necessary to ensure that the amount paid, when converted at the rate of exchange prevailing on payment, is the amount then due in the required currency. You must also pay all costs, expenses and losses incurred in the conversions. Any amount due from you under this clause 62.3 will be due as a separate debt. It is not to be affected by any judgment being obtained for any other sums due under the *facility agreement*.

## **63 Taxes**

### **63.1 Payment to be made without deduction for foreign taxes**

All payments by you to us under the *facility agreement* must be made free of any foreign taxes.

### **63.2 Gross up for foreign taxes**

If a deduction is made for foreign taxes, you must pay us on the *due date* any additional amounts which we decide are necessary to ensure that we receive when due a net amount (after payment of any foreign taxes in respect of those additional amounts) in the relevant currency that is equal to the full amount which we would have received if a deduction had not been made. You must indemnify us against the foreign taxes and any amounts recoverable from us in respect of the foreign taxes. You waive any statutory right you may have to recover from us any amount paid under this clause 63.

### **63.3 Meaning of foreign taxes**

"Foreign taxes" means withholding taxes and other taxes, levies, imposts, stamp duty, transaction duty and similar charges (except taxes based on our overall net income) imposed by a country (or any of its political subdivisions or taxing authorities) other than Australia.

## **64 Illegality, impossibility and unforeseen circumstances**

### **64.1 You must compensate us for a loss due to a change to law**

You must compensate us on demand if we determine that:

- (a) a change in a *directive*;
- (b) a change in the interpretation or administration of a *directive*; or
- (c) a new *directive*,

taking effect after the date of the *facility offer*, directly or indirectly:

- increases the cost of any loan facility or services to us or the *Octet financial institution*;
- reduces any amount received or receivable by us, the *Octet financial institution*, or our effective return, in connection with any *advance*, commitment or services; or
- reduces our return on capital allocated to any *advance* or our overall return on capital.

However, a reference to a *directive* does not include a *directive* imposing or changing the basis of a tax on our overall net income.

You must compensate us whether or not the increase or reduction could have been avoided. However, at your request, we agree to consider ways of minimising any increase or reduction. Compensation need not be in the form of a lump sum and may be demanded as a series of payments.

## 64.2 Cancellation or suspension of obligations

If we determine that:

- a change in a *directive*;
- a change in the interpretation or administration of a *directive*; or
- a new *directive*,

taking effect after the date of the *facility offer*, makes it (or will make it) illegal or impossible for us to fund, provide, or continue to fund or provide any *advance* or provide any service or commitment, we may suspend or cancel some or all of our obligations under the *facility agreement* and require that any *advance* be repaid. That suspension, cancellation or repayment will apply only to the extent necessary to avoid the illegality or impossibility. On request we will provide reasonable details about the change or the new *directive*. If we require that an *advance* be repaid you must do so within sixty days of us requiring the repayment or, if it is earlier, before it becomes illegal for us to continue to provide the *advance*.

## 65 Evidence

### 65.1 Certificates we provide

A certificate signed by us or one of our *authorised officers* in relation to an *amount owing*; the *available credit*; a liability, expense, charge, loss or damage suffered or incurred by us; or anything arising out of the *facility agreement* is, in the absence of manifest error, sufficient evidence of that thing, unless it is proved to be false. You will not object to the admissibility of the certificate in any legal proceedings.

### 65.2 We can rely on court and other determinations

A ruling by the *trade relationship office*, a court or arbitrator (however described) in any dispute or action between you and the *seller* or any other *entity* in relation to any matter is conclusive evidence of that matter, unless the ruling is to our knowledge quashed or altered on appeal before we have acted in reliance upon it.

## 66 Joint and several liability

If you comprise more than one *entity*, each of you is bound by the *facility agreement* jointly and severally and a reference to “you” or “your” includes all of you and any one or more of you.

## 67 Trusts

### 67.1 You are bound in your own right and as trustee

If you are or become a trustee of a trust you must tell us (see clause 45.1(p)). Irrespective of this, you are bound by the *facility agreement* both in your own right and as the trustee of each trust (including the trust specified in the *facility offer*) of which you are the trustee. You are also bound as the trustee of each trust you may become the trustee of. These requirements are not affected by an Australian Business Number being or not being, or a trust being or not being, specified in the *facility offer* or any other document. You are not bound in relation to a trust arising under the will of a deceased person.

### 67.2 Your trust warranties

If you are the trustee of a trust you represent and warrant that:

- (a) the arrangements with us are for the benefit of the trust and the unitholders or other beneficiaries of the trust and will be binding on those unitholders and beneficiaries;



- (b) you have been duly appointed as trustee, you are the sole trustee of the trust and you are not in breach of any of your obligations as trustee;
- (c) you have authority to enter into the *facility agreement* with us and you enter into the *facility agreement* in the proper performance of your duties as trustee;
- (d) you have the right to be fully indemnified out of the trust assets for all obligations incurred under the *facility agreement* and we will be subrogated to your right of recoupment out of the trust assets;
- (e) no action has been taken or proposed to terminate the trust;
- (f) a certified copy of the trust deed and other documents relating to the establishment of the trust, the powers of the trustee or the exercise of those powers have been provided to us and disclose all the terms of the trust and you have complied with those documents;
- (g) every formality required by those documents was complied with before you signed the acceptance provision to the *facility offer*;
- (h) you have not delegated any of your powers as trustee or exercised any power of appointment; and
- (i) you have disclosed to us all *security interests* (other than *permitted interests*) over any of the trust assets and you will not allow any further *security interests* (other than a *permitted interest*) to arise or continue without obtaining our consent.

### **67.3 Your trust obligations**

You must tell us if you could not, at any time, truthfully repeat each of those representations and warranties with respect to the facts and circumstances existing at that time. In addition you must not do anything, permit anything to be done or fail to do something which could cause a representation or warranty to be untrue or which could mean that you could not truthfully repeat a representation or warranty.

You must ensure that no action of the type mentioned in clause 67.2(e) is taken; that the documents mentioned in clause 67.2(f) are not changed or revoked without our approval; that the things mentioned in clause 67.2(i) do not happen; that the assets of the trust are not resettled or vested; that the capital of the trust is not transferred or distributed without our approval; that income of the trust is not segregated, assigned or distributed if doing so could affect your ability to perform your obligations under the *facility agreement* or if an *event of default* is subsisting; and that the vesting date is not changed.

If you cease to be the sole trustee you must cause any new trustee to sign a document we require to bind it to the *facility agreement* and any other agreement or document we require. Until that document and the other required agreement is signed the new trustee will, by agreeing to act as trustee, be taken to be bound by the *facility agreement*.

## **68 Authority to fill in blanks, entire agreement and severability**

### **68.1 We can fill in blanks**

You irrevocably authorise us, one of our *authorised officers*, our lawyers or someone else authorised to act on our behalf to fill in any blanks or correct any manifest errors or omissions in any documents or electronic record to which you are a party. This includes the *facility offer* and the *sale contract*.

### **68.2 Entire agreement**

The *facility agreement* contains all the terms of the agreement between you and us with respect to the transactions contemplated by the *facility agreement*, except where it is expressly stated that additional terms will apply, and except for other documents we are both parties to.

You should ensure that all representations or warranties made or provided by us or any of our officers, agents, representatives or employees, whether oral or in writing, prior to you accepting our offer in the *facility offer* are included in the *facility offer* if they are important to you. To the maximum extent permitted by law it is agreed that you will not be entitled to rely on them if they have not been recorded in the *facility agreement*.

The *facility agreement* may only be varied by a document signed by us and you, or by us under clause 51 or other clauses which give us that right.

### **68.3 No merger of rights and remedies**

None of the terms or conditions of the *facility agreement*, nor any act, matter or thing done under or by virtue of, or in connection with the *facility agreement*, will operate as a merger of any of our rights and remedies in or under the *facility agreement* or otherwise. All of those rights and remedies will continue in full force and effect.

### **68.4 Severability**

If any part of the *facility agreement* is or becomes void, invalid or unenforceable in any place, it is to be treated as not being part of the agreement in that place. Any void, invalid or unenforceable provision is, so far as that place is concerned, replaced by a lawful and enforceable provision which so far as possible achieves the same economic and other benefits for the parties as the void, invalid or unenforceable provision was intended to achieve. You must, on request by us and at our cost, execute any documents and do any other thing as we may reasonably require to confirm or give effect to the replacement.

### **68.5 Execution and counterparts**

Any agreement which may be entered into between you and us may be executed in any number of counterparts. All counterparts taken together will constitute the one instrument.

An agreement can be entered into by the use of electronic signatures. For example, we could issue the *facility offer* in an electronic format and you could sign it using a digital signature or otherwise show your agreement and provide the acceptance to us in an electronic form. The agreement will be considered to be made "in writing" by a "document" which is "signed" by you. If you are a *corporation* the person who provides evidence of the signing to us (for example the signed acceptance of the offer we made) represents and warrants that the signing satisfies section 127(1) of the Corporations Act 2001. If the agreement was intended to be a deed but formalities required for it to be a deed were not satisfied it will take effect as an agreement.

## **69 Making a complaint**

### **69.1 You should tell us about concerns**

If you have a concern please let us know. We welcome the opportunity to fix the situation. Our complaint handling process is designed to respond to your concerns promptly and equitably. We often find that a concern a client may have is a genuine misunderstanding and can quite easily be resolved.

### **69.2 Our system to handle complaints**

We are committed to providing an efficient, fair and comprehensive system for resolving complaints in accordance with Customer Satisfaction – Guidelines for Complaints Handling in Organisations (AS ISO 10002 – 2006).

If you have a complaint, please give your Octet Manager the opportunity to help. Your Octet Manager will fully review the situation and respond to you within five *business days*.

If, after your Octet Manager has been involved, the matter is not resolved to your satisfaction, our Complaints Officer is there to help you. You may contact our Complaints Officer as follows:

The Complaints Officer  
Octet Finance Pty Ltd  
Level 3  
10-14 Waterloo Street  
Surry Hills NSW 2010  
Telephone: +61 2 9356 6300  
Fax: +61 2 9356 6333  
Email: feedback@OctetFinance.com

You should provide full particulars of the complaint, including copies of any relevant documents or accounts. Where possible please provide the particulars in writing. If requested the Complaints Officer will provide reasonable assistance in the formulation and lodgement of the complaint. There is no charge to you for this service or the handling of the complaint.

### **69.3 How we handle complaints**

Our Complaints Officer will treat your complaint seriously and deal with it quickly and courteously. When necessary the complaint is treated in the strictest confidence. Our staff have the training, resources and delegated authority required to handle all complaints. They can determine and implement remedies.

You will be informed of our decision within ten *business days* of your first contact with our Complaints Officer. However, in some instances, where the matter is complex or involves accessing archived files, we ask that you allow us up to thirty *business days* to provide our decision. If you have made a complaint in writing the response will be given in writing.

Our commitment to resolve complaints in accordance with the dispute resolution system outlined above does not limit your rights or our rights under the *facility agreement* and other documents between you and us.

## **70 Legal and financial advice**

### **70.1 You should obtain independent advice**

It is important that you carefully read the *facility offer* and this document to ensure that they set out in full all details of the arrangements between you and us which you will rely on. You must ensure that you are satisfied with every provision of those documents before you sign the *facility offer* to accept our offer.

You acknowledge that you have had the opportunity to take, and we have recommended that you should take, independent legal, financial and taxation (including *GST*) advice about your rights and obligations under the *facility agreement*. We will rely on that acknowledgment in our dealings with you. We do not provide financial advice and make no representations and provide no warranties as to any taxation (including *GST*) or other consequences which the *facility agreement* or those dealings may have for you.

### **70.2 You bear risk of currency fluctuations**

You bear the risk of currency fluctuations. You acknowledge that you have not relied on us when considering those risks and that you have had the opportunity to take independent advice in relation to them.

## **N DEFINITIONS AND INTERPRETATION**

### **71 Important words**

In the *facility agreement* the following definitions apply, except to the extent the context requires otherwise, when the term is printed *like this*.

**Accepted order confirmation** is the electronic message which is conveyed by the *Octet platform* from the *seller* to you which contains the acceptance of the offer which you made to the *seller* – see clause 6.3.

**Account balance** is the total amount you owe to us as stated on a monthly statement which we send or make available to you in accordance with clause 20. That total amount will be determined on a specified day, for example the start date or the end date of a statement period. The *account balance* will not necessarily be the same as the *amount owing*.

**Advance** means an amount advanced by us to you under clauses 19, 26, 31, 36 or 37 or, where the context requires, the making of the loan. The money lent to you is said to be **advanced**. An *advance* is always denominated in Australian dollars.

**Amount owing** means, at any time, all amounts:

- (a) that are payable, are owing but not currently payable, are contingently or prospectively owing, or remain unpaid, by you to us;
- (b) we have *advanced* to you (even if the amount has been disbursed to another *entity* such as the *Octet financial institution* or has been applied towards meeting your obligation to reimburse us);
- (c) comprising *financial indebtedness* which you owe us;
- (d) we have *advanced* or paid on your behalf or on your express or implied request;
- (e) you owe us (including amounts which are owed contingently or prospectively) under any *guarantee* or other undertaking you provide to us;
- (f) we are liable to pay by reason of any act or omission on your part; and
- (g) that are reasonably foreseeable as likely to fall within any of the above paragraphs.

The *amount owing* does not, however, include the amount referred to in the first bullet point in paragraph (a) in the definition of *available credit*.

This definition applies:

- to amounts owing at any time and for any reason;
- irrespective of the capacity in which you or we became entitled to the amount concerned;
- irrespective of the capacity in which you or we became liable in respect of the amount concerned;
- whether you or we are liable as principal debtor, as surety or otherwise;
- whether you are liable alone, or together with another *entity*;
- even if you owe an amount or obligation to us because it was assigned to us, whether or not you consented to or were aware of the assignment; and
- if you are a trustee, whether or not you have a right of indemnity from the trust fund.

**Approved seller** means a *seller* we have told you can receive a deposit which is funded by an *advance*. We can at any time determine that a *seller* will cease to be an *approved seller* by telling you.

**Approved US dollar card** means a *credit card* which we have told you is an *approved US dollar card*. We can change the *credit cards* which are an *approved US dollar card* at any time.

**Authorised officer** means each of our directors and company secretaries, each person who is employed by us or an *entity* which is *related* to us whose title includes “manager”, “company secretary” or “accountant”, and each person that we advise you is an authorised officer.

**Available credit** is the amount, denominated in Australian dollars, which is determined in relation to your purchases from a *seller*. It is calculated by us, at any time, by:

- (a) taking the *facility limit* applicable in relation to that *seller* and deducting (without double counting) each of the following:
- the amount which is the total amount which could be payable under all *order confirmations*, all *accepted order confirmations* and all *completed orders* if the *Octet direct payment* method applies. It does not matter whether the transaction was with that *seller* or another *seller*. If an amount is denominated in a currency other than Australian dollars the Australian dollar equivalent will be determined by us applying the *daily exchange rate* and that amount will be increased by five per cent. However, if we are satisfied that the foreign currency amount will be paid in accordance with clause 32.3 the Australian dollar equivalent will, for the purposes of that foreign currency amount, be determined by applying the rate which applies under the *forward contract* instead of the *daily exchange rate* and the five per cent increase is not applied; and
  - the *amount owing*; and then,
- (b) when an additional amount has been allocated for transactions with another *seller* (see clause 18.1), adding the amount which is the total of all additional amounts in excess of the *Octet limit* which we have allocated for transactions with all other *sellers* to the extent the allocations have been utilised to enable you to have *order confirmations*, *accepted order confirmations*, *completed orders* and *amounts owing* (if the *Octet direct payment* method applies) in excess of the *Octet limit*.

**Business day** means a day, other than a Saturday, Sunday or public holiday, we are open for business in Sydney, Australia.

**Buyer direct payment** is the payment method described in clause 4.3.

**Buyer payment portion** has the meaning given in clause 4.3.

**Buyer payment revised portion** means the *buyer payment portion* as amended in accordance with clause 7.3.

**Claimed amount**, in relation to a *sale contract*, means the amount which has been claimed by the *seller* – see clauses 8.1 and 28.1 and the definition of *order amount*.

**Completed order** – when the *seller* records on the *Octet platform* that it considers the *payment conditions* satisfied there is a *completed order*, see clause 8.3.

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

**Credit card** means a credit card, charge card or debit card we specify on the *Octet platform*. They could include MasterCard, Visa Card or American Express Card.

**Daily exchange rate** on any day is the rate of exchange which our bank or other counterparty has quoted to us as being the rate applicable for that day at which we may be able to buy the required currency from that bank or other counterparty for payment in another currency.

**Directive** means a treaty, a law, an order, an official directive or request having the force of law, and an official directive, request, guideline or policy with which financiers carrying on business in Australia, Hong Kong or the place where the *Octet financial institution* is located generally comply.

**Due date** has the meaning given in clause 20.2, except in relation to an *advance* made in accordance with clauses 36 and 37, in which case it means the end of the third *business day* after the *advance* was made.

**Entity** includes an individual, firm, partnership, joint venture, organisation, society, unincorporated body, trust (in each case whether or not having separate legal personality), a *corporation*, and any other legal entity under any law.

**Event of default** means any of the events or circumstances listed in clause 52.3.

**Facility agreement** means this document as supplemented and amended by a separate *facility offer*.

**Facility limit** has the meaning given in clause 18.1.

**Facility offer** is the letter or similar document we, or someone on our behalf, send to you containing an offer to provide the loan facility and services to you and which specifies terms and conditions. The *facility offer* may change this document.

**Financial indebtedness** means any indebtedness in respect of money borrowed or raised, and any financial accommodation of any kind. The indebtedness may be present or future. It may be actual, contingent or prospective. It includes:

- (a) financial accommodation provided pursuant to a negotiable instrument, other financial instrument or discounting arrangement;
- (b) an interest, gold or currency exchange, hedge or other arrangement, including a swap, option, futures contract, exchange agreement and purchase agreement;
- (c) the value, premium and dividend (whether declared or not and whether there are sufficient funds for payment or not) of a share which is redeemable or subject to a *guarantee*;
- (d) indebtedness which the accounting standards (as defined in section 9 of the Corporations Act 2001) would require to be recognised in a balance sheet;
- (e) the deferred purchase price of an asset, service or work done, and any related obligation; and
- (f) an obligation to deliver goods or other property, or perform services or work, that have been paid for in advance by a financier or in relation to another financing transaction.

**Forward contract** means a forward foreign exchange contract between you and your counterparty under which you, for delivery on a future date, purchase a specified amount in a foreign currency in exchange for the sale of a specified amount in Australian dollars. The foreign currency should be the currency in which the amount payable under a *sale contract* is denominated. You will use that foreign currency to pay the amount due to the *seller*.

**GST** means any amount paid or payable under any GST law as that expression is defined in section 195-1 of the A New Tax System (Goods and Services Tax) Act 1999.

**Guarantee** means a guarantee, indemnity, guarantee and indemnity, letter of credit, legally binding letter of comfort or suretyship, or any other obligation (including an irrevocable offer) of any kind at all, whatever its nature or title. It must be one under which there is a requirement to pay, purchase, provide funds, or to be responsible in any other way for:

- an obligation or indebtedness of another *entity*;
- a dividend, distribution, capital or premium on shares or other interests; or
- the insolvency or financial condition of another *entity*.

**Guarantor** means an *entity* which at any time has provided, or should have provided, a *guarantee* in our favour in relation to your obligations under the *facility agreement*.

**Insolvency event** means the happening of any of these events.

- (a) A meeting of creditors is called or held.
- (b) An application is made to a court for an order, or an order is made, that a *corporation* be wound up.
- (c) An application is made to a court for an order appointing a liquidator or provisional liquidator in respect of a *corporation*, or one of them is appointed, whether under an order or otherwise.

- (d) A *corporation* enters into, or resolves to enter into, a scheme of arrangement, deed of company arrangement, or other arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of those creditors. This does not apply to a reconstruction or amalgamation whilst solvent on terms approved by us.
- (e) A *corporation* resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so, except to reconstruct or amalgamate whilst solvent on terms approved by us, or is otherwise wound up or dissolved or a notice under section 601AB (deregistration – ASIC initiated) of the Corporations Act 2001 is given to or in respect of the *corporation*.
- (f) An *entity* is, or states that the *entity* is, unable to pay the *entity's* debts as and when they fall due.
- (g) An *entity* is insolvent within the meaning of section 95A of the Corporations Act 2001.
- (h) Any legal process, in an amount in excess of A\$10,000, is issued in relation to an *entity* and is not discharged within twenty-one days or defended in a way which is acceptable to us.
- (i) Execution or distress is levied against any income or assets of an *entity*.
- (j) As a result of the operation of section 459F(1) of the Corporations Act 2001, a *corporation* is taken to have failed to comply with a statutory demand.
- (k) A *corporation* is, or makes a statement from which it may be reasonably deduced by us that it is, the subject of an event described in sections 459C(2) (where court may presume insolvency) or 585 (insolvency of bodies other than companies) of the Corporations Act 2001.
- (l) An *entity* takes any step to obtain protection, or is granted protection, from creditors under any law, or an administrator or trustee is appointed to or in respect of that *entity*.
- (m) A person becomes an insolvent under administration (as defined in section 9 of the Corporations Act 2001), or action is taken which could result in that event; commits an act of bankruptcy; or is a regulated debtor as defined Bankruptcy Act 1966.
- (n) A controller (as defined in section 9 of the Corporations Act 2001) is appointed in relation to property of a *corporation* or a company (as defined in section 9 of the Corporations Act 2001) is taken under the Corporations Act 2001 to be under external administration.
- (o) An administrator is appointed in relation to a body corporate or a body corporate is a chapter 5 body corporate. In this paragraph terms have the same meaning as in the Corporations Act 2001.
- (p) Income or assets are seized under any legal process.
- (q) Anything analogous or having a substantially similar effect to any of the events (a) – (p) happens under the law of any applicable jurisdiction.

**Interest free period** has the meaning given in clause 23.1.

**Interest rate** means the prevailing annual percentage rate determined in accordance with clause 24.2.

**Invoice** means:

- (a) when the *seller* is not in Australia or New Zealand, a commercial invoice; and
- (b) when the *seller* is in Australia or New Zealand, a tax invoice.

**Latest claim date** for a *sale contract* is a date recorded on the *Octet platform* as the latest claim date. It must satisfy the requirements specified in clause 4.1(f).

**Month** means calendar month.

**Octet conversion rate** is the rate of exchange we use to convert an amount in one currency into an amount in another currency as determined in accordance with clause 62.2.

**Octet direct payment** is the payment method described in clause 4.3.

**Octet express payment fee** is the transfer fee and card charge payable by you to us in accordance with clause 38.4.

**Octet financial institution**, in relation to a *seller*, means an *entity* which has entered into an agreement with the *platform provider* under which that *entity* may, amongst other things, give the *seller* access to the *Octet platform*. An agreement is entered into between the *Octet financial institution* and the *seller*. We can be an *Octet financial institution*. When you enter into a *sale contract* with a *seller* in Australia and we are the *Octet financial institution* in relation to that *seller* we do not have to differentiate between the functions which the *facility agreement* contemplates we should perform and those which it contemplates the *Octet financial institution* should perform. When we are not the *Octet financial institution* you acknowledge that we do not enter into a contract with the *seller* and the *seller* is not one of our customers. The *entities* which are *Octet financial institutions* can change.

**Octet funded portion** has the meaning given in clause 4.3.

**Octet funded revised portion** means the *Octet funded portion* as amended in accordance with clause 7.3.

**Octet limit** has the meaning given in clause 18.1.

**Octet platform** means the internet based facility to which the *Octet financial institution* gives the *seller* access to assist the *seller* to make sales. We give you access to the *Octet platform* under the *facility agreement* for the purposes specified in clause 42.1. The *seller* can access the *Octet platform* under the *seller rules*. Other *entities*, such as other sellers, buyers from other sellers and the *trade relationship office*, can also access the *Octet platform* but the information which they see is restricted to information which is relevant for dealings or transactions which involve them.

**Order acceptance fee** is the fee payable by the *seller* to the *Octet financial institution* – see clause 38.3.

**Order amount** is the amount, denominated in an approved currency listed on the *Octet platform* or another currency approved by us, which you and the *seller* agree in the *sale contract* should be paid by you to the *seller* for the supply of goods or services. In relation to any particular *sale contract* the *order amount* will not exceed the “order amount” specified on the *order confirmation*. The *order amount* can be adjusted and when the *seller* claims payment the amount claimed is called the *claimed amount*.

**Order confirmation** is the electronic message which is conveyed by the *Octet platform* from you to the *seller* which contains the offer you make to the *seller* – see clause 5.2. It includes documents attached to it.

**Order placement fee** is a fee payable by you to us – see clause 38.1.

**Payment conditions** are the conditions which the *seller* must satisfy before the *seller* is, in accordance with the terms and conditions of the *sale contract*, entitled to be paid for agreeing to supply goods or services. The payment conditions will be found exclusively on the *order confirmation* or a document which is referred to in the *order confirmation* with the intention that it be included as part of the *sale contract*. If there is any inconsistency between a provision in the *order confirmation* and a provision in a document referred to in the *order confirmation* the former will prevail to the extent of the inconsistency.

**Payment dispute** has the meaning given in clause 9.3 and occurs at the time specified in that clause. A reference to *payment dispute* being, or not being, resolved by the *trade relationship*



*office* means it is resolved, or it is not resolved, within five *business day* of the *payment dispute* occurring as contemplated by clause 11.1.

**Payment gateway** means an internet payment gateway selected by us which is operated by a bank.

**Permitted interest** means a *security interest*, transfer or dealing we have approved; a *security interest* in our favour; a charge or lien arising in favour of a government department or agency by operation of statute (other than the *PPSA*) or a lien arising in the ordinary course of your ordinary business in favour of a mechanic or similar person, unless there is a default in payment of money secured by that charge or lien; a *security interest* which is a perfected purchase money security interest (as defined in section 14 of the *PPSA*) so long as it arose in the ordinary course of your ordinary business and it does not contravene any other agreement between you and us.

**Platform provider** means any *entity* which provides or owns the *Octet platform* or owns the intellectual property utilised for the purposes of the *Octet platform* or which is the licensor of that intellectual property. It includes the *entity* which allows us to use the *Octet platform* and gives us the authority to allow you to use it.

**PPSA** means the Personal Property Securities Act 2009.

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

- (a) a related body corporate within the meaning of section 50 of the Corporations Act 2001, but on the basis that “subsidiary” has the meaning given below and “body corporate” includes any *entity*; and
- (b) a related entity as defined in section 9 of the Corporations Act 2009.

**Required provisions** are the terms and conditions which must, in accordance with clause 4.2, be included as terms and conditions of the *sale contract*. They are on the *Octet platform*.

**Review event** means:

- (a) we reasonably believe that an *event of default* could occur with the giving of notice or passing of time;
- (b) we have not received the information, accounts and other items referred to in clauses 47.2 or 47.3 when and in the manner and form it should have been given to us;
- (c) we do not have the “view only” access to the ATO platform referred to in clause 50.4 or have not received a copy of your month end ATO account; or
- (d) the ratio of your total *financial indebtedness* to the shareholder’s equity deteriorates by ten per cent or more over any rolling six month period.

**Sale contract** means each contract made between you and the *seller* by you sending an *order confirmation* to the *seller* and the *seller* sending an *accepted order confirmation* to you. The terms and conditions of that contract are found exclusively on the *order confirmation* or a document which is referred to in the *order confirmation* with the intention that it be included as part of the contract between you and the *seller*. If there is any inconsistency between a provision in the *order confirmation* and a provision in a document referred to in the *order confirmation* the former will prevail to the extent of the inconsistency.

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

**Seller** means an *entity* which sells goods to you for delivery to you or performs services for you. The *seller* will conclude arrangements with you by using at least some of the services available on the *Octet platform*.

**Seller rules** means the rules which the *seller* agrees or should agree govern the use of the *Octet platform* and the transactions conducted by the use of the *Octet platform*. It also includes any agreement between the *seller* and an *Octet financial institution* in connection with that use or those transactions.

**Subsidiary**, in relation to an *entity*, means a subsidiary within the meaning of section 46 of the Corporations Act 2001. However, an *entity* is also a subsidiary of an *entity* if it is controlled directly or indirectly by that *entity*. In addition, a trust may be a subsidiary (in which case, a unit or other beneficial interest or being a member of the class of potential beneficiaries is to be regarded as a share); and an *entity* may be a subsidiary of a trust if it would have been a subsidiary if that trust were a *corporation*.

**Third party FX contract processing fee** is a fee payable by you to us – see clause 38.5.

**Token** has the meaning given in clause 42.2.

**Trade relationship office** means an *entity* which you and the *seller* agree will perform the duties described in the *facility agreement* and the *seller rules*.

**Transaction documents** are the documents copies of which the *seller* must lodge on the *Octet platform* to evidence satisfaction of the *payment conditions*. Those documents should be specified in the *sale contract*. They must include an *invoice*. In addition, if the *seller* is not in Australia and the *sale contract* is for the sale and export of goods they must include either the bill of lading or the airway bill. If the *sale contract* is for the provision of services, they must include similar documents as required by us to evidence the provisions of the services.

**Transaction fee** is a fee payable by you to us – see clause 38.2. As outlined in that clause the *seller* may agree to pay part of that fee.

## 72 Interpretation

### 72.1 Contents, headings and overview

The contents and headings are for ease of reference only and do not affect the interpretation of the *facility agreement*. The overview which has been included before the contents is only a summary of some of the features of the *facility agreement* and does not affect the interpretation of the *facility agreement*.

### 72.2 What happens when both payment methods apply?

If the *Octet direct payment* method applies in relation to only part of the *order amount* (see clause 4.3) the *facility agreement* will be applied, where the context so requires, as if there were two separate transactions; one being for the *Octet funded portion* and the other for the *buyer payment portion*. For example, when the *seller* considers that it has satisfied the *payment conditions* it will claim payment (see clause 8.3). If you authorise payment of the *claimed amount* (see clause 9.1) we will *advance* the *Octet funded revised portion* subject to the provisions of the *facility agreement* (see clauses 10.1, 12.2(a), 12.3 and 19.1) and you must pay the *buyer payment revised portion* (see clauses 10.2 and 12.2(b)). In applying clauses 12.2(a) and 12.3 “*claimed amount*” means the *Octet funded revised portion* and “*order amount*” means the *Octet funded portion*.

Clause 53.2(a) applies to the *buyer payment revised portion*. Clauses 53.2(b) and 53.2(c) apply to the *Octet funded revised portion* and in those paragraphs “*claimed amount*” means the *Octet funded revised portion* and “*order amount*” means the *Octet funded portion*.

### 72.3 Interpretation of particular words

- (a) A reference to “Australian dollars”, “A\$” or “\$” is a reference to the lawful currency of Australia.
- (b) “Australian entity” has the meaning in section 10 of the *PPSA*.
- (c) A reference to “bank” includes an authorised deposit-taking institution as defined in the Banking Act 1959.
- (d) The words “deliver”, “delivered” and “delivery” when used in connection with the *seller* having an obligation to deliver goods or making a delivery of goods includes, when the goods are exported or are to be exported by the *seller*, the goods being shipped or the shipment of the goods. “Shipped” means the goods have been placed in transit to you or to your order, whether by common carrier or the *seller’s* own transport in accordance with the *sale contract*. “Shipment” has a corresponding meaning.
- (e) A reference to “goods” includes produce and a reference to “services” includes work done.
- (f) The words “including” and “includes” when used to introduce an item do not limit the meaning of the words to which the item relates to items of a similar kind. Similarly, when the words “for example”, “such as” and “in particular” are used to introduce an illustration that illustration does not limit the meaning of the provision to which the illustration relates. The illustration can extend the operation of the provision.
- (g) A reference to the *trade relationship office* making a “ruling” to resolve a *payment dispute* refers to a ruling which is made within five *business days* of the *payment dispute* occurring as contemplated by clause 11.
- (h) A reference to *review event* or an *event of default* having occurred or happened includes it being the case.
- (i) “We”, “us” or “our” means Octet Finance Pty Ltd and its successors and assigns. If we are part of a GST group pursuant to section 48-5 of the A New Tax System (Goods and Services Tax) Act 1999, a reference to “we”, “us” or “our” includes the representative member of that group.
- (j) “You” or “your” means the *entity* named in the *facility offer* as the “buyer”, being the *entity* to which we provide a loan facility as set in the *facility agreement*. It includes your successors and assigns.

### 72.4 General interpretation rules

- (a) Words implying the singular include the plural and vice versa and words implying one gender also include the other genders.
- (b) A reference to any thing (including any right) includes the whole and each part of it, but this does not mean that performance of part of an obligation constitutes performance of the obligation.
- (c) A reference to our discretion means our absolute unfettered discretion.
- (d) A reference to law includes an *AML/CTF law*, *anti-corruption law* and *sanctions law* (each as defined in clause 56.4) and any other any statute, regulation, statutory instrument, rule of common law or equity and any *directive* and anything having substantially the same effect in any applicable jurisdiction.
- (e) A reference to any agreement or document (including the *facility agreement*) is to that agreement or document as amended, novated, supplemented or replaced (whether in writing or otherwise) from time to time, so long as the change did not contravene the *facility agreement*.

- (f) A reference to any statute, or a provision of it, includes a modification, amendment, replacement or re-enactment of it, a provision substituted for it and a regulation or statutory instrument issued under it. A reference to a statute of any jurisdiction, or a provision of it, includes any corresponding statute (or provision) of any other applicable jurisdiction.
- (g) A reference to your ordinary business means that business as it was conducted on the date of the *facility offer*.
- (h) A reference to the currency in which the *order amount* is denominated means the currency as specified on the *Octet platform*.
- (i) A reference to the operator of the *payment gateway* approving a transaction, receiving a payment or making a payment includes the issuer of the *credit card* approving the transaction, receiving the payment or making the payment.
- (j) An indemnity given to us in the *facility agreement* is irrevocable. It is a continuing obligation which is separate and independent from other obligations and survives the ending of the *facility agreement*. It is also unconditional, except for any conditions specified in the *facility agreement*. It is not necessary for an expense to be incurred or for a payment to be made before an indemnity is enforced.
- (k) When it is provided that you must reimburse, or otherwise pay an amount to, us the relevant reimbursement must be made or payment made immediately upon the obligation arising. There are no conditions which limit or qualify the obligation.
- (l) If an *entity* mentioned in the *facility agreement* ceases to exist or is reconstituted, renamed or replaced, or its powers or functions are transferred to another *entity*, a reference to the *entity* includes an *entity* established or constituted in its place, or succeeding it with similar powers or functions.
- (m) Where it is stated that you must not do something that means both that you may not do it and may not agree to do it.

## **72.5 Different versions of this document**

- (a) We may issue revised versions of this document. The version which applies to you is specified in the *facility offer*, although we may vary the *facility agreement* (see clause 51) so that other terms and conditions apply.
- (b) If the *facility agreement* (or any part of it) is translated into a language other than English that translation will be provided for information purposes and the English version will prevail if there is any inconsistency.

**Annexure**

No. NSD616 of 2021


Federal Court of Australia  
District Registry: New South Wales  
Division: General

**Westpac Banking Corporation ABN 33 007 457 141** and another  
Applicant


**Forum Finance Pty Limited ACN 153 301 172** and others named in the Schedule  
Respondents

This is the Annexure marked "**BJQ-4**" shown and produced to **Bianca Josephine Quan** at the time of swearing her affidavit on 28 September 2021.

Deponent signature:

DocuSigned by:  
  
.....  
E3C6AC0D03C0401...

Before me:

DocuSigned by:  
  
.....  
BC4298F2AFED404...

Adrian Lee

Level 10, 114 William Street, Melbourne VIC 3000

An Australian Legal Practitioner within the meaning of the Legal Profession Uniform Law (Vic)

A person authorised under Section 19(1) of the Oaths and Affirmations Act 2018 to take an affidavit.

This affidavit, as signed and notated by the authorised affidavit taker, was signed by the deponent over audio-visual link.

The specified things in respect of the affidavit were done by means of audio-visual link. The affidavit is a scanned hard copy or an electronic copy, not an original.



## **General Security Deed**

**OCTET FINANCE PTY LTD**

**FORUM GROUP PTY LTD**

## **CONTENTS**

<b>BACKGROUND</b>	<b>1</b>
<b>OPERATIVE PROVISIONS</b>	<b>1</b>
<b>1 COMMENCEMENT</b>	<b>1</b>
<b>2 GRANT OF SECURITY</b>	<b>1</b>
2.1 Security Interest	1
2.2 Personal Property	2
2.3 Other security interests and superannuation	2
<b>3 DEALING WITH THE COLLATERAL</b>	<b>3</b>
3.1 Restrictions on dealings	3
3.2 Permitted dealings	3
3.3 Revolving assets	4
3.4 Grantor's ability to deal with the proceeds of receivables	4
<b>4 NOMINATED ACCOUNT</b>	<b>5</b>
4.1 Establishment of the nominated account	5
4.2 Deposits into the nominated account	5
4.3 Withdrawals from the nominated account	6
<b>5 REPRESENTATIONS</b>	<b>6</b>
5.1 General representations	6
5.2 Additional representations – individuals	8
5.3 Representations relating to the collateral	8
5.4 Repetition	9
5.5 Reliance on representations and warranties	9
<b>6 UNDERTAKINGS</b>	<b>9</b>
6.1 Payment and performance undertakings	9
6.2 Corporate existence, name and other particulars	10
6.3 Attached receivables	10
6.4 General undertakings	11
6.5 Environmental undertakings	12
6.6 Undertakings regarding records	12
6.7 Information undertakings	12
6.8 Undertakings relating to the collateral	13
6.9 Controllable property	15
6.10 ADI accounts	16
6.11 Negotiable instruments and letters of credit	16
6.12 Chattel paper	16
6.13 Investment instruments	17
6.14 Intermediated securities	17
6.15 Obligation to insure	18
6.16 Insurance proceeds	18
6.17 Octet may remedy breach	18

6.18	Co-operation with Octet	18
6.19	Term of undertakings	19
<b>7</b>	<b>POWER OF ATTORNEY</b>	<b>19</b>
7.1	Appointment of attorneys	19
7.2	Exercise of attorney's discretion	19
<b>8</b>	<b>ENFORCEMENT</b>	<b>19</b>
8.1	Acceleration of obligations and enforcement of security interest	19
8.2	Consequences of an event of default	19
8.3	Octet's enforcement powers	20
8.4	Calls on shares	21
8.5	Grantor must help Octet	21
<b>9</b>	<b>RECEIVERS</b>	<b>21</b>
9.1	Appointing and removing Receivers	21
9.2	Agent of Grantor	21
9.3	Appointing receiver after winding-up	21
9.4	Receiver's powers	21
9.5	Indemnity by Grantor	22
9.6	Grantor must help receiver	22
9.7	Acting severally	22
<b>10</b>	<b>STATUTORY POWERS</b>	<b>22</b>
10.1	Powers conferred by law	22
10.2	Exclusion of legislation	22
10.3	Exercise of rights by Octet	22
10.4	No notice required unless mandatory	22
10.5	Exclusion of PPSA provisions	23
<b>11</b>	<b>PROCEEDS OF ENFORCEMENT</b>	<b>23</b>
11.1	Applying the proceeds	23
11.2	Surplus proceeds	24
11.3	Payments actually received	24
11.4	Contingent amounts	24
<b>12</b>	<b>PAYMENTS</b>	<b>24</b>
12.1	Money given to Octet as security	24
12.2	Octet can set-off money owed	24
12.3	Octet can consolidate accounts	25
12.4	Currency conversions	25
<b>13</b>	<b>OTHER SECURITIES AND INTERESTS</b>	<b>26</b>
13.1	Additional security interests in favour of Octet	26
13.2	Notice of other interests in collateral	26
13.3	Octet agreement for other interests	27
<b>14</b>	<b>CONTINUING SECURITY</b>	<b>27</b>
14.1	Security interest created by this deed continues	27
14.2	Requirements for release	27



14.3	Rescission of payment	28
14.4	Principal obligation	28
14.5	Limitations on Grantor's rights	28
<b>15</b>	<b>PROTECTION OF THIRD PARTIES</b>	<b>29</b>
15.1	No duty to enquire	29
15.2	Protection of purchasers	29
15.3	Receipt	29
<b>16</b>	<b>COSTS AND INTEREST</b>	<b>29</b>
16.1	Costs	29
16.2	Interest	29
16.3	Goods and services tax	30
<b>17</b>	<b>INDEMNITIES</b>	<b>30</b>
17.1	General indemnity	30
17.2	PPSA costs included in indemnity	31
17.3	Administrator and liquidator indemnity	31
17.4	Indemnities are continuing obligations	31
<b>18</b>	<b>LIMITED LIABILITY</b>	<b>31</b>
18.1	Accounting for money received	31
18.2	Losses due to enforcement	31
<b>19</b>	<b>TRUST PROVISIONS</b>	<b>32</b>
19.1	Grantor liable in trustee capacity	32
19.2	Liability	32
19.3	Trust covenants	32
19.4	Additional trust covenants	33
19.5	Grantor's right of indemnity	33
19.6	Compliance with trust documents	34
19.7	Additional trustees	34
<b>20</b>	<b>NOTICES</b>	<b>34</b>
20.1	Notices from Octet to the Grantor	34
20.2	Service of legal process	34
20.3	Service is always effective	34
20.4	Notices from the Grantor to Octet	35
<b>21</b>	<b>MISCELLANEOUS</b>	<b>35</b>
21.1	Allowing conduct of others	35
21.2	Assignment	35
21.3	Completion and registration of document	35
21.4	Conflict of interest	36
21.5	Entire agreement	36
21.6	Severability	36
21.7	Variation	36
21.8	Evidence	36
21.9	Execution of separate documents	36

21.10 Exercise of rights	36
21.11 Waiver, consents and approvals	36
21.12 Appointment of nominee for registration	37
21.13 Confidentiality and privacy	37
21.14 Governing law and jurisdiction	37
21.15 Joint and several liability	38
<b>22 DEFINITIONS AND INTERPRETATION</b>	<b>38</b>
22.1 Definitions	38
22.2 Personal Property Securities Act	47
22.3 Contents and headings	48
22.4 Interpretation	48
<b>SCHEDULE</b>	<b>50</b>
<b>EXECUTION AND DATE</b>	<b>51</b>

## GENERAL SECURITY DEED

### This deed is given by:

**Forum Group Pty Ltd** ACN 153 336 997 of Level 5, 141 Walker Street, North Sydney, New South Wales, 2060 (**Grantor**)

### in favour of:

**Octet Finance Pty Ltd** ACN 124 477 916 of Level 3, 10-14 Waterloo Street, Surry Hills, New South Wales, 2010 (**Octet**)

## BACKGROUND

- A Octet has agreed to lend money, give credit, provide finance or provide a facility to, or at the request of, the Grantor on certain conditions.
- B Those conditions include a requirement that the Grantor execute this deed to better secure the payment of the *secured money* and the performance of the *secured obligations*.
- C If the Grantor is not an individual a *security interest* is taken in all of the Grantor's present and after-acquired property. If the Grantor is an individual a *security interest* is taken in all of the Grantor's present and after-acquired property except certain consumer property.

## OPERATIVE PROVISIONS

### 1 COMMENCEMENT

This deed will come into force on the *commencement date*.

### 2 GRANT OF SECURITY

#### 2.1 Security Interest

- (a) The Grantor gives a *security interest* in the *collateral* to Octet to secure payment of the *secured money* and the performance of the *secured obligations*.
- (b) The *security interest* is a transfer by way of security of *collateral* consisting of *attached receivables* and chattel paper. To the extent any *collateral* is not so transferred the *security interest* is a charge. If for any reason it is necessary to determine the nature of the charge, it is a floating charge over *revolving assets* and a fixed charge over all other *collateral*.
- (c) The Grantor grants the *security interest* as beneficial owner and, if the Grantor is a trustee, the Grantor does so in the exercise of its powers as trustee of the *trust*. If the Grantor does not have title to *personal property* but has rights in that *personal property*, or the power to transfer rights in that *personal property* to Octet, it still gives a *security interest* in that *personal property* to Octet.
- (d) To the extent that the grant of any *security interest* under clause 2.1(b) operates as a transfer of *collateral* the Grantor will at all times remain liable to perform its obligations in

relation to that *collateral* and Octet will not have any liability to perform any of those obligations.

- (e) The *security interest* in *personal property* attaches in accordance with clause 2.2. The charge over the *collateral* which is not *personal property* is in all of that property which exists on or at any time after the *commencement date*.

## 2.2 Personal Property

- (a) On the *commencement date* the *security interest* will attach to *personal property* which exists on that date and will attach to *personal property* which exists after the *commencement date* when the Grantor acquires rights in that property or has the power to transfer rights in that property to Octet. Subject to clause 2.2(c), there is no agreement to defer attachment to any later time.
- (b) If the Grantor obtains a "Debtor Finance Facility" under the *facility agreement* there will be *transferred receivables* and they are not part of the *collateral*. To obtain priority over a purchase money security interest under section 64 of the *PPSA* Octet may postpone the transfer of a *receivable* under the *facility agreement*. In that case the *receivable* will be an *attached receivable* (the *security interest* arising under this deed attaching in accordance with clause 2.2(a)) until it becomes a *transferred receivable* in accordance with the *facility agreement*. When it becomes a *transferred receivable* it ceases to be an *attached receivable* and therefore ceases to be subject to a *security interest* which arises under this deed.
- (c) If the Grantor does not obtain a "Debtor Finance Facility" under the *facility agreement* (for example the Grantor obtains a "Working Capital Facility" and a "Business Transaction Facility" or just one of those facilities) the *facility agreement* may provide that the *security interest* which arises in *receivables*, or *receivables* of a particular type, under this deed does not attach until the *delayed attachment time*. Attachment is delayed so that Octet may obtain priority over a purchase money security interest under section 64 of the *PPSA*. Despite clause 2.2(a), at the *delayed attachment time* the *security interest* will attach to all *delayed attached receivables* which exist at the *delayed attachment time*. The *security interest* will attach to all *delayed attached receivables* which exist after the *delayed attachment time* when the *delayed attached receivables* arise. There is no agreement to defer attachment to any later time. When the *security interest* attaches to a *delayed attached receivable* the *delayed attached receivable* becomes an *attached receivable* or, if it is not an *attached receivable*, an *other receivable*.
- (d) If Octet advances funds to the Grantor for the purpose of acquiring *personal property* for use in the Grantor's business and the funds are actually used for that purpose, Octet has a purchase money security interest in that *personal property*. That purchase money security interest in *personal property* extends to proceeds and accessions.

## 2.3 Other security interests and superannuation

- (a) The *security interests* created by this deed take priority over all other *security interests*, except *permitted interests* (if any) which Octet has agreed can have priority.
- (b) If the Superannuation Industry (Supervision) Act 1993 prohibits the Grantor from giving a *security interest* in any of the *collateral*, this deed does not create a *security interest* in that *collateral*.

### 3 DEALING WITH THE COLLATERAL

#### 3.1 Restrictions on dealings

The Grantor must not do, agree to do, attempt or threaten to do, or allow to be done any of the following unless it is permitted to do so by clause 3.2.

- (a) Create, claim to create or allow to arise or continue an interest (including a *security interest*) in any *collateral*, unless it is a *permitted interest*.
- (b) Factor, discount, transfer, assign, declare a trust over or otherwise dispose of, any *receivable*, *other receivable*, chattel paper, monetary claim or revenue, except under the *facility agreement*.
- (c) Dispose of, sell, lend, transfer, assign, subordinate, subdivide, consolidate, lease, license, part with possession of, give control, or deal in any other way with any *collateral*; change the nature of any *collateral*; or waive any of its rights or release any *entity* from obligations in connection with the *collateral*.
- (d) Withdraw money from the *nominated account*, permit any money in the *nominated account* to be set-off against a liability of the Grantor or permit that money to be appropriated in any way, except in accordance with clause 4.3.
- (e) Allow the *collateral* to become an accession to property not covered by this deed, be commingled with property not covered by this deed or to be affixed to land which is not owned by the Grantor.
- (f) Conceal the *collateral* or move or transfer any of the *collateral* to a place outside Australia.
- (g) Change any identifying mark or serial number on the *collateral* or seek any replacement or substitute title documents for the *collateral*.

#### 3.2 Permitted dealings

- (a) The Grantor may do any of the following in the ordinary course of the Grantor's ordinary business, unless it is prohibited from doing so by the *facility agreement*.
  - (i) Create or allow another interest (so long as it is a *permitted interest* if that other interest is a *security interest*) in any *revolving asset*.
  - (ii) Dispose of, sell, part with possession of or change the nature of a *revolving asset* other than an *other receivable*.
  - (iii) Withdraw or transfer money from an account with an ADI or other financial institution so long as that account is not the *nominated account* and a *control event* has not occurred.
  - (iv) Use, dispose of or deal with *collateral* which is currency so long as the currency is not a *collection of a transferred receivable* or an *attached receivable* and a *control event* has not occurred.
- (b) *Receivables* and *other receivables* can only be dealt with in accordance with clause 3.4.
- (c) Any insurance proceeds must be dealt with in accordance with clause 6.16.

- (d) Except as expressly permitted by the above paragraphs the Grantor does not have express or implied authority to transfer or deal in any way with the *collateral* (including in a way which would extinguish any *security interest* that Octet holds in the *collateral*), even if the transfer or other dealing would be in the ordinary course of the Grantor's ordinary business.

### 3.3 Revolving assets

- (a) If a *control event* occurs in respect of any *collateral* then automatically:
- (i) that *collateral* is not (and ceases to be) a *revolving asset*;
  - (ii) any floating charge over that *collateral* immediately operates as a fixed charge;
  - (iii) if that *collateral* is an *attached receivable*, *other receivable* or chattel paper, it is transferred to Octet by way of security if it has not already been transferred by way of security in accordance with clause 2.1(b); and
  - (iv) the Grantor may no longer deal with that *collateral* under clause 3.2.
- (b) If any *collateral* is not, or ceases to be, a *revolving asset*, and becomes subject to a fixed charge or transfer under clause 3.3(a), Octet may give the Grantor a notice stating that, from a date specified in the notice, the *collateral* specified in the notice is a *revolving asset*, or becomes subject to a floating charge or is transferred back to the Grantor. This may occur any number of times.
- (c) Any inventory which is not, or ceases to be, a *revolving asset* is specifically appropriated to a *security interest* under this deed. The Grantor may not remove it without obtaining the specific and express authority of Octet to do so.

### 3.4 Grantor's ability to deal with the proceeds of receivables

- (a) The Grantor must comply with its obligations under the *facility agreement* in relation to *receivables* and *other receivables*. If the *facility agreement* does not impose obligations in relation to *receivables* or *other receivables* the Grantor must comply with this clause 3.4. If the *facility agreement* does impose obligations in relation to *receivables* and *other receivables* the Grantor must comply with both those obligations and this clause 3.4 and, to the extent that is not possible (for example because the obligations are inconsistent), the Grantor must comply with the *facility agreement* rather than this clause 3.4.
- (b) The Grantor must use its best endeavours to collect the *attached receivables* and the *delayed attached receivables* and must take any action as may be necessary to recover the *attached receivables* and the *delayed attached receivables*. The Grantor must deal with the *collections* received in discharge of *attached receivables* and the *delayed attached receivables* in accordance with clause 4.2(a)(i). Octet may determine that the Grantor should not collect an *attached receivable*, or any of them as determined by Octet, and the Grantor must then cease to do so. Octet may then go about the collection of the *attached receivables* in the way it thinks appropriate and the Grantor must do anything Octet requires to help Octet collect those *receivables*.
- (c) The Grantor must use its best endeavours to collect the *other receivables* and must take any action as may be necessary to recover the *other receivables*. The Grantor must deal with the *collections* received in discharge of *other receivables* in accordance with clause 4.2(a)(ii) and when that provision does not apply must deal with them in the ordinary course of and for the purpose of carrying on its ordinary business. Octet may determine that the Grantor should not collect an *other receivable*, or any of them as determined by

Octet, and the Grantor must then cease to do so. Octet may then go about the collection of the *other receivables* in the way it thinks appropriate and the Grantor must do anything Octet requires to help Octet collect those *receivables*.

- (d) If there are *transferred receivables* the Grantor must comply with its obligations under the *facility agreement* in relation to them.

## 4 NOMINATED ACCOUNT

### 4.1 Establishment of the nominated account

If required by Octet the Grantor must open and maintain a *nominated account* with an ADI approved by Octet. The *nominated account* must satisfy each of the following requirements.

- (a) The mandate agreed between the Grantor and the *account bank* must be satisfactory to Octet and that mandate must not be changed without Octet's approval.
- (b) Octet will determine who will be the authorised signatories for the *nominated account* and no withdrawals can be made from the *nominated account* without at least one of those authorised signatories approving the withdrawal.
- (c) No *entity* can have, without Octet's approval, a *security interest* in the *nominated account* (in particular the *account bank* must not have a *security interest* perfected by control) and Octet must control the *nominated account* within the meaning of section 341(1A)(d) of the *PPSA*.
- (d) If required by Octet the *account bank* must agree, in terms acceptable to Octet, that the *account bank* will not pay any money in the *nominated account* to the Grantor or any other *entity* (except Octet) without the consent of Octet; it waives all rights of set-off and combination in respect of the *nominated account*; if it does have a *security interest* in the *nominated account* that *security interest* is subordinated to Octet's *security interest* and it will not enforce its *security interest* in any way without Octet's approval; and it will pay all money standing to the credit of the *nominated account* to Octet if asked to do so by Octet.

### 4.2 Deposits into the nominated account

- (a) The Grantor must immediately pay into the *nominated account*:
  - (i) all *collections* which are received in discharge of *attached receivables* and *delayed attached receivables*;
  - (ii) all *collections* which are received in discharge of an *other receivable* if a *control event* occurs in respect of the *other receivable* or if Octet requires that amounts paid in discharge of the *other receivable* be deposited into the *nominated account*;
  - (iii) the proceeds of any disposal of or other dealing with any *collateral* which is not a *revolving asset*, to the extent that the proceeds are not immediately applied in acquiring another similar asset, in payment of the *secured money* or in payment of money secured by a *security interest* which ranks ahead of the *security interest* created by this deed. This requirement does not in any way limit the Grantor's obligations under clause 3.1. If the *nominated account* has not been opened the Grantor must immediately pay those proceeds to Octet and until it does so that Grantor will hold them on trust for Octet;

- (iv) the proceeds (other than *collections*) of any disposal or other dealing with any *collateral* which is a *revolving asset*, if the disposal or other dealing was not in the ordinary course of the Grantor's ordinary business. If the *nominated account* has not been opened the Grantor must immediately pay those proceeds to Octet and until it does so that Grantor will hold them on trust for Octet;
  - (v) the proceeds which the Grantor receives under any insurance policy (except the proceeds received from any workers' compensation, public liability policy or reinstatement policy to the extent that the proceeds are paid, or are payable, to an *entity* entitled to be compensated under the workers' compensation or public liability policy or are paid, or are payable, under a contract for the reinstatement of the *collateral*); and
  - (vi) any compensation which is received in respect of the *collateral*.
- (b) The deposit of amounts into the *nominated account* does not result in Octet or any other *entity* coming under a present liability to pay any amount to any *entity*.

#### 4.3 Withdrawals from the nominated account

- (a) Octet can direct the disposition of funds from the *nominated account* without further consent from the Grantor. In particular Octet can require that money in the *nominated account* be applied to reduce the *secured money* or the money secured by any *security interest* which ranks ahead of any *security interest* created by this deed. The deposit of amounts into the *nominated account* does not result in Octet or any other *entity* coming under a present liability to pay any amount to any *entity*.
- (b) The Grantor acknowledges that it is not entitled to any *collections* of any *attached receivable* held in the *nominated account* from time to time. The Grantor also acknowledges that it is not entitled to any *collections* of any *other receivable* which is not a *revolving asset* held in the *nominated account* from time to time. Octet has the sole and absolute discretion to determine if any of those proceeds of *attached receivables* or *other receivables* are withdrawn and whether they should be paid to the Grantor or used for another purpose.
- (c) The Grantor acknowledges that any *collections* of any *transferred receivable* held in the *nominated account* from time to time are the property of Octet and that the Grantor has no interest in them and does not have the power to transfer rights in them.

## 5 REPRESENTATIONS

### 5.1 General representations

The Grantor represents and warrants to Octet that, except as previously notified to and accepted by Octet in writing, each of the following is true.

- (a) If it is a *corporation*, it is a *corporation* duly incorporated and validly existing under the laws of its jurisdiction of incorporation.
- (b) It has an established place of business in Australia and is an Australian entity.
- (c) If it is a *corporation*, it has the power to:
  - (i) own its property and carry on its business as it is being conducted; and



- (ii) enter into, perform and deliver the *transaction documents* to which it is a party and the transactions contemplated by those *transaction documents*.
- (d) The obligations expressed to be assumed by it in each *transaction document* are legal, valid, binding and enforceable.
- (e) The entry into and performance by it of the *transaction documents* and the transactions contemplated by the *transaction documents* does not and will not conflict with any law or regulation applicable to it; its constitutional documents or any agreement or instrument binding on it or any of its property.
- (f) It has taken all corporate actions and obtained or effected all required or desirable authorisations (which are in full force and effect):
  - (i) to enable it lawfully to enter into, deliver, exercise its rights and perform its obligations under the *transaction documents* to which it is a party and the transactions contemplated by those *transaction documents*;
  - (ii) to make the *transaction documents* to which it is a party valid, binding, enforceable and admissible in evidence in its jurisdiction of incorporation; and
  - (iii) which are material to it carrying on its business.
- (g) It is not materially in default of any law which is binding on it or any *collateral*.
- (h) The choice of law referred to in this deed as the governing law of this deed will be recognised and enforced in its jurisdiction of incorporation or, if the Grantor is an individual, his or her principal place of business and principal place of residence.
- (i) Any judgment relating to a *transaction document* that is obtained in a jurisdiction referred to in this deed as the governing jurisdiction, will be recognised and enforced in its jurisdiction of incorporation or, if the Grantor is an individual, his or her principal place of business and principal place of residence.
- (j) Neither it nor any of its assets has any immunity from suit or attachment in the jurisdiction of its incorporation or, if the Grantor is an individual, his or her principal place of business or principal place of residence.
- (k) No *event of default* is continuing or might reasonably be expected to result from its entering into and performing its obligations under the *transaction documents*.
- (l) No event or circumstance is outstanding which constitutes a default under any other agreement or instrument which is binding on it or to which its property is subject which might have a *material adverse effect*.
- (m) It is solvent and able to pay its debts as they fall due.
- (n) No proceedings have (to the best of its knowledge and belief) been started or threatened against it which, if adversely determined, might reasonably be expected to have a *material adverse effect*. In this clause "proceedings" means litigation, arbitration, administrative or investigative proceedings of or before any court, arbitral body or agency, tax or government authority.
- (o) Except as specified in item 1 of the Schedule, it does not enter any *transaction document* as a trustee or hold any property as trustee.

- (p) Any factual information provided by it for the purposes of a *transaction document* was true and accurate in all material respects as at the date it was provided or as at the date (if any) at which it is stated.
- (q) The records, accounts, statement of financial position, statement of financial performance, statement of cash flows and other financial information of the Grantor provided to Octet give a true, fair and complete view of the Grantor's business and its assets and liabilities and disclose all material *financial indebtedness* and all material contingent liabilities of the Grantor.
- (r) There is no information about its affairs which, if disclosed to Octet, might adversely affect Octet's decision to enter into or rely on the *transaction documents*.
- (s) Its payment obligations under the *transaction documents* rank at least *pari passu* with the claims of all its unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally (if the Grantor is a *corporation*) or to individuals generally (if the Grantor is an individual).
- (t) Except as disclosed to Octet before the date of this deed, the Grantor is not and has not been, and the Grantor agrees that it will not (without approval from Octet) become:
  - (i) a member of a group of companies under section 48-5 of the *GST Act* or a member of a consolidated group (which has the meaning given by section 703-5 of the *Income Tax Assessment Act 1997*) or an MEC (multiple entry consolidated) group (which has the meaning given by section 719-5 of that Act);
  - (ii) a member of a joint venture under section 51-5 of the *GST Act*; or
  - (iii) a partner in a partnership as defined in the *GST Act*.

## 5.2 Additional representations – individuals

If the Grantor is an individual he or she also represents and warrants to Octet that each of the following is true.

- (a) He or she enters into each *transaction document* to which he or she is a party wholly for business purposes or investment purposes. Those investment purposes do not include the purchase, renovation or improvement of residential property or investment in marketable securities.
- (b) All *personal property* which is used to any extent in the conduct of, or in connection with, a business, including inventory, the goodwill of each business which he or she may carry on and all property used to conduct that business is held by him or her in the course of furtherance, to any degree, of carrying on an enterprise to which an ABN has been allocated.
- (c) His or her date of birth as disclosed to Octet is correct.

## 5.3 Representations relating to the collateral

The Grantor represents and warrants to Octet that, except as previously disclosed to and accepted by Octet in writing, each of the following is true.

- (a) It is the only owner of the *collateral*.

- (b) It has not granted or agreed to grant a *security interest* over any of the *collateral* and there are no *security interests* in any of the *collateral*, other than *permitted interests*.
- (c) The *collateral* is not used for any personal, household or domestic purpose and will not be used for any of those purposes.
- (d) No other *entity* has an interest or right in any of the *collateral* or the power to transfer a right in the *collateral*, except an interest or right which is a *permitted interest*.
- (e) It has control of all investment instruments, intermediated securities, letters of credit, negotiable instruments, satellites and space objects which form part of the *collateral* and, if requested by Octet, will do all things necessary and enter into any agreement requested by Octet to deliver control of that *collateral* to Octet.
- (f) It has not granted or agreed to grant possession or control over the *collateral* to any *entity* other than Octet.
- (g) Each *attached receivable* will be good, valid, enforceable and subsisting at all times for its full unpaid balance, and will not be voidable, or subject to any set-off or counterclaim against the Grantor by reason of any default of the Grantor.
- (h) The information given to Octet about the *collateral* is complete and correct.

#### **5.4 Repetition**

The Grantor will be taken to have repeated the representations and warranties in this deed on each day until the *security interests* created by this deed are released.

#### **5.5 Reliance on representations and warranties**

The Grantor acknowledges that Octet has entered or will enter into the *transaction documents* in reliance on the representations and warranties in this deed.

### **6 UNDERTAKINGS**

#### **6.1 Payment and performance undertakings**

The Grantor must do each of the following.

- (a) Duly and punctually pay the *secured money* in accordance with the *transaction documents* or, if the *transaction documents* do not specify when the *secured money* must be paid, on demand. After an *event of default* (whether or not it subsists) the Grantor must pay all *secured money* on demand by Octet. The *secured money* must be paid without set-off or counterclaim.
- (b) Duly and punctually comply with and perform each of the *secured obligations* and any other obligations under the *transaction documents*.
- (c) Ensure that no *event of default* occurs.
- (d) Apply the financial accommodation provided to it by Octet for the purpose agreed by Octet including, if required, to release or discharge any *security interest*.
- (e) Perform its obligations under any security agreement in respect of a prior ranking *security interest* over any *collateral*.

## 6.2 Corporate existence, name and other particulars

- (a) The Grantor must, unless the Grantor is an individual, maintain its corporate existence and must not change its place of incorporation.
- (b) The Grantor must not change its name or business characteristics (such as its ACN, ABN or ARSN) without Octet's approval. That approval must be obtained at least ten *business days* before the change occurs.
- (c) The Grantor must keep Octet informed of the name or style under which it trades; its registered address; its principal place of business; its telephone number, fax number and e-mail address; any change in the nature of its business or to its auditor or external accountants; if it is a *corporation*, any change in its directors, company secretary or public officer; and if it is a partnership, any change in the identity of the partners. Where possible the Grantor must inform Octet about a change before it happens.

## 6.3 Attached receivables

The Grantor agrees that:

- (a) it will, if required by Octet, give any notice to the *entity* which owes the *attached receivable* or any other *entity*, as Octet may require, in relation to any *attached receivable*. It must not give any notice of that type unless Octet requests it to do so;
- (b) it will, if required by Octet, deliver to Octet each invoice which evidences or purports to evidence an *attached receivable*; each agreement, receipt, acknowledgement or other document which gives rise to, evidences or records or purports to evidence or record an *attached receivable* or the amount of it that remains to be paid; and each document or other record of a *related right*;
- (c) until the invoices and other documents mentioned in clause 6.3(b) are delivered to Octet the Grantor will keep them in good order and condition and ensure that they are properly and securely housed in premises either owned by the Grantor or leased by the Grantor on terms approved by Octet;
- (d) it will perform the Grantor's obligations under each agreement which gives rise to an *attached receivable* in accordance with its terms and any law relating to it;
- (e) it will not do or cause to be done or permit any act or omission which may prejudice or adversely affect any right to receive payment of an *attached receivable* or to enforce any agreement which gives rise to an *attached receivable*;
- (f) it will not, without the consent of Octet, release or compound an *attached receivable* or allow a set-off, counterclaim or any other thing to arise, occur or be asserted which could reduce the value of an *attached receivable*;
- (g) it will not receive, compound or release an *attached receivable* or do anything which may impede, delay or prevent recovery of an *attached receivable* without Octet's consent; and
- (h) it will promptly tell Octet if an *attached receivable* is not paid within ordinary trading terms and that could have a *material adverse effect*.

If the *facility agreement* imposes obligations in relation to *attached receivables* the Grantor must comply with both those obligations and this clause 6.3 and, to the extent that is not possible (for

example because the obligations are inconsistent), the Grantor must comply with the *facility agreement* rather than this clause 6.3.

#### 6.4 General undertakings

The Grantor must do each of the following.

- (a) Conduct its business in a proper, orderly and efficient manner and in accordance with all applicable laws.
- (b) Promptly obtain, comply with and do all that is necessary to maintain in full force and effect, all authorisations required:
  - (i) to enable it to perform its obligations under the *transaction documents*;
  - (ii) to ensure the legality, validity, enforceability or admissibility in evidence of each *transaction document* in Australia, in its jurisdiction of incorporation (if the Grantor is not an individual), in the Grantor's principal place of business and principal place of residence (if the Grantor is an individual) and in each place where the *collateral* is located; and
  - (iii) to carry on its business, if those authorisations are material to that business.
- (c) Promptly supply certified copies to Octet of any authorisations required under clause 6.4(b).
- (d) Comply in all respects with all laws to which it or the *collateral* may be subject, if failure to comply could materially impair its ability to perform its obligations under the *transaction documents*.
- (e) Not vary in any way any *security interest* disclosed and consented to by Octet, without Octet's consent.
- (f) Not incur any *financial indebtedness* or allow any further *financial indebtedness* to remain owing without Octet's consent.
- (g) Not enter into any amalgamation, demerger, merger or corporate reconstruction.
- (h) Not deal in any way with any *entity* except at arm's-length in the ordinary course of business for valuable commercial consideration.
- (i) Not to transfer or lease any asset to, or lend any money to, or permit any money to remain owing to it (unless approved by Octet on any terms it thinks fit) by any other Grantor (if there is more than one) or an *entity* which is *related* to the Grantor, nor enter into any service agreement or other arrangement with those *entities* without Octet's consent. A consent or approval can be given in relation to specific transactions or by a general description of the extent of a Grantor's authority to do any of those things.
- (j) Not make any substantial change to the general nature of its business from that carried on at the date of this deed.
- (k) Not, without the prior consent of Octet:
  - (i) call up or receive in advance of calls any of the uncalled capital (including any share premium); or

- (ii) pass a resolution under section 254N or section 260B of the Corporations Act 2001.

#### **6.5 Environmental undertakings**

The Grantor must do each of the following.

- (a) Notify Octet promptly if there is a *contaminant* on, in, under or migrating to or from the *collateral*.
- (b) Not have a *contaminant* on, in or under the *collateral*, or release a *contaminant* from, or allow a *contaminant* to escape or migrate from, the *collateral*.
- (c) Immediately remove any *contaminant* from the *collateral* and make good any damage caused by the *contaminant* or its removal.
- (d) If a *contaminant* is released, escapes or migrates from the *collateral*, minimise its impact on the *environment* and make good any damage it causes.
- (e) Not deal with the *collateral* or any *contaminant* in such a way as to increase the risk of harm from any *contaminant*.
- (f) Notify Octet promptly if a government authority issues any notice, order or claim in respect of the *collateral* under any law relating to a *contaminant*, pollution or the protection of the *environment* (**Clean-up Notice**).
- (g) Do any remedial work or other thing required by any Clean-up Notice within any period of time specified in the notice.
- (h) If Octet reasonably believes there is a *contaminant* on, in, under or migrating to or from the *collateral* or if a government authority is entitled to issue a Clean-up Notice, arrange for an environmental examination or audit of the *collateral* to be conducted by an appropriately qualified person approved by Octet, and have any remedial work or any other thing recommended by that person done within such time as Octet reasonably requires.

#### **6.6 Undertakings regarding records**

The Grantor must do each of the following.

- (a) Keep proper records in relation to its business in accordance with the law, the accounting standards and the *facility agreement*.
- (b) Have its annual financial statements audited if Octet requires it to do so.
- (c) If Octet reasonably believes that there is a *potential event of default* or an *event of default* may have happened, allow Octet, or an agent or accountant engaged by Octet, to investigate whether this belief is accurate and co-operate fully to allow the investigation to take place.

#### **6.7 Information undertakings**

The Grantor must do each of the following.

- (a) Give to Octet a copy of all documents sent by the Grantor to its shareholders (or any class of them) or its creditors generally (or any class of them) at the same time as they are sent.

- (b) Promptly on becoming aware of them, give Octet details of any proceedings which are current, threatened or pending against the Grantor and which might, if adversely determined, have a *material adverse effect*. In this clause "proceedings" means litigation, arbitration, administrative or investigative proceedings of or before any court, arbitral body or agency, tax or government authority.
- (c) Promptly give Octet any further information regarding the financial condition, business and operations of the Grantor as Octet may reasonably request.
- (d) Promptly on becoming aware of the occurrence of an *event of default* or a *potential event of default* give to Octet notice of the event and the steps (if any) being taken to remedy it.
- (e) Promptly on becoming aware of any claim for compensation arising in relation to the *collateral*; any claim arising under any insurance policy in relation to the *collateral*; any damage to or defect in the *collateral*; or any event or circumstance which could result in the value of the *collateral* being adversely affected give notice of the claim, damage, event or circumstance to Octet.
- (f) Promptly on request by Octet, give Octet a certificate signed by two of its directors (or the director if there is only one) or by the Grantor if the Grantor is an individual certifying that no *event of default* is continuing (or if an *event of default* is continuing, specifying the *event of default* and the steps (if any) being taken to remedy it).
- (g) Within ten *business days* of a request by Octet, give Octet a full and complete list of the *collateral*, including the value and location of each item and the serial number of each item which is serial numbered property.
- (h) Give Octet:
  - (i) prompt notice of any transfer of *collateral* in breach of clause 3.1; and
  - (ii) any information requested by Octet in relation to the transferee to enable Octet to perfect its *security interests* created by this deed as against the transferee.

The Grantor acknowledges that any notification under this clause 6.7(h) does not cure the breach of the undertakings in clause 3.1.

- (i) Give Octet a copy of any garnishee notice, or any notice under section 120 of the *PPSA*, that is given to any *entity* in relation to money that the *entity* owes or may owe at any time to the Grantor, as soon as the Grantor becomes aware of the notice.

## 6.8 Undertakings relating to the collateral

The Grantor must do each of the following.

- (a) If this deed is intended by Octet to secure a loan made by Octet to enable the Grantor to purchase any *collateral* or release or discharge a *security interest* over any *collateral*, immediately apply the proceeds of the loan (or as much of the loan as is necessary) for that purpose.
- (b) Perform its obligations under any security agreement in respect of a prior ranking *security interest* over any *collateral*.
- (c) Not use any *collateral* except in the ordinary course of its ordinary business.

- (d) Not take any *collateral* out of Australia without Octet's consent, except in the ordinary course of its ordinary business.
- (e) Store the *collateral* at its principal place of business or the place notified to Octet in writing, unless the *collateral* is being used in the ordinary course of its ordinary business.
- (f) Perform its obligations (or ensure that the lessee performs the lessee's obligations) under any lease of any premises at which the *collateral* is stored and perform its obligations under any lease held by the Grantor.
- (g) Comply with all laws applying to the *collateral*, the ownership of the *collateral* or the use of the *collateral*.
- (h) Not use any *collateral* in any way that makes it liable to be confiscated under any legal power.
- (i) If the *collateral* is seized under a legal power or taken out of its possession without its consent, within 24 hours advise Octet of that fact and, if known, the place where the *collateral* is stored.
- (j) Not allow any unqualified, unlicensed, alcohol impaired or drug impaired person to use the *collateral*.
- (k) Comply with the manufacturer's specifications for the use of any *collateral*.
- (l) Not use any *collateral* in a way that if the *collateral* was damaged or destroyed it would not be insured or a manufacturer's or supplier's warranty would be void or inapplicable.
- (m) Maintain and comply with the terms of all licences, manufacturer's or supplier's warranties, consents and authorisations applying to any *collateral* or the use of any *collateral*.
- (n) Maintain the *collateral* in good condition.
- (o) Have the *collateral* serviced by a qualified person in accordance with the manufacturer's recommendations. If required by Octet that person must be a person approved by Octet.
- (p) Not modify or dismantle any *collateral* (except for the purpose of normal maintenance) without Octet's consent.
- (q) Not remove or modify any name, serial number, identification number or trademark on any *collateral*.
- (r) Allow Octet or a person appointed by Octet to inspect or test the *collateral* at any reasonable time, and do everything in its power to assist the inspection or testing.
- (s) Pay all charges, fees and taxes that apply to any *collateral* when they are due and, if Octet asks it to, give Octet evidence that it has done so.
- (t) Deliver to Octet and allow Octet to retain all documents of title and other documents relating to the ownership or use of the *collateral*, unless those documents are held by the holder of a prior *security interest* over the *collateral*.
- (u) Irrevocably direct any holder of any prior *security interest* over the *collateral* to deliver to Octet all documents of title and other documents relating to the ownership or use of the *collateral* held by that *entity* when that *entity* ceases to be entitled to hold them.



- (v) Not deal with (whether in a single transaction or a series of related or unrelated transactions, and whether voluntarily or involuntarily) any *collateral* except as permitted under clause 3.
- (w) If the Grantor is an individual, he or she must not, during the currency of this deed and for a period of two years after any sale or disposal of the goodwill of the business conducted by the Grantor following an *event of default*, within a distance of five kilometres in a direct line from any place where the Grantor conducted that business, directly or indirectly, undertake or carry on, or be connected with, or engaged or interested in, either alone or in partnership with, or as a shareholder, manager, servant or agent of, any other *entity*, a business of any nature which is the same or substantially similar to any business carried on by the Grantor during the currency of this deed.
- (x) If any compensation is payable to the Grantor in relation to the *collateral* (for example because it is compulsorily acquired by a governmental authority) the Grantor must deposit the compensation into the *nominated account* as required by clause 4.2 and until it does so that Grantor will hold the compensation on trust for Octet. If the *nominated account* has not been opened the Grantor must immediately pay the compensation to Octet and until it does so the Grantor will hold the compensation on trust for Octet.
- (y) If the Grantor is or could be a secured party in respect of any *security interest*, the Grantor must implement, maintain and comply with procedures (which Octet requires or, if Octet has not required that it be done, those which are prudent for a person conducting a similar business) to identify and perfect those *security interests*. These include procedures to ensure that those *security interests* are continuously perfected, including all steps necessary:
  - (i) for the Grantor to obtain the highest ranking priority possible in respect of the *security interest* (such as perfecting a purchase money security interest or perfecting a *security interest* by control); and
  - (ii) to minimise the risk of a third party acquiring an interest free of the *security interest* (such as including serial number in a financing statement).

#### 6.9 Controllable property

The Grantor must do each of the following.

- (a) Ensure that a potential purchaser cannot acquire any negotiable instrument, investment instrument, intermediated security or chattel paper forming part of the *collateral*.
- (b) Ensure that a potential purchaser cannot take possession of any *collateral* without first receiving notice in a form approved by Octet of Octet's interest in the *collateral* under this deed and that any dealing with that *collateral* (unless it is inventory which is sold in the ordinary course of the Grantor's ordinary business) constitutes a breach of this deed.
- (c) Ensure that no *entity* other than the Grantor, Octet, an *entity* which has agreed to act on the instructions of Octet or an *entity* approved by Octet controls the sending of some or all of the electronic messages or other electronic communications by which a marketable security (as defined in the Corporations Act 2001) included in the *collateral* could be transferred. The Grantor must, if required by Octet, ensure that there is an agreement in force under which Octet or an *entity* which has agreed to act on the instructions of Octet controls the sending of the electronic messages or other electronic communications by which a marketable security of that type could be transferred.

- (d) Take any steps required by Octet to ensure that Octet's *security interests* in investment instruments, intermediated securities and negotiable instruments are recorded by any relevant clearing house or securities depository and on the records maintained by or on behalf of the relevant issuer.

#### 6.10 ADI accounts

- (a) If an ADI account is included in the *collateral* Octet may direct the disposition of funds from the account without further consent from the Grantor. In relation to the *nominated account* also see clause 4.
- (b) If an ADI account is included in the *collateral* and any other *entity* (including the ADI) has a *security interest* in the ADI account (including a *security interest* which is perfected by control) the Grantor must obtain any waiver in relation to the other *security interest* which Octet may require.

#### 6.11 Negotiable instruments and letters of credit

- (a) If a *facility agreement* imposes obligations in relation to a negotiable instrument (for example because it is a *collection* in payment of a *transferred receivable* or *attached receivable*) the Grantor must comply with those obligations. If the *facility agreement* does not impose obligations in relation to a negotiable instrument the Grantor must comply with paragraphs (b) and (c) below and, if the *facility agreement* does impose obligations of that type, the Grantor must comply with paragraphs (b) and (c) below to the extent it is possible to comply with those paragraphs and also comply with the obligations in the *facility agreement*.
- (b) If a negotiable instrument not evidenced by an electronic record is included in the *collateral* the Grantor must, if required by Octet, use its best endeavours to give physical possession of the negotiable instrument to Octet.
- (c) If a negotiable instrument not evidenced by a certificate is included in the *collateral* the Grantor must use its best endeavours to ensure that the negotiable instrument is able to be transferred in accordance with the operating rules of a clearing and settlement facility. If required by Octet, Octet or its nominee must control the sending of some or all of the electronic messages or other electronic communications by which the negotiable instrument could be transferred.
- (d) If a letter of credit is included in the *collateral* the Grantor must, if required by Octet, use its best endeavours to ensure that the issuer or its nominee consents to the letter of credit being transferred to Octet. If required by Octet the letter of credit must be given to Octet.

#### 6.12 Chattel paper

- (a) If chattel paper is included in the *collateral* the Grantor must ensure that a potential purchaser cannot acquire it; must not give possession of it (including as contemplated by section 24(5) of the *PPSA* if it is evidenced by an electronic record) to any *entity* except Octet; and must, if requested by Octet, give possession to Octet in the way Octet requires.
- (b) If chattel paper evidenced by an electronic record is included in the *collateral* the Grantor must, if required by Octet, ensure:
  - (i) that there is a single, authoritative copy of the electronic record which is unique, identifiable and unalterable;
  - (ii) that the authoritative copy identifies Octet as the transferee;

- (iii) that the authoritative copy is communicated to, and maintained by, Octet;
- (iv) copies or revisions of the record that change the transferee of the authoritative copy can be made only with the participation of Octet;
- (v) each copy of the authoritative copy (and any copy of such a copy) is readily identifiable as a copy that is not the authoritative copy; and
- (vi) any revision of the authoritative copy is readily identifiable as an authorised or unauthorised copy.

#### **6.13 Investment instruments**

- (a) If required by Octet the Grantor must use its best endeavours to ensure that any investment instrument included in the *collateral* records Octet as the registered owner of the instrument or that the issuer registers Octet as the registered owner of the instrument.
- (b) If an investment instrument included in the *collateral* is evidenced by a certificate the Grantor agrees to give possession of the instrument to Octet if required by Octet and consents to a transfer of the instrument to Octet or its nominee and also consents to any dealing with the instrument by Octet or its nominee.
- (c) If an investment instrument included in the *collateral* is evidenced by a certificate the Grantor must, if required by Octet, use its best endeavours to ensure:
  - (i) that the certificate specifies Octet as the *entity* which is entitled to the investment instrument; and
  - (ii) that Octet or its nominee has possession of the certificate.
- (d) If an investment instrument included in the *collateral* is not evidenced by a certificate Octet will be entitled to initiate or control the sending of instructions by which the investment instrument could be transferred or otherwise dealt with. If required by Octet the Grantor must use its best endeavours to ensure that the issuer of the instrument registers Octet or its nominee as the registered owner and that Octet or its nominee is able to initiate or control the sending of some or all of the electronic messages or other electronic communications by which the investment instrument could be transferred or otherwise dealt with.

#### **6.14 Intermediated securities**

The Grantor must do each of the following if Octet has told the Grantor that this clause 6.14 applies, if an *event of default* has occurred or if there is a *potential event of default*.

- (a) Ensure that Octet or its nominee is able to initiate or control the sending of some or all of the electronic messages or other electronic communications by which the intermediated securities could be transferred or otherwise dealt with.
- (b) Not give the intermediary any instructions in relation to the intermediated securities without first obtaining approval from Octet.
- (c) Ensure that the intermediary complies with instructions (including instructions to debit a securities account) given by Octet without seeking the consent of the Grantor or any *entity* which has agreed to act on the instructions of the Grantor.

- (d) Use its best endeavours to ensure that the securities account is maintained in the name of Octet or its nominee.

#### **6.15 Obligation to insure**

- (a) The Grantor must, at its expense, arrange and maintain insurance over all the *collateral* it is legally entitled to insure.
- (b) The insurance must:
  - (i) insure against the risks that *entities* in the same business as the Grantor usually insure against;
  - (ii) insure against any other risks that Octet requires;
  - (iii) be on usual commercial terms;
  - (iv) be for the full agreed value of the *collateral*;
  - (v) be with an insurer acceptable to Octet; and
  - (vi) note Octet's interest as the holder of the *security interest* created by this deed, or (if required by Octet) specify Octet as the loss payee.
- (c) Upon request, the Grantor must give Octet evidence that it has arranged and is maintaining the insurance required by this deed.

#### **6.16 Insurance proceeds**

- (a) Subject to the rights of the holder of any prior ranking *security interest* over the *collateral*, Octet is entitled to any insurance proceeds payable to the Grantor under the Grantor's insurance policies in respect of the *collateral*. The Grantor irrevocably authorises its insurers to pay those proceeds to Octet.
- (b) If the Grantor's insurer pays those proceeds to the Grantor the Grantor must deposit them into the *nominated account* as required by clause 4.2 and until it does so, the Grantor will hold the proceeds on trust for Octet. If the *nominated account* has not been opened the Grantor must immediately pay the proceeds to Octet and until it does so the Grantor will hold the proceeds on trust for Octet.
- (c) Octet is entitled, at its discretion, to use the proceeds of the Grantor's insurance policies to repair or replace any of the *collateral* which has been damaged or destroyed, to pay any *secured money* or to procure the performance of any *secured obligations*.

#### **6.17 Octet may remedy breach**

If the Grantor does not comply with an obligation it has to Octet under the *transaction documents*, Octet may do what the Grantor was required to do.

#### **6.18 Co-operation with Octet**

The Grantor must do everything Octet asks the Grantor to do to give Octet the full benefit of this deed. The Grantor must make sure that any *entity* who is expressed to be a party to a *transaction document* complies with its obligations to Octet under that *transaction document*.

**6.19 Term of undertakings**

Each undertaking in this clause continues from the date of this deed until each *security interest* created by this deed is released.

**7 POWER OF ATTORNEY****7.1 Appointment of attorneys**

For valuable consideration and by way of security the Grantor irrevocably and unconditionally appoints Octet, any *receiver*, each *authorised officer* and any lawyer acting on behalf of Octet, jointly and severally, as the Grantor's attorney to:

- (a) do anything the Grantor is required to do under a *transaction document*;
- (b) do anything the attorney thinks necessary to protect Octet's rights under a *transaction document* or to exercise any right, power or remedy that Octet has under a *transaction document*;
- (c) do anything the attorney thinks necessary for the due performance of this deed or to give effect to this deed; and
- (d) do anything else the Grantor could do as owner of the *collateral*.

**7.2 Exercise of attorney's discretion**

The attorney will determine, at the attorney's discretion, if and how a power should be exercised. An attorney may act despite any conflict of duty or interest and may do any of the things mentioned in clause 7.1 as the attorney sees fit. Anything done by an attorney under the powers given to the attorney will be binding on you as if those things had been done by you. An attorney is not liable to you for anything done by the attorney.

**8 ENFORCEMENT****8.1 Acceleration of obligations and enforcement of security interest**

If any *event of default* happens the *secured money* will become payable immediately, the *secured obligations* must be performed immediately and the *security interest* created by this deed will become enforceable without demand or notice.

**8.2 Consequences of an event of default**

In addition to any other rights provided by law or any *transaction document*, at any time after an *event of default* (whether or not it continues), Octet may do all or any of the following.

- (a) Sue the Grantor for the *secured money*.
- (b) Appoint one or more qualified persons as a *receiver* of the *collateral* or any part of the *collateral*.
- (c) Do anything that a *receiver* could do under this deed, whether or not a *receiver* has been appointed.

### 8.3 Octet's enforcement powers

If this deed has become enforceable, Octet is entitled to do any one or more of the following.

- (a) Deal with any *collateral* in any way the Grantor could.
- (b) Seize, take possession of, secure, store, value or retain any *collateral* and, if Octet does have possession of any *collateral*, give up possession of any *collateral* at any time.
- (c) Carry on any part of the business of the Grantor with all the powers of an absolute owner if Octet considers it appropriate.
- (d) Have access to and use the Grantor's premises, plant, equipment, *accounting records* and other records and use the services of the Grantor's employees and agents for any purpose.
- (e) Repair, clean, repaint, demolish, rebuild, alter or add to the *collateral*.
- (f) Subdivide or consolidate the *collateral*; create any easements or covenants; carry out or complete any work; and remove any chattels or fixtures and deal with them in any way.
- (g) Pay any money owed by the Grantor or any money owing in respect of the *collateral* or which is secured by a *security interest* in the *collateral*.
- (h) Sell, transfer, assign, lease, license or otherwise dispose of the *collateral* (whether or not Octet has seized or taken possession of it). Any sale may be by auction, private treaty, tender or any other method. The sale, transfer, assignment, lease, license or disposal may be on any terms and conditions that Octet thinks fit, including terms for the deferred payment of the whole or any part of the purchase price, either with or without interest and either with or without security. The *collateral* can be sold, transferred, assigned, leased, licensed or disposed of in one line or by separate lots and can occur together with any other property.
- (i) Delay doing any of the things mentioned in clause 8.3(h) for any period determined by Octet.
- (j) Borrow money for the purpose of exercising Octet's rights, remedies and powers, and to give a *security interest* over any of the *collateral* as security for the loan.
- (k) Employ people to help it or advise it how to deal with the *collateral*.
- (l) Give receipts and sign any documents needed to deal with any of the *collateral* or which could assist with any dealing with any of the *collateral*.
- (m) Exercise the Grantor's rights or powers in respect of the *collateral* and perform, observe, carry out, enforce, vary or rescind any deed, agreement, obligation or right.
- (n) Sign documents and enter into contracts relating to the *collateral* on the Grantor's behalf.
- (o) Bring, continue or defend legal proceedings relating to the *collateral* (including in the Grantor's name) and make any arrangement or compromise.
- (p) Delegate any of Octet's rights, remedies and powers (including this power) to any other *entity*.

- (q) Do anything else that the Grantor could do in respect of the *collateral* and perform any of the Grantor's obligations under a *transaction document*.
- (r) Open or operate any ADI account in the Grantor's name (whether alone or jointly) to the exclusion of the Grantor, to deposit or withdraw any money to or from any ADI account and to sign and indorse or authorise others to sign and indorse in the name of the Grantor any negotiable instrument.
- (s) Open, deal with and redirect the mail of the Grantor.
- (t) Exercise any other right, remedy or power it has as a matter of law.

#### **8.4 Calls on shares**

Octet may do the following at any time while an *event of default* subsists.

- (a) In the name of the Grantor, make a call on the unpaid share capital of the Grantor (whether on account of the nominal value of shares or by way of premium).
- (b) Sue in the name of the Grantor or otherwise for the recovery of moneys becoming due in respect of calls.
- (c) Give valid receipts for those moneys.

#### **8.5 Grantor must help Octet**

The Grantor must do everything Octet asks it to do to help Octet exercise its rights, remedies and powers under this deed.

### **9 RECEIVERS**

#### **9.1 Appointing and removing Receivers**

- (a) An appointment by Octet of a *receiver* must be in writing and be signed by or on behalf of Octet. Octet will determine the terms of the *receiver's* appointment and the amount and basis of the *receiver's* remuneration.
- (b) Octet may remove any *receiver* it appoints and, if it wants to, reappoint that person or appoint another person as a replacement.

#### **9.2 Agent of Grantor**

Subject to clause 9.3, a *receiver* is the agent of the Grantor, not Octet. The Grantor, and not Octet, is responsible for anything a *receiver* does or fails to do in his or her capacity as *receiver*.

#### **9.3 Appointing receiver after winding-up**

Octet may appoint a *receiver* even if an order is made, or a resolution passed, to wind-up the Grantor. To the extent this is required by law a *receiver* appointed in those circumstances will not, or will not in some respects, act as the agent of the Grantor.

#### **9.4 Receiver's powers**

Unless Octet expressly restricts a *receiver's* powers on appointment, the *receiver* will have the power, in addition to the powers the *receiver* has as a matter of law, to do everything Octet may do under clause 8.3 (except appoint a receiver or receiver and manager).

#### **9.5 Indemnity by Grantor**

The Grantor must indemnify a *receiver* and each of the *receiver's* agents and employees against any claim or proceeding that is made, threatened or commenced, and any liability, loss, damage or expense (including legal costs on a full indemnity basis) and *taxes* they incur or suffer in their capacity as *receiver* or whilst acting as the *receiver's* agent or employee.

#### **9.6 Grantor must help receiver**

The Grantor must do everything a *receiver* asks it to do to help the *receiver* exercise his or her powers under this deed.

#### **9.7 Acting severally**

If Octet appoints more than one person to act as a *receiver*, those persons may act severally unless specified otherwise in the instrument of appointment.

### **10 STATUTORY POWERS**

#### **10.1 Powers conferred by law**

The rights, remedies and powers conferred on a mortgagee or other secured party by law:

- (a) are in addition to the rights, remedies and powers conferred by this deed or any *additional security*;
- (b) to the extent permitted by law, may be exercised by Octet immediately an *event of default* occurs and at any time subsequently; and
- (c) to the extent permitted by law, are excluded or varied only so far as they are inconsistent with the express terms of this deed or any *additional security*.

#### **10.2 Exclusion of legislation**

To the extent permitted by law, all legislation which at any time directly or indirectly:

- (a) lessens, varies or affects in favour of the Grantor any obligation under this deed or any *additional security*; or
- (b) delays, prevents or prejudicially affects the exercise of any right, remedy or power by Octet, any *receiver* or any attorney,

is excluded from this deed and any *additional security*.

#### **10.3 Exercise of rights by Octet**

If Octet exercises a right, power or remedy in connection with this deed, that exercise is taken not to be an exercise of a right, power or remedy under the *PPSA* unless Octet states otherwise at the time of exercise. However, this clause does not apply to a right, power or remedy which can only be exercised under the *PPSA*.

#### **10.4 No notice required unless mandatory**

To the extent the law permits, the Grantor waives:

- (a) its rights to receive any notice that is required by:



- (i) any provision of the *PPSA* (including a notice of a verification statement);
  - (ii) any other law before a secured party or *receiver* exercises a right, power or remedy; and
- (b) any time period that must otherwise lapse under any law before a secured party or *receiver* exercises a right, power or remedy.

If the law which requires a period of notice or a lapse of time cannot be excluded, but the law provides that the period of notice or lapse of time may be agreed, that period or lapse is one day or the minimum period the law allows to be agreed (whichever is longer).

However, nothing in this clause prohibits Octet or any *receiver* from giving a notice under the *PPSA* or any other law.

## 10.5 Exclusion of PPSA provisions

To the extent the law permits:

- (a) for the purposes of section 115(1) and 115(7) of the *PPSA*:
  - (i) Octet need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d) or 132(4); and
  - (ii) sections 142 and 143 are excluded;
- (b) for the purposes of section 115(7) of the *PPSA*, Octet need not comply with sections 132 and 137(3);
- (c) Octet may seize intangible property in any way and is not required to do so by serving a notice under section 123(2) of the *PPSA*;
- (d) if the *PPSA* is amended after the date of this deed to permit the Grantor and Octet to agree to not comply with or to exclude other provisions of the *PPSA*, Octet may notify the Grantor that any of these provisions is excluded, or that Octet need not comply with any of these provisions, as notified to the Grantor by Octet; and
- (e) the Grantor agrees not to exercise its rights to make any request of Octet under section 275 of the *PPSA*, to authorise the disclosure of any information under that section or to waive any duty of confidence that would otherwise permit non-disclosure under that section.

## 11 PROCEEDS OF ENFORCEMENT

### 11.1 Applying the proceeds

- (a) Any *personal property* or proceeds of *personal property* received by or on behalf of Octet as a result of enforcing a *security interest* in *personal property* will be applied in accordance with section 140 of the *PPSA* when that provision applies.
- (b) When section 140 of the *PPSA* does not apply all money received by Octet or a *receiver* under or by virtue of this deed will, subject to overriding legal obligations, be applied in the following manner and order.

- (i) First, in payment of all costs, charges and expenses of Octet and any *receiver* incurred in or incidental to the exercise or performance or attempted exercise or performance of any right, power or remedy in relation to this deed or any *additional security*.
- (ii) Secondly, in payment of such other outgoings as Octet may think fit to pay.
- (iii) Thirdly, in payment to the *receiver* of any remuneration whether by way of commission or otherwise.
- (iv) Fourthly, in payment to Octet of all amounts necessary to give effect to any indemnity contained in this deed.
- (v) Fifthly, in payment to Octet of the *secured money*.

#### **11.2 Surplus proceeds**

After payment in accordance with the previous clause, any remaining surplus will belong to the Grantor or other *entities* entitled to it. The surplus will not carry interest. Octet may pay the surplus to the credit of an ADI account in the name of the Grantor or other *entities* entitled to it and will then be under no further liability in respect of it.

#### **11.3 Payments actually received**

When applying money towards payment of the *secured money*, Octet will credit the Grantor only for money actually received by Octet in immediately available funds.

#### **11.4 Contingent amounts**

If, at the time Octet receives any money under this deed, any part of the *secured money* is contingently owing, Octet may retain an amount equal to that part. Octet must pay the amount retained into a short term interest bearing account. When the relevant *secured money* becomes due or is no longer contingently owing, Octet may pay to itself the due amount and any balance of the retained amount, together with interest earned, must be applied in accordance with clause 11.1.

### **12 PAYMENTS**

#### **12.1 Money given to Octet as security**

This deed does not affect Octet's right of set-off or appropriation with respect to any money given to or held by Octet as security for an obligation or which is payable by Octet to the Grantor. Until the whole of the *secured money* has been paid and all of the *secured obligations* have been performed no money given to or held by Octet as security for an obligation or owing by Octet to the Grantor on any account will become due for payment. The Grantor's rights in respect of that money are personal and the Grantor must not assign or deal with them in any way. Octet can at any time exercise a right of set-off in accordance with clause 12.2 and can at any time consolidate accounts in accordance with clause 12.3.

#### **12.2 Octet can set-off money owed**

- (a) Against any money that Octet or an *entity related* to Octet owes the Grantor, Octet may, without notice to the Grantor, set-off any money that the Grantor or an *entity related* to the Grantor owes Octet or an *entity related* to Octet. This includes money which is owed contingently or prospectively. It includes money which is owed on any account or basis. If

an amount owed cannot be immediately ascertained, Octet is entitled to make a reasonable estimate. On request Octet will tell the Grantor about any set-off effected under this clause.

- (b) Despite clause 12.2(a), if there is a perfected purchase money security interest granted by the Grantor in a *transferred receivable* or an *attached receivable* as the proceeds of inventory, Octet cannot set-off any new value mentioned in section 64 of the *PPSA* payable to the Grantor for the *security interest* granted by the Grantor in that *transferred receivable* or *attached receivable* against any debt or liability which was owed to Octet before Octet obtained that *security interest*.

### 12.3 Octet can consolidate accounts

- (a) Octet may, without notice to the Grantor, combine, consolidate or merge any accounts recording transactions between the Grantor and Octet. Octet may, without notice to the Grantor, apply all or any part of any credit balance standing to any account of the Grantor with Octet or any amount available to Octet by way of lien in or towards satisfaction of the *secured money*.
- (b) Octet may for those purposes do any of the following.
  - (i) Vary the terms and conditions of any arrangement between the Grantor and Octet on or under which Octet may be indebted to the Grantor, despite any prior agreement to the contrary or the fact that the respective liabilities may not be expressed in the same currency.
  - (ii) Effect any currency conversion Octet considers necessary or desirable. The rate which is applied will be the rate selected by Octet on a reasonable basis at the time of conversion.
  - (iii) In the name of the Grantor, do any acts and execute and deliver any documents as may be required to effect any combination, consolidation, merger or application under this clause.

### 12.4 Currency conversions

- (a) The Grantor must make each payment in the currency in which it is due. If Octet receives an amount in a currency other than that in which it is due:
  - (i) Octet may at its discretion convert the amount received into an amount in the required currency. The conversion will be made at the most recent prevailing rate of exchange. "Rate of exchange" means the rate at which Octet is able to buy the required currency from an ADI at its selling rate of exchange for that currency; and
  - (ii) the Grantor satisfies its obligation to pay in the required currency only to the extent of the amount of the required currency obtained from the conversion after deducting the costs, charges and expenses of the conversion.
- (b) If a judgment, order or proof of debt in connection with the *secured money* is expressed in a currency other than that in which the *secured money* is due, the Grantor must indemnify Octet against, and the Grantor must therefore pay Octet on demand:
  - (i) any difference arising from converting the other currency if the rate of exchange Octet uses for converting currency when Octet receives a payment in the other currency is less favourable to Octet than the rate of exchange used for the purpose of the judgment, order or acceptance of proof of debt; and

- (ii) the costs, charges and expenses of conversion.
- (c) The Grantor acknowledges that it might be necessary to convert the other currency through more than one currency to determine the rate of exchange available to Octet.

## 13 OTHER SECURITIES AND INTERESTS

### 13.1 Additional security interests in favour of Octet

- (a) If Octet has or obtains any *additional security*, the Grantor's obligations under this deed are not affected in any way. Octet can choose to exercise its rights under this deed or under an *additional security* at the same time or at different times.
- (b) In addition to the *secured money* and the *secured obligations*, this deed secures the same moneys and the same obligations as are secured by any *additional security*.
- (c) If required by Octet the Grantor must cause each of its subsidiaries within the meaning of section 46 of the Corporations Act 2001 to execute and deliver to Octet a guarantee and indemnity for the payment of the *secured money* and the performance of the *secured obligations* in a form acceptable to Octet and a security for that guarantee and indemnity in a form acceptable to Octet.
- (d) If the Grantor is a member of a partnership, firm or joint venture and the members change the Grantor must cause each new member to execute and deliver to Octet any document Octet may require to confirm that the new member is jointly and severally liable for the payment of the *secured money* and the performance of the *secured obligations* and a security for the performance of those obligations in a form acceptable to Octet. The Grantor continues to be bound by each *transaction document* to which it is a party if the members change (including if the Grantor ceases to be a member) or the partnership, firm or joint venture is dissolved or ceases to carry on business.

### 13.2 Notice of other interests in collateral

- (a) If Octet receives notice of a subsequent interest in any *collateral* which is not *personal property*, it may open a new account in the Grantor's name in the books of Octet. If Octet does not open a new account under this clause 13.2(a), it is taken to have done so at the time it received notice of the subsequent interest.
- (b) From the time the new account is opened or taken to be opened, the following amounts will be, or will be taken to be, debited or credited (as applicable) to the new account:
  - (i) all financial accommodation provided by Octet to the Grantor; and
  - (ii) all payments and repayments made by the Grantor to Octet.
- (c) Payments, repayments and other amounts from the new account will only be applied in reduction of other *secured money* to the extent there is no debit balance in that account.
- (d) If requested by Octet, the Grantor must ensure that any other holder of a *security interest* in *collateral* which is not *personal property* enters into an agreement with Octet:
  - (i) under which the holder agrees that Octet's *security interests* rank ahead of that holder's *security interest*, for all the amount owing that is incurred after that holder's *security interest* was granted; and

- (ii) which is otherwise satisfactory to Octet in form and substance.
- (e) Octet may notify the Grantor that its obligation to provide further financial accommodation under any *transaction document* is terminated, in which case its obligation to do so terminates immediately, if:
  - (i) Octet receives notices of a subsequent *security interest* (other than a *permitted interest*) which affects any *collateral* which is not *personal property*; and
  - (ii) it is of the opinion that any further financial accommodation provided to the Grantor will not rank ahead of that subsequent *security interest*.
- (f) If this clause 13.2 is inconsistent with any other *transaction document* or any other document between the parties, this clause prevails to the extent of the inconsistency.

### 13.3 Octet agreement for other interests

Nothing in this deed should be construed as an agreement by Octet to subordinate its *security interest* in the *collateral* or as a consent to any other *security interest*, apart from *permitted interests*, attaching to the *collateral*.

## 14 CONTINUING SECURITY

### 14.1 Security interest created by this deed continues

- (a) The *security interest* created by this deed is a continuing security. It is not released even if the Grantor has paid all the *secured money* and performed all the *secured obligations*. If Octet enters into other arrangements with the Grantor or with someone else at the Grantor's request in the future, this deed will also apply to those arrangements.
- (b) A *security interest* created by this deed will only be released if Octet gives the Grantor a formal written discharge or formal notice of release of all or part of the *collateral*. If it is given in relation to part of the *collateral* the *security interest* continues in relation to all other *collateral*.

### 14.2 Requirements for release

- (a) Octet has no obligation to give a discharge or notice releasing the *security interest* created by this deed, or amend any financing statement which Octet has registered in relation to it, until Octet is satisfied on each of the following points.
  - (i) Octet has received payment of all the *secured money*.
  - (ii) No further *secured money* may become owing to Octet in the future.
  - (iii) The *secured obligations* have been performed.
  - (iv) No payment made by the Grantor or a *guarantor* may be avoided or required to be repaid by Octet under any law relating to insolvency or the protection of creditors.
- (b) If Octet, at its discretion, releases some of the *collateral* from a *security interest* created by this deed so that the Grantor may transfer that property, or give a *security interest* in it, to another *entity* free of Octet's *security interest* (including for the purposes of a sale and lease back transaction) and that property is at any time transferred back to the Grantor (or the other secured party releases its *security interest*) then that property will, without any

further act being required, once again be subject to the *security interest* created by this deed.

- (c) If a *security interest* created by this deed is extinguished in relation to an item of *collateral* (for example by virtue of Part 2.5 of the *PPSA*) Octet will still have a *security interest* in the proceeds of the transaction or other dealing which resulted in the extinguishment. Octet may also have other rights, for example under section 53(2) of the *PPSA*.

#### **14.3 Rescission of payment**

Whenever for any reason (including under any law relating to liquidation, bankruptcy, fiduciary obligations or the protection of creditors):

- (a) all or part of any transaction of any nature (including any payment or transfer) made during the term of this deed which affects or relates in any way to the *secured money* is void, set aside or voidable;
- (b) any claim that anything contemplated by paragraph (a) is upheld, conceded or compromised; or
- (c) Octet is required to return or repay any money or asset received by it under any such transaction or the equivalent in value of that money or asset,

Octet will immediately become entitled against the Grantor to all rights in respect of the *secured money* and the *collateral* which it would have had if all or the relevant part of the transaction or receipt had not taken place. The Grantor must indemnify Octet on demand against any resulting loss, cost or expense. The Grantor must immediately do anything (including the signing of documents) required by Octet to restore to Octet any *guarantee* or *security interest* to which it was entitled immediately before application or the payment or transaction giving rise to it. This clause continues to apply after the discharge of this deed.

#### **14.4 Principal obligation**

- (a) This deed is a principal and independent obligation not ancillary or collateral to any other right or obligation. Octet may enforce this deed against the Grantor before it enforces any other right, remedy or power against any other Grantor (if there is more than one), any *guarantor* or any other *entity*, or enforces any other security for the *secured money*.
- (b) Octet's rights and the Grantor's liabilities under this deed are not affected by anything that might otherwise affect them at law.
- (c) Octet's rights, remedies and power under this deed are in addition to any rights, remedies and powers that Octet may have apart from it or may have under any law.

#### **14.5 Limitations on Grantor's rights**

Until the points specified in clause 14.2(a) have been satisfied the Grantor must not:

- (a) share in any security held or money received by Octet in respect of the *secured money*, or stand in the place of Octet in respect of any such security or money;
- (b) if there are two or more Grantors, take any steps to enforce a right or claim against another Grantor in respect of any money paid by a Grantor to Octet under this deed; or
- (c) have or exercise any rights of subrogation or have or exercise any rights as surety in competition with Octet.

## 15 PROTECTION OF THIRD PARTIES

### 15.1 No duty to enquire

An *entity* dealing with Octet or a *receiver* appointed by it or with an attorney or agent of the Grantor appointed under this deed will not have to enquire whether an *event of default* has occurred; whether any right, remedy or power exercised or claimed to be exercised has become exercisable; whether a *receiver* has been properly appointed or has the power which he or she claims to have; whether the *secured money* has fallen due or remains due; as to the propriety or regularity of a sale or other dealing; as to the necessity or expediency of a sale or other dealing; or whether a condition subject to which any sale, calling in, collection, conversion or dealing may be conducted has been satisfied. That *entity* will also not have to enquire as to the application of money paid to Octet or to a *receiver* appointed by Octet, or to an attorney or agent of the Grantor appointed under this deed.

### 15.2 Protection of purchasers

The title of any property acquired by a third party from Octet or a *receiver* will not be adversely affected by any irregularity or impropriety in the exercise of a right, remedy or power under this deed.

### 15.3 Receipt

Once Octet or an *authorised officer* receives any money or assets payable to or receivable by Octet, the *entity* which paid that money or handed over that asset cannot be liable for their subsequent loss or misapplication.

## 16 COSTS AND INTEREST

### 16.1 Costs

The Grantor indemnifies Octet against, and must pay Octet on demand the amount of, all losses, liabilities, costs and expenses (including legal costs on a full indemnity basis) and *taxes* in connection with any of the following.

- (a) The negotiation, preparation, execution, stamping and registration of a *transaction document*.
- (b) The occurrence of any *event of default*.
- (c) The administration, enforcement, attempted enforcement, preservation or attempted preservation of its rights, powers or remedies under a *transaction document* or which are conferred by law.
- (d) Any amendment to, or any consent, approval, waiver, release or discharge of or under a *transaction document*.
- (e) The appointment of a *receiver* (including the remuneration and costs of a *receiver*).

### 16.2 Interest

- (a) If the Grantor fails to pay any amount under this deed on the due date for payment, the Grantor must pay interest on that amount from the date payment should have been made until it is paid. The rate of interest will be the *prevailing rate*. Octet will calculate the interest daily.

- (b) If any amount the Grantor must pay under this deed becomes covered by a court order, the relevant Grantor must pay interest on that amount as a separate obligation and the rate of interest will be the *prevailing rate* or the rate in the court order if it is higher.
- (c) The Grantor must pay any interest calculated by Octet as payable under this clause on demand. If it is not paid it will be added to the amount which is outstanding and bear interest.

### 16.3 Goods and services tax

- (a) All amounts payable under or in connection with this deed are calculated without regard to GST. Accordingly:
  - (i) if any amount is determined to be consideration payable by the Grantor to Octet for a taxable supply for which Octet is liable to pay GST, the Grantor must pay to Octet at the same time an additional amount equal to the GST payable. Octet must provide to the Grantor a tax invoice at the time of payment; and
  - (ii) if the Grantor is required under this deed to indemnify Octet, or to make a reimbursement or contribution to Octet in respect of a taxable supply, and Octet can obtain an input tax credit on an acquisition associated with that indemnity, reimbursement or contribution, the amount the Grantor is required to pay is reduced by the amount of that input tax credit. The reduction is to be made before any increase under clause 16.3(a)(i).
- (b) Terms used in this clause have the meanings given to them in the *GST Act*.

## 17 INDEMNITIES

### 17.1 General indemnity

The Grantor must continuously, both before this deed ends and after it ends, immediately on demand indemnify Octet, each *authorised officer* and each of Octet's agents and employees against any loss, liability, cost or expense (including legal costs on a full indemnity basis) and taxes incurred or suffered in connection with any of the following.

- (a) The negotiation, preparation, execution, stamping and registration of a *transaction document* or the registration of a *security interest* which arises under a *transaction document*.
- (b) The Grantor failing to comply with its obligations to Octet under a *transaction document*.
- (c) The occurrence of any *event of default* or *potential event of default* or the occurrence of any event of default or any similar event (however described) which gives Octet a right to terminate any *transaction document*.
- (d) Any amendment to, or any consent, approval, waiver, release or discharge of or under a *transaction document*.
- (e) The appointment of a *receiver* and the exercise of any rights, powers or remedies by the *receiver*. This includes the remuneration and costs of a *receiver* and any indemnity given by Octet to the *receiver*.



- (f) The administration, enforcement, attempted enforcement, preservation or attempted preservation of its rights, powers or remedies under a *transaction document* or which are conferred by law.
- (g) Any claim or proceeding that is made, threatened or commenced, and any loss, liability, cost or expense (including legal costs on a full indemnity basis) and taxes they incur or suffer in exercising Octet's rights, remedies and powers under a *transaction document* or under any indemnity Octet gives a *receiver* or which are conferred by law.

#### **17.2 PPSA costs included in indemnity**

The costs mentioned in clause 17.1 include the costs of complying with an amendment demand given under section 178 of the *PPSA* in respect of a financing statement relating to this deed or the *security interests* it creates. They also include the costs of complying with a request for information under sections 275 or 276 of the *PPSA*; costs incurred in dealing with a notice under section 120 of the *PPSA*; costs incurred in any application for, or the obtaining of any registration relating to, any of the *security interests* created by this deed; and costs incurred in serving a court order on the Grantor or the Registrar (as defined in section 10 of the *PPSA*).

#### **17.3 Administrator and liquidator indemnity**

If Octet has any obligation (whether at law, under contract or otherwise) to indemnify an administrator, liquidator or provisional liquidator (each as defined in section 9 of the Corporations Act 2001 and including an administrator appointed under section 436C of that Act) the Grantor must indemnify Octet against that liability. The fact that the administrator has been, or may be entitled to be, indemnified by Octet and nothing in this clause will affect the administrator's right of indemnity under section 443D or the lien under section 443F. The fact that the liquidator or provisional liquidator has been, or may be entitled to be, indemnified by Octet and nothing in this clause will affect the liquidator's or provisional liquidator's right to payment under section 556 of the Corporations Act 2001 or any other right which he or she may have.

#### **17.4 Indemnities are continuing obligations**

Each indemnity in this deed is irrevocable. It is a continuing obligation which is separate and independent from all other obligations and survives the ending of this deed. It is also unconditional, except for conditions specified in this deed. It is not necessary for an expense to be incurred or for a payment to be made before an indemnity is enforced.

### **18 LIMITED LIABILITY**

#### **18.1 Accounting for money received**

Octet and each *receiver* only have to account to the Grantor for the amount which they actually receive from any dealing with the *collateral*. Octet and each *receiver* are not liable to account to the Grantor as a mortgagee in possession or for anything that a mortgagee in possession or other secured party could be liable for. If Octet does anything it should not do in relation to the *collateral* the Grantor's only remedy is damages. The Grantor will continue to owe Octet the difference between the amount of the *secured money* and the amount Octet actually receives from any dealing with the *collateral* and which is credited in accordance with clause 11.3.

#### **18.2 Losses due to enforcement**

Octet, the *authorised officers* and any *receiver* are not liable for any loss caused by the exercise or attempted exercise, failure to exercise, or delay in exercising, a right, remedy or power, unless the loss was caused by Octet's, the *authorised officer's* or *receiver's* gross negligence or wilful default.

## 19 TRUST PROVISIONS

### 19.1 Grantor liable in trustee capacity

If the Grantor is or becomes a trustee of a trust (other than the *trust* specified in item 1 of the Schedule) it must tell Octet immediately. Irrespective of this, the Grantor is bound by this deed both in its own right and as the trustee of each trust (including the *trust* specified in item 1 of the Schedule) of which it is a trustee. The relevant Grantor is also bound as the trustee of each trust it may become the trustee of. These requirements are not affected by an Australian Business Number being or not being, or a trust being or not being, specified in this deed.

### 19.2 Liability

- (a) A reference in this deed to the Grantor includes the Grantor as trustee of the *trust*, and the Grantor in the Grantor's own right.
- (b) A reference in this deed to the Grantor's property or business includes property owned by the Grantor, property in which the Grantor has rights or the power to transfer rights and the business carried on by the Grantor, irrespective of whether the Grantor has the title, right or power, or conducts the business, as trustee of the *trust* or in the Grantor's own right.
- (c) The liability of the Grantor under this deed or under any judgment or order obtained by Octet for the *secured money* or the performance of the *secured obligations* will be a personal liability of the Grantor and will be a liability both to the extent of the assets, rents, income and profits of the *trust* and of the *collateral* held by the Grantor beneficially.

### 19.3 Trust covenants

- (a) The Grantor enters into and executes this deed both in its personal capacity and as trustee of the *trust*.
- (b) The rights and interests of Octet will operate and rank in priority to the interests of the beneficiaries of the *trust*.
- (c) The Grantor warrants that true certified copies of any documents constituting or evidencing the *trust* have been supplied to Octet or Octet's lawyers prior to the date of this deed. The copies supplied are of all the documents which constitute or evidence the *trust*. No variation, alteration or addition has been made to them.
- (d) The Grantor warrants that each *transaction document* is duly executed and granted in lawful exercise of the rights and powers of the Grantor under the constituent *trust* documents and for the purposes of the *trust*.
- (e) The Grantor warrants that at the date of this deed, the Grantor is the only trustee of the *trust*, the *trust* is in full force and the Grantor is not in breach of any of its obligations as trustee.
- (f) The Grantor warrants that the *security interest* created by this deed will be binding on the Grantor's successors in office as trustee of the *trust*.
- (g) The *secured money*, to the full extent of the indebtedness of the Grantor to Octet (whether actual or contingent), is a liability both in its personal capacity and as trustee of the *trust*.
- (h) Nothing in this deed or in any notification given or to be treated as given to Octet:

- (i) requires Octet to see to the application of any money paid or credited to the Grantor, or to make any enquiry, or to be treated as having any knowledge of any right or claim by any *entity* to any money paid or credited;
- (ii) requires Octet to take notice of any actual, contingent or future interest of anyone in or under the documents constituting or evidencing the *trust* or the trust fund constituted or created by the *trust* (**Trust Fund**); or
- (iii) prejudices or in any way limits any rights or remedies of Octet against the Grantor as trustee of the *trust* or any beneficiary under the *trust* or any other *entity* referred to in the documents constituting or evidencing the *trust* or claiming any interest under the *trust*; or in relation to any part of the property, assets and rights held by the Grantor as trustee of the *trust*. It does not matter whether the rights or remedies arise by way of indemnity, lien, subrogation or in any other way. They include all rights to trace, follow and levy execution and enforcement upon or against any part of the property, assets and rights.

#### 19.4 Additional trust covenants

The Grantor covenants with Octet that it will not, without the consent of Octet:

- (a) retire or cease for any reason to be the sole trustee of the *trust*;
- (b) permit any other *entity* to act or be appointed as trustee of the *trust*, either jointly with the Grantor or by way of addition to, or in replacement of, the Grantor;
- (c) permit the *trust* to be determined in any other way;
- (d) permit the whole or any part of the capital of the Trust Fund to be sold, disposed of, transferred, distributed, resettled, appropriated, lent, advanced or encumbered (except by a *permitted interest*), unless the transaction is permitted under clause 3.2 and is in the ordinary course of and for the purpose of carrying on the ordinary business of the Grantor in its capacity as trustee of the *trust*;
- (e) permit the income of the Trust Fund to be segregated or assigned;
- (f) permit the *trust* or the documents constituting the *trust* to be varied, added to or revoked;
- (g) delegate any of the powers of the Grantor as trustee, or exercise any power of appointment or any of its powers at the direction of any other *entity*, whether or not that *entity* was permitted to direct the Grantor as trustee at the date of this deed; or
- (h) exercise or propose to exercise or permit to be exercised any power of revocation, addition, appointment or removal conferred on the Grantor as trustee, or on any other *entity*, by the documents constituting the *trust* or by law.

#### 19.5 Grantor's right of indemnity

- (a) Without limiting Octet's right of subrogation in relation to the *trust*, the Grantor must, at the request of Octet, exercise any right of indemnity which the Grantor as trustee of the *trust* may have against the Trust Fund for the benefit of Octet, and the Grantor declares that, at the date of this deed, there are no limitations on that right of indemnity against the Trust Fund; and the Grantor covenants not to do anything which limits or prejudices the right of indemnity.

- (b) The Grantor in its capacity as trustee irrevocably appoints Octet and each *authorised officer* (jointly and severally), as the attorney of the Grantor to execute any documents and do anything else the attorney considers necessary in the exercise of any right of indemnity. The Grantor must indemnify each attorney against any loss, liability, cost or expense (including legal costs on a full indemnity basis) and *taxes* incurred or suffered while acting as the Grantor's attorney.

#### **19.6 Compliance with trust documents**

The Grantor covenants that every formality, whether of a legal, administrative or other nature, required by the documents constituting or evidencing the *trust* or in relation to the Grantor as the trustee of the *trust* to be complied with before the Grantor enters into this deed (or, where applicable, receives the *secured money*) has been complied with in all respects.

#### **19.7 Additional trustees**

Despite clause 19.3, if the Grantor is no longer trustee or sole trustee of the *trust*, the Grantor must cause any subsequent joint or substituted trustee of the *trust* to execute, on request by Octet, a document creating a *security interest* over the *collateral* upon the conditions Octet requires. Any subsequent joint or substituted trustee, by agreeing to act as trustee of the *trust*, will be taken to have agreed to the creation of the *security interest*.

## **20 NOTICES**

### **20.1 Notices from Octet to the Grantor**

- (a) A notice or demand from Octet to the Grantor must be in writing and be signed by Octet, an *authorised officer*, any lawyer acting on behalf of Octet or someone else authorised to act on behalf of Octet. It may be served by giving it to the Grantor; by sending it to the Grantor by e-mail or fax; by posting it in a pre-paid envelope to the Grantor at its address specified in item 2 of the Schedule, its registered office, or its business address last known to Octet; or by delivering it to any of those places.
- (b) A notice or demand sent by e-mail to the Grantor's, an officer's or employee's e-mail address last known to Octet is to be treated as having been received by the Grantor twenty-four hours after Octet sends it unless Octet has, in the meantime, received a message indicating that it has not been received. A notice or demand sent by fax to the Grantor's last known number is to be treated as having been received by it when Octet receives an error free transmission report. A notice or demand sent by post is to be treated as having been received by the Grantor the next *business day* after it is posted. A notice or demand which is given or delivered is to be treated as having been received by the Grantor when it is given or delivered. However, if the Grantor is treated as having received a notice or demand on a day which is not a *business day* or after 5.00pm on a *business day* the Grantor will be treated as having received it at 9.00am on the next *business day*.

### **20.2 Service of legal process**

Anything in connection with legal process (such as court documents) can be served in any of the ways described in clause 20.1 if the law permits this. Nothing in clause 20 affects Octet's right to serve process in any way permitted by law.

### **20.3 Service is always effective**

Service is effective even if the Grantor or one of its partners is dead, incompetent, absent from the jurisdiction, the subject of an insolvency event (as defined in the *facility agreement*) or wound up. It

is effective despite anything else, as well. If there is more than one Grantor service on any one of them is service on each of them.

#### **20.4 Notices from the Grantor to Octet**

A notice (including a request that Octet approve something) from the Grantor to Octet must be in writing and signed by the Grantor, by an officer of the Grantor or someone claiming to be an officer of the Grantor. The Grantor must deliver the notice to Octet at its office specified in this deed or any substitute address which Octet specifies. However, if the notice is in connection with a registration on the register established under the *PPSA* it must be sent to the address for service specified in the registration.

### **21 MISCELLANEOUS**

#### **21.1 Allowing conduct of others**

If the Grantor is not permitted to do something by this deed, it must not allow or assist anyone else to do that thing.

#### **21.2 Assignment**

- (a) Octet is entitled, without further approval, to novate, assign or otherwise deal with this deed or any of its rights or obligations under it in any way Octet considers appropriate but a novation, assignment or dealing may not materially prejudice the Grantor's rights under this deed. In the case of a novation the new party assumes Octet's obligations. At Octet's request the Grantor must sign and deliver to Octet or any other *entity* Octet specifies any document Octet reasonably requires for this purpose.
- (b) The Grantor's rights under this deed are personal to the Grantor and the Grantor can only assign or deal with them with Octet's consent.

#### **21.3 Completion and registration of document**

- (a) The Grantor irrevocably authorises Octet, an *authorised officer*, Octet's lawyer or someone else authorised to act on Octet's behalf to do the following.
  - (i) Date this deed and to fill in any blanks or correct any manifest errors in any part of this deed.
  - (ii) Register and record this deed or the *security interests* which are created by it (electronically or otherwise) in such places as Octet or its lawyers may at any time consider necessary or desirable to perfect this deed or the *security interests* which are created by it or to protect the rights of Octet under this deed.
- (b) The Grantor must give Octet all information necessary for Octet to register and maintain a legally effective financing statement in respect of the *security interests* created by this deed and must ensure that the *security interests* created by this deed have priority over all other *security interests*, except *permitted interests* (if any) which Octet has agreed can have priority.
- (c) The Grantor authorises Octet to file all financing statements, financing change statements and other documents and to do all things which Octet considers desirable to perfect and maintain the *security interests* created by this deed, to protect and preserve the *collateral* and to realise Octet's *security interest*.

**21.4 Conflict of interest**

Octet, each *authorised officer*, each other person appointed by Octet under this deed, each administrator of the Grantor appointed by Octet, each attorney and each *receiver* may exercise the rights, remedies and powers conferred by this deed or by law even though that *entity* may have a conflict of interest in exercising those rights, remedies or powers or a direct or personal interest in the means or result of the exercise of those rights, remedies or powers.

**21.5 Entire agreement**

The *transaction documents* contain everything Octet has agreed in relation to the matters they deal with. The Grantor cannot rely on an earlier document, or anything said or done by Octet, an *authorised officer*, or an agent or employee of Octet, before the *transaction documents* were executed, except as permitted by law.

**21.6 Severability**

If any part of this deed is or becomes void, invalid or unenforceable in any place it is to be treated as not being part of this deed in that place. Any void, invalid or unenforceable provision is, so far as that place is concerned, replaced by a lawful and enforceable provision which so far as possible achieves the same economic and other benefits for the parties as the void, invalid or unenforceable provision was intended to achieve. The Grantor must, on request by Octet and at Octet's cost, execute any documents and do any other thing as Octet may reasonably require to confirm or give effect to the replacement.

**21.7 Variation**

No variation of this deed will be of any force or effect unless it is in writing and signed by Octet.

**21.8 Evidence**

A certificate signed by Octet or an *authorised officer* of the amount of the *secured money* or anything else relating to this deed is, in the absence of manifest error, sufficient evidence of what it states, unless it is proved to be false. The Grantor cannot object to the admission of a certificate of that type in any proceedings.

**21.9 Execution of separate documents**

This deed may be executed in any number of counterparts. All counterparts taken together will constitute the one instrument.

**21.10 Exercise of rights**

- (a) Octet may exercise a right, remedy or power at its discretion, and separately or concurrently with another right, remedy or power.
- (b) A single or partial exercise of a right, remedy or power by Octet does not prevent a further exercise of that or of any other right, remedy or power and a failure by Octet to exercise, or delay by Octet in exercising, a right, remedy or power does not prevent its exercise.

**21.11 Waiver, consents and approvals**

- (a) A waiver by Octet of any right, remedy or power under this deed must be in writing and signed by Octet or an *authorised officer*. A waiver by Octet is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

- (b) If Octet fails to do, or delays in doing, something Octet is entitled to do under this deed that does not amount to a waiver.
- (c) The Grantor must comply with the conditions of any consent or waiver given by Octet.
- (d) Where this deed requires that Octet consent to something, or approve of something, Octet's prior written consent or approval is required. The consent or approval must be signed by Octet or by an *authorised officer*. Octet will act reasonably when it decides to give or withhold its consent or approval. Octet may give its consent or approval on any conditions it likes.

#### **21.12 Appointment of nominee for registration**

For the purposes of section 153 of the *PPSA*, Octet appoints the Grantor as its nominee, and authorises the Grantor to act on its behalf, in connection with a registration under the *PPSA* of any *security interest* in favour of the Grantor which is:

- (a) evidenced or created by chattel paper;
- (b) perfected by registration under the *PPSA*; and
- (c) transferred to Octet under this deed.

This authority ceases when the registration is transferred to Octet.

#### **21.13 Confidentiality and privacy**

- (a) The Grantor and Octet agree that neither of them will disclose to an interested person (as defined in section 275(9) of the *PPSA*), or any *entity* at the request of one of those interested persons, any information of the kind described in section 275(1) of the *PPSA*. However, Octet may make that disclosure if section 275(7) of the *PPSA* applies. The Grantor must not authorise the disclosure of any information of the kind described in section 275(1) of the *PPSA*.
- (b) The Grantor appoints Octet and each *authorised officer* as its agent and authorised representative for the purpose of requesting information pursuant to section 275 of the *PPSA* from an *entity* which is a secured party holding a *security interest* in property in which the Grantor has an interest.
- (c) Octet's privacy policy can be viewed on, or downloaded from, its website. Alternatively, the Grantor can ask Octet for a copy.
- (d) If the Grantor is an individual he or she irrevocably authorises Octet to obtain from the Personal Property Securities Register information about any registration in which he or she is registered as a grantor or a secured party. Other searches may be permitted by section 172 of the *PPSA*.

#### **21.14 Governing law and jurisdiction**

- (a) The law of the State of New South Wales governs this deed (including the *security interest* created by it and the contractual obligations between the Grantor and Octet under it) to the extent this is permitted under the *PPSA*. To the extent this is not permitted, the law of the Commonwealth of Australia as it applies in that state will be applied to the extent that is permitted under the *PPSA*. To the extent this is not permitted, the governing law will be determined in accordance with the requirements of the *PPSA*.

- (b) The Grantor submits to the non-exclusive jurisdiction of the courts having jurisdiction in New South Wales.
- (c) To the extent permitted by law, the agreement in this clause prevails to the extent that it is inconsistent with any law.

#### 21.15 Joint and several liability

If there is more than one Grantor, each Grantor is bound by this deed jointly and severally and each reference to "the Grantor" includes each Grantor and any one or more of the Grantors.

## 22 DEFINITIONS AND INTERPRETATION

### 22.1 Definitions

In this deed the following definitions apply, except to the extent the context requires otherwise, when the term is printed *like this*.

**Account bank** means the ADI with which the *nominated account* is maintained.

**Accounting records** means:

- (a) accounting books, records and ledgers, including financial and management accounts and working papers needed to explain the accounts;
- (b) computer data or materials about the Grantor's financial position, purchases and sales;
- (c) invoices, receipts, credit notes and documents evidencing entries in any of the above; and
- (d) any other documents relating to *receivables*, *other receivables*, *related rights*, the Grantor's financial affairs or the Grantor's business as Octet may specify.

**Additional security** means any other *security interest* securing, or any *guarantee* in respect of, any *secured money* or *secured obligation*.

**Attached receivable** is:

- (a) if the Grantor obtains a "Debtor Finance Facility" under the *facility agreement*, all *receivables* (including all *collections* and *related rights* pertaining to the *receivable*) other than *transferred receivables*;
- (b) if the Grantor obtains a "Working Capital Facility" under the *facility agreement*, all *receivables* (including all *collections* and *related rights* pertaining to the *receivable*) other than *delayed attached receivables*; and
- (c) if the Grantor obtains a "Business Transaction Facility" under the *facility agreement* and does not obtain a "Debtor Finance Facility" or a "Working Capital Facility", all *receivables* (including all *collections* and *related rights* pertaining to the *receivable*) which Octet has told the Grantor are to be classified as being an *attached receivable*, other than *delayed attached receivables*. Octet can, from time to time, change the classification. Octet can make the determination in respect of a particular *receivable* or in respect of *receivables* of a particular type.



**Authorised officer** means each of Octet's directors and company secretaries, each person who is employed by Octet or an *entity* which is *related* to Octet whose title includes "manager", "company secretary" or "accountant" and each person Octet advises the Grantor is an authorised officer.

**Business Day** means a day, other than a Saturday, Sunday or public holiday, Octet's Sydney office is open for business.

**Change in Control**, in relation to a company, means a change in:

- (a) control of the composition of the board of directors of the company;
- (b) control of more than one half of the voting rights attaching to shares in the company; or
- (c) control of more than one half of the issued share capital of the company, excluding any part of the issued share capital which carries no right to participate beyond a specified amount in the distribution of either profit or capital.

**Collateral:**

- (a) when the Grantor is not an individual, means all of the Grantor's present and after-acquired personal property (as defined in the *PPSA*), *PPSA* retention of title property (as defined in section 51F of the Corporations Act 2001) and rights and interests conferred by the *PPSA*; and all other present and after-acquired assets, undertaking and property of the Grantor or over which the Grantor can grant a *security interest* wherever it is situated. It includes inventory; the goodwill of its business; its uncalled and called but unpaid capital; all the uncalled premiums on its issued share capital; all of its estates and interest in land (including all fixtures and crops); its right of indemnity from the assets of any *trust*, together with all the assets, undertakings and property the subject of any *trust*; each *attached receivable*; each *other receivable*; any interest which it may have in the *nominated account*; its chattel paper; and the net interest which it may have in a partnership. It also includes the proceeds of each of those things and any accessions. It does not include the *transferred receivables* or the *delayed attached receivables*; and
- (b) when the Grantor is an individual, means:
  - (i) all of the following things (whether present or future) which are held by the Grantor in the course of furtherance, to any degree, of carrying on an enterprise to which an ABN has been allocated:
    - personal property as defined in the *PPSA*;
    - assets, undertakings and property over which the Grantor can grant a *security interest*;
    - inventory, goodwill, *PPSA* retention of title property (as defined in section 51F of the Corporations Act 2001) and rights and interests conferred by the *PPSA*;
    - each *attached receivable* and each *other receivable*;
  - (ii) his or her right of indemnity from the assets of any *trust* together with all the assets, undertakings and property the subject of any *trust* when an ABN has been allocated in relation to the *trust* or those assets, undertakings and property are held by the

Grantor in the course or furtherance, to any degree, of carrying on an enterprise to which an ABN has been allocated;

- (iii) any interest (whether present or future) which he or she may have in the *nominated account*;
- (iv) his or her chattel paper (whether present or future);
- (v) the net interest he or she may have at any time in a partnership;
- (vi) all of his or her present and future estates and interests in land (including all fixtures and crops); and
- (vii) all present and future assets and property (including licences) which are not personal property (as defined in the *PPSA*) but are used in conducting a business,

but does not include the *transferred receivables* or the *delayed attached receivables*.

**Collections**, in relation to an *attached receivable*, an *other receivable* or a *delayed attached receivable*, means all proceeds of the *attached receivable*, *other receivable* or *delayed attached receivable* and all currency, negotiable instruments, other instruments, letters of credit, electronic payments and any other proceeds, remittances or instruments of payment in any form which are a payment of the *attached receivable*, *other receivable* or *delayed attached receivable*. It includes all proceeds of chattel paper which evidences the *attached receivable*, *other receivable* or *delayed attached receivable*.

**Commencement date** means the date the Grantor receives, or the date the Grantor is treated as having received, a notice from Octet telling the Grantor that this deed has commenced or, if a later date is specified in that notice, that later date. If Octet provides financial accommodation to, or at the request of, the Grantor before it has given the commencement notice, the *commencement date* will be the later of the date of this deed and the date that financial accommodation is provided.

**Contaminant** means anything (including a liquid, solid, gas, odour, temperature, sound, vibration or radiation) that presents or could present a risk of harm to human health or the *environment*.

**Control event** means:

- (a) in respect of any *collateral* that is, or would have been, a *revolving asset*:
  - (i) the Grantor breaches, or attempts to breach, clause 3.1 in respect of the *collateral* or takes any step which would result in it doing so;
  - (ii) an *entity* takes a step (including signing a notice or direction) which may result in any *taxes*, or an amount owing to an authority, ranking ahead of the *security interest* in the *collateral* arising under this deed;
  - (iii) distress is levied or a judgment, order or *security interest* is enforced or a creditor takes any step to levy distress or enforce a judgment, order or *security interest* over the *collateral*; or
  - (iv) Octet gives a notice to the Grantor that the *collateral* is not a *revolving asset*. However, Octet may only give a notice if Octet reasonably considers that it is necessary to do so to protect its rights under this deed or if an *event of default* is continuing; or

- (b) in respect of all *collateral* that is or would have been *revolving assets*, an insolvency event (as defined in the *facility agreement*) has occurred in relation to the Grantor.

**Corporation** has the meaning given to that term in section 57A of the Corporations Act 2001.

**Delayed attached receivable** is a *receivable* (including all *collections* and *related rights* pertaining to the *receivable*) to which the *security interest* arising under this deed has not attached as stated in clause 2.2(c). A *delayed attached receivable* becomes an *attached receivable* or an *other receivable* at the *delayed attachment time* in accordance with clause 2.2(c) and the *security interest* then attaches to it.

**Delayed attachment time** means the registration time applicable to the registration of Octet's *security interest* created by this deed in *delayed attached receivables*.

**Entity** means an individual, firm, partnership, joint venture, society, unincorporated body, trust (in each case whether or not having separate legal personality) and *corporation*, and any other legal entity under any law as the context requires.

**Environment** means components of the earth (and how those components interact with each other), including any of the following:

- (a) land, air and water;
- (b) any layer of the atmosphere;
- (c) any organic or inorganic matter and any living organism; and
- (d) human made or modified structures and areas.

**Event of default** means any event or circumstance which is defined in the *facility agreement* as being an event of default.

**Facility agreement** means the agreement or agreements specified in item 3 of the Schedule. If two or more agreements are specified, a reference to "*facility agreement*" is to all of them and any one or more of them.

**Financial indebtedness** means any debts of the Grantor for or in respect of any of the following:

- (a) money borrowed;
- (b) money raised under any acceptance credit, bill acceptance or bill endorsement facility;
- (c) an amount raised under any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with generally accepted accounting practice, be treated as a finance or capital lease;
- (e) receivables sold or discounted on a recourse basis;
- (f) an amount raised under any other transaction having the commercial effect of a borrowing;
- (g) the marked to market value of any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price;

- (h) an interest, gold or currency exchange, hedge or other arrangement, including a swap, option, futures contract, exchange agreement and purchase agreement;
- (i) the value, premium and dividend (whether declared or not, and whether there are sufficient funds for payment or not) of a share which is redeemable or subject to a *guarantee*;
- (j) the deferred purchase price of an asset, service or work done, and any related obligation;
- (k) a counter-indemnity obligation in respect of a *guarantee* issued by an ADI or other financial institution; and
- (l) the amount of any liability under any *guarantee* in respect of any of the items referred to above.

**GST** means any amount paid or payable under any *GST* law as that expression is defined in section 195-1 of the *GST Act*.

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

**Guarantee** means a guarantee, indemnity, guarantee and indemnity, letter of credit, legally binding letter of comfort or suretyship, or any other obligation (including an irrevocable offer) of any kind at all, whatever its nature or title. It must be one under which there is a requirement to pay, purchase, provide funds, or to be responsible in any other way for:

- (a) an obligation or indebtedness of another *entity*;
- (b) a dividend, distribution, capital or premium on shares or other interests; or
- (c) the insolvency or financial condition of another *entity*.

**Guarantor** means an *entity* which at any time has provided, or should have provided, a *guarantee* to Octet in relation to the Grantor's obligations under a *transaction document* or for the payment of any of the *secured money* or the performance of any of the *secured obligations*.

**Material adverse effect** means a material adverse effect on:

- (a) the business or financial condition of the Grantor;
- (b) the Grantor's ability to comply with its obligations under a *transaction document*; or
- (c) the validity or enforceability of, or Octet's rights under, a *transaction document*.

**Nominated account** means the nominated account as defined in the *facility agreement* or another ADI account specified by Octet. The ADI account can be opened, set up and maintained by the Grantor in accordance with clause 4.1 or any other ADI account specified by Octet including an ADI account opened, set up and maintained by Octet. If the *nominated account* is opened, set-up or maintained by Octet the Grantor has no interest in it.

**Other receivable** means:

- (a) a *receivable* (including all *collections* and *related rights* pertaining to the *receivable*) which is not an *attached receivable*, a *delayed attached receivable* or a *transferred receivable*. If the Grantor obtains a "Business Transaction Facility" under the *facility agreement* and does not obtain a "Debtor Finance Facility" or a "Working Capital Facility" this would, after the *delayed attachment time*, include any *receivables* which have not been classified as being

an *attached receivable* in accordance with paragraph (c) of the definition of *attached receivable*; and

- (b) an obligation which is not a *receivable* or a *delayed attached receivable* but is money owing or purporting to be owing at any time to the Grantor (including all rights which the Grantor may have with respect to money deposited, other than that deposited into the *nominated account*, on any terms at all with any ADI or other financial institution) and all liabilities or other monetary claims, whether actual, contingent, liquidated or unliquidated, which may be or become owing to the Grantor. It includes all *collections* and *related rights* pertaining to those obligations.

**Permitted interest** means:

- (a) a *security interest*, transfer or dealing which Octet has approved;
- (b) a *security interest* in favour of Octet;
- (c) a charge or lien arising in favour of a government department or agency by operation of statute or a lien arising in the ordinary course of business in favour of a mechanic or similar person, unless there is a default in payment of money secured by that charge or lien; and
- (d) a *security interest* in favour of an *entity* which supplies goods or materials to the Grantor if that *security interest* is in inventory, has been notified to Octet and is a perfected purchase money security interest, so long as Octet's *security interest* in an *attached receivable* or the *transferred receivable* which is proceeds of that inventory has priority.

**Personal property** means all *collateral* which is personal property as defined in the *PPSA* and is covered by the *PPSA*.

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

**PPSA** means the *personal property Securities Act 2009*.

**Prevailing rate** means the prevailing interest rate or prevailing rate determined in accordance with the *facility agreement*. If there is more than one, it means the highest.

**Receivable** means an existing or future right to receive payment for property (including goods, rights and produce) sold or services (which includes the leasing or hiring of property) performed or work done. It includes interest, costs, taxes, duties and all other monetary claims (whether actual, contingent, liquidated or unliquidated). It includes an account as defined in section 10 of the *PPSA* and the proceeds of it. It also includes all legal and other remedies for the recovery of any of those amounts and any rights which the Grantor may have for restitutory relief.

**Receiver** means any person Octet appoints under this deed as a receiver or receiver and manager of any *collateral*.

**Related**, in relation to an *entity*, means a related body corporate within the meaning of section 50 of the Corporations Act 2001, but on the basis that:

- (a) "subsidiary" means an *entity* which is controlled directly or indirectly by another *entity* or a subsidiary within the meaning of section 46 of the Corporations Act 2001. A subsidiary may also be a trust (in which case a unit or other beneficial interest or being a member of

the class of potential beneficiaries is to be regarded as a share) and an *entity* may be a subsidiary of a trust if it would have been a subsidiary if that trust were a *corporation*; and

- (b) "body corporate" includes any *entity*.

**Related rights**, in relation to an *attached receivable*, *other receivable* or *delayed attached receivable*, means:

- (a) all of the Grantor's rights (except the right to payment of the *attached receivable*, *other receivable* or *delayed attached receivable*) under an agreement (whether express, implied, oral or written) for the sale of any property (including rights and produce), performance of any services (including the leasing or hiring of any property) or the doing of any work. Those rights include the Grantor's rights under a purchase money security interest, including the new value and its proceeds mentioned in section 64(3) of the *PPSA*;
- (b) the benefit of all insurances, securities (including all *security interests*), guarantees and indemnities given to or held by the Grantor;
- (c) all negotiable instruments and other instruments and all letters of credit held by or available to the Grantor;
- (d) all of the Grantor's rights to and interest in any chattel paper or *accounting records* recording or evidencing the *attached receivable*, *other receivable* or *delayed attached receivable*;
- (e) any right to stop the delivery of goods which are in transit; and
- (f) all of the Grantor's rights to and interest in any goods which were sold or purportedly sold but were returned to or repossessed by the Grantor or were rejected by the *entity* who was intended to be the purchaser.

It includes all documents, agreements and electronic records which evidence or record any of the above.

**Revolving asset** means any *collateral*:

- (a) which is:
- (i) an *other receivable* so long as the Grantor is not required to pay *collections* received in discharge of it into the *nominated account*;
- (ii) inventory (as defined in section 341(1B) of the *PPSA*);
- (iii) a negotiable instrument so long as it does not relate to a *transferred receivable*, an *attached receivable* or a *delayed transferred receivable* and, if it relates to an *other receivable*, so long as the Grantor is not required to pay *collections* received in discharge of the *other receivable* into the *nominated account*;
- (iv) machinery, plant or equipment which is not inventory (as defined in section 341(1B) of the *PPSA*) and has a value less than A\$10,000 or its equivalent;
- (v) money (including money withdrawn or transferred to a third party from an account of the Grantor with an ADI or other financial institution so long as that money is not the proceeds of a *transferred receivable*, an *attached receivable* or an *other*

*receivable* the proceeds of which *other receivable* should be deposited into the *nominated account* and that account is not the *nominated account*); and`

- (b) in relation to which no control event has occurred, subject to clause 3.3(b).

**Secured money means:**

- (a) all amounts which the Grantor may at any time owe to Octet under in the *facility agreement*;
- (b) all money which the Grantor or the *guarantor* is or may become liable to pay or reimburse Octet from time to time under a *transaction document* including fees, charges and interest;
- (c) all money which Octet lends, relends, pays or advances to, for, or on the credit of, or for the accommodation of, or otherwise on account of the Grantor or to, for, or on account of any other *entity* with the authority of the Grantor;
- (d) all money for which the Grantor is at the date of this deed or may become liable to pay or reimburse Octet from time to time arising out of Octet drawing, accepting, indorsing, paying or discounting any negotiable instrument;
- (e) all money which Octet may pay or be or become liable to pay to, for, or on account of the Grantor by reason of Octet drawing, accepting, indorsing, paying or discounting any negotiable instrument (whether or not it has matured) or by Octet entering into any *guarantee*, letter of credit, bond or other arrangement, or by Octet arranging for the issue of any *guarantee*, letter of credit or bond at the request of the Grantor, or by Octet otherwise incurring any liability for, on behalf of, at the request of or for the benefit of the Grantor or to, for, on behalf of or for the benefit of any other *entity* upon the order or request or with the authority of the Grantor;
- (f) all money now payable or which may become payable for interest (including capitalised and current interest, interest on interest and interest payable under a *transaction document*), discount charges, acceptances, discounts, establishment fees, stamp duties, transaction duties, GST, fees, postage, commissions, charges and expenses and other like charges payable to, or by, Octet and arising under a *transaction document*, out of any advances or accommodation provided to the Grantor or to, for or on account of any other *entity* with the authority of the Grantor or any transaction of the Grantor;
- (g) all legal and other costs, charges and expenses (calculated on a full indemnity basis) that are incurred in respect of, or incidental to, any *transaction document*, the preparation and execution of any *transaction document* or any *security interest*, the performance or the failure to perform by the Grantor or the *guarantor* of its obligations under any *transaction document* or any *security interest*, or the enforcement of any *transaction document* or any *security interest*;
- (h) all money which is or may become due, payable or owing, or remains unpaid by the Grantor or any *guarantor* to Octet under any *transaction document* or any *guarantee*, letter of credit or bond created by the Grantor or any *guarantor* or any other *entity* with the authority of the Grantor in favour of Octet;
- (i) all money and damages (whether liquidated or not) which are or may become due, payable or owing, including contingently, by the Grantor or by any other *entity* with the authority of the Grantor to Octet on any account;

- (j) all money which is or may become due, payable or owing, or remains unpaid to Octet by the Grantor or any *guarantor* on any account or on any basis;
- (k) all money or obligations owed by the Grantor or any *guarantor* to Octet because an obligation was transferred to Octet, irrespective of whether the transfer was before, at the same time as, or after the execution of this deed; the Grantor consented to or was aware of the transfer; or the transferred obligation was secured;
- (l) the remuneration of any *receiver* appointed under this deed or any other *security interest* or any other moneys payable or paid by Octet to that *receiver*;
- (m) all money spent by Octet to make good any breach or non-compliance by the Grantor or any *guarantor* of its obligations and all money spent by Octet in exercising or attempting to exercise any of its rights, powers or remedies under any *transaction document*, together with interest on the amount spent from the date of expenditure until payment at the *prevailing rate*.

In this definition of "*secured money*" each reference to "Octet" means Octet and each *entity* which is *related* to Octet. Money owing by a *guarantor* is included irrespective of whether the liability arose at the request of, or with the knowledge of the Grantor. Despite any other provision contained in this deed, the expression the "*secured money*" does not include money which may at any time be due and payable under a credit contract as defined in the National Credit Code.

**Secured obligations** means all the present and future, actual and contingent obligations of the Grantor or any *guarantor* to Octet, except for any obligation to pay *secured money*.

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

**Tax** includes any present or future tax, levy, impost, deduction, charge, duty, *GST*, compulsory loan, assessment, fee or withholding of any nature and any related interest, penalty, fine or expense imposed by any government agency but excludes any tax that is imposed on or calculated by reference to the net income received or receivable by Octet.

**Transaction document** means each of the following:

- (a) this deed;
- (b) the *facility agreement*;
- (c) any document creating an *additional security*;
- (d) any other document which Octet and the other parties to that document so agree in writing;
- (e) each other document contemplated by or required in connection with any of the above or the transactions which they contemplate; and
- (f) each document entered into for the purpose of amending, novating, supplementing, restating or replacing any of the above.



**Transferred receivable** means a *receivable* (including all *collections* and *related rights* pertaining to the *receivable*) which is absolutely, completely and unconditionally transferred to Octet under the *facility agreement*. Octet purchases the *receivable* and becomes the owner of it although for the purposes of the *PPSA* Octet may have a *security interest* in it.

**Trust** means any trust of which the Grantor is or becomes a trustee, and includes any trust specified in item 1 of the Schedule.

## 22.2 Personal Property Securities Act

In this deed the following terms have the meaning in the specified section of the *PPSA*, except to the extent the context requires otherwise.

**ABN** – section 10.

**Accession** – section 10.

**ADI** – section 10.

**ADI account** – section 10.

**After-acquired property** – section 10.

**Amendment demand** – section 178.

**Attaches** – section 19. Attachment occurs when a *security interest* attaches to *collateral*.

**Australian entity** – section 10.

**Business day** – section 10.

**Chattel paper** – section 10.

**Circulating asset** – section 340.

**Clearing and settlement facility** – section 10.

**Control** – sections 23 to 29.

**Currency** - section 10.

**Document of title** – section 10.

**Financing change statement** – section 10.

**Financing statement** – section 10.

**Interest** – section 10.

**Intermediary** - section 15.

**Intermediated security** – section 15.

**Inventory** – section 10.

**Investment instrument** – section 10.

**Negotiable instrument** – section 10.

**New value** – section 10.

**Perfected** – sections 21 and 22.

**Possession** – section 24.

**Proceeds** – section 31.

**Purchase money security interest** – section 14. A non-purchase money security interest is a security interest (as defined in section 12 of the *PPSA*) in property which is not a purchase money security interest.

**Registration event** – section 155.

**Registration time** – section 10.

**Securities account** – section 15.

**Serial number** – section 9.

**Transitional security interest** – section 308.

**Value** – section 10.

**Verification statement** – section 155.

### 22.3 Contents and headings

The contents and headings are for ease of reference only and do not affect the interpretation of this deed.

### 22.4 Interpretation

- (a) If the day on which any act, matter or thing is to be done under this deed is not a *business day*, the act matter or thing must be done on the next *business day*.
- (b) A reference to “dollars” or “\$” means Australian dollars and all amounts payable under this deed are payable in Australian dollars.
- (c) A reference to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- (d) A reference to any agreement or document is to that agreement or document as amended, novated, supplemented, restated or replaced.
- (e) An expression importing an individual includes any *entity*.
- (f) Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- (g) Words implying the singular include the plural and vice versa.

- (h) The words "including" and "includes" when used to introduce an item do not limit the meaning of the words to which the item relates to items of a similar kind.
- (i) A reference to "deal with" includes selling, leasing, transferring, parting with possession of, otherwise disposing of and conferring a right or interest on any *entity* and agreeing to do any of those things, and "dealing" and "dealing with" have equivalent meanings.
- (j) A reference to "owing" means actually or contingently owing, and "owe" and "owed" have an equivalent meaning.
- (k) A reference to "ordinary business" means the Grantor's business as it was conducted on the date of this deed and a reference to "business" includes a trade.

**SCHEDULE**

<b>Item 1</b> <b>Grantor's trust</b>	None specified
<b>Item 2</b> <b>Service of notices</b>	<p><b>Octet</b></p> <p>Name: Octet Finance Pty Ltd  Address: Level 3,  10-14 Waterloo Street,  Surry Hills, NSW 2010  Fax number: 02 9356 6333  Attention: The Managing Director</p> <p><b>Grantor</b></p> <p>Name: Forum Group Pty Ltd  Address: Level 1 Rothsay Accounting  Services Pty Ltd  c/- Rothsay Ac  12-14 O'Connell Street,  Sydney, NSW 2000  Attention: Basile Papadimitriou</p>
<b>Item 3</b> <b>Facility agreement</b>	The facility offer dated 27 September 2018 from Octet to the Grantor (including the terms and conditions which are incorporated into the facility offer) under which Octet offers to provide a Business Transaction Facility.

**EXECUTION AND DATE**

Executed by the Grantor as a deed poll.

Date: 11/10/18

Executed by **Forum Group Pty Ltd** ACN 153  
336 997 by being signed by:



.....  
Signature of sole director and sole company  
secretary

*BASILE PAPADIMITRIOU*  
.....

Print full name

**Annexure**

No. NSD616 of 2021


Federal Court of Australia  
District Registry: New South Wales  
Division: General

**Westpac Banking Corporation ABN 33 007 457 141** and another  
Applicant

**Forum Finance Pty Limited ACN 153 301 172** and others named in the Schedule  
Respondents

This is the Annexure marked "**BJQ-5**" shown and produced to **Bianca Josephine Quan** at the time of swearing her affidavit on 28 September 2021.

Deponent signature:

DocuSigned by:  
  
E3C6AC0D03C0401.....

Before me: DocuSigned by:  
  
BC4298F2AFED404.....

Adrian Lee

Level 10, 114 William Street, Melbourne VIC 3000

An Australian Legal Practitioner within the meaning of the Legal Profession Uniform Law (Vic)

A person authorised under Section 19(1) of the Oaths and Affirmations Act 2018 to take an affidavit.

This affidavit, as signed and notated by the authorised affidavit taker, was signed by the deponent over audio-visual link.

The specified things in respect of the affidavit were done by means of audio-visual link. The affidavit is a scanned hard copy or an electronic copy, not an original.



Australian Government  
Australian Financial Security Authority



BJQ-5  
Personal Property  
Securities Register

05/10/2018

## Verification Statement

### Financing Statement

This verification statement is provided under section 156 of the *Personal Property Securities Act 2009*

This PPSR registration was created on 05/10/2018 10:28:17 (Canberra Time)

#### PPSR Registration Details

PPSR Registration number:	201810050021344	Change number:	51310632
Registration kind:	Security interest		
Giving of notice identifier:	839		
Registration start time:	05/10/2018 10:28:17 (Canberra Time)		
Registration end time:	No stated end time		
Registration last changed:	05/10/2018 10:28:17 (Canberra Time)		
Subordinate registration:	Not stated	Transitional:	No

#### Grantor Details

Organisation identifier:	153336997	Organisation identifier type:	ACN
Organisation name:	FORUM GROUP PTY LTD (Verified)		

#### Collateral Details

Collateral type:	Commercial property
Collateral class:	All present and after-acquired property - No exceptions

#### Secured Party Details

Organisation identifier:	124477916	Organisation identifier type:	ACN
Organisation name:	OCTET FINANCE PTY LIMITED (Verified)		

#### Address for Service

Contact name:	Reynaldo Flores		
Email:	rflores@octetfinance.com		
Mailing address:	10-14 Waterloo Street Surry Hills NSW 2010 AUSTRALIA		
Physical address:	No address provided		

You may be obliged by section 157 of the *Personal Property Securities Act 2009* to give a notice of this verification statement to another person. The notice must be in the approved form. Information about your obligations under section 157 of the *Personal Property Securities Act 2009* is available from: [www.ppsr.gov.au](http://www.ppsr.gov.au).

#### Privacy and Terms and Conditions

The Australian Financial Security Authority is subject to the *Privacy Act 1988* which requires that we comply with the Australian Privacy Principles (APPs) set out in the Act. The APPs set out how Australian Government agencies

should collect, use, store and disclose personal information and how individuals can access records containing their personal information.

Access to and use of the PPSR is subject to the General Conditions of Use, as well as other relevant terms and conditions. All relevant terms and conditions can be found at [www.ppsr.gov.au](http://www.ppsr.gov.au).

End of Verification Statement

EMAIL: [enquiries@ppsr.gov.au](mailto:enquiries@ppsr.gov.au) WEBSITE: [www.ppsr.gov.au](http://www.ppsr.gov.au)

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GPO Box 1944 Adelaide SA 5001

1300 00 77 77



**Annexure**

No. NSD616 of 2021

Federal Court of Australia  
District Registry: New South Wales  
Division: General

**Westpac Banking Corporation ABN 33 007 457 141** and another  
Applicant

**Forum Finance Pty Limited ACN 153 301 172** and others named in the Schedule  
Respondents

This is the Annexure marked "**BJQ-6**" shown and produced to **Bianca Josephine Quan** at the time of swearing her affidavit on 28 September 2021.

Deponent signature:

DocuSigned by:  
*Bianca Quan*  
E3C8ACbD03C0401...

Before me:

DocuSigned by:  
*Adrian Lee*  
BC4298F2AFED404...  
Adrian Lee

Level 10, 114 William Street, Melbourne VIC 3000

An Australian Legal Practitioner within the meaning of the Legal Profession Uniform Law (Vic)

A person authorised under Section 19(1) of the Oaths and Affirmations Act 2018 to take an affidavit.

This affidavit, as signed and notated by the authorised affidavit taker, was signed by the deponent over audio-visual link.

The specified things in respect of the affidavit were done by means of audio-visual link. The affidavit is a scanned hard copy or an electronic copy, not an original.

Your reference:  
Our reference: MMJ:1051518



5 July 2021

**Post and Recorded Mail**

Forum Group Pty Ltd  
Rothsay Accounting Services Pty Ltd  
C/- Rothsay AC  
Level 1, 12 – 14 O'Connell Street  
Sydney NSW 2000

**And by email:** [nicholasp@rothsay.com.au](mailto:nicholasp@rothsay.com.au)  
[bpapas@forumgroup.com.au](mailto:bpapas@forumgroup.com.au)

Dear Sir

**OCTET FINANCE PTY LTD  
BUSINESS TRANSACTION FACILITY  
BUYER/CLIENT: FORUM GROUP PTY LTD ACN 153 336 997**

We act on behalf of Octet Finance Pty Ltd (**Octet**).

An event of default has occurred under the Business Transaction Facility (**Facility**) between our client and Forum Group Pty Ltd (**Company**), in that the Company has failed to make the minimum monthly payment due on 30 June 2021 under the Facility. We are instructed that this default continues.

In accordance with the terms of the General Security Deed executed as a deed poll by the Company on 11 October 2018 in favour of Octet (**GSD**), Octet gives notice to the Company that the Company's bank account held with National Australia Bank (BSB: 082 080 Account number: 12 178 2934) is no longer a revolving asset (as defined in the GSD).

Pursuant to the Business Transaction Facility Terms and Conditions applicable to the Facility, our client puts you on notice that the Facility is now terminated. Octet can still rely on, and the Company must continue to comply with, the provisions of the Facility until Octet is satisfied that all the liabilities of the Company have been satisfied.

Our client requires immediate payment of the full balance outstanding under the Facility.

We are instructed that as at 2 July 2021, the amount outstanding and due and payable under the Facility is presently \$1,792,831.99 excluding legal costs. A copy of the statement showing the amount outstanding is **enclosed**. Other amounts will become owing in accordance with the Facility, in particular, interest and costs consequence on the default under the Facility continue to accrue.

Our client requires that you make immediate payment of all indebtedness outstanding, being the amount of \$1,792,831.99, plus interest and legal costs accruing, and by no later than **12 July 2021**.

A payout figure can be provided by contacting our office.

---

A L10 114 William St, Melbourne Vic 3000 P GPO Box 1466, Melbourne Vic 3001 • DX 636 Melbourne  
T +61 3 9608 2000 W [cornwalls.com.au](http://cornwalls.com.au)



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AHL:1050201:M:D7031772

In the event payment is not made within the time specified, we will seek our client's instructions to proceed with further enforcement action consequent on the default without further notice to you.

Yours faithfully



**CORNWALLS**

**Contact**

Adrian Lee

Associate

a.lee@cornwalls.com.au

+61 3 9608 2132

Partner: Bianca Quan

encl

**Annexure**

No. NSD616 of 2021

Federal Court of Australia  
District Registry: New South Wales  
Division: General

**Westpac Banking Corporation ABN 33 007 457 141** and another  
Applicant

**Forum Finance Pty Limited ACN 153 301 172** and others named in the Schedule  
Respondents

This is the Annexure marked "**BJQ-7**" shown and produced to **Bianca Josephine Quan** at the time of swearing her affidavit on 28 September 2021.

Deponent signature:

DocuSigned by:  
*Bianca Quan*  
.....E3C8AC0D03C04b1.....

Before me: DocuSigned by:  
*Adrian Lee*  
.....BC4298F2AFED404.....

Adrian Lee

Level 10, 114 William Street, Melbourne VIC 3000

An Australian Legal Practitioner within the meaning of the Legal Profession Uniform Law (Vic)

A person authorised under Section 19(1) of the Oaths and Affirmations Act 2018 to take an affidavit.

This affidavit, as signed and notated by the authorised affidavit taker, was signed by the deponent over audio-visual link.

The specified things in respect of the affidavit were done by means of audio-visual link. The affidavit is a scanned hard copy or an electronic copy, not an original.



**General Security Deed  
(Third Party)**

**OCTET FINANCE PTY LTD**

**FORUM GROUP PTY LTD**

## CONTENTS

<b>BACKGROUND</b>	<b>1</b>
<b>OPERATIVE PROVISIONS</b>	<b>1</b>
<b>1 COMMENCEMENT</b>	<b>1</b>
<b>2 GRANT OF SECURITY</b>	<b>1</b>
2.1 Security interest	1
2.2 Personal property	2
2.3 Other security interests and superannuation	2
<b>3 DEALING WITH THE COLLATERAL</b>	<b>2</b>
3.1 Restrictions on dealings	2
3.2 Permitted dealings	3
3.3 Revolving assets	3
3.4 Grantor's ability to deal with the proceeds of receivables	4
<b>4 NOMINATED ACCOUNT</b>	<b>4</b>
4.1 Establishment of the nominated account	4
4.2 Deposits into the nominated account	4
4.3 Withdrawals from the nominated account	5
<b>5 REPRESENTATIONS</b>	<b>5</b>
5.1 General representations	5
5.2 Additional representations – individuals	7
5.3 Representations relating to the collateral	8
5.4 Repetition	8
5.5 Reliance on representations and warranties	8
<b>6 UNDERTAKINGS</b>	<b>8</b>
6.1 Payment and performance undertakings	8
6.2 Corporate existence, name and other particulars	9
6.3 Attached receivables	9
6.4 General undertakings	10
6.5 Environmental undertakings	11
6.6 Undertakings regarding records	11
6.7 Information undertakings	12
6.8 Undertakings relating to the collateral	13
6.9 Controllable property	15
6.10 ADI accounts	15
6.11 Negotiable instruments and letters of credit	15
6.12 Chattel paper	16
6.13 Investment instruments	16
6.14 Intermediated securities	17
6.15 Obligation to insure	17
6.16 Insurance proceeds	17
6.17 Octet may remedy breach	18

6.18	Co-operation with Octet	18
6.19	Term of undertakings	18
<b>7</b>	<b>POWER OF ATTORNEY</b>	<b>18</b>
7.1	Appointment of attorneys	18
7.2	Exercise of attorney's discretion	18
<b>8</b>	<b>ENFORCEMENT</b>	<b>19</b>
8.1	Acceleration of obligations and enforcement of security interest	19
8.2	Consequences of an event of default	19
8.3	Octet's enforcement powers	19
8.4	Calls on shares	20
8.5	Grantor must help Octet	20
<b>9</b>	<b>RECEIVERS</b>	<b>20</b>
9.1	Appointing and removing Receivers	20
9.2	Agent of Grantor	21
9.3	Appointing receiver after winding-up	21
9.4	Receiver's powers	21
9.5	Indemnity by Grantor	21
9.6	Grantor must help receiver	21
9.7	Acting severally	21
<b>10</b>	<b>STATUTORY POWERS</b>	<b>21</b>
10.1	Powers conferred by law	21
10.2	Exclusion of legislation	21
10.3	Exercise of rights by Octet	22
10.4	No notice required unless mandatory	22
10.5	Exclusion of PPSA provisions	22
<b>11</b>	<b>PROCEEDS OF ENFORCEMENT</b>	<b>23</b>
11.1	Applying the proceeds	23
11.2	Surplus proceeds	23
11.3	Payments actually received	23
11.4	Contingent amounts	23
<b>12</b>	<b>PAYMENTS</b>	<b>23</b>
12.1	Money given to Octet as security	23
12.2	Octet can set-off money owed	24
12.3	Octet can consolidate accounts	24
12.4	Currency conversions	24
<b>13</b>	<b>OTHER SECURITIES AND INTERESTS</b>	<b>25</b>
13.1	Additional security interests in favour of Octet	25
13.2	Notice of other interests in collateral	25
13.3	Octet agreement for other interests	26
<b>14</b>	<b>CONTINUING SECURITY</b>	<b>26</b>
14.1	Security interest created by this deed continues	26
14.2	Requirements for release	26

14.3	Rescission of payment	27
14.4	Principal obligation	27
<b>15</b>	<b>PROTECTION OF THIRD PARTIES</b>	<b>28</b>
15.1	No duty to enquire	28
15.2	Protection of purchasers	28
15.3	Receipt	28
<b>16</b>	<b>COSTS AND INTEREST</b>	<b>28</b>
16.1	Costs	28
16.2	Interest	28
16.3	Goods and services tax	29
<b>17</b>	<b>INDEMNITIES</b>	<b>29</b>
17.1	General indemnity	29
17.2	PPSA costs included in indemnity	30
17.3	Administrator and liquidator indemnity	30
17.4	Third party indemnity	30
17.5	Indemnities are continuing obligations	30
<b>18</b>	<b>LIMITED LIABILITY</b>	<b>30</b>
18.1	Accounting for money received	30
18.2	Losses due to enforcement	31
<b>19</b>	<b>TRUST PROVISIONS</b>	<b>31</b>
19.1	Grantor liable in trustee capacity	31
19.2	Liability	31
19.3	Trust covenants	31
19.4	Additional trust covenants	32
19.5	Grantor's right of indemnity	32
19.6	Compliance with trust documents	33
19.7	Additional trustees	33
<b>20</b>	<b>NOTICES</b>	<b>33</b>
20.1	Notices from Octet to the Grantor	33
20.2	Service of legal process	33
20.3	Service is always effective	34
20.4	Notices from the Grantor to Octet	34
<b>21</b>	<b>MISCELLANEOUS</b>	<b>34</b>
21.1	Allowing conduct of others	34
21.2	Assignment	34
21.3	Completion and registration of document	34
21.4	Conflict of interest	35
21.5	Entire agreement	35
21.6	Severability	35
21.7	Variation	35
21.8	Evidence	35
21.9	Execution of separate documents	35



21.10	Exercise of rights	35
21.11	Waiver, consents and approvals	35
21.12	Appointment of nominee for registration	36
21.13	Confidentiality and privacy	36
21.14	Governing law and jurisdiction	36
21.15	Joint and several liability	37
<b>22</b>	<b>THIRD PARTY PROVISIONS</b>	<b>37</b>
22.1	Security not affected	37
22.2	Receipt of payments by Octet	38
22.3	Grantor's subrogation rights limited	38
22.4	No marshalling	39
22.5	Variation	39
22.6	Application of clause 22	39
<b>23</b>	<b>DEFINITIONS AND INTERPRETATION</b>	<b>39</b>
23.1	Definitions	39
23.2	Personal Property Securities Act	47
23.3	Contents and headings	49
23.4	Interpretation	49
	<b>SCHEDULE</b>	<b>51</b>
	<b>EXECUTION AND DATE</b>	<b>55</b>

## GENERAL SECURITY DEED

### This deed is given by:

**Forum Group Pty Ltd** (ACN 153 336 997) of Level 5, 141 Walker Street, North Sydney, New South Wales, 2060 (**Grantor**)

### in favour of:

**Octet Finance Pty Ltd** (ACN 124 477 916) of Octet House, 108 Cathedral Street, Woolloomooloo, Sydney, New South Wales, 2011 (**Octet**)

## BACKGROUND

- A Octet has, at the request of the Grantor, agreed to lend money, give credit, provide finance or provide a facility to the *client* on certain conditions.
- B Those conditions include a requirement that the Grantor execute this deed to better secure the payment of the *secured money* and the performance of the *secured obligations*.
- C If the Grantor is not an individual a *security interest* is taken in all of the Grantor's present and after-acquired property. If the Grantor is an individual a *security interest* is taken in all of the Grantor's present and after-acquired property except certain consumer property.

## OPERATIVE PROVISIONS

### 1 COMMENCEMENT

This deed will come into force on the *commencement date*.

### 2 GRANT OF SECURITY

#### 2.1 Security interest

- (a) The Grantor gives a *security interest* in the *collateral* to Octet to secure payment of the *secured money* and the performance of the *secured obligations*.
- (b) The *security interest* is a transfer by way of security of *collateral* consisting of *attached receivables* and chattel paper. To the extent any *collateral* is not so transferred the *security interest* is a charge. If for any reason it is necessary to determine the nature of the charge, it is a floating charge over *revolving assets* and a fixed charge over all other *collateral*.
- (c) The Grantor grants the *security interest* as beneficial owner and, if the Grantor is a trustee, the Grantor does so in the exercise of its powers as trustee of the *trust*. If the Grantor does not have title to *personal property* but has rights in that *personal property*, or the power to transfer rights in that *personal property* to Octet, it still gives a *security interest* in that *personal property* to Octet.
- (d) To the extent that the grant of any *security interest* under clause 2.1(b) operates as a transfer of *collateral* the Grantor will at all times remain liable to perform its obligations in relation to that *collateral* and Octet will not have any liability to perform any of those obligations.

- (e) The *security interest* in *personal property* attaches in accordance with clause 2.2. The charge over the *collateral* which is not *personal property* is in all of that property which exists on or at any time after the *commencement date*.
- (f) The Grantor gives the *security interest* for value. That value includes the agreement of Octet to lend money, give credit, provide finance or provide services to the *client* at the request of the Grantor under the *facility agreement*. By signing this deed the Grantor acknowledges having made that request.

## 2.2 Personal property

On the *commencement date* the *security interest* will attach to *personal property* which exists on that date and will attach to *personal property* which exists after the *commencement date* when the Grantor acquires rights in that property or has the power to transfer rights in that property to Octet. There is no agreement to defer attachment to any later time.

## 2.3 Other security interests and superannuation

- (a) The *security interests* created by this deed take priority over all other *security interests*, except *permitted interests* (if any) which Octet has agreed can have priority.
- (b) If the Superannuation Industry (Supervision) Act 1993 prohibits the Grantor from giving a *security interest* in any of the *collateral*, this deed does not create a *security interest* in that *collateral*.

# 3 DEALING WITH THE COLLATERAL

## 3.1 Restrictions on dealings

The Grantor must not do, agree to do, attempt or threaten to do, or allow to be done any of the following unless it is permitted to do so by clause 3.2.

- (a) Create, claim to create or allow to arise or continue an interest (including a *security interest*) in any *collateral*, unless it is a *permitted interest*.
- (b) Factor, discount, transfer, assign, declare a trust over or otherwise dispose of, any *attached receivable*, *other receivable*, chattel paper, monetary claim or revenue.
- (c) Dispose of, sell, lend, transfer, assign, subordinate, subdivide, consolidate, lease, license, part with possession of, give control, or deal in any other way with any *collateral*; change the nature of any *collateral*; or waive any of its rights or release any *entity* from obligations in connection with the *collateral*.
- (d) Withdraw money from the *nominated account*, permit any money in the *nominated account* to be set-off against a liability of the Grantor or permit that money to be appropriated in any way, except in accordance with clause 4.3.
- (e) Allow the *collateral* to become an accession to property not covered by this deed, be commingled with property not covered by this deed or to be affixed to land which is not owned by the Grantor.
- (f) Conceal the *collateral* or move or transfer any of the *collateral* to a place outside Australia.

- (g) Change any identifying mark or serial number on the *collateral* or seek any replacement or substitute title documents for the *collateral*.

### 3.2 Permitted dealings

- (a) The Grantor may do any of the following in the ordinary course of the Grantor's ordinary business, unless it is prohibited from doing so by a *transaction document*.
  - (i) Create or allow another interest (so long as it is a *permitted interest* if that other interest is a *security interest*) in any *revolving asset*.
  - (ii) Dispose of, sell, part with possession of or change the nature of a *revolving asset* other than an *other receivable*.
  - (iii) Withdraw or transfer money from an account with an ADI or other financial institution so long as that account is not the *nominated account* and a *control event* has not occurred.
  - (iv) Use, dispose of or deal with *collateral* which is currency so long as the currency is not a *collection* of an *attached receivable* and a *control event* has not occurred.
- (b) *Attached receivables* and *other receivables* can only be dealt with in accordance with clause 3.4.
- (c) Any insurance proceeds must be dealt with in accordance with clause 6.16.
- (d) Except as expressly permitted by the above paragraphs the Grantor does not have express or implied authority to transfer or deal in any way with the *collateral* (including in a way which would extinguish any *security interest* that Octet holds in the *collateral*), even if the transfer or other dealing would be in the ordinary course of the Grantor's ordinary business.

### 3.3 Revolving assets

- (a) If a *control event* occurs in respect of any *collateral* then automatically:
  - (i) that *collateral* is not (and ceases to be) a *revolving asset*;
  - (ii) any floating charge over that *collateral* immediately operates as a fixed charge;
  - (iii) if that *collateral* is an *attached receivable*, *other receivable* or chattel paper, it is transferred to Octet by way of security if it has not already been transferred by way of security in accordance with clause 2.1(b); and
  - (iv) the Grantor may no longer deal with that *collateral* under clause 3.2.
- (b) If any *collateral* is not, or ceases to be, a *revolving asset*, and becomes subject to a fixed charge or transfer under clause 3.3(a), Octet may give the Grantor a notice stating that, from a date specified in the notice, the *collateral* specified in the notice is a *revolving asset*, or becomes subject to a floating charge or is transferred back to the Grantor. This may occur any number of times.
- (c) Any inventory which is not, or ceases to be, a *revolving asset* is specifically appropriated to a *security interest* under this deed. The Grantor may not remove it without obtaining the specific and express authority of Octet to do so.

### 3.4 Grantor's ability to deal with the proceeds of receivables

- (a) The Grantor must use its best endeavours to collect the *attached receivables* and must take any action as may be necessary to recover the *attached receivables*. The Grantor must deal with the *collections* received in discharge of *attached receivables* in accordance with clause 4.2(a)(i). Octet may determine that the Grantor should not collect an *attached receivable*, or any of them as determined by Octet, and the Grantor must then cease to do so. Octet may then go about the collection of the *attached receivables* in the way it thinks appropriate and the Grantor must do anything Octet requires to help Octet collect those *receivables*.
- (b) The Grantor must use its best endeavours to collect the *other receivables* and must take any action as may be necessary to recover the *other receivables*. The Grantor must deal with the *collections* received in discharge of *other receivables* in accordance with clause 4.2(a)(ii) and when that provision does not apply must deal with them in the ordinary course of and for the purpose of carrying on its ordinary business. Octet may determine that the Grantor should not collect an *other receivable*, or any of them as determined by Octet, and the Grantor must then cease to do so. Octet may then go about the collection of the *other receivables* in the way it thinks appropriate and the Grantor must do anything Octet requires to help Octet collect those *receivables*.

## 4 NOMINATED ACCOUNT

### 4.1 Establishment of the nominated account

If required by Octet the Grantor must open and maintain a *nominated account* with an ADI approved by Octet. The *nominated account* must satisfy each of the following requirements.

- (a) The mandate agreed between the Grantor and the *account bank* must be satisfactory to Octet and that mandate must not be changed without Octet's approval.
- (b) Octet will determine who will be the authorised signatories for the *nominated account* and no withdrawals can be made from the *nominated account* without at least one of those authorised signatories approving the withdrawal.
- (c) No *entity* can have, without Octet's approval, a *security interest* in the *nominated account* (in particular the *account bank* must not have a *security interest* perfected by control) and Octet must control the *nominated account* within the meaning of section 341(1A)(d) of the *PPSA*.
- (d) If required by Octet the *account bank* must agree, in terms acceptable to Octet, that the *account bank* will not pay any money in the *nominated account* to the Grantor or any other *entity* (except Octet) without the consent of Octet; it waives all rights of set-off and combination in respect of the *nominated account*; if it does have a *security interest* in the *nominated account* that *security interest* is subordinated to Octet's *security interest* and it will not enforce its *security interest* in any way without Octet's approval; and it will pay all money standing to the credit of the *nominated account* to Octet if asked to do so by Octet.

### 4.2 Deposits into the nominated account

- (a) The Grantor must immediately pay into the *nominated account*:
  - (i) all *collections* which are received in discharge of *attached receivables*;

- (ii) all *collections* which are received in discharge of an *other receivable* if a *control event* occurs in respect of the *other receivable* or if Octet requires that amounts paid in discharge of the *other receivable* be deposited into the *nominated account*;
  - (iii) the proceeds of any disposal of or other dealing with any *collateral* which is not a *revolving asset*, to the extent that the proceeds are not immediately applied in acquiring another similar asset, in payment of the *secured money* or in payment of money secured by a *security interest* which ranks ahead of the *security interest* created by this deed. This requirement does not in any way limit the Grantor's obligations under clause 3.1. If the *nominated account* has not been opened the Grantor must immediately pay those proceeds to Octet and until it does so that Grantor will hold them on trust for Octet;
  - (iv) the proceeds (other than *collections*) of any disposal or other dealing with any *collateral* which is a *revolving asset*, if the disposal or other dealing was not in the ordinary course of the Grantor's ordinary business. If the *nominated account* has not been opened the Grantor must immediately pay those proceeds to Octet and until it does so that Grantor will hold them on trust for Octet;
  - (v) the proceeds which the Grantor receives under any insurance policy (except the proceeds received from any workers' compensation, public liability policy or reinstatement policy to the extent that the proceeds are paid, or are payable, to an *entity* entitled to be compensated under the workers' compensation or public liability policy or are paid, or are payable, under a contract for the reinstatement of the *collateral*); and
  - (vi) any compensation which is received in respect of the *collateral*.
- (b) The deposit of amounts into the *nominated account* does not result in Octet or any other *entity* coming under a present liability to pay any amount to any *entity*.

#### 4.3 Withdrawals from the nominated account

- (a) Octet can direct the disposition of funds from the *nominated account* without further consent from the Grantor. In particular Octet can require that money in the *nominated account* be applied to reduce the *secured money* or the money secured by any *security interest* which ranks ahead of any *security interest* created by this deed. The deposit of amounts into the *nominated account* does not result in Octet or any other *entity* coming under a present liability to pay any amount to any *entity*.
- (b) The Grantor acknowledges that it is not entitled to any *collections* of any *attached receivable* held in the *nominated account* from time to time. The Grantor also acknowledges that it is not entitled to any *collections* of any *other receivable* which is not a *revolving asset* held in the *nominated account* from time to time. Octet has the sole and absolute discretion to determine if any of those proceeds of *attached receivables* or *other receivables* are withdrawn and whether they should be paid to the Grantor or used for another purpose.

## 5 REPRESENTATIONS

### 5.1 General representations

The Grantor represents and warrants to Octet that, except as previously notified to and accepted by Octet in writing, each of the following is true.

- (a) If it is a *corporation*, it is a *corporation* duly incorporated and validly existing under the laws of its jurisdiction of incorporation.
- (b) It has an established place of business in Australia and is an Australian entity.
- (c) If it is a *corporation*, it has the power to:
  - (i) own its property and carry on its business as it is being conducted; and
  - (ii) enter into, perform and deliver the *transaction documents* to which it is a party and the transactions contemplated by those *transaction documents*.
- (d) The obligations expressed to be assumed by it in each *transaction document* are legal, valid, binding and enforceable.
- (e) The entry into and performance by it of the *transaction documents* and the transactions contemplated by the *transaction documents* does not and will not conflict with any law or regulation applicable to it; its constitutional documents or any agreement or instrument binding on it or any of its property.
- (f) It has taken all corporate actions and obtained or effected all required or desirable authorisations (which are in full force and effect):
  - (i) to enable it lawfully to enter into, deliver, exercise its rights and perform its obligations under the *transaction documents* to which it is a party and the transactions contemplated by those *transaction documents*;
  - (ii) to make the *transaction documents* to which it is a party valid, binding, enforceable and admissible in evidence in its jurisdiction of incorporation; and
  - (iii) which are material to it carrying on its business.
- (g) It is not materially in default of any law which is binding on it or any *collateral*.
- (h) The choice of law referred to in this deed as the governing law of this deed will be recognised and enforced in its jurisdiction of incorporation or, if the Grantor is an individual, his or her principal place of business and principal place of residence.
- (i) Any judgment relating to a *transaction document* that is obtained in a jurisdiction referred to in this deed as the governing jurisdiction, will be recognised and enforced in its jurisdiction of incorporation or, if the Grantor is an individual, his or her principal place of business and principal place of residence.
- (j) Neither it nor any of its assets has any immunity from suit or attachment in the jurisdiction of its incorporation or, if the Grantor is an individual, his or her principal place of business or principal place of residence.
- (k) No *event of default* is continuing or might reasonably be expected to result from its entering into and performing its obligations under the *transaction documents*.
- (l) No event or circumstance is outstanding which constitutes a default under any other agreement or instrument which is binding on it or to which its property is subject which might have a *material adverse effect*.
- (m) It is solvent and able to pay its debts as they fall due.

- (n) No proceedings have (to the best of its knowledge and belief) been started or threatened against it which, if adversely determined, might reasonably be expected to have a *material adverse effect*. In this clause "proceedings" means litigation, arbitration, administrative or investigative proceedings of or before any court, arbitral body or agency, tax or government authority.
- (o) Except as specified in item 1 of the Schedule, it does not enter any *transaction document* as a trustee or hold any property as trustee.
- (p) Any factual information provided by it for the purposes of a *transaction document* was true and accurate in all material respects as at the date it was provided or as at the date (if any) at which it is stated.
- (q) The records, accounts, statement of financial position, statement of financial performance, statement of cash flows and other financial information of the Grantor provided to Octet give a true, fair and complete view of the Grantor's business and its assets and liabilities and disclose all material *financial indebtedness* and all material contingent liabilities of the Grantor.
- (r) There is no information about its affairs which, if disclosed to Octet, might adversely affect Octet's decision to enter into or rely on the *transaction documents*.
- (s) Its payment obligations under the *transaction documents* rank at least *pari passu* with the claims of all its unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally (if the Grantor is a *corporation*) or to individuals generally (if the Grantor is an individual).
- (t) Except as disclosed to Octet before the date of this deed, the Grantor is not and has not been, and the Grantor agrees that it will not (without approval from Octet) become:
  - (i) a member of a group of companies under section 48-5 of the *GST Act* or a member of a consolidated group (which has the meaning given by section 703-5 of the Income Tax Assessment Act 1997) or an MEC (multiple entry consolidated) group (which has the meaning given by section 719-5 of that Act);
  - (ii) a member of a joint venture under section 51-5 of the *GST Act*; or
  - (iii) a partner in a partnership as defined in the *GST Act*.

## 5.2 Additional representations – individuals

If the Grantor is an individual he or she also represents and warrants to Octet that each of the following is true.

- (a) He or she enters into each *transaction document* to which he or she is a party wholly for business purposes or investment purposes. Those investment purposes do not include the purchase, renovation or improvement of residential property or investment in marketable securities.
- (b) All *personal property* which is used to any extent in the conduct of, or in connection with, a business, including inventory, the goodwill of each business which he or she may carry on and all property used to conduct that business is held by him or her in the course of furtherance, to any degree, of carrying on an enterprise to which an ABN has been allocated.
- (c) His or her date of birth as disclosed to Octet is correct.



### 5.3 Representations relating to the collateral

The Grantor represents and warrants to Octet that, except as previously disclosed to and accepted by Octet in writing, each of the following is true.

- (a) It is the only owner of the *collateral*.
- (b) It has not granted or agreed to grant a *security interest* over any of the *collateral* and there are no *security interests* in any of the *collateral*, other than *permitted interests*.
- (c) The *collateral* is not used for any personal, household or domestic purpose and will not be used for any of those purposes.
- (d) No other *entity* has an interest or right in any of the *collateral* or the power to transfer a right in the *collateral*, except an interest or right which is a *permitted interest*.
- (e) It has control of all investment instruments, intermediated securities, letters of credit, negotiable instruments, satellites and space objects which form part of the *collateral* and, if requested by Octet, will do all things necessary and enter into any agreement requested by Octet to deliver control of that *collateral* to Octet.
- (f) It has not granted or agreed to grant possession or control over the *collateral* to any *entity* other than Octet.
- (g) Each *attached receivable* will be good, valid, enforceable and subsisting at all times for its full unpaid balance, and will not be voidable, or subject to any set-off or counterclaim against the Grantor by reason of any default of the Grantor.
- (h) The information given to Octet about the *collateral* is complete and correct.

### 5.4 Repetition

The Grantor will be taken to have repeated the representations and warranties in this deed on each day until the *security interests* created by this deed are released.

### 5.5 Reliance on representations and warranties

The Grantor acknowledges that Octet has entered or will enter into the *transaction documents* in reliance on the representations and warranties in this deed.

## 6 UNDERTAKINGS

### 6.1 Payment and performance undertakings

The Grantor must do each of the following.

- (a) Duly and punctually pay the *secured money* in accordance with the *transaction documents* or, if the *transaction documents* do not specify when the *secured money* must be paid, on demand. After an *event of default* (whether or not it subsists) the Grantor must pay all *secured money* on demand by Octet. The *secured money* must be paid without set-off or counterclaim.
- (b) Duly and punctually comply with and perform each of the *secured obligations* and any other obligations under the *transaction documents*.
- (c) Ensure that no *event of default* occurs.

- (d) Apply the financial accommodation provided to it by Octet for the purpose agreed by Octet including, if required, to release or discharge any *security interest*.
- (e) Perform its obligations under any security agreement in respect of a prior ranking *security interest* over any *collateral*.

## 6.2 Corporate existence, name and other particulars

- (a) The Grantor must, unless the Grantor is an individual, maintain its corporate existence and must not change its place of incorporation.
- (b) The Grantor must not change its name or business characteristics (such as its ACN, ABN or ARSN) without Octet's approval. That approval must be obtained at least ten *business days* before the change occurs.
- (c) The Grantor must keep Octet informed of the name or style under which it trades; its registered address; its principal place of business; its telephone number, fax number and e-mail address; any change in the nature of its business or to its auditor or external accountants; if it is a *corporation*, any change in its directors, company secretary or public officer; and if it is a partnership, any change in the identity of the partners. Where possible the Grantor must inform Octet about a change before it happens.

## 6.3 Attached receivables

The Grantor agrees that:

- (a) it will, if required by Octet, give any notice to the *entity* which owes the *attached receivable* or any other *entity*, as Octet may require, in relation to any *attached receivable*. It must not give any notice of that type unless Octet requests it to do so;
- (b) it will, if required by Octet, deliver to Octet each invoice which evidences or purports to evidence an *attached receivable*; each agreement, receipt, acknowledgement or other document which gives rise to, evidences or records or purports to evidence or record an *attached receivable* or the amount of it that remains to be paid; and each document or other record of a *related right*;
- (c) until the invoices and other documents mentioned in clause 6.3(b) are delivered to Octet the Grantor will keep them in good order and condition and ensure that they are properly and securely housed in premises either owned by the Grantor or leased by the Grantor on terms approved by Octet;
- (d) it will perform the Grantor's obligations under each agreement which gives rise to an *attached receivable* in accordance with its terms and any law relating to it;
- (e) it will not do or cause to be done or permit any act or omission which may prejudice or adversely affect any right to receive payment of an *attached receivable* or to enforce any agreement which gives rise to an *attached receivable*;
- (f) it will not, without the consent of Octet, release or compound an *attached receivable* or allow a set-off, counterclaim or any other thing to arise, occur or be asserted which could reduce the value of an *attached receivable*;
- (g) it will not receive, compound or release an *attached receivable* or do anything which may impede, delay or prevent recovery of an *attached receivable* without Octet's consent; and

- (h) it will promptly tell Octet if an *attached receivable* is not paid within ordinary trading terms and that could have a *material adverse effect*.

#### 6.4 General undertakings

The Grantor must do each of the following.

- (a) Conduct its business in a proper, orderly and efficient manner and in accordance with all applicable laws.
- (b) Promptly obtain, comply with and do all that is necessary to maintain in full force and effect, all authorisations required:
  - (i) to enable it to perform its obligations under the *transaction documents*;
  - (ii) to ensure the legality, validity, enforceability or admissibility in evidence of each *transaction document* in Australia, in its jurisdiction of incorporation (if the Grantor is not an individual), in the Grantor's principal place of business and principal place of residence (if the Grantor is an individual) and in each place where the *collateral* is located; and
  - (iii) to carry on its business, if those authorisations are material to that business.
- (c) Promptly supply certified copies to Octet of any authorisations required under clause 6.4(b).
- (d) Comply in all respects with all laws to which it or the *collateral* may be subject, if failure to comply could materially impair its ability to perform its obligations under the *transaction documents*.
- (e) Not vary in any way any *security interest* disclosed and consented to by Octet, without Octet's consent.
- (f) Not incur any *financial indebtedness* or allow any further *financial indebtedness* to remain owing without Octet's consent.
- (g) Not enter into any amalgamation, demerger, merger or corporate reconstruction.
- (h) Not deal in any way with any *entity* except at arm's-length in the ordinary course of business for valuable commercial consideration.
- (i) Not to transfer or lease any asset to, or lend any money to, or permit any money to remain owing to it (unless approved by Octet on any terms it thinks fit) by any other Grantor (if there is more than one), the *client* or an *entity* which is *related* to the Grantor or the *client*, nor enter into any service agreement or other arrangement with those *entities* without Octet's consent. A consent or approval can be given in relation to specific transactions or by a general description of the extent of a Grantor's authority to do any of those things.
- (j) Not make any substantial change to the general nature of its business from that carried on at the date of this deed.
- (k) Not, without the prior consent of Octet:
  - (i) call up or receive in advance of calls any of the uncalled capital (including any share premium); or

- (ii) pass a resolution under section 254N or section 260B of the Corporations Act 2001.

#### 6.5 Environmental undertakings

The Grantor must do each of the following.

- (a) Notify Octet promptly if there is a *contaminant* on, in, under or migrating to or from the *collateral*.
- (b) Not have a *contaminant* on, in or under the *collateral*, or release a *contaminant* from, or allow a *contaminant* to escape or migrate from, the *collateral*.
- (c) Immediately remove any *contaminant* from the *collateral* and make good any damage caused by the *contaminant* or its removal.
- (d) If a *contaminant* is released, escapes or migrates from the *collateral*, minimise its impact on the *environment* and make good any damage it causes.
- (e) Not deal with the *collateral* or any *contaminant* in such a way as to increase the risk of harm from any *contaminant*.
- (f) Notify Octet promptly if a government authority issues any notice, order or claim in respect of the *collateral* under any law relating to a *contaminant*, pollution or the protection of the *environment* (**Clean-up Notice**).
- (g) Do any remedial work or other thing required by any Clean-up Notice within any period of time specified in the notice.
- (h) If Octet reasonably believes there is a *contaminant* on, in, under or migrating to or from the *collateral* or if a government authority is entitled to issue a Clean-up Notice, arrange for an environmental examination or audit of the *collateral* to be conducted by an appropriately qualified person approved by Octet, and have any remedial work or any other thing recommended by that person done within such time as Octet reasonably requires.

#### 6.6 Undertakings regarding records

The Grantor must do each of the following.

- (a) Keep proper records in relation to its business in accordance with the law, the accounting standards and any requirements of any other *transaction document*.
- (b) The Grantor must, at its expense, give Octet any information Octet requires and allow Octet to inspect any records, including books, accounts, ledgers, letters and any other documents. Octet is entitled to copy anything it wants to, and to take a printout or electronic copy of any records on computer and to take possession of the relevant records and documents or use computer systems to do so. If any relevant records or documents are not in the Grantor's possession or under the Grantor's control, the Grantor must do everything that is necessary to enable Octet to inspect and copy them and, where appropriate, take possession of them. The records and documents must be kept at the Grantor's address specified in item 2 of the Schedule or at a substitute address with Octet's approval.
- (c) The Grantor must give Octet a copy of its management accounts, including its balance sheet, its trading and profit and loss accounts, any other accounts Octet requires and any related information Octet asks for. The Grantor must give all of them in the manner and form and with the detail Octet requires whenever Octet asks the Grantor to.

- (d) The Grantor must give Octet a copy of its annual financial report, including the Grantor's balance sheet, its trading and profit and loss accounts and its statement of cash flows, any other accounts Octet requires, and any related information Octet asks for. The Grantor must give all of them in the manner and form and with the detail Octet requires no more than four months after the end of the period to which they relate. Each financial report must comply with the accounting standards.
- (e) The Grantor must give Octet, within seven days after Octet asks for it, a statement setting out all the Grantor's outstanding liabilities, including contingent and prospective liabilities, as at the date Octet specifies.
- (f) The information to be given under clauses 6.6(c), (d) and (e) must each be certified as being accurate and complete by the Grantor or, if the Grantor is a *corporation*, by a director. If that information is provided electronically the Grantor must comply with Octet's requirements so that it is compatible with Octet's system and the certification must be provided in a way Octet considers satisfactory.
- (g) Have its annual financial statements audited if Octet requires it to do so.
- (h) If Octet reasonably believes that there is a *potential event of default* or an *event of default* may have happened, allow Octet, or an agent or accountant engaged by Octet, to investigate whether this belief is accurate and co-operate fully to allow the investigation to take place.

#### 6.7 Information undertakings

The Grantor must do each of the following.

- (a) Give to Octet a copy of all documents sent by the Grantor to its shareholders (or any class of them) or its creditors generally (or any class of them) at the same time as they are sent.
- (b) Promptly on becoming aware of them, give Octet details of any proceedings which are current, threatened or pending against the Grantor and which might, if adversely determined, have a *material adverse effect*. In this clause "proceedings" means litigation, arbitration, administrative or investigative proceedings of or before any court, arbitral body or agency, tax or government authority.
- (c) Promptly give Octet any further information regarding the financial condition, business and operations of the Grantor as Octet may reasonably request.
- (d) Promptly on becoming aware of the occurrence of an *event of default* or a *potential event of default* give to Octet notice of the event and the steps (if any) being taken to remedy it.
- (e) Promptly on becoming aware of any claim for compensation arising in relation to the *collateral*; any claim arising under any insurance policy in relation to the *collateral*; any damage to or defect in the *collateral*; or any event or circumstance which could result in the value of the *collateral* being adversely affected give notice of the claim, damage, event or circumstance to Octet.
- (f) Promptly on request by Octet, give Octet a certificate signed by two of its directors (or the director if there is only one) or by the Grantor if the Grantor is an individual certifying that no *event of default* is continuing (or if an *event of default* is continuing, specifying the *event of default* and the steps (if any) being taken to remedy it).

- (g) Within ten *business days* of a request by Octet, give Octet a full and complete list of the *collateral*, including the value and location of each item and the serial number of each item which is serial numbered property.
- (h) Give Octet:
  - (i) prompt notice of any transfer of *collateral* in breach of clause 3.1; and
  - (ii) any information requested by Octet in relation to the transferee to enable Octet to perfect its *security interests* created by this deed as against the transferee.

The Grantor acknowledges that any notification under this clause 6.7(h) does not cure the breach of the undertakings in clause 3.1.

- (i) Give Octet a copy of any garnishee notice, or any notice under section 120 of the *PPSA*, that is given to any *entity* in relation to money that the *entity* owes or may owe at any time to the Grantor, as soon as the Grantor becomes aware of the notice.

#### **6.8 Undertakings relating to the collateral**

The Grantor must do each of the following.

- (a) If this deed is intended by Octet to secure a loan made by Octet to enable the Grantor to purchase any *collateral* or release or discharge a *security interest* over any *collateral*, immediately apply the proceeds of the loan (or as much of the loan as is necessary) for that purpose.
- (b) Perform its obligations under any security agreement in respect of a prior ranking *security interest* over any *collateral*.
- (c) Not use any *collateral* except in the ordinary course of its ordinary business.
- (d) Not take any *collateral* out of Australia without Octet's consent, except in the ordinary course of its ordinary business.
- (e) Store the *collateral* at its principal place of business or the place notified to Octet in writing, unless the *collateral* is being used in the ordinary course of its ordinary business.
- (f) Perform its obligations (or ensure that the lessee performs the lessee's obligations) under any lease of any premises at which the *collateral* is stored and perform its obligations under any lease held by the Grantor.
- (g) Comply with all laws applying to the *collateral*, the ownership of the *collateral* or the use of the *collateral*.
- (h) Not use any *collateral* in any way that makes it liable to be confiscated under any legal power.
- (i) If the *collateral* is seized under a legal power or taken out of its possession without its consent, within 24 hours advise Octet of that fact and, if known, the place where the *collateral* is stored.
- (j) Not allow any unqualified, unlicensed, alcohol impaired or drug impaired person to use the *collateral*.
- (k) Comply with the manufacturer's specifications for the use of any *collateral*.

- (l) Not use any *collateral* in a way that if the *collateral* was damaged or destroyed it would not be insured or a manufacturer's or supplier's warranty would be void or inapplicable.
- (m) Maintain and comply with the terms of all licences, manufacturer's or supplier's warranties, consents and authorisations applying to any *collateral* or the use of any *collateral*.
- (n) Maintain the *collateral* in good condition.
- (o) Have the *collateral* serviced by a qualified person in accordance with the manufacturer's recommendations. If required by Octet that person must be a person approved by Octet.
- (p) Not modify or dismantle any *collateral* (except for the purpose of normal maintenance) without Octet's consent.
- (q) Not remove or modify any name, serial number, identification number or trademark on any *collateral*.
- (r) Allow Octet or a person appointed by Octet to inspect or test the *collateral* at any reasonable time, and do everything in its power to assist the inspection or testing.
- (s) Pay all charges, fees and *taxes* that apply to any *collateral* when they are due and, if Octet asks it to, give Octet evidence that it has done so.
- (t) Deliver to Octet and allow Octet to retain all documents of title and other documents relating to the ownership or use of the *collateral*, unless those documents are held by the holder of a prior *security interest* over the *collateral*.
- (u) Irrevocably direct any holder of any prior *security interest* over the *collateral* to deliver to Octet all documents of title and other documents relating to the ownership or use of the *collateral* held by that *entity* when that *entity* ceases to be entitled to hold them.
- (v) Not deal with (whether in a single transaction or a series of related or unrelated transactions, and whether voluntarily or involuntarily) any *collateral* except as permitted under clause 3.
- (w) If the Grantor is an individual, he or she must not, during the currency of this deed and for a period of two years after any sale or disposal of the goodwill of the business conducted by the Grantor following an *event of default*, within a distance of five kilometres in a direct line from any place where the Grantor conducted that business, directly or indirectly, undertake or carry on, or be connected with, or engaged or interested in, either alone or in partnership with, or as a shareholder, manager, servant or agent of, any other *entity*, a business of any nature which is the same or substantially similar to any business carried on by the Grantor during the currency of this deed.
- (x) If any compensation is payable to the Grantor in relation to the *collateral* (for example because it is compulsorily acquired by a governmental authority) the Grantor must deposit the compensation into the *nominated account* as required by clause 4.2 and until it does so that Grantor will hold the compensation on trust for Octet. If the *nominated account* has not been opened the Grantor must immediately pay the compensation to Octet and until it does so the Grantor will hold the compensation on trust for Octet.
- (y) If the Grantor is or could be a secured party in respect of any *security interest*, the Grantor must implement, maintain and comply with procedures (which Octet requires or, if Octet has not required that it be done, those which are prudent for a person conducting a similar

business) to identify and perfect those *security interests*. These include procedures to ensure that those *security interests* are continuously perfected, including all steps necessary:

- (i) for the Grantor to obtain the highest ranking priority possible in respect of the *security interest* (such as perfecting a purchase money security interest or perfecting a *security interest* by control); and
- (ii) to minimise the risk of a third party acquiring an interest free of the *security interest* (such as including serial number in a financing statement).

#### 6.9 Controllable property

The Grantor must do each of the following.

- (a) Ensure that a potential purchaser cannot acquire any negotiable instrument, investment instrument, intermediated security or chattel paper forming part of the *collateral*.
- (b) Ensure that a potential purchaser cannot take possession of any *collateral* without first receiving notice in a form approved by Octet of Octet's interest in the *collateral* under this deed and that any dealing with that *collateral* (unless it is inventory which is sold in the ordinary course of the Grantor's ordinary business) constitutes a breach of this deed.
- (c) Ensure that no *entity* other than the Grantor, Octet, an *entity* which has agreed to act on the instructions of Octet or an *entity* approved by Octet controls the sending of some or all of the electronic messages or other electronic communications by which a marketable security (as defined in the Corporations Act 2001) included in the *collateral* could be transferred. The Grantor must, if required by Octet, ensure that there is an agreement in force under which Octet or an *entity* which has agreed to act on the instructions of Octet controls the sending of the electronic messages or other electronic communications by which a marketable security of that type could be transferred.
- (d) Take any steps required by Octet to ensure that Octet's *security interests* in investment instruments, intermediated securities and negotiable instruments are recorded by any relevant clearing house or securities depository and on the records maintained by or on behalf of the relevant issuer.

#### 6.10 ADI accounts

- (a) If an ADI account is included in the *collateral* Octet may direct the disposition of funds from the account without further consent from the Grantor. In relation to the *nominated account* also see clause 4.
- (b) If an ADI account is included in the *collateral* and any other *entity* (including the ADI) has a *security interest* in the ADI account (including a *security interest* which is perfected by control) the Grantor must obtain any waiver in relation to the other *security interest* which Octet may require.

#### 6.11 Negotiable instruments and letters of credit

- (a) If a negotiable instrument not evidenced by an electronic record is included in the *collateral* the Grantor must, if required by Octet, use its best endeavours to give physical possession of the negotiable instrument to Octet.
- (b) If a negotiable instrument not evidenced by a certificate is included in the *collateral* the Grantor must use its best endeavours to ensure that the negotiable instrument is able to be transferred in accordance with the operating rules of a clearing and settlement facility. If



required by Octet, Octet or its nominee must control the sending of some or all of the electronic messages or other electronic communications by which the negotiable instrument could be transferred.

- (c) If a letter of credit is included in the *collateral* the Grantor must, if required by Octet, use its best endeavours to ensure that the issuer or its nominee consents to the letter of credit being transferred to Octet. If required by Octet the letter of credit must be given to Octet.

#### 6.12 Chattel paper

- (a) If chattel paper is included in the *collateral* the Grantor must ensure that a potential purchaser cannot acquire it; must not give possession of it (including as contemplated by section 24(5) of the *PPSA* if it is evidenced by an electronic record) to any *entity* except Octet; and must, if requested by Octet, give possession to Octet in the way Octet requires.
- (b) If chattel paper evidenced by an electronic record is included in the *collateral* the Grantor must, if required by Octet, ensure:
  - (i) that there is a single, authoritative copy of the electronic record which is unique, identifiable and unalterable;
  - (ii) that the authoritative copy identifies Octet as the transferee;
  - (iii) that the authoritative copy is communicated to, and maintained by, Octet;
  - (iv) copies or revisions of the record that change the transferee of the authoritative copy can be made only with the participation of Octet;
  - (v) each copy of the authoritative copy (and any copy of such a copy) is readily identifiable as a copy that is not the authoritative copy; and
  - (vi) any revision of the authoritative copy is readily identifiable as an authorised or unauthorised copy.

#### 6.13 Investment instruments

- (a) If required by Octet the Grantor must use its best endeavours to ensure that any investment instrument included in the *collateral* records Octet as the registered owner of the instrument or that the issuer registers Octet as the registered owner of the instrument.
- (b) If an investment instrument included in the *collateral* is evidenced by a certificate the Grantor agrees to give possession of the instrument to Octet if required by Octet and consents to a transfer of the instrument to Octet or its nominee and also consents to any dealing with the instrument by Octet or its nominee.
- (c) If an investment instrument included in the *collateral* is evidenced by a certificate the Grantor must, if required by Octet, use its best endeavours to ensure:
  - (i) that the certificate specifies Octet as the *entity* which is entitled to the investment instrument; and
  - (ii) that Octet or its nominee has possession of the certificate.
- (d) If an investment instrument included in the *collateral* is not evidenced by a certificate Octet will be entitled to initiate or control the sending of instructions by which the investment instrument could be transferred or otherwise dealt with. If required by Octet the Grantor must

use its best endeavours to ensure that the issuer of the instrument registers Octet or its nominee as the registered owner and that Octet or its nominee is able to initiate or control the sending of some or all of the electronic messages or other electronic communications by which the investment instrument could be transferred or otherwise dealt with.

#### **6.14 Intermediated securities**

The Grantor must do each of the following if Octet has told the Grantor that this clause 6.14 applies, if an *event of default* has occurred or if there is a *potential event of default*.

- (a) Ensure that Octet or its nominee is able to initiate or control the sending of some or all of the electronic messages or other electronic communications by which the intermediated securities could be transferred or otherwise dealt with.
- (b) Not give the intermediary any instructions in relation to the intermediated securities without first obtaining approval from Octet.
- (c) Ensure that the intermediary complies with instructions (including instructions to debit a securities account) given by Octet without seeking the consent of the Grantor or any *entity* which has agreed to act on the instructions of the Grantor.
- (d) Use its best endeavours to ensure that the securities account is maintained in the name of Octet or its nominee.

#### **6.15 Obligation to insure**

- (a) The Grantor must, at its expense, arrange and maintain insurance over all the *collateral* it is legally entitled to insure.
- (b) The insurance must:
  - (i) insure against the risks that *entities* in the same business as the Grantor usually insure against;
  - (ii) insure against any other risks that Octet requires;
  - (iii) be on usual commercial terms;
  - (iv) be for the full agreed value of the *collateral*;
  - (v) be with an insurer acceptable to Octet; and
  - (vi) note Octet's interest as the holder of the *security interest* created by this deed, or (if required by Octet) specify Octet as the loss payee.
- (c) Upon request, the Grantor must give Octet evidence that it has arranged and is maintaining the insurance required by this deed.

#### **6.16 Insurance proceeds**

- (a) Subject to the rights of the holder of any prior ranking *security interest* over the *collateral*, Octet is entitled to any insurance proceeds payable to the Grantor under the Grantor's insurance policies in respect of the *collateral*. The Grantor irrevocably authorises its insurers to pay those proceeds to Octet.

- (b) If the Grantor's insurer pays those proceeds to the Grantor the Grantor must deposit them into the *nominated account* as required by clause 4.2 and until it does so, the Grantor will hold the proceeds on trust for Octet. If the *nominated account* has not been opened the Grantor must immediately pay the proceeds to Octet and until it does so the Grantor will hold the proceeds on trust for Octet.
- (c) Octet is entitled, at its discretion, to use the proceeds of the Grantor's insurance policies to repair or replace any of the *collateral* which has been damaged or destroyed, to pay any *secured money* or to procure the performance of any *secured obligations*.

#### **6.17 Octet may remedy breach**

If the Grantor does not comply with an obligation it has to Octet under the *transaction documents*, Octet may do what the Grantor was required to do.

#### **6.18 Co-operation with Octet**

The Grantor must do everything Octet asks the Grantor to do to give Octet the full benefit of this deed. The Grantor must make sure that any *entity* who is expressed to be a party to a *transaction document* complies with its obligations to Octet under that *transaction document*.

#### **6.19 Term of undertakings**

Each undertaking in this clause continues from the date of this deed until each *security interest* created by this deed is released.

## **7 POWER OF ATTORNEY**

### **7.1 Appointment of attorneys**

For valuable consideration and by way of security the Grantor irrevocably and unconditionally appoints Octet, any *receiver*, each *authorised officer* and any lawyer acting on behalf of Octet, jointly and severally, as the Grantor's attorney to:

- (a) do anything the Grantor is required to do under a *transaction document*;
- (b) do anything the attorney thinks necessary to protect Octet's rights under a *transaction document* or to exercise any right, power or remedy that Octet has under a *transaction document*;
- (c) do anything the attorney thinks necessary for the due performance of this deed or to give effect to this deed; and
- (d) do anything else the Grantor could do as owner of the *collateral*.

### **7.2 Exercise of attorney's discretion**

The attorney will determine, at the attorney's discretion, if and how a power should be exercised. An attorney may act despite any conflict of duty or interest and may do any of the things mentioned in clause 7.1 as the attorney sees fit. Anything done by an attorney under the powers given to the attorney will be binding on you as if those things had been done by you. An attorney is not liable to you for anything done by the attorney.

## **8 ENFORCEMENT**

### **8.1 Acceleration of obligations and enforcement of security interest**

If any *event of default* happens the *secured money* will become payable immediately, the *secured obligations* must be performed immediately and the *security interest* created by this deed will become enforceable without demand or notice.

### **8.2 Consequences of an event of default**

In addition to any other rights provided by law or any *transaction document*, at any time after an *event of default* (whether or not it continues), Octet may do all or any of the following.

- (a) Sue the Grantor for the *secured money*.
- (b) Appoint one or more qualified persons as a *receiver* of the *collateral* or any part of the *collateral*.
- (c) Do anything that a *receiver* could do under this deed, whether or not a *receiver* has been appointed.

### **8.3 Octet's enforcement powers**

If this deed has become enforceable, Octet is entitled to do any one or more of the following.

- (a) Deal with any *collateral* in any way the Grantor could.
- (b) Seize, take possession of, secure, store, value or retain any *collateral* and, if Octet does have possession of any *collateral*, give up possession of any *collateral* at any time.
- (c) Carry on any part of the business of the Grantor with all the powers of an absolute owner if Octet considers it appropriate.
- (d) Have access to and use the Grantor's premises, plant, equipment, *accounting records* and other records and use the services of the Grantor's employees and agents for any purpose.
- (e) Repair, clean, repaint, demolish, rebuild, alter or add to the *collateral*.
- (f) Subdivide or consolidate the *collateral*; create any easements or covenants; carry out or complete any work; and remove any chattels or fixtures and deal with them in any way.
- (g) Pay any money owed by the Grantor or any money owing in respect of the *collateral* or which is secured by a *security interest* in the *collateral*.
- (h) Sell, transfer, assign, lease, license or otherwise dispose of the *collateral* (whether or not Octet has seized or taken possession of it). Any sale may be by auction, private treaty, tender or any other method. The sale, transfer, assignment, lease, license or disposal may be on any terms and conditions that Octet thinks fit, including terms for the deferred payment of the whole or any part of the purchase price, either with or without interest and either with or without security. The *collateral* can be sold, transferred, assigned, leased, licensed or disposed of in one line or by separate lots and can occur together with any other property.
- (i) Delay doing any of the things mentioned in clause 8.3(h) for any period determined by Octet.
- (j) Borrow money for the purpose of exercising Octet's rights, remedies and powers, and to give a *security interest* over any of the *collateral* as security for the loan.

- (k) Employ people to help it or advise it how to deal with the *collateral*.
- (l) Give receipts and sign any documents needed to deal with any of the *collateral* or which could assist with any dealing with any of the *collateral*.
- (m) Exercise the Grantor's rights or powers in respect of the *collateral* and perform, observe, carry out, enforce, vary or rescind any deed, agreement, obligation or right.
- (n) Sign documents and enter into contracts relating to the *collateral* on the Grantor's behalf.
- (o) Bring, continue or defend legal proceedings relating to the *collateral* (including in the Grantor's name) and make any arrangement or compromise.
- (p) Delegate any of Octet's rights, remedies and powers (including this power) to any other *entity*.
- (q) Do anything else that the Grantor could do in respect of the *collateral* and perform any of the Grantor's obligations under a *transaction document*.
- (r) Open or operate any ADI account in the Grantor's name (whether alone or jointly) to the exclusion of the Grantor, to deposit or withdraw any money to or from any ADI account and to sign and indorse or authorise others to sign and indorse in the name of the Grantor any negotiable instrument.
- (s) Open, deal with and redirect the mail of the Grantor.
- (t) Exercise any other right, remedy or power it has as a matter of law.

#### **8.4 Calls on shares**

Octet may do the following at any time while an *event of default* subsists.

- (a) In the name of the Grantor, make a call on the unpaid share capital of the Grantor (whether on account of the nominal value of shares or by way of premium).
- (b) Sue in the name of the Grantor or otherwise for the recovery of moneys becoming due in respect of calls.
- (c) Give valid receipts for those moneys.

#### **8.5 Grantor must help Octet**

The Grantor must do everything Octet asks it to do to help Octet exercise its rights, remedies and powers under this deed.

## **9 RECEIVERS**

### **9.1 Appointing and removing Receivers**

- (a) An appointment by Octet of a *receiver* must be in writing and be signed by or on behalf of Octet. Octet will determine the terms of the *receiver's* appointment and the amount and basis of the *receiver's* remuneration.
- (b) Octet may remove any *receiver* it appoints and, if it wants to, reappoint that person or appoint another person as a replacement.

**9.2 Agent of Grantor**

Subject to clause 9.3, a *receiver* is the agent of the Grantor, not Octet. The Grantor, and not Octet, is responsible for anything a *receiver* does or fails to do in his or her capacity as *receiver*.

**9.3 Appointing receiver after winding-up**

Octet may appoint a *receiver* even if an order is made, or a resolution passed, to wind-up the Grantor. To the extent this is required by law a *receiver* appointed in those circumstances will not, or will not in some respects, act as the agent of the Grantor.

**9.4 Receiver's powers**

Unless Octet expressly restricts a *receiver's* powers on appointment, the *receiver* will have the power, in addition to the powers the *receiver* has as a matter of law, to do everything Octet may do under clause 8.3 (except appoint a receiver or receiver and manager).

**9.5 Indemnity by Grantor**

The Grantor must indemnify a *receiver* and each of the *receiver's* agents and employees against any claim or proceeding that is made, threatened or commenced, and any liability, loss, damage or expense (including legal costs on a full indemnity basis) and taxes they incur or suffer in their capacity as *receiver* or whilst acting as the *receiver's* agent or employee.

**9.6 Grantor must help receiver**

The Grantor must do everything a *receiver* asks it to do to help the *receiver* exercise his or her powers under this deed.

**9.7 Acting severally**

If Octet appoints more than one person to act as a *receiver*, those persons may act severally unless specified otherwise in the instrument of appointment.

**10 STATUTORY POWERS****10.1 Powers conferred by law**

The rights, remedies and powers conferred on a mortgagee or other secured party by law:

- (a) are in addition to the rights, remedies and powers conferred by this deed or any *additional security*;
- (b) to the extent permitted by law, may be exercised by Octet immediately an *event of default* occurs and at any time subsequently; and
- (c) to the extent permitted by law, are excluded or varied only so far as they are inconsistent with the express terms of this deed or any *additional security*.

**10.2 Exclusion of legislation**

To the extent permitted by law, all legislation which at any time directly or indirectly:

- (a) lessens, varies or affects in favour of the Grantor any obligation under this deed or any *additional security*; or
- (b) delays, prevents or prejudicially affects the exercise of any right, remedy or power by Octet, any *receiver* or any attorney,

is excluded from this deed and any *additional security*.

### 10.3 Exercise of rights by Octet

If Octet exercises a right, power or remedy in connection with this deed, that exercise is taken not to be an exercise of a right, power or remedy under the *PPSA* unless Octet states otherwise at the time of exercise. However, this clause does not apply to a right, power or remedy which can only be exercised under the *PPSA*.

### 10.4 No notice required unless mandatory

To the extent the law permits, the Grantor waives:

- (a) its rights to receive any notice that is required by:
  - (i) any provision of the *PPSA* (including a notice of a verification statement);
  - (ii) any other law before a secured party or *receiver* exercises a right, power or remedy; and
- (b) any time period that must otherwise lapse under any law before a secured party or *receiver* exercises a right, power or remedy.

If the law which requires a period of notice or a lapse of time cannot be excluded, but the law provides that the period of notice or lapse of time may be agreed, that period or lapse is one day or the minimum period the law allows to be agreed (whichever is longer).

However, nothing in this clause prohibits Octet or any *receiver* from giving a notice under the *PPSA* or any other law.

### 10.5 Exclusion of *PPSA* provisions

To the extent the law permits:

- (a) for the purposes of section 115(1) and 115(7) of the *PPSA*:
  - (i) Octet need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d) or 132(4); and
  - (ii) sections 142 and 143 are excluded;
- (b) for the purposes of section 115(7) of the *PPSA*, Octet need not comply with sections 132 and 137(3);
- (c) Octet may seize intangible property in any way and is not required to do so by serving a notice under section 123(2) of the *PPSA*;
- (d) if the *PPSA* is amended after the date of this deed to permit the Grantor and Octet to agree to not comply with or to exclude other provisions of the *PPSA*, Octet may notify the Grantor that any of these provisions is excluded, or that Octet need not comply with any of these provisions, as notified to the Grantor by Octet; and
- (e) the Grantor agrees not to exercise its rights to make any request of Octet under section 275 of the *PPSA*, to authorise the disclosure of any information under that section or to waive any duty of confidence that would otherwise permit non-disclosure under that section.

## 11 PROCEEDS OF ENFORCEMENT

### 11.1 Applying the proceeds

- (a) Any *personal property* or proceeds of *personal property* received by or on behalf of Octet as a result of enforcing a *security interest* in *personal property* will be applied in accordance with section 140 of the *PPSA* when that provision applies.
- (b) When section 140 of the *PPSA* does not apply all money received by Octet or a *receiver* under or by virtue of this deed will, subject to overriding legal obligations, be applied in the following manner and order.
  - (i) First, in payment of all costs, charges and expenses of Octet and any *receiver* incurred in or incidental to the exercise or performance or attempted exercise or performance of any right, power or remedy in relation to this deed or any *additional security*.
  - (ii) Secondly, in payment of such other outgoings as Octet may think fit to pay.
  - (iii) Thirdly, in payment to the *receiver* of any remuneration whether by way of commission or otherwise.
  - (iv) Fourthly, in payment to Octet of all amounts necessary to give effect to any indemnity contained in this deed.
  - (v) Fifthly, in payment to Octet of the *secured money*.

### 11.2 Surplus proceeds

After payment in accordance with the previous clause, any remaining surplus will belong to the Grantor or other *entities* entitled to it. The surplus will not carry interest. Octet may pay the surplus to the credit of an ADI account in the name of the Grantor or other *entities* entitled to it and will then be under no further liability in respect of it.

### 11.3 Payments actually received

When applying money towards payment of the *secured money*, Octet will credit the Grantor only for money actually received by Octet in immediately available funds.

### 11.4 Contingent amounts

If, at the time Octet receives any money under this deed, any part of the *secured money* is contingently owing, Octet may retain an amount equal to that part. Octet must pay the amount retained into a short term interest bearing account. When the relevant *secured money* becomes due or is no longer contingently owing, Octet may pay to itself the due amount and any balance of the retained amount, together with interest earned, must be applied in accordance with clause 11.1.

## 12 PAYMENTS

### 12.1 Money given to Octet as security

This deed does not affect Octet's right of set-off or appropriation with respect to any money given to or held by Octet as security for an obligation or which is payable by Octet to the Grantor. Until the whole of the *secured money* has been paid and all of the *secured obligations* have been performed no money given to or held by Octet as security for an obligation or owing by Octet to the Grantor on any account will become due for payment. The Grantor's rights in respect of that money are personal



and the Grantor must not assign or deal with them in any way. Octet can at any time exercise a right of set-off in accordance with clause 12.2 and can at any time consolidate accounts in accordance with clause 12.3.

#### **12.2 Octet can set-off money owed**

- (a) Against any money that Octet or an *entity related* to Octet owes the Grantor, Octet may, without notice to the Grantor, set-off any money that the Grantor or an *entity related* to the Grantor owes Octet or an *entity related* to Octet. This includes money which is owed contingently or prospectively. It includes money which is owed on any account or basis. If an amount owed cannot be immediately ascertained, Octet is entitled to make a reasonable estimate. On request Octet will tell the Grantor about any set-off effected under this clause.
- (b) Despite clause 12.2(a), if there is a perfected purchase money security interest granted by the Grantor in an *attached receivable* as the proceeds of inventory, Octet cannot set-off any new value mentioned in section 64 of the *PPSA* payable to the Grantor for the *security interest* granted by the Grantor in that *attached receivable* against any debt or liability which was owed to Octet before Octet obtained that *security interest*.

#### **12.3 Octet can consolidate accounts**

- (a) Octet may, without notice to the Grantor, combine, consolidate or merge any accounts recording transactions between the Grantor and Octet. Octet may, without notice to the Grantor, apply all or any part of any credit balance standing to any account of the Grantor with Octet or any amount available to Octet by way of lien in or towards satisfaction of the *secured money*.
- (b) Octet may for those purposes do any of the following.
  - (i) Vary the terms and conditions of any arrangement between the Grantor and Octet on or under which Octet may be indebted to the Grantor, despite any prior agreement to the contrary or the fact that the respective liabilities may not be expressed in the same currency.
  - (ii) Effect any currency conversion Octet considers necessary or desirable. The rate which is applied will be the rate selected by Octet on a reasonable basis at the time of conversion.
  - (iii) In the name of the Grantor, do any acts and execute and deliver any documents as may be required to effect any combination, consolidation, merger or application under this clause.

#### **12.4 Currency conversions**

- (a) The Grantor must make each payment in the currency in which it is due. If Octet receives an amount in a currency other than that in which it is due:
  - (i) Octet may at its discretion convert the amount received into an amount in the required currency. The conversion will be made at the most recent prevailing rate of exchange. "Rate of exchange" means the rate at which Octet is able to buy the required currency from an ADI at its selling rate of exchange for that currency; and
  - (ii) the Grantor satisfies its obligation to pay in the required currency only to the extent of the amount of the required currency obtained from the conversion after deducting the costs, charges and expenses of the conversion.

- (b) If a judgment, order or proof of debt in connection with the *secured money* is expressed in a currency other than that in which the *secured money* is due, the Grantor must indemnify Octet against, and the Grantor must therefore pay Octet on demand:
  - (i) any difference arising from converting the other currency if the rate of exchange Octet uses for converting currency when Octet receives a payment in the other currency is less favourable to Octet than the rate of exchange used for the purpose of the judgment, order or acceptance of proof of debt; and
  - (ii) the costs, charges and expenses of conversion.
- (c) The Grantor acknowledges that it might be necessary to convert the other currency through more than one currency to determine the rate of exchange available to Octet.

### 13 OTHER SECURITIES AND INTERESTS

#### 13.1 Additional security interests in favour of Octet

- (a) If Octet has or obtains any *additional security*, the Grantor's obligations under this deed are not affected in any way. Octet can choose to exercise its rights under this deed or under an *additional security* at the same time or at different times.
- (b) In addition to the *secured money* and the *secured obligations*, this deed secures the same moneys and the same obligations as are secured by any *additional security*.
- (c) If required by Octet the Grantor must cause each of its subsidiaries within the meaning of section 46 of the Corporations Act 2001 to execute and deliver to Octet a guarantee and indemnity for the payment of the *secured money* and the performance of the *secured obligations* in a form acceptable to Octet and a security for that guarantee and indemnity in a form acceptable to Octet.
- (d) If the Grantor is a member of a partnership, firm or joint venture and the members change the Grantor must cause each new member to execute and deliver to Octet any document Octet may require to confirm that the new member is jointly and severally liable for the payment of the *secured money* and the performance of the *secured obligations* and a security for the performance of those obligations in a form acceptable to Octet. The Grantor continues to be bound by each *transaction document* to which it is a party if the members change (including if the Grantor ceases to be a member) or the partnership, firm or joint venture is dissolved or ceases to carry on business.

#### 13.2 Notice of other interests in collateral

- (a) If Octet receives notice of a subsequent interest in any *collateral* which is not *personal property*, it may open a new account in the Grantor's name in the books of Octet. If Octet does not open a new account under this clause 13.2(a), it is taken to have done so at the time it received notice of the subsequent interest.
- (b) From the time the new account is opened or taken to be opened, the following amounts will be, or will be taken to be, debited or credited (as applicable) to the new account:
  - (i) all financial accommodation provided by Octet to the Grantor or the *client*; and
  - (ii) all payments and repayments made by the Grantor or the *client* to Octet.

- (c) Payments, repayments and other amounts from the new account will only be applied in reduction of other *secured money* to the extent there is no debit balance in that account.
- (d) If requested by Octet, the Grantor must ensure that any other holder of a *security interest* in *collateral* which is not *personal property* enters into an agreement with Octet:
  - (i) under which the holder agrees that Octet's *security interests* rank ahead of that holder's *security interest*, for all the amount owing that is incurred after that holder's *security interest* was granted; and
  - (ii) which is otherwise satisfactory to Octet in form and substance.
- (e) Octet may notify the Grantor or the *client* that its obligation to provide further financial accommodation under any *transaction document* is terminated, in which case its obligation to do so terminates immediately, if:
  - (i) Octet receives notices of a subsequent *security interest* (other than a *permitted interest*) which affects any *collateral* which is not *personal property*; and
  - (ii) it is of the opinion that any further financial accommodation provided to the Grantor or the *client* will not rank ahead of that subsequent *security interest*.
- (f) If this clause 13.2 is inconsistent with any other *transaction document* or any other document between the parties, this clause prevails to the extent of the inconsistency.

### 13.3 Octet agreement for other interests

Nothing in this deed should be construed as an agreement by Octet to subordinate its *security interest* in the *collateral* or as a consent to any other *security interest*, apart from *permitted interests*, attaching to the *collateral*.

## 14 CONTINUING SECURITY

### 14.1 Security interest created by this deed continues

- (a) The *security interest* created by this deed is a continuing security. It is not released even if the Grantor has paid all the *secured money* and performed all the *secured obligations*. If Octet enters into other arrangements with the Grantor, the *client* or someone else at the Grantor's request in the future, this deed will also apply to those arrangements.
- (b) A *security interest* created by this deed will only be released if Octet gives the Grantor a formal written discharge or formal notice of release of all or part of the *collateral*. If it is given in relation to part of the *collateral* the *security interest* continues in relation to all other *collateral*.

### 14.2 Requirements for release

- (a) Octet has no obligation to give a discharge or notice releasing the *security interest* created by this deed, or amend any financing statement which Octet has registered in relation to it, until Octet is satisfied on each of the following points.
  - (i) Octet has received payment of all the *secured money*.
  - (ii) No further *secured money* may become owing to Octet in the future.

- (iii) The *secured obligations* have been performed.
  - (iv) No payment made by the Grantor, the *client* or a *guarantor* may be avoided or required to be repaid by Octet under any law relating to insolvency or the protection of creditors.
- (b) If Octet, at its discretion, releases some of the *collateral* from a *security interest* created by this deed so that the Grantor may transfer that property, or give a *security interest* in it, to another *entity* free of Octet's *security interest* (including for the purposes of a sale and lease back transaction) and that property is at any time transferred back to the Grantor (or the other secured party releases its *security interest*) then that property will, without any further act being required, once again be subject to the *security interest* created by this deed.
- (c) If a *security interest* created by this deed is extinguished in relation to an item of *collateral* (for example by virtue of Part 2.5 of the *PPSA*) Octet will still have a *security interest* in the proceeds of the transaction or other dealing which resulted in the extinguishment. Octet may also have other rights, for example under section 53(2) of the *PPSA*.

#### 14.3 Rescission of payment

Whenever for any reason (including under any law relating to liquidation, bankruptcy, fiduciary obligations or the protection of creditors):

- (a) all or part of any transaction of any nature (including any payment or transfer) made during the term of this deed which affects or relates in any way to the *secured money* is void, set aside or voidable;
- (b) any claim that anything contemplated by paragraph (a) is upheld, conceded or compromised; or
- (c) Octet is required to return or repay any money or asset received by it under any such transaction or the equivalent in value of that money or asset,

Octet will immediately become entitled against the Grantor to all rights in respect of the *secured money* and the *collateral* which it would have had if all or the relevant part of the transaction or receipt had not taken place. The Grantor must indemnify Octet on demand against any resulting loss, cost or expense. The Grantor must immediately do anything (including the signing of documents) required by Octet to restore to Octet any *guarantee* or *security interest* to which it was entitled immediately before application or the payment or transaction giving rise to it. This clause continues to apply after the discharge of this deed.

#### 14.4 Principal obligation

- (a) This deed is a principal and independent obligation not ancillary or collateral to any other right or obligation. Octet may enforce this deed against the Grantor before it enforces any other right, remedy or power against the *client*, any other Grantor (if there is more than one), any *guarantor* or any other *entity*, or enforces any other security for the *secured money*.
- (b) Octet's rights and the Grantor's liabilities under this deed are not affected by anything that might otherwise affect them at law.
- (c) Octet's rights, remedies and power under this deed are in addition to any rights, remedies and powers that Octet may have apart from it or may have under any law.

## 15 PROTECTION OF THIRD PARTIES

### 15.1 No duty to enquire

An *entity* dealing with Octet or a *receiver* appointed by it or with an attorney or agent of the Grantor appointed under this deed will not have to enquire whether an *event of default* has occurred; whether any right, remedy or power exercised or claimed to be exercised has become exercisable; whether a *receiver* has been properly appointed or has the power which he or she claims to have; whether the *secured money* has fallen due or remains due; as to the propriety or regularity of a sale or other dealing; as to the necessity or expediency of a sale or other dealing; or whether a condition subject to which any sale, calling in, collection, conversion or dealing may be conducted has been satisfied. That *entity* will also not have to enquire as to the application of money paid to Octet or to a *receiver* appointed by Octet, or to an attorney or agent of the Grantor appointed under this deed.

### 15.2 Protection of purchasers

The title of any property acquired by a third party from Octet or a *receiver* will not be adversely affected by any irregularity or impropriety in the exercise of a right, remedy or power under this deed.

### 15.3 Receipt

Once Octet or an *authorised officer* receives any money or assets payable to or receivable by Octet, the *entity* which paid that money or handed over that asset cannot be liable for their subsequent loss or misapplication.

## 16 COSTS AND INTEREST

### 16.1 Costs

The Grantor indemnifies Octet against, and must pay Octet on demand the amount of, all losses, liabilities, costs and expenses (including legal costs on a full indemnity basis) and *taxes* in connection with any of the following.

- (a) The negotiation, preparation, execution, stamping and registration of a *transaction document*.
- (b) The occurrence of any *event of default*.
- (c) The administration, enforcement, attempted enforcement, preservation or attempted preservation of its rights, powers or remedies under a *transaction document* or which are conferred by law.
- (d) Any amendment to, or any consent, approval, waiver, release or discharge of or under a *transaction document*.
- (e) The appointment of a *receiver* (including the remuneration and costs of a *receiver*).

### 16.2 Interest

- (a) If the Grantor fails to pay any amount under this deed on the due date for payment, the Grantor must pay interest on that amount from the date payment should have been made until it is paid. The rate of interest will be the *prevailing rate*. Octet will calculate the interest daily.
- (b) If any amount the Grantor must pay under this deed becomes covered by a court order, the relevant Grantor must pay interest on that amount as a separate obligation and the rate of interest will be the *prevailing rate* or the rate in the court order if it is higher.

- (c) The Grantor must pay any interest calculated by Octet as payable under this clause on demand. If it is not paid it will be added to the amount which is outstanding and bear interest.

### 16.3 Goods and services tax

- (a) All amounts payable under or in connection with this deed are calculated without regard to GST. Accordingly:
  - (i) if any amount is determined to be consideration payable by the Grantor to Octet for a taxable supply for which Octet is liable to pay GST, the Grantor must pay to Octet at the same time an additional amount equal to the GST payable. Octet must provide to the Grantor a tax invoice at the time of payment; and
  - (ii) if the Grantor is required under this deed to indemnify Octet, or to make a reimbursement or contribution to Octet in respect of a taxable supply, and Octet can obtain an input tax credit on an acquisition associated with that indemnity, reimbursement or contribution, the amount the Grantor is required to pay is reduced by the amount of that input tax credit. The reduction is to be made before any increase under clause 16.3(a)(i).
- (b) Terms used in this clause have the meanings given to them in the *GST Act*.

## 17 INDEMNITIES

### 17.1 General indemnity

The Grantor must continuously, both before this deed ends and after it ends, immediately on demand indemnify Octet, each *authorised officer* and each of Octet's agents and employees against any loss, liability, cost or expense (including legal costs on a full indemnity basis) and *taxes* incurred or suffered in connection with any of the following.

- (a) The negotiation, preparation, execution, stamping and registration of a *transaction document* or the registration of a *security interest* which arises under a *transaction document*.
- (b) The *client* or the Grantor failing to comply with its obligations to Octet under a *transaction document*.
- (c) The occurrence of any *event of default* or *potential event of default* or the occurrence of any event of default or any similar event (however described) which gives Octet a right to terminate any *transaction document*.
- (d) Any amendment to, or any consent, approval, waiver, release or discharge of or under a *transaction document*.
- (e) The appointment of a *receiver* and the exercise of any rights, powers or remedies by the *receiver*. This includes the remuneration and costs of a *receiver* and any indemnity given by Octet to the *receiver*.
- (f) The administration, enforcement, attempted enforcement, preservation or attempted preservation of its rights, powers or remedies under a *transaction document* or which are conferred by law.
- (g) Any claim or proceeding that is made, threatened or commenced, and any loss, liability, cost or expense (including legal costs on a full indemnity basis) and *taxes* they incur or suffer in

exercising Octet's rights, remedies and powers under a *transaction document* or under any indemnity Octet gives a *receiver* or which are conferred by law.

#### **17.2 PPSA costs included in indemnity**

The costs mentioned in clause 17.1 include the costs of complying with an amendment demand given under section 178 of the *PPSA* in respect of a financing statement relating to this deed or the *security interests* it creates. They also include the costs of complying with a request for information under sections 275 or 276 of the *PPSA*; costs incurred in dealing with a notice under section 120 of the *PPSA*; costs incurred in any application for, or the obtaining of any registration relating to, any of the *security interests* created by this deed; and costs incurred in serving a court order on the Grantor or the Registrar (as defined in section 10 of the *PPSA*).

#### **17.3 Administrator and liquidator indemnity**

If Octet has any obligation (whether at law, under contract or otherwise) to indemnify an administrator, liquidator or provisional liquidator (each as defined in section 9 of the Corporations Act 2001 and including an administrator appointed under section 436C of that Act) the Grantor must indemnify Octet against that liability. The fact that the administrator has been, or may be entitled to be, indemnified by Octet and nothing in this clause will affect the administrator's right of indemnity under section 443D or the lien under section 443F. The fact that the liquidator or provisional liquidator has been, or may be entitled to be, indemnified by Octet and nothing in this clause will affect the liquidator's or provisional liquidator's right to payment under section 556 of the Corporations Act 2001 or any other right which he or she may have.

#### **17.4 Third party indemnity**

If any *secured money* (including money which would have been *secured money* if it was recoverable) is not recoverable from the *client* or the *guarantor* for any reason, including any legal limitation, disability or incapacity affecting the *client* or the *guarantor* or any obligation in any *transaction document* being or becoming unenforceable, void or illegal the Grantor must, on demand, indemnify Octet against any loss, liability, cost or expense incurred or suffered by Octet due to that money not being recoverable from the *client* or the *guarantor*. The Grantor is liable even if any transaction relating to the *secured money* or the *secured obligation* was void or illegal or has been subsequently avoided and even if any matter or fact relating to a transaction of that type was or ought to have been within the knowledge of Octet.

#### **17.5 Indemnities are continuing obligations**

Each indemnity in this deed is irrevocable. It is a continuing obligation which is separate and independent from all other obligations and survives the ending of this deed. It is also unconditional, except for conditions specified in this deed. It is not necessary for an expense to be incurred or for a payment to be made before an indemnity is enforced.

### **18 LIMITED LIABILITY**

#### **18.1 Accounting for money received**

Octet and each *receiver* only have to account to the Grantor for the amount which they actually receive from any dealing with the *collateral*. Octet and each *receiver* are not liable to account to the Grantor as a mortgagee in possession or for anything that a mortgagee in possession or other secured party could be liable for. If Octet does anything it should not do in relation to the *collateral* the Grantor's only remedy is damages. The Grantor will continue to owe Octet the difference between the amount of the *secured money* and the amount Octet actually receives from any dealing with the *collateral* and which is credited in accordance with clause 11.3.

**18.2 Losses due to enforcement**

Octet, the *authorised officers* and any *receiver* are not liable for any loss caused by the exercise or attempted exercise, failure to exercise, or delay in exercising, a right, remedy or power, unless the loss was caused by Octet's, the *authorised officer's* or *receiver's* gross negligence or wilful default.

**19 TRUST PROVISIONS****19.1 Grantor liable in trustee capacity**

If the Grantor is or becomes a trustee of a trust (other than the *trust* specified in item 1 of the Schedule) it must tell Octet immediately. Irrespective of this, the Grantor is bound by this deed both in its own right and as the trustee of each trust (including the *trust* specified in item 1 of the Schedule) of which it is a trustee. The relevant Grantor is also bound as the trustee of each trust it may become the trustee of. These requirements are not affected by an Australian Business Number being or not being, or a trust being or not being, specified in this deed.

**19.2 Liability**

- (a) A reference in this deed to the Grantor includes the Grantor as trustee of the *trust*, and the Grantor in the Grantor's own right.
- (b) A reference in this deed to the Grantor's property or business includes property owned by the Grantor, property in which the Grantor has rights or the power to transfer rights and the business carried on by the Grantor, irrespective of whether the Grantor has the title, right or power, or conducts the business, as trustee of the *trust* or in the Grantor's own right.
- (c) The liability of the Grantor under this deed or under any judgment or order obtained by Octet for the *secured money* or the performance of the *secured obligations* will be a personal liability of the Grantor and will be a liability both to the extent of the assets, rents, income and profits of the *trust* and of the *collateral* held by the Grantor beneficially.

**19.3 Trust covenants**

- (a) The Grantor enters into and executes this deed both in its personal capacity and as trustee of the *trust*.
- (b) The rights and interests of Octet will operate and rank in priority to the interests of the beneficiaries of the *trust*.
- (c) The Grantor warrants that true certified copies of any documents constituting or evidencing the *trust* have been supplied to Octet or Octet's lawyers prior to the date of this deed. The copies supplied are of all the documents which constitute or evidence the *trust*. No variation, alteration or addition has been made to them.
- (d) The Grantor warrants that each *transaction document* is duly executed and granted in lawful exercise of the rights and powers of the Grantor under the constituent *trust* documents and for the purposes of the *trust*.
- (e) The Grantor warrants that at the date of this deed, the Grantor is the only trustee of the *trust*, the *trust* is in full force and the Grantor is not in breach of any of its obligations as trustee.
- (f) The Grantor warrants that the *security interest* created by this deed will be binding on the Grantor's successors in office as trustee of the *trust*.



- (g) The *secured money*, to the full extent of the indebtedness of the Grantor to Octet (whether actual or contingent), is a liability both in its personal capacity and as trustee of the *trust*.
- (h) Nothing in this deed or in any notification given or to be treated as given to Octet:
  - (i) requires Octet to see to the application of any money paid or credited to the Grantor, or to make any enquiry, or to be treated as having any knowledge of any right or claim by any *entity* to any money paid or credited;
  - (ii) requires Octet to take notice of any actual, contingent or future interest of anyone in or under the documents constituting or evidencing the *trust* or the trust fund constituted or created by the *trust* (**Trust Fund**); or
  - (iii) prejudices or in any way limits any rights or remedies of Octet against the Grantor as trustee of the *trust* or any beneficiary under the *trust* or any other *entity* referred to in the documents constituting or evidencing the *trust* or claiming any interest under the *trust*; or in relation to any part of the property, assets and rights held by the Grantor as trustee of the *trust*. It does not matter whether the rights or remedies arise by way of indemnity, lien, subrogation or in any other way. They include all rights to trace, follow and levy execution and enforcement upon or against any part of the property, assets and rights.

#### 19.4 Additional trust covenants

The Grantor covenants with Octet that it will not, without the consent of Octet:

- (a) retire or cease for any reason to be the sole trustee of the *trust*;
- (b) permit any other *entity* to act or be appointed as trustee of the *trust*, either jointly with the Grantor or by way of addition to, or in replacement of, the Grantor;
- (c) permit the *trust* to be determined in any other way;
- (d) permit the whole or any part of the capital of the Trust Fund to be sold, disposed of, transferred, distributed, resettled, appropriated, lent, advanced or encumbered (except by a *permitted interest*), unless the transaction is permitted under clause 3.2 and is in the ordinary course of and for the purpose of carrying on the ordinary business of the Grantor in its capacity as trustee of the *trust*;
- (e) permit the income of the Trust Fund to be segregated or assigned;
- (f) permit the *trust* or the documents constituting the *trust* to be varied, added to or revoked;
- (g) delegate any of the powers of the Grantor as trustee, or exercise any power of appointment or any of its powers at the direction of any other *entity*, whether or not that *entity* was permitted to direct the Grantor as trustee at the date of this deed; or
- (h) exercise or propose to exercise or permit to be exercised any power of revocation, addition, appointment or removal conferred on the Grantor as trustee, or on any other *entity*, by the documents constituting the *trust* or by law.

#### 19.5 Grantor's right of indemnity

- (a) Without limiting Octet's right of subrogation in relation to the *trust*, the Grantor must, at the request of Octet, exercise any right of indemnity which the Grantor as trustee of the *trust* may have against the Trust Fund for the benefit of Octet, and the Grantor declares that, at the

date of this deed, there are no limitations on that right of indemnity against the Trust Fund; and the Grantor covenants not to do anything which limits or prejudices the right of indemnity.

- (b) The Grantor in its capacity as trustee irrevocably appoints Octet and each *authorised officer* (jointly and severally), as the attorney of the Grantor to execute any documents and do anything else the attorney considers necessary in the exercise of any right of indemnity. The Grantor must indemnify each attorney against any loss, liability, cost or expense (including legal costs on a full indemnity basis) and *taxes* incurred or suffered while acting as the Grantor's attorney.

#### **19.6 Compliance with trust documents**

The Grantor covenants that every formality, whether of a legal, administrative or other nature, required by the documents constituting or evidencing the *trust* or in relation to the Grantor as the trustee of the *trust* to be complied with before the Grantor enters into this deed (or, where applicable, receives the *secured money*) has been complied with in all respects.

#### **19.7 Additional trustees**

Despite clause 19.3, if the Grantor is no longer trustee or sole trustee of the *trust*, the Grantor must cause any subsequent joint or substituted trustee of the *trust* to execute, on request by Octet, a document creating a *security interest* over the *collateral* upon the conditions Octet requires. Any subsequent joint or substituted trustee, by agreeing to act as trustee of the *trust*, will be taken to have agreed to the creation of the *security interest*.

## **20 NOTICES**

### **20.1 Notices from Octet to the Grantor**

- (a) A notice or demand from Octet to the Grantor must be in writing and be signed by Octet, an *authorised officer*, any lawyer acting on behalf of Octet or someone else authorised to act on behalf of Octet. It may be served by giving it to the Grantor; by sending it to the Grantor by e-mail or fax; by posting it in a pre-paid envelope to the Grantor at its address specified in item 2 of the Schedule, its registered office, or its business address last known to Octet; or by delivering it to any of those places.
- (b) A notice or demand sent by e-mail to the Grantor's, an officer's or employee's e-mail address last known to Octet is to be treated as having been received by the Grantor twenty-four hours after Octet sends it unless Octet has, in the meantime, received a message indicating that it has not been received. A notice or demand sent by fax to the Grantor's last known number is to be treated as having been received by it when Octet receives an error free transmission report. A notice or demand sent by post is to be treated as having been received by the Grantor the next *business day* after it is posted. A notice or demand which is given or delivered is to be treated as having been received by the Grantor when it is given or delivered. However, if the Grantor is treated as having received a notice or demand on a day which is not a *business day* or after 5.00pm on a *business day* the Grantor will be treated as having received it at 9.00am on the next *business day*.

### **20.2 Service of legal process**

Anything in connection with legal process (such as court documents) can be served in any of the ways described in clause 20.1 if the law permits this. Nothing in clause 20 affects Octet's right to serve process in any way permitted by law.

### 20.3 Service is always effective

Service is effective even if the Grantor or one of its partners is dead, incompetent, absent from the jurisdiction, the subject of an insolvency event (as defined in the *facility agreement*) or wound up. It is effective despite anything else, as well. If there is more than one Grantor service on any one of them is service on each of them.

### 20.4 Notices from the Grantor to Octet

A notice (including a request that Octet approve something) from the Grantor to Octet must be in writing and signed by the Grantor, by an officer of the Grantor or someone claiming to be an officer of the Grantor. The Grantor must deliver the notice to Octet at its office specified in this deed or any substitute address which Octet specifies. However, if the notice is in connection with a registration on the register established under the *PPSA* it must be sent to the address for service specified in the registration.

## 21 MISCELLANEOUS

### 21.1 Allowing conduct of others

If the Grantor is not permitted to do something by this deed, it must not allow or assist anyone else to do that thing.

### 21.2 Assignment

- (a) Octet is entitled, without further approval, to novate, assign or otherwise deal with this deed or any of its rights or obligations under it in any way Octet considers appropriate but a novation, assignment or dealing may not materially prejudice the Grantor's rights under this deed. In the case of a novation the new party assumes Octet's obligations. At Octet's request the Grantor must sign and deliver to Octet or any other *entity* Octet specifies any document Octet reasonably requires for this purpose.
- (b) The Grantor's rights under this deed are personal to the Grantor and the Grantor can only assign or deal with them with Octet's consent.

### 21.3 Completion and registration of document

- (a) The Grantor irrevocably authorises Octet, an *authorised officer*, Octet's lawyer or someone else authorised to act on Octet's behalf to do the following.
  - (i) Date this deed and to fill in any blanks or correct any manifest errors in any part of this deed.
  - (ii) Register and record this deed or the *security interests* which are created by it (electronically or otherwise) in such places as Octet or its lawyers may at any time consider necessary or desirable to perfect this deed or the *security interests* which are created by it or to protect the rights of Octet under this deed.
- (b) The Grantor must give Octet all information necessary for Octet to register and maintain a legally effective financing statement in respect of the *security interests* created by this deed and must ensure that the *security interests* created by this deed have priority over all other *security interests*, except *permitted interests* (if any) which Octet has agreed can have priority.
- (c) The Grantor authorises Octet to file all financing statements, financing change statements and other documents and to do all things which Octet considers desirable to perfect and

maintain the *security interests* created by this deed, to protect and preserve the *collateral* and to realise Octet's *security interest*.

#### **21.4 Conflict of interest**

Octet, each *authorised officer*, each other person appointed by Octet under this deed, each administrator of the Grantor appointed by Octet, each attorney and each *receiver* may exercise the rights, remedies and powers conferred by this deed or by law even though that *entity* may have a conflict of interest in exercising those rights, remedies or powers or a direct or personal interest in the means or result of the exercise of those rights, remedies or powers.

#### **21.5 Entire agreement**

The *transaction documents* contain everything Octet has agreed in relation to the matters they deal with. The Grantor cannot rely on an earlier document, or anything said or done by Octet, an *authorised officer*, or an agent or employee of Octet, before the *transaction documents* were executed, except as permitted by law.

#### **21.6 Severability**

If any part of this deed is or becomes void, invalid or unenforceable in any place it is to be treated as not being part of this deed in that place. Any void, invalid or unenforceable provision is, so far as that place is concerned, replaced by a lawful and enforceable provision which so far as possible achieves the same economic and other benefits for the parties as the void, invalid or unenforceable provision was intended to achieve. The Grantor must, on request by Octet and at Octet's cost, execute any documents and do any other thing as Octet may reasonably require to confirm or give effect to the replacement.

#### **21.7 Variation**

No variation of this deed will be of any force or effect unless it is in writing and signed by Octet.

#### **21.8 Evidence**

A certificate signed by Octet or an *authorised officer* of the amount of the *secured money* or anything else relating to this deed is, in the absence of manifest error, sufficient evidence of what it states, unless it is proved to be false. The Grantor cannot object to the admission of a certificate of that type in any proceedings.

#### **21.9 Execution of separate documents**

This deed may be executed in any number of counterparts. All counterparts taken together will constitute the one instrument.

#### **21.10 Exercise of rights**

- (a) Octet may exercise a right, remedy or power at its discretion, and separately or concurrently with another right, remedy or power.
- (b) A single or partial exercise of a right, remedy or power by Octet does not prevent a further exercise of that or of any other right, remedy or power and a failure by Octet to exercise, or delay by Octet in exercising, a right, remedy or power does not prevent its exercise.

#### **21.11 Waiver, consents and approvals**

- (a) A waiver by Octet of any right, remedy or power under this deed must be in writing and signed by Octet or an *authorised officer*. A waiver by Octet is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied

waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

- (b) If Octet fails to do, or delays in doing, something Octet is entitled to do under this deed that does not amount to a waiver.
- (c) The Grantor must comply with the conditions of any consent or waiver given by Octet.
- (d) Where this deed requires that Octet consent to something, or approve of something, Octet's prior written consent or approval is required. The consent or approval must be signed by Octet or by an *authorised officer*. Octet will act reasonably when it decides to give or withhold its consent or approval. Octet may give its consent or approval on any conditions it likes.

#### **21.12 Appointment of nominee for registration**

For the purposes of section 153 of the *PPSA*, Octet appoints the Grantor as its nominee, and authorises the Grantor to act on its behalf, in connection with a registration under the *PPSA* of any *security interest* in favour of the Grantor which is:

- (a) evidenced or created by chattel paper;
- (b) perfected by registration under the *PPSA*; and
- (c) transferred to Octet under this deed.

This authority ceases when the registration is transferred to Octet.

#### **21.13 Confidentiality and privacy**

- (a) The Grantor and Octet agree that neither of them will disclose to an interested person (as defined in section 275(9) of the *PPSA*), or any *entity* at the request of one of those interested persons, any information of the kind described in section 275(1) of the *PPSA*. However, Octet may make that disclosure if section 275(7) of the *PPSA* applies. The Grantor must not authorise the disclosure of any information of the kind described in section 275(1) of the *PPSA*.
- (b) The Grantor appoints Octet and each *authorised officer* as its agent and authorised representative for the purpose of requesting information pursuant to section 275 of the *PPSA* from an *entity* which is a secured party holding a *security interest* in property in which the Grantor has an interest.
- (c) Octet's privacy policy can be viewed on, or downloaded from, its website. Alternatively, the Grantor can ask Octet for a copy.
- (d) If the Grantor is an individual he or she irrevocably authorises Octet to obtain from the Personal Property Securities Register information about any registration in which he or she is registered as a grantor or a secured party. Other searches may be permitted by section 172 of the *PPSA*.

#### **21.14 Governing law and jurisdiction**

- (a) The law of the State of New South Wales governs this deed (including the *security interest* created by it and the contractual obligations between the Grantor and Octet under it) to the extent this is permitted under the *PPSA*. To the extent this is not permitted, the law of the Commonwealth of Australia as it applies in that state will be applied to the extent that is

permitted under the *PPSA*. To the extent this is not permitted, the governing law will be determined in accordance with the requirements of the *PPSA*.

- (b) The Grantor submits to the non-exclusive jurisdiction of the courts having jurisdiction in New South Wales.
- (c) To the extent permitted by law, the agreement in this clause prevails to the extent that it is inconsistent with any law.

#### **21.15 Joint and several liability**

If there is more than one Grantor, each Grantor is bound by this deed jointly and severally and each reference to "the Grantor" includes each Grantor and any one or more of the Grantors.

## **22 THIRD PARTY PROVISIONS**

### **22.1 Security not affected**

The liability of the Grantor under this deed will not be released, abrogated, prejudiced or affected by any act, matter or thing that Octet may do or omit which, but for this provision, would or might release, abrogate, prejudice or affect the liability of the Grantor including the following (whether or not they occur with the consent of the Grantor):

- (a) the granting of time, credit or any indulgence or concession to the *client* or to the *guarantor*; the discharge or release of the *client* or the *guarantor*; any compounding, compromise, release, abandonment, waiver, variation, relinquishment, renewal or transfer of any *transaction document*, *security interest*, documents of title, assets or rights of Octet against the *client* or the *guarantor*; any neglect or omission to enforce any of those documents, rights or transactions; or any arrangement that may take place between Octet and the *client* or the *guarantor*;
- (b) the liquidation, receivership or administration of the *client* or the *guarantor* which is a *corporation*; the bankruptcy, death or incapacity of the *client* or the *guarantor* who is an individual; or the *client* or the *guarantor* entering into any compromise or assignment of property or scheme of arrangement or composition of debts or scheme of reconstruction;
- (c) Octet becoming a party to or bound by any compromise, moratorium, assignment of property, scheme of arrangement, deed of company arrangement, composition of debts or scheme of reconstruction by or relating to the *client* or the *guarantor*;
- (d) Octet exercising or delaying or refraining from exercising any *security interest* held by it or any right, power or remedy conferred on it by law or by a *transaction document*;
- (e) the failure by the *client*, the *guarantor* or Octet to notify the Grantor of any default by the *client* or the *guarantor* under any *transaction document*;
- (f) Octet obtaining a judgment against the *client* or the *guarantor* for the payment of the *secured money* or the performance of the *secured obligations*;
- (g) any legal limitation, disability, incapacity or other circumstance relating to the *client* or the *guarantor*;
- (h) any change in circumstance (including any change in the members or constitution of the *client* or the *guarantor*);

- (i) any increase in the *secured money* or change in the *secured obligations*;
- (j) any other *entity* becoming liable to pay the *secured money* or to perform the *secured obligations*, whether alone or jointly or jointly and severally;
- (k) any failure by the *client* or the *guarantor* or any other *entity* to provide any *security interest* which ought to be provided or to have been provided under any *transaction document* or under any other agreement in respect of the *secured money* or the *secured obligations*;
- (l) any amendment, novation, replacement, rescission, invalidity, extinguishment, repudiation, avoidance, unenforceability, frustration, failure, expiry, termination, loss, release, discharge, abandonment, alteration, addition, variation, assignment or transfer of or to any *transaction document* or any other agreement, right, obligation, *security interest*, power or remedy in respect of the *secured money* or the *secured obligations* either in whole or in part and either with or without consideration and with or without the consent or knowledge of the Grantor;
- (m) any *transaction document* or any *security interest* held or taken at any time by Octet for the *secured money* or to ensure performance of the *secured obligations* being (whether in whole or in part) void, defective or informal in any respect or any *entity* named in the *transaction document* as a party failing to execute or properly execute it; or
- (n) the *client* or the *guarantor* being discharged from its obligation to pay the *secured money* otherwise than by payment or satisfaction of those moneys to Octet or the *client* or the *guarantor* being discharged from its obligation to perform the *secured obligations* otherwise than by the due performance of the *secured obligations*.

## 22.2 Receipt of payments by Octet

This deed is not to be considered as wholly or partially satisfied by any payment of any money to Octet.

## 22.3 Grantor's subrogation rights limited

- (a) Until the points specified in clause 14.2(a) have been satisfied:
  - (i) the Grantor must not assert any right of subrogation in respect of any money paid to Octet or any *security interest* or *guarantee* held by Octet;
  - (ii) the Grantor must not exercise any right of subrogation or exercise any rights as surety in competition with Octet;
  - (iii) the Grantor must not claim any rights of contribution or indemnity from the *client*, the *guarantor* or any other *entity* who gives a *security interest* or *guarantee* in favour of Octet;
  - (iv) the Grantor must not share in any security held or money received by Octet in respect of the *secured money*, or stand in the place of Octet in respect of that security or money; and
  - (v) if there are two or more Grantors, a Grantor must not take any steps to enforce a right or claim against another Grantor in respect of any money paid by a Grantor to Octet under this deed.
- (b) If the *client* or a *guarantor* becomes bankrupt, goes into liquidation or becomes subject to other similar administration, the Grantor must not claim an amount in the bankruptcy,

liquidation or administration unless Octet tells the Grantor to. The Grantor authorises Octet to prove in the bankruptcy, liquidation or administration of the *client* or the *guarantor* for any amount which the *client* or the *guarantor* may owe the Grantor and all claims which the Grantor may have against the *client* or the *guarantor*, including any amount which the Grantor may pay under this deed.

- (c) Octet may retain and carry to a suspense account any amount which is paid by the Grantor under this deed or which Octet receives by virtue of a proof under clause 22.3(b). Octet may, at its discretion, appropriate any amount paid or received until Octet considers that the points specified in clause 14.2(a) have been satisfied.

#### **22.4 No marshalling**

Octet is not obliged to marshal or appropriate in favour of the Grantor, or to enforce, exercise, apply or recover any *security interest* or *guarantee* held by Octet at any time or any of the funds or assets that Octet may be entitled to receive or have a claim on.

#### **22.5 Variation**

Without limiting the above, this deed and any *additional security* covers the *secured money* as varied from time to time including, without limitation, as a result of:

- (a) any new *transaction document* or any amendment to any *transaction document*; or
- (b) the provision of further accommodation to the *client*,

and whether or not with the consent of or notice to the Grantor.

#### **22.6 Application of clause 22**

If there is more than one Grantor, clauses 22.1 and 22.3(b) will be applied separately in relation to each Grantor and when they are applied that Grantor will not be included as a "*guarantor*" and each other Grantor will be included as a "*guarantor*" irrespective of whether it is a guarantor as defined in clause 23.1. If a Grantor named in this deed fails to execute or become bound by this deed or any other *transaction document* or ceases for any reason to be bound by this deed or any other *transaction document* that does not affect the liability of each other Grantor.

## **23 DEFINITIONS AND INTERPRETATION**

### **23.1 Definitions**

In this deed the following definitions apply, except to the extent the context requires otherwise, when the term is printed *like this*.

**Account bank** means the ADI with which the *nominated account* is maintained.

**Accounting records** means:

- (a) accounting books, records and ledgers, including financial and management accounts and working papers needed to explain the accounts;
- (b) computer data or materials about the Grantor's financial position, purchases and sales;
- (c) invoices, receipts, credit notes and documents evidencing entries in any of the above; and



- (d) any other documents relating to *receivables*, *other receivables*, *related rights*, the Grantor's financial affairs or the Grantor's business as Octet may specify.

**Additional security** means any other *security interest* securing, or any *guarantee* in respect of, any *secured money* or *secured obligation*.

**Attached receivable** is all *receivables* (including all *collections* and *related rights* pertaining to the *receivable*) which Octet has told the Grantor are to be classified as being an *attached receivable*. Octet can, from time to time, change the classification. Octet can make the determination in respect of a particular *receivable* or in respect of *receivables* of a particular type.

**Authorised officer** means each of Octet's directors and company secretaries, each person who is employed by Octet or an *entity* which is *related* to Octet whose title includes "manager", "company secretary" or "accountant" and each person Octet advises the Grantor is an authorised officer.

**Business Day** means a day, other than a Saturday, Sunday or public holiday, Octet's Sydney office is open for business.

**Change in Control**, in relation to a company, means a change in:

- (a) control of the composition of the board of directors of the company;
- (b) control of more than one half of the voting rights attaching to shares in the company; or
- (c) control of more than one half of the issued share capital of the company, excluding any part of the issued share capital which carries no right to participate beyond a specified amount in the distribution of either profit or capital.

**Client** means the *entity* specified in item 4 of the Schedule and any other *entity* named in the *principal agreement* as the "buyer", the "client" or the "borrower". It includes that *entity's* successors and assigns.

**Collateral:**

- (a) when the Grantor is not an individual, means all of the Grantor's present and after-acquired personal property (as defined in the *PPSA*), *PPSA* retention of title property (as defined in section 51F of the Corporations Act 2001) and rights and interests conferred by the *PPSA*; and all other present and after-acquired assets, undertaking and property of the Grantor or over which the Grantor can grant a *security interest* wherever it is situated. It includes inventory; the goodwill of its business; its uncalled and called but unpaid capital; all the uncalled premiums on its issued share capital; all of its estates and interest in land (including all fixtures and crops); its right of indemnity from the assets of any *trust*, together with all the assets, undertakings and property the subject of any *trust*; each *attached receivable*; each *other receivable*; any interest which it may have in the *nominated account*; its chattel paper; and the net interest which it may have in a partnership. It also includes the proceeds of each of those things and any accessions; and
- (b) when the Grantor is an individual, means:
- (i) all of the following things (whether present or future) which are held by the Grantor in the course of furtherance, to any degree, of carrying on an enterprise to which an ABN has been allocated:
- personal property as defined in the *PPSA*;

- assets, undertakings and property over which the Grantor can grant a *security interest*;
  - inventory, goodwill, PPSA retention of title property (as defined in section 51F of the Corporations Act 2001) and rights and interests conferred by the *PPSA*;
  - each *attached receivable* and each *other receivable*;
- (ii) his or her right of indemnity from the assets of any *trust* together with all the assets, undertakings and property the subject of any *trust* when an ABN has been allocated in relation to the *trust* or those assets, undertakings and property are held by the Grantor in the course or furtherance, to any degree, of carrying on an enterprise to which an ABN has been allocated;
- (iii) any interest (whether present or future) which he or she may have in the *nominated account*;
- (iv) his or her chattel paper (whether present or future);
- (v) the net interest he or she may have at any time in a partnership;
- (vi) all of his or her present and future estates and interests in land (including all fixtures and crops); and
- (vii) all present and future assets and property (including licences) which are not personal property (as defined in the *PPSA*) but are used in conducting a business.

**Collections**, in relation to an *attached receivable* or an *other receivable*, means all proceeds of the *attached receivable* or *other receivable* and all currency, negotiable instruments, other instruments, letters of credit, electronic payments and any other proceeds, remittances or instruments of payment in any form which are a payment of the *attached receivable* or *other receivable*. It includes all proceeds of chattel paper which evidences the *attached receivable* or *other receivable*.

**Commencement date** means the date the Grantor receives, or the date the Grantor is treated as having received, a notice from Octet telling the Grantor that this deed has commenced or, if a later date is specified in that notice, that later date. If Octet provides financial accommodation to, or at the request of, the *client* or the Grantor before it has given the commencement notice, the *commencement date* will be the later of the date of this deed and the date that financial accommodation is provided.

**Contaminant** means anything (including a liquid, solid, gas, odour, temperature, sound, vibration or radiation) that presents or could present a risk of harm to human health or the *environment*.

**Control event** means:

- (a) in respect of any *collateral* that is, or would have been, a *revolving asset*:
- (i) the Grantor breaches, or attempts to breach, clause 3.1 in respect of the *collateral* or takes any step which would result in it doing so;
  - (ii) an *entity* takes a step (including signing a notice or direction) which may result in any *taxes*, or an amount owing to an authority, ranking ahead of the *security interest* in the *collateral* arising under this deed;

- (iii) distress is levied or a judgment, order or *security interest* is enforced or a creditor takes any step to levy distress or enforce a judgment, order or *security interest* over the *collateral*; or
  - (iv) Octet gives a notice to the Grantor that the *collateral* is not a *revolving asset*. However, Octet may only give a notice if Octet reasonably considers that it is necessary to do so to protect its rights under this deed or if an *event of default* is continuing; or
- (b) in respect of all *collateral* that is or would have been *revolving assets*, an insolvency event (as defined in the *facility agreement*) has occurred in relation to the Grantor.

**Corporation** has the meaning given to that term in section 57A of the Corporations Act 2001.

**Entity** means an individual, firm, partnership, joint venture, society, unincorporated body, trust (in each case whether or not having separate legal personality) and *corporation*, and any other legal entity under any law as the context requires.

**Environment** means components of the earth (and how those components interact with each other), including any of the following:

- (a) land, air and water;
- (b) any layer of the atmosphere;
- (c) any organic or inorganic matter and any living organism; and
- (d) human made or modified structures and areas.

**Event of default** means any event or circumstance which is defined in the *facility agreement* as being an event of default.

**Facility agreement** means the agreement or agreements specified in item 3 of the Schedule. If two or more agreements are specified, a reference to "*facility agreement*" is to all of them and any one or more of them.

**Financial indebtedness** means any debts of the Grantor for or in respect of any of the following:

- (a) money borrowed;
- (b) money raised under any acceptance credit, bill acceptance or bill endorsement facility;
- (c) an amount raised under any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with generally accepted accounting practice, be treated as a finance or capital lease;
- (e) receivables sold or discounted on a recourse basis;
- (f) an amount raised under any other transaction having the commercial effect of a borrowing;
- (g) the marked to market value of any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price;

- (h) an interest, gold or currency exchange, hedge or other arrangement, including a swap, option, futures contract, exchange agreement and purchase agreement;
- (i) the value, premium and dividend (whether declared or not, and whether there are sufficient funds for payment or not) of a share which is redeemable or subject to a *guarantee*;
- (j) the deferred purchase price of an asset, service or work done, and any related obligation;
- (k) a counter-indemnity obligation in respect of a *guarantee* issued by an ADI or other financial institution; and
- (l) the amount of any liability under any *guarantee* in respect of any of the items referred to above.

**GST** means any amount paid or payable under any GST law as that expression is defined in section 195-1 of the *GST Act*.

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

**Guarantee** means a guarantee, indemnity, guarantee and indemnity, letter of credit, legally binding letter of comfort or suretyship, or any other obligation (including an irrevocable offer) of any kind at all, whatever its nature or title. It must be one under which there is a requirement to pay, purchase, provide funds, or to be responsible in any other way for:

- (a) an obligation or indebtedness of another *entity*;
- (b) a dividend, distribution, capital or premium on shares or other interests; or
- (c) the insolvency or financial condition of another *entity*.

**Guarantor** means an *entity* which at any time has provided, or should have provided, a *guarantee* to Octet in relation to the *client's* or the Grantor's obligations under a *transaction document* or for the payment of any of the *secured money* or the performance of any of the *secured obligations*.

**Material adverse effect** means a material adverse effect on:

- (a) the business or financial condition of the Grantor or the *client*;
- (b) the Grantor's or the *client's* ability to comply with its obligations under a *transaction document*; or
- (c) the validity or enforceability of, or Octet's rights under, a *transaction document*.

**Nominated account** means the nominated account as defined in the *facility agreement* or another ADI account specified by Octet. The ADI account can be opened, set up and maintained by the Grantor in accordance with clause 4.1 or any other ADI account specified by Octet including an ADI account opened, set up and maintained by Octet. If the *nominated account* is opened, set-up or maintained by Octet the Grantor has no interest in it.

**Other receivable** means:

- (a) a *receivable* (including all *collections* and *related rights* pertaining to the *receivable*) which is not an *attached receivable*; and

- (b) an obligation which is not a *receivable* but is money owing or purporting to be owing at any time to the Grantor (including all rights which the Grantor may have with respect to money deposited, other than that deposited into the *nominated account*, on any terms at all with any ADI or other financial institution) and all liabilities or other monetary claims, whether actual, contingent, liquidated or unliquidated, which may be or become owing to the Grantor. It includes all *collections* and *related rights* pertaining to those obligations.

**Permitted interest** means:

- (a) a *security interest*, transfer or dealing which Octet has approved;
- (b) a *security interest* in favour of Octet;
- (c) a charge or lien arising in favour of a government department or agency by operation of statute or a lien arising in the ordinary course of business in favour of a mechanic or similar person, unless there is a default in payment of money secured by that charge or lien; and
- (d) a *security interest* in favour of an *entity* which supplies goods or materials to the Grantor if that *security interest* is in inventory, has been notified to Octet and is a perfected purchase money security interest, so long as Octet's *security interest* in an *attached receivable* which is proceeds of that inventory has priority.

**Personal property** means all *collateral* which is personal property as defined in the *PPSA* and is covered by the *PPSA*.

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

**PPSA** means the *personal property Securities Act 2009*.

**Prevailing rate** means the prevailing interest rate or prevailing rate determined in accordance with the *facility agreement*. If there is more than one, it means the highest.

**Receivable** means an existing or future right to receive payment for property (including goods, rights and produce) sold or services (which includes the leasing or hiring of property) performed or work done. It includes interest, costs, taxes, duties and all other monetary claims (whether actual, contingent, liquidated or unliquidated). It includes an account as defined in section 10 of the *PPSA* and the proceeds of it. It also includes all legal and other remedies for the recovery of any of those amounts and any rights which the Grantor may have for restitutory relief.

**Receiver** means any person Octet appoints under this deed as a receiver or receiver and manager of any *collateral*.

**Related**, in relation to an *entity*, means a related body corporate within the meaning of section 50 of the Corporations Act 2001, but on the basis that:

- (a) "subsidiary" means an *entity* which is controlled directly or indirectly by another *entity* or a subsidiary within the meaning of section 46 of the Corporations Act 2001. A subsidiary may also be a trust (in which case a unit or other beneficial interest or being a member of the class of potential beneficiaries is to be regarded as a share) and an *entity* may be a subsidiary of a trust if it would have been a subsidiary if that trust were a *corporation*; and
- (b) "body corporate" includes any *entity*.

**Related rights**, in relation to an *attached receivable* or *other receivable*, means:

- (a) all of the Grantor's rights (except the right to payment of the *attached receivable* or *other receivable*) under an agreement (whether express, implied, oral or written) for the sale of any property (including rights and produce), performance of any services (including the leasing or hiring of any property) or the doing of any work. Those rights include the Grantor's rights under a purchase money security interest, including the new value and its proceeds mentioned in section 64(3) of the *PPSA*;
- (b) the benefit of all insurances, securities (including all *security interests*), guarantees and indemnities given to or held by the Grantor;
- (c) all negotiable instruments and other instruments and all letters of credit held by or available to the Grantor;
- (d) all of the Grantor's rights to and interest in any chattel paper or *accounting records* recording or evidencing the *attached receivable* or *other receivable*;
- (e) any right to stop the delivery of goods which are in transit; and
- (f) all of the Grantor's rights to and interest in any goods which were sold or purportedly sold but were returned to or repossessed by the Grantor or were rejected by the *entity* who was intended to be the purchaser.

It includes all documents, agreements and electronic records which evidence or record any of the above.

**Revolving asset** means any *collateral*:

- (a) which is:
  - (i) an *other receivable* so long as the Grantor is not required to pay *collections* received in discharge of it into the *nominated account*;
  - (ii) inventory (as defined in section 341(1B) of the *PPSA*);
  - (iii) a negotiable instrument so long as it does not relate to an *attached receivable* and, if it relates to an *other receivable*, so long as the Grantor is not required to pay *collections* received in discharge of the *other receivable* into the *nominated account*;
  - (iv) machinery, plant or equipment which is not inventory (as defined in section 341(1B) of the *PPSA*) and has a value less than A\$10,000 or its equivalent;
  - (v) money (including money withdrawn or transferred to a third party from an account of the Grantor with an ADI or other financial institution so long as that money is not the proceeds of an *attached receivable* or an *other receivable* the proceeds of which *other receivable* should be deposited into the *nominated account* and that account is not the *nominated account*); and
- (b) in relation to which no control event has occurred, subject to clause 3.3(b).

**Secured money** means:

- (a) all amounts which the *client* may at any time owe to Octet under in the *facility agreement*;

- (b) all money which the *client*, the Grantor or the *guarantor* is or may become liable to pay or reimburse Octet from time to time under a *transaction document* including fees, charges and interest;
- (c) all money which Octet lends, relends, pays or advances to, for, or on the credit of, or for the accommodation of, or otherwise on account of the *client* or the Grantor or to, for, or on account of any other *entity* with the authority of the *client* or the Grantor;
- (d) all money for which the *client* or the Grantor is at the date of this deed or may become liable to pay or reimburse Octet from time to time arising out of Octet drawing, accepting, indorsing, paying or discounting any negotiable instrument;
- (e) all money which Octet may pay or be or become liable to pay to, for, or on account of the *client* or the Grantor by reason of Octet drawing, accepting, indorsing, paying or discounting any negotiable instrument (whether or not it has matured) or by Octet entering into any *guarantee*, letter of credit, bond or other arrangement, or by Octet arranging for the issue of any *guarantee*, letter of credit or bond at the request of the *client* or the Grantor, or by Octet otherwise incurring any liability for, on behalf of, at the request of or for the benefit of the *client* or the Grantor or to, for, on behalf of or for the benefit of any other *entity* upon the order or request or with the authority of the *client* or the Grantor;
- (f) all money now payable or which may become payable for interest (including capitalised and current interest, interest on interest and interest payable under a *transaction document*), discount charges, acceptances, discounts, establishment fees, stamp duties, transaction duties, *GST*, fees, postage, commissions, charges and expenses and other like charges payable to, or by, Octet and arising under a *transaction document*, out of any advances or accommodation provided to the *client* or the Grantor or to, for or on account of any other *entity* with the authority of the *client* or the Grantor or any transaction of the *client* or the Grantor;
- (g) all legal and other costs, charges and expenses (calculated on a full indemnity basis) that are incurred in respect of, or incidental to, any *transaction document*, the preparation and execution of any *transaction document* or any *security interest*, the performance or the failure to perform by the *client*, the Grantor or the *guarantor* of its obligations under any *transaction document* or any *security interest*, or the enforcement of any *transaction document* or any *security interest*;
- (h) all money which is or may become due, payable or owing, or remains unpaid by the *client*, the Grantor or any *guarantor* to Octet under any *transaction document* or any *guarantee*, letter of credit or bond created by the *client*, the Grantor, any *guarantor* or any other *entity* with the authority of the *client* or the Grantor in favour of Octet;
- (i) all money and damages (whether liquidated or not) which are or may become due, payable or owing, including contingently, by the *client*, the Grantor or any other *entity* with the authority of the *client* or the Grantor to Octet on any account;
- (j) all money which is or may become due, payable or owing, or remains unpaid to Octet by the *client*, the Grantor or any *guarantor* on any account or on any basis;
- (k) all money or obligations owed by the *client*, the Grantor or any *guarantor* to Octet because an obligation was transferred to Octet, irrespective of whether the transfer was before, at the same time as, or after the execution of this deed; the Grantor consented to or was aware of the transfer; or the transferred obligation was secured;

- (l) the remuneration of any *receiver* appointed under this deed or any other *security interest* or any other moneys payable or paid by Octet to that *receiver*;
- (m) all money spent by Octet to make good any breach or non-compliance by the *client*, the Grantor or any *guarantor* of its obligations and all money spent by Octet in exercising or attempting to exercise any of its rights, powers or remedies under any *transaction document*, together with interest on the amount spent from the date of expenditure until payment at the *prevailing rate*.

In this definition of "*secured money*" each reference to "Octet" means Octet and each *entity* which is *related* to Octet. Money owing by the *client* or a *guarantor* is included irrespective of whether the liability arose at the request of, or with the knowledge of the Grantor. Despite any other provision contained in this deed, the expression the "*secured money*" does not include money which may at any time be due and payable under a credit contract as defined in the National Credit Code.

**Secured obligations** means all the present and future, actual and contingent obligations of the *client*, the Grantor or any *guarantor* to Octet, except for any obligation to pay *secured money*.

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

**Tax** includes any present or future tax, levy, impost, deduction, charge, duty, *GST*, compulsory loan, assessment, fee or withholding of any nature and any related interest, penalty, fine or expense imposed by any government agency but excludes any tax that is imposed on or calculated by reference to the net income received or receivable by Octet.

**Transaction document** means each of the following:

- (a) this deed;
- (b) the *facility agreement*;
- (c) any document creating an *additional security*;
- (d) any other document which Octet and the other parties to that document so agree in writing;
- (e) each other document contemplated by or required in connection with any of the above or the transactions which they contemplate; and
- (f) each document entered into for the purpose of amending, novating, supplementing, restating or replacing any of the above.

**Trust** means any trust of which the Grantor is or becomes a trustee, and includes any trust specified in item 1 of the Schedule.

### 23.2 Personal Property Securities Act

In this deed the following terms have the meaning in the specified section of the *PPSA*, except to the extent the context requires otherwise.



**ABN** – section 10.

**Accession** – section 10.

**ADI** – section 10.

**ADI account** – section 10.

**After-acquired property** – section 10.

**Amendment demand** – section 178.

**Attaches** – section 19. Attachment occurs when a *security interest attaches to collateral*.

**Australian entity** – section 10.

**Business day** – section 10.

**Chattel paper** – section 10.

**Circulating asset** – section 340.

**Clearing and settlement facility** – section 10.

**Control** – sections 23 to 29.

**Currency** - section 10.

**Document of title** – section 10.

**Financing change statement** – section 10.

**Financing statement** – section 10.

**Interest** – section 10.

**Intermediary** - section 15.

**Intermediated security** – section 15.

**Inventory** – section 10.

**Investment instrument** – section 10.

**Negotiable instrument** – section 10.

**New value** – section 10.

**Perfected** – sections 21 and 22.

**Possession** – section 24.

**Proceeds** – section 31.

**Purchase money security interest** – section 14. A non-purchase money security interest is a security interest (as defined in section 12 of the *PPSA*) in property which is not a purchase money security interest.

**Registration event** – section 155.

**Registration time** – section 10.

**Securities account** – section 15.

**Serial number** – section 9.

**Transitional security interest** – section 308.

**Value** – section 10.

**Verification statement** – section 155.

### 23.3 Contents and headings

The contents and headings are for ease of reference only and do not affect the interpretation of this deed.

### 23.4 Interpretation

- (a) If the day on which any act, matter or thing is to be done under this deed is not a *business day*, the act matter or thing must be done on the next *business day*.
- (b) A reference to “dollars” or “\$” means Australian dollars and all amounts payable under this deed are payable in Australian dollars.
- (c) A reference to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- (d) A reference to any agreement or document is to that agreement or document as amended, novated, supplemented, restated or replaced.
- (e) An expression importing an individual includes any *entity*.
- (f) Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- (g) Words implying the singular include the plural and vice versa.
- (h) The words “including” and “includes” when used to introduce an item do not limit the meaning of the words to which the item relates to items of a similar kind.
- (i) A reference to “deal with” includes selling, leasing, transferring, parting with possession of, otherwise disposing of and conferring a right or interest on any *entity* and agreeing to do any of those things, and “dealing” and “dealing with” have equivalent meanings.
- (j) A reference to “owing” means actually or contingently owing, and “owe” and “owed” have an equivalent meaning.

- (k) A reference to "ordinary business" means the Grantor's business as it was conducted on the date of this deed and a reference to "business" includes a trade.

**SCHEDULE**

<b>Item 1 Grantor's trust</b>	None Specified
<b>Item 2 Service of notices</b>	<p><b>Octet</b></p> <p>Name: Octet Finance Pty Ltd</p> <p>Address: Octet House, 108 Cathedral Street, Woolloomooloo, Sydney, NSW 2011</p> <p>Fax number: 02 9356 6333</p> <p>Attention: The Managing Director</p> <p><b>Grantor(s)</b></p> <p>Name: The Forum Group of Companies Pty Ltd ACN 151 964 626</p> <p>Address: Level 1, Rothsay Accounting Services Pty Ltd, 12-14 O'Connell Street, Sydney, New South Wales, 2000</p> <p>Attention: The Managing Director</p> <p>Name: Forum Group (Qld) Pty Ltd ACN 103 609 678</p> <p>Address: Level 1, Rothsay Accounting Services Pty Ltd, 12-14 O'Connell Street, Sydney, New South Wales, 2000</p> <p>Attention: The Managing Director</p> <p>Name: Forum Group (Vic) Pty Ltd ACN 153 062 018</p> <p>Address: Level 1, Rothsay Accounting Services Pty Ltd, 12-14 O'Connell Street, Sydney, New South Wales, 2000</p> <p>Attention: The Managing Director</p> <p>Name: Imagetec Financial Services Pty Ltd ACN 111 978 182</p> <p>Address: Level 1, Rothsay Accounting Services Pty Ltd, 12-14</p>

	<p>O'Connell Street, Sydney, New South Wales, 2000</p> <p>Attention: The Managing Director</p> <p>Name: Forum Security Pty Ltd ACN 150 890 289</p> <p>Address: Level 1, Rothsay Accounting Services Pty Ltd, 12-14 O'Connell Street, Sydney, New South Wales, 2000</p> <p>Attention: The Managing Director</p> <p>Name: Imagetec Finance Australia Pty Ltd ACN 155 655 897</p> <p>Address: Level 1, Rothsay Accounting Services Pty Ltd, 12-14 O'Connell Street, Sydney, New South Wales, 2000</p> <p>Attention: The Managing Director</p> <p>Name: Forum Group Finance Pty Ltd ACN 132 807 080</p> <p>Address: Level 1, Rothsay Accounting Services Pty Ltd, 12-14 O'Connell Street, Sydney, New South Wales, 2000</p> <p>Attention: The Managing Director</p> <p>Name: Forum Fleet Pty Ltd ACN 155 440 994</p> <p>Address: Level 1, Rothsay Accounting Services Pty Ltd, 12-14 O'Connell Street, Sydney, New South Wales, 2000</p> <p>Attention: The Managing Director</p> <p>Name: Forum Finance Pty Ltd ACN 153 301 172</p> <p>Address: Level 1, Rothsay Accounting Services Pty Ltd, 12-14 O'Connell Street, Sydney, New South Wales, 2000</p>
--	---

	<p><b>Attention:</b> The Managing Director</p>
	<p><b>Name:</b> Forum Enviro Pty Ltd ACN 168 709 840</p>
	<p><b>Address:</b> Level 1, Rothsay Accounting Services Pty Ltd, 12-14 O'Connell Street, Sydney, New South Wales, 2000</p>
	<p><b>Attention:</b> The Managing Director</p>
	<p><b>Name:</b> Forum Direct Pty Ltd ACN 054 890 710</p>
	<p><b>Address:</b> Level 1, Rothsay Accounting Services Pty Ltd, 12-14 O'Connell Street, Sydney, New South Wales, 2000</p>
	<p><b>Attention:</b> The Managing Director</p>
	<p><b>Name:</b> Chilli Print Pty Ltd ACN 158 095 866</p>
	<p><b>Address:</b> Level 1, Rothsay Accounting Services Pty Ltd, 12-14 O'Connell Street, Sydney, New South Wales, 2000</p>
	<p><b>Attention:</b> The Managing Director</p>
	<p><b>Name:</b> Onesource Australia Holdings Pty Ltd ACN 120 463 541</p>
	<p><b>Address:</b> Level 1, Rothsay Accounting Services Pty Ltd, 12-14 O'Connell Street, Sydney, New South Wales, 2000</p>
	<p><b>Attention:</b> The Managing Director</p>
	<p><b>Name:</b> Imagetec Solutions Australia Pty Ltd ACN 074 715 718</p>
	<p><b>Address:</b> Level 1, Rothsay Accounting Services Pty Ltd, 12-14 O'Connell Street, Sydney, New South Wales, 2000</p>
	<p><b>Attention:</b> The Managing Director</p>
	<p><b>Name:</b> Imagetec Solutions Australasia Pty Ltd ACN 073 804 109</p>


	<p>Address: Level 1, Rothsay Accounting Services Pty Ltd, 12-14 O'Connell Street, Sydney, New South Wales, 2000</p> <p>Attention: The Managing Director</p> <p>Name: Onesource Australia Pty Ltd ACN 120 463 836</p> <p>Address: Level 1, Rothsay Accounting Services Pty Ltd, 12-14 O'Connell Street, Sydney, New South Wales, 2000</p> <p>Attention: The Managing Director</p> <p>Name: Imagetec Distributors Pty Ltd ACN 001 521 375</p> <p>Address: Level 1, Rothsay Accounting Services Pty Ltd, 12-14 O'Connell Street, Sydney, New South Wales, 2000</p> <p>Attention: The Managing Director</p>
<b>Item 3 Facility agreement</b>	The facility offer dated 27 <sup>th</sup> September 2018 from Octet to the Client (including the terms and conditions which are incorporated into the facility offer) under which Octet offers to provide a Business Transaction Facility.
<b>Item 4 Client</b>	<b>Forum Group Pty Ltd ACN 153 336 997</b> - Level 5, 141 Walker Street, North Sydney, New South Wales, 2060

**EXECUTION AND DATE**

Executed by the Grantor as a deed poll.

Date: 02/04/19

Executed by **Forum Group of Companies Pty Ltd** ACN 151 964 626 by being signed by:

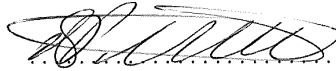
  
Signature of director

VINCE TESCIERO  
Print full name

  
Signature of \*director/\*company secretary  
\* Delete as appropriate


BASILE PAPADIMITRIOU  
Print full name

Executed by **Forum Group (Qld) Pty Ltd** ACN 103 609 678 by being signed by:

  
Signature of sole director and sole company secretary

BASILE PAPADIMITRIOU  
Print full name


Executed by **Forum Group (Vic) Pty Ltd** ACN 153 062 018 by being signed by:

  
Signature of sole director and sole company secretary

BASILE PAPADIMITRIOU  
Print full name



Executed by **Imagetec Financial Services Pty Ltd** ACN 111 978 182 by being signed by:




Signature of sole director and sole company secretary

BASILE PAPADIMITRIOU

Print full name

Executed by **Forum Security Pty Ltd** ACN 150 890 289 by being signed by:



Signature of sole director and sole company secretary

BASILE PAPADIMITRIOU

Print full name

Executed by **Imagetec Finance Australia Pty Ltd** ACN 155 655 897 by being signed by:



Signature of sole director and sole company secretary

BASILE PAPADIMITRIOU

Print full name

Executed by **Forum Group Finance Pty Ltd**  
ACN 132 807 080 by being signed by:



Signature of sole director and sole company secretary

BASILE PAPAIMITRIOU

Print full name

Executed by **Forum Fleet Pty Ltd** ACN 155  
440 994 by being signed by:




Signature of sole director and sole company secretary

BASILE PAPAIMITRIOU

Print full name

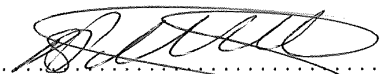
Executed by **Forum Finance Pty Ltd** ACN  
153 301 172 by being signed by:



Signature of director

VINCE TESORIERO

Print full name



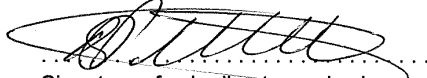
Signature of \*director/\*company secretary

\* Delete as appropriate

BASILE PAPAIMITRIOU

Print full name

Executed by **Forum Enviro Pty Ltd** ACN 168  
709 840 by being signed by:

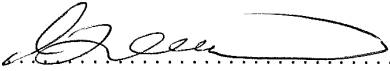


Signature of sole director and sole company  
secretary

BASILE PAPADIMITRIOU

Print full name

Executed by **Forum Direct Pty Ltd** ACN 054  
890 710 by being signed by:



Signature of director

VINCE TESORIERO

Print full name



Signature of \*director/\*company secretary

\* Delete as appropriate

BASILE PAPADIMITRIOU

Print full name

Executed by **Chilli Print Pty Ltd** ACN 158  
095 866 by being signed by:

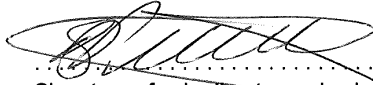


Signature of sole director and sole company  
secretary

BASILE PAPADIMITRIOU

Print full name

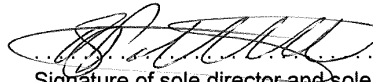
Executed by **Onesource Australia Holdings Pty Ltd** ACN 120 463 541 by being signed by:



.....  
Signature of sole director and sole company secretary

BASILE PAPADIMITRIOU  
.....  
Print full name

Executed by **Imagetec Solutions Australia Pty Ltd** ACN 074 715 718 by being signed by:



.....  
Signature of sole director and sole company secretary

BASILE PAPADIMITRIOU  
.....  
Print full name

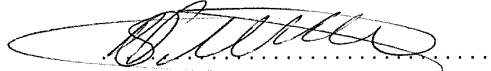
Executed by **Imagetec Solutions Australasia Pty Ltd** ACN 073 804 109 by being signed by:



.....  
Signature of sole director and sole company secretary

BASILE PAPADIMITRIOU  
.....  
Print full name

Executed by **Onesource Australia Pty Ltd**  
ACN 120 463 836 by being signed by:

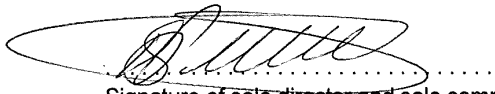


Signature of sole director and sole company secretary

BASILE PAPADIMITRIOU

Print full name

Executed by **Imagetec Distributors Pty Ltd**  
ACN 001 521 375 by being signed by:



Signature of sole director and sole company secretary

BASILE PAPADIMITRIOU

Print full name



**Annexure**

No. NSD616 of 2021

Federal Court of Australia  
District Registry: New South Wales  
Division: General

**Westpac Banking Corporation ABN 33 007 457 141** and another  
Applicant

**Forum Finance Pty Limited ACN 153 301 172** and others named in the Schedule  
Respondents

This is the Annexure marked "**BJQ-8**" shown and produced to **Bianca Josephine Quan** at the time of swearing her affidavit on 28 September 2021.

Deponent signature:

DocuSigned by:  
*Bianca Quan*  
E3C6AC0D03C0401.....

Before me: DocuSigned by:  
*Adrian Lee*  
BC4298F2AFED404.....

Adrian Lee

Level 10, 114 William Street, Melbourne VIC 3000

An Australian Legal Practitioner within the meaning of the Legal Profession Uniform Law (Vic)

A person authorised under Section 19(1) of the Oaths and Affirmations Act 2018 to take an affidavit.

This affidavit, as signed and notated by the authorised affidavit taker, was signed by the deponent over audio-visual link.

The specified things in respect of the affidavit were done by means of audio-visual link. The affidavit is a scanned hard copy or an electronic copy, not an original.



Australian Government  
 Australian Financial Security Authority



Personal Property  
 Securities Register

02/04/2019

## Verification Statement

### Financing Statement

This verification statement is provided under section 156 of the *Personal Property Securities Act 2009*

This PPSR registration was created on 02/04/2019 15:24:44 (Canberra Time)

#### PPSR Registration Details

PPSR Registration number:	201904020047633	Change number:	53947724
Registration kind:	Security interest		
Giving of notice identifier:	839		
Registration start time:	02/04/2019 15:24:44 (Canberra Time)		
Registration end time:	No stated end time		
Registration last changed:	02/04/2019 15:24:44 (Canberra Time)		
Subordinate registration:	Not stated	Transitional:	No

#### Grantor Details

Organisation identifier:	151964626	Organisation identifier type:	ACN
Organisation name:	THE FORUM GROUP OF COMPANIES PTY LTD (Verified)		
Organisation identifier:	103609678	Organisation identifier type:	ACN
Organisation name:	FORUM GROUP (QLD) PTY LTD (Verified)		
Organisation identifier:	153062018	Organisation identifier type:	ACN
Organisation name:	FORUM GROUP (VIC) PTY LTD (Verified)		
Organisation identifier:	111978182	Organisation identifier type:	ACN
Organisation name:	IMAGETEC FINANCIAL SERVICES PTY LTD (Verified)		
Organisation identifier:	150890289	Organisation identifier type:	ACN
Organisation name:	FORUM SECURITY PTY LTD (Verified)		
Organisation identifier:	155655897	Organisation identifier type:	ACN
Organisation name:	IMAGETEC FINANCE AUSTRALIA PTY LTD (Verified)		
Organisation identifier:	132807080	Organisation identifier type:	ACN
Organisation name:	FORUM GROUP FINANCE PTY LTD (Verified)		
Organisation identifier:	155440994	Organisation identifier type:	ACN
Organisation name:	FORUM FLEET PTY LIMITED (Verified)		
Organisation identifier:	153301172	Organisation identifier type:	ACN
Organisation name:	FORUM FINANCE PTY LIMITED (Verified)		
Organisation identifier:	168709840	Organisation identifier type:	ACN
Organisation name:	FORUM ENVIRO PTY LTD (Verified)		
Organisation identifier:	054890710	Organisation identifier type:	ACN
Organisation name:	FORUM DIRECT PTY LTD (Verified)		
Organisation identifier:	158095866	Organisation identifier type:	ACN



Organisation name: CHILLI PRINT PTY LTD (Verified)  
Organisation identifier: 120463541 Organisation identifier type: ACN  
Organisation name: ONESOURCE AUSTRALIA HOLDINGS PTY LIMITED (Verified)  
Organisation identifier: 074715718 Organisation identifier type: ACN  
Organisation name: IMAGETEC SOLUTIONS AUSTRALIA PTY LTD (Verified)  
Organisation identifier: 073804109 Organisation identifier type: ACN  
Organisation name: IMAGETEC SOLUTIONS AUSTRALASIA PTY LTD (Verified)  
Organisation identifier: 120463836 Organisation identifier type: ACN  
Organisation name: ONESOURCE AUSTRALIA PTY LIMITED (Verified)  
Organisation identifier: 001521375 Organisation identifier type: ACN  
Organisation name: IMAGETEC DISTRIBUTORS PTY LTD (Verified)

### Collateral Details

Collateral type: Commercial property  
Collateral class: All present and after-acquired property - No exceptions

### Secured Party Details

Organisation identifier: 124477916 Organisation identifier type: ACN  
Organisation name: OCTET FINANCE PTY LIMITED (Verified)

### Address for Service

Contact name: Reynaldo Flores  
Email: rflores@octetfinance.com  
Mailing address: 10-14 Waterloo Street  
Surry Hills  
NSW 2010  
AUSTRALIA  
Physical address: No address provided

You may be obliged by section 157 of the *Personal Property Securities Act 2009* to give a notice of this verification statement to another person. The notice must be in the approved form. Information about your obligations under section 157 of the *Personal Property Securities Act 2009* is available from: [www.ppsr.gov.au](http://www.ppsr.gov.au).

### Privacy and Terms and Conditions

The Australian Financial Security Authority is subject to the *Privacy Act 1988* which requires that we comply with the Australian Privacy Principles (APPs) set out in the Act. The APPs set out how Australian Government agencies should collect, use, store and disclose personal information and how individuals can access records containing their personal information.

Access to and use of the PPSR is subject to the General Conditions of Use, as well as other relevant terms and conditions. All relevant terms and conditions can be found at [www.ppsr.gov.au](http://www.ppsr.gov.au).

End of Verification Statement

EMAIL: [enquiries@ppsr.gov.au](mailto:enquiries@ppsr.gov.au) WEBSITE: [www.ppsr.gov.au](http://www.ppsr.gov.au)

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GPO Box 1944 Adelaide SA 5001

1300 00 77 77

**Annexure**

No. NSD616 of 2021

Federal Court of Australia  
District Registry: New South Wales  
Division: General

**Westpac Banking Corporation ABN 33 007 457 141** and another  
Applicant

**Forum Finance Pty Limited ACN 153 301 172** and others named in the Schedule  
Respondents

This is the Annexure marked "**BJQ-9**" shown and produced to **Bianca Josephine Quan** at the time of swearing her affidavit on 28 September 2021.

Deponent signature:

DocuSigned by:  
*Bianca Quan*  
.....E3C6AC0D03C0401.....

Before me: DocuSigned by:  
*Adrian Lee*  
.....BC4298F2AFED404.....

Adrian Lee

Level 10, 114 William Street, Melbourne VIC 3000

An Australian Legal Practitioner within the meaning of the Legal Profession Uniform Law (Vic)

A person authorised under Section 19(1) of the Oaths and Affirmations Act 2018 to take an affidavit.

This affidavit, as signed and notated by the authorised affidavit taker, was signed by the deponent over audio-visual link.

The specified things in respect of the affidavit were done by means of audio-visual link. The affidavit is a scanned hard copy or an electronic copy, not an original.

# Guarantee and Indemnity

**Forum Group Pty Ltd**  
**Basile Papadimitriou**  
**The Forum Group of Companies Pty Ltd**  
**Forum Group (Qld) Pty Ltd**  
**Forum Group (Vic) Pty Ltd**  
**Imagetec Financial Services Pty Ltd**  
**Forum Security Pty Ltd**  
**Imagetec Finance Australia Pty Ltd**  
**Forum Group Finance Pty Ltd**  
**Forum Fleet Pty Ltd**  
**Forum Finance Pty Ltd**  
**Forum Enviro Pty Ltd**  
**Forum Direct Pty Ltd**  
**Chilli Print Pty Ltd**  
**Onesource Australia Holdings Pty Ltd**  
**Imagetec Solutions Australia Pty Ltd**  
**Imagetec Solutions Australasia Pty Ltd**  
**Onesource Australia Pty Ltd**  
**Imagetec Distributors Pty Ltd**  
**Aramia Holdings Pty Ltd**  
**Malton Enterprises Pty Ltd**  
**Smartprint Fleet Management Pty Ltd**



Guarantee and Indemnity

6271854\_1

**BTF 2 © Copyright 2019**

**Guarantee and Indemnity**

6271854\_1

## Important notice for each guarantor

This is a guarantee and indemnity. If the buyer referred to in the schedule does not pay when due, money presently or in the future owed to Octet, you must pay that money yourself and indemnify Octet against any loss it suffers by not recovering from the buyer. It is therefore important that you understand:

- (a) the nature and extent of the facilities being provided to the buyer and that future facilities provided to the buyer by Octet will also be guaranteed by you;
- (b) that upon signing you become legally bound to pay the whole of the buyer's indebtedness to Octet together with interest and other costs and expenses which the buyer becomes liable to pay to Octet; and
- (c) that if you have given or give security over any of your assets to Octet, Octet can seize and sell those assets if the buyer defaults and you do not pay the money which the buyer has failed to pay to Octet.

Octet recommends that you obtain independent legal advice as to the full effect of this document and the documents governing the facility to the buyer. If you cannot obtain a copy of the documents governing the facility from the buyer please request a copy from Octet. You should also obtain any other advice which is necessary to understand the financial position of the buyer and its ability to meet its present and future commitments to Octet.

## Contents

<b>1</b>	<b>The guarantee and indemnity .....</b>	<b>1</b>
1.1	Unconditional guarantee .....	1
1.2	Unconditional indemnity.....	1
<b>2</b>	<b>Payment of guaranteed money .....</b>	<b>1</b>
2.1	Payment must be made on demand .....	1
2.2	Time is of the essence.....	2
2.3	Combination of accounts .....	2
2.4	Application of payments .....	2
2.5	Interest on guaranteed money.....	2
<b>3</b>	<b>General guarantee provisions .....</b>	<b>2</b>
3.1	Guarantor to make enquiries .....	2
3.2	Guarantor's obligations to continue unaffected .....	2
3.3	Failure of a named Guarantor to sign.....	4
3.4	Commencement and termination of deed.....	4
3.5	Increases in guaranteed money.....	4
<b>4</b>	<b>Guarantor's warranties and undertakings .....</b>	<b>5</b>
4.1	Guarantor's representations.....	5
4.2	Guarantor's undertakings.....	5
<b>5</b>	<b>Trusts .....</b>	<b>6</b>
5.1	Guarantor is bound in its own right and as trustee .....	6
5.2	Trust representations .....	6
5.3	Trust obligations.....	7
<b>6</b>	<b>Enforcement obligations.....</b>	<b>7</b>
6.1	Guarantor must not compete with Octet .....	7
6.2	Octet's set-off rights.....	7
6.3	Octet may prove .....	8
6.4	Rights of subrogation and contribution.....	8
6.5	When Octet can enforce .....	8
6.6	Octet is not liable for losses .....	8
6.7	Octet may have other rights .....	8
6.8	Void transactions and returned payments.....	8
<b>7</b>	<b>Miscellaneous.....</b>	<b>9</b>
7.1	Power of attorney .....	9

7.2	Guarantors that are also buyer.....	9
7.3	Guarantors that are also shareholders etc.....	9
7.4	Joint and individual liability.....	10
7.5	Costs and stamp duty.....	10
7.6	Financial information.....	10
7.7	Assignment.....	10
7.8	GST.....	10
7.9	Waivers by Octet.....	10
7.10	Consents and reasons.....	11
7.11	Certificates Octet provides.....	11
7.12	Octet's privacy policy.....	11
7.13	Execution.....	11
7.14	Octet can fill in blanks.....	11
7.15	Severability.....	12
7.16	Entire agreement.....	12
7.17	Governing law.....	12
<b>8</b>	<b>Notices.....</b>	<b>12</b>
8.1	Notices from Octet.....	12
8.2	Service of legal process.....	13
8.3	Service is always effective and can be on any Guarantor.....	13
8.4	Service on Octet.....	13
<b>9</b>	<b>Special provisions.....</b>	<b>13</b>
<b>10</b>	<b>Definitions and interpretation.....</b>	<b>13</b>
10.1	Definitions.....	13
10.2	Contents and headings.....	15
10.3	Interpretation.....	15
	<b>Schedule.....</b>	<b>16</b>
	<b>Execution.....</b>	<b>18</b>



# Guarantee and Indemnity

This document is an agreement between the person specified in item 1 of the schedule (**Guarantor**) and the person specified in item 2 of the schedule (**Octet**).

## 1 The guarantee and indemnity

### 1.1 Unconditional guarantee

Each Guarantor unconditionally and irrevocably guarantees the due and punctual payment of the *guaranteed money* to Octet. Each Guarantor also unconditionally and irrevocably guarantees the due and punctual performance and observance of all obligations (including each indemnity obligation) which the *buyer* has at any time under a *finance document*.

### 1.2 Unconditional indemnity

As a separate, independent and principal obligation, each Guarantor unconditionally and irrevocably indemnifies Octet against all actions, claims, demands, payments, liabilities, damages, costs, charges, expenses and losses of any kind which Octet may at any time sustain, suffer, incur or become liable for directly or indirectly because:

- (a) any Guarantor is not obliged to pay an amount to Octet or perform an obligation as required by clause 1.1;
- (b) a *finance document* (or a part of it) is void, voidable or unenforceable;
- (c) a stay (including one imposed by the Corporations Act 2001) prevents Octet from enforcing a *finance document* (either partly or completely);
- (d) any payment to Octet in full or partial satisfaction of the *guaranteed money* is challenged for any reason;
- (e) the *buyer* or any Guarantor fails to pay, is not obliged to pay or is unable to pay any *guaranteed money*;
- (f) a term of a *finance document* is breached or any event or circumstance occurs and as a consequence money is payable under a *finance document* earlier than the time it would otherwise have become payable; or
- (g) Octet entered into a *finance document*, performs any obligations under a *finance document* or exercises or attempts to exercise any right, power or remedy under a *finance document* or in relation to the recovery of any *guaranteed money*.

## 2 Payment of guaranteed money

### 2.1 Payment must be made on demand

Each Guarantor must pay any money to which Octet is entitled under this document immediately on demand. It must do so in cleared funds without any set-off, abatement,

counterclaim or deduction. It must do so even if the Guarantor has rights against Octet. The demand given to the Guarantor does not have to specify the amount which the Guarantor must pay.

## **2.2 Time is of the essence**

Each Guarantor agrees that time is of the essence in relation to the payment of *guaranteed money* to Octet.

## **2.3 Combination of accounts**

Each Guarantor authorises Octet without notice and in its discretion to apply credit balances in any account of the Guarantor with Octet towards satisfaction of any amount then payable by the Guarantor under this document.

## **2.4 Application of payments**

Each Guarantor irrevocably waives its right to determine the appropriation of any money paid to Octet. All payments of *guaranteed money* may be applied in the absolute discretion of Octet towards reduction or satisfaction of that part of the *guaranteed money* which Octet elects. Payment of *guaranteed money* may be credited by Octet to a suspense account and appropriated to *guaranteed money* in its discretion. Octet is under no obligation to appropriate the proceeds of any *security interest* to payment of *guaranteed money* before payment of any other money secured by that *security interest*.

## **2.5 Interest on guaranteed money**

Each Guarantor must on demand pay Octet interest calculated daily at the *interest rate* on any money owing pursuant to this document from the date it is demanded to the date it is paid. However, the Guarantor is not required to pay interest on an amount included in the *guaranteed money* which, pursuant to an agreement between the *buyer* and Octet, is bearing interest and that interest is itself *guaranteed money*.

# **3 General guarantee provisions**

## **3.1 Guarantor to make enquiries**

Each Guarantor agrees that:

- (a) in entering into this document, it has relied exclusively on its own knowledge and enquiries of the *buyer* and the *buyer's* proposed transactions with Octet; and
- (b) Octet is not at any time required to provide the Guarantor with any information relating to the *buyer*, any other Guarantor or any existing or proposed transaction with the *buyer*.

## **3.2 Guarantor's obligations to continue unaffected**

This document, the obligations and liabilities of a Guarantor under it and the rights, powers and remedies of Octet under it are not affected or changed by:

- (a) any delay, act, omission, mistake or default by Octet which would, apart from this clause, have affected the Guarantor's liability;
- (b) the *buyer* not having any obligations to Octet at any time or any or all of the *buyer's* obligations to Octet under a *finance document* ceasing (temporarily or otherwise) at any time;
- (c) any other *entity* becoming liable to Octet for any of the obligations of the *buyer* under a *finance document*, whether alone or jointly or jointly and severally;
- (d) the *buyer* or any Guarantor being discharged or released in whole or in part by Octet or by operation of law from a *finance document*, a *security interest* or any obligation under a *finance document*;
- (e) all or any of the obligations of the *buyer* or any Guarantor not being enforceable (either partly or completely); Octet not enforcing (either strictly or at all) any right, power or remedy; or Octet acting to the prejudice of the Guarantor;
- (f) the termination of a *finance document* or a *finance document* or *security interest* being assigned, novated or otherwise dealt with;
- (g) a *finance document* being varied, altered, extended or replaced in any way including variations, alterations, extensions or replacements which increase the *guaranteed money* even if the Guarantor is not notified or does not consent;
- (h) a new account being established between Octet and the *buyer* or the amount of financial accommodation provided by Octet to the *buyer* changing in any way, including changes which may increase the *guaranteed money* even if the Guarantor is not notified or does not consent;
- (i) a new agreement becoming a *finance document*, or an agreement which was contemplated to be a *finance document* not being entered into or being entered into on different terms to those contemplated;
- (j) a *finance document* (or any obligations under it) or a *security interest* being partly or completely illegal, void, voidable or unenforceable for any reason;
- (k) a stay (including one imposed by the Corporations Act 2001) preventing Octet from enforcing a *finance document* (either partly or completely);
- (l) Octet compounding with; compromising with; having dealings with; making an arrangement with; having an obligation to; or granting any time, waiver, indulgence or concession to, the *buyer*, any Guarantor or any other *entity*;
- (m) a *security interest* not being perfected or registered, being incorrectly registered or not being enforceable (in whole or in part); Octet not giving notice of a *security interest*; or Octet releasing, losing the benefit of or impairing a *security interest* or not obtaining any *security interest* or not obtaining a *security interest* with any particular value or priority;
- (n) Octet making or not making demand on the *buyer* or any other Guarantor or enforcing or not enforcing any *finance document*, *guarantee* or *security interest* (either strictly or at all);
- (o) Octet obtaining, seeking to obtain, not obtaining or not seeking to obtain a court judgment against the *buyer*, any Guarantor or any other *entity*;
- (p) an *entity* which was intended to be a party to a *finance document* or to give any other *guarantee* or any *security interest* not doing so; not being required to do so; not doing so effectively; not being bound by it; not having the power to sign it; or ceasing to be liable under it;
- (q) the *buyer* or any Guarantor being or becoming a trustee;
- (r) Octet owing an amount or having any obligation to the *buyer* or any Guarantor; a payment to Octet by the *buyer* or any Guarantor being an unfair preference; Octet receiving a dividend or payment as a consequence of any insolvency process; or all

- or any of the obligations of the *buyer* or any Guarantor arising after the *buyer* or any Guarantor become insolvent;
- (s) the *buyer* or any Guarantor being a partnership or being in partnership and a change in the membership of the partnership occurring for any reason or the partnership ceasing to carry on business or the *buyer* or any Guarantor becoming members of another partnership;
  - (t) the death, mental or physical incapacity or insolvency of the *buyer* or any Guarantor;
  - (u) any change to the status of the *buyer* or any Guarantor or the nature of the *buyer's* business changing in any way;
  - (v) the whole or any part of the business or property of the *buyer* being sold or disposed of in any way;
  - (w) the *buyer*, any Guarantor or any other *entity* failing to comply with any obligation under any *finance document* or *security interest* or a representation or warranty by the *buyer*, any Guarantor or any other *entity* under any *finance document* being not true or being misleading for any reason at all;
  - (x) Octet doing something or failing to do something or anything else happening that, apart from this clause, could have affected the Guarantor's liability or result in the obligations of the Guarantor ending or being affected.

### **3.3 Failure of a named Guarantor to sign**

If a Guarantor named in this document fails to execute or become bound by this document or any other *finance document* or ceases for any reason to be bound by this document or any other *finance document* that does not affect the liability of each other Guarantor.

### **3.4 Commencement and termination of deed**

Each Guarantor gives the guarantee and indemnity and enters into this document in consideration of, amongst other things, Octet agreeing to pay \$1 to each Guarantor. Octet will pay \$1 to a Guarantor within ten *business days* of the Guarantor requesting it.

There is no condition precedent to this document coming into effect. A Guarantor cannot cancel this document or limit the Guarantor's liability under it. This document will remain in force until Octet has given written notice terminating it. If a Guarantor asks, Octet will give that notice when Octet is satisfied, in Octet's discretion, that there is no *guaranteed money*, there will not be any *guaranteed money*, all obligations under each *finance document* have been performed and there is no risk of Octet having to hand over any money which it has received from the *buyer*, any Guarantor or any other *entity*.

### **3.5 Increases in guaranteed money**

Without limiting clause 3.2 each Guarantor agrees that, without notice to or the consent of the Guarantor:

- (a) Octet may deal with the *buyer*, any Guarantor or other *entity* in any manner;
- (b) any *finance document* may be varied, altered, extended or replaced.

The *guaranteed money* may increase as a result.

## 4 Guarantor's warranties and undertakings

### 4.1 Guarantor's representations

Each Guarantor represents and warrants to Octet that:

- (a) it has the power to enter into this document and perform its obligations under this document and will continue to have that power;
- (b) by entering into this document and performing obligations under this document neither it nor any other *entity* will breach any agreement or any law;
- (c) each of its obligations under this document are and will continue to be valid, binding and enforceable;
- (d) it has disclosed to Octet everything known to it which might have influenced Octet's decision to enter into or rely on the *facility agreement* or provide accommodation under the *facility agreement*;
- (e) it does not act and will not act as the trustee of any trust (whether under a trust deed, deed of settlement or other instrument, or a trust arising by law or implication), except a trust specified in the schedule, a trust arising under the will of a deceased person or a trust approved by Octet;
- (f) if the Guarantor is a *corporation*, there is justifiable commercial benefit to it in entering into this document;
- (g) it is able and will remain able to pay its debts as and when they become due and payable;
- (h) it is an Australian entity (as defined in section 10 of the *PPSA*), unless the Guarantor told Octet it is not before the date of this document;
- (i) it has disclosed to Octet all of its *financial indebtedness*, all *security interests* (except *permitted interests*) in property in which it has an interest and all *guarantees* given by it in relation to *financial indebtedness*;
- (j) the representations and warranties given by the *buyer* in each *finance document* are true;
- (k) it has not taken a *security interest* from the *buyer* in connection with this document and agrees not to do so unless Octet consents. Despite this, if at any time the Guarantor does hold a *security interest* of that type it will hold it on trust for Octet; and
- (l) it is aware of the financial position of the *buyer* and each of the other Guarantors.

### 4.2 Guarantor's undertakings

Each Guarantor undertakes to Octet that:

- (a) it will not seek to impeach its liability under this document because anything described in clause 3.2 has occurred or may occur;
- (b) it will immediately tell Octet if it could not, at any time, truthfully repeat each representation and warranty in clause 4.1 with respect to the facts and circumstances existing at that time. In addition the Guarantor must not do anything, permit anything to be done or fail to do something, which could cause a representation or warranty to be untrue or which could mean that the Guarantor could not truthfully repeat a representation or warranty;
- (c) it will tell Octet as soon as it becomes aware of the occurrence of an event of default (as defined in the *facility agreement*);

- (d) it will not provide *financial indebtedness* to any *entity* or give a *guarantee* in relation to *financial indebtedness*, without obtaining Octet's consent;
- (e) it will not give any *security interests* or allow any *security interests* over any property in which it has an interest to arise or continue, unless the *security interest* was disclosed to Octet before the date of this document or it is a *permitted interest*; and
- (f) it will tell Octet before it gives a new *guarantee* in relation to *financial indebtedness* or incurs any further *financial indebtedness*.

## 5 Trusts

### 5.1 Guarantor is bound in its own right and as trustee

If a Guarantor is or becomes a trustee of a trust it must tell Octet – see clause 4.1(e). Irrespective of this, the Guarantor is bound by this document and each other *finance document* to which it is a party both in its own right and as the trustee of each trust (including the trust specified in the schedule) of which it is the trustee. The Guarantor is also bound as the trustee of each trust it may become the trustee of. These requirements are not affected by an Australian Business Number being or not being, or a trust being or not being, specified in this document, a *finance document* or any other document. The Guarantor is not bound in relation to a trust arising under the will of a deceased person.

### 5.2 Trust representations

If a Guarantor is the trustee of a trust it represents and warrants that:

- (a) the arrangements with Octet are for the benefit of the trust and the unitholders or other beneficiaries of the trust and will be binding on those unitholders and beneficiaries;
- (b) it has been duly appointed as trustee, it is the sole trustee of the trust and it is not in breach of any of its obligations as trustee;
- (c) it has authority to enter into each *finance document* to which it is a party and it does so in the proper performance of its duties as trustee;
- (d) it has the right to be fully indemnified out of the trust assets for all obligations incurred by it under a *finance document* and Octet will be subrogated to its right of recoupment out of the trust assets;
- (e) no action has been taken or proposed to terminate the trust;
- (f) a certified copy of the trust deed and other documents relating to the establishment of the trust, the powers of the trustee or the exercise of those powers have been provided to Octet and disclose all the terms of the trust and it has complied with those documents;
- (g) every formality required by those documents was complied with before the Guarantor entered into a *finance document*;
- (h) it has not delegated any of its powers as trustee or exercised any power of appointment; and
- (i) it has disclosed to Octet in writing all *security interests* (other than *permitted interests*) over any trust assets and it will not allow any further *security interests* (other than *permitted interests*) to arise or continue, without obtaining Octet's consent.

### 5.3 Trust obligations

The Guarantor must immediately tell Octet if the Guarantor could not, at any time, truthfully repeat each of those representations and warranties with respect to the facts and circumstances existing at that time. In addition the Guarantor must not do anything, permit anything to be done or fail to do something, which could cause a representation or warranty to be untrue or which could mean that it could not truthfully repeat a representation or warranty.

Each Guarantor must ensure that no action of the type mentioned in clause 5.2(e) is taken; that the documents mentioned in clause 5.2(f) are not changed or revoked without Octet's approval; that the things mentioned in clause 5.2(h) do not happen; that the assets of the trust are not resettled or vested; that the capital of the trust is not transferred or distributed without Octet's approval; that income of the trust is not segregated, assigned or distributed if doing so could affect the Guarantor's ability to perform its obligations under the *finance documents* or if an event of default as defined in the *facility agreement* is subsisting; and the vesting date is not changed.

If the Guarantor ceases to be the sole trustee it must cause any new trustee to sign a document Octet requires to bind it to the *finance documents* and any other agreement Octet requires. Until that document and the other required agreement is signed the new trustee will, by agreeing to act as trustee, be taken to be bound by the *finance documents*.

## 6 Enforcement obligations

### 6.1 Guarantor must not compete with Octet

A Guarantor must not, without Octet's prior written consent:

- (a) exercise any right of subrogation or contribution; exercise any right as surety in competition with Octet; or exercise or take any step to enforce a right or claim against the *buyer* or another Guarantor;
- (b) claim that the *buyer*, another Guarantor or any other *entity* has a right of set-off, combination or counterclaim against Octet or in relation to payment of the *guaranteed money*;
- (c) exercise any right of set-off or counterclaim against the *buyer* or another Guarantor;
- (d) other than by its attorney appointed pursuant to clause 7.1, prove in the bankruptcy, winding up or insolvency of the *buyer* or any other Guarantor; or claim or receive the benefit of any dividend, distribution or other payment pursuant to that bankruptcy, winding up or insolvency; or exercise any vote or other rights in respect of indebtedness owed to the Guarantor by the *buyer* or another Guarantor;
- (e) claim the benefit of any right, power, remedy or *security interest* held by Octet; or
- (f) raise, or take advantage of, any estoppel, defence or right of action which the *buyer* or any Guarantor may have against Octet as a ground for not paying the *guaranteed money* in accordance with clause 2.1. This does not extinguish any right of action which the Guarantor may have against Octet.

### 6.2 Octet's set-off rights

Against any money that Octet or any *entity* which is related to Octet owes a Guarantor, Octet is entitled to set-off any money that any Guarantor, the *buyer* or an *entity* which is related to any of them owes to Octet or an *entity* which is related to Octet. This includes money owed contingently or prospectively. It includes money which is owed on any account or basis. If an

amount owed cannot be immediately ascertained, Octet is entitled to make a reasonable estimate. On request Octet will tell a Guarantor about any set-off effected under this clause.

### **6.3 Octet may prove**

Octet may, in a Guarantor's name, claim from an *entity* any money which the *entity* may owe or which is payable to the Guarantor, including a dividend or distribution of any kind, and do anything to collect it. Octet may retain the amount collected in a suspense account and at Octet's discretion appropriate it until all liabilities have been satisfied.

### **6.4 Rights of subrogation and contribution**

A Guarantor must exercise any right of subrogation or contribution; exercise or enforce a right or claim against the *buyer* or another Guarantor; and exercise any right of set-off or counterclaim against the *buyer* or another Guarantor as directed by Octet. This includes a right to prove for, or claim, or exercise any vote or other rights in respect of, indebtedness owed to the Guarantor by the *buyer* or another Guarantor which is insolvent. The rights and claims (including a right of proof) will be held on trust for Octet, all amounts arising out of them must be paid to Octet and those amounts will be held on trust for Octet until they are paid to Octet.

### **6.5 When Octet can enforce**

Each Guarantor agrees that Octet does not have to ask the *buyer* to make payment before Octet makes a demand under clause 2.1 and that Octet may enforce this document against the Guarantor before Octet enforces its rights against the *buyer*, any other Guarantor or other *entity* under any *finance document* or *security interest* or before Octet enforces payment of any *debt* and despite the Guarantor not having been notified that the *buyer* was in default under a *finance document*.

### **6.6 Octet is not liable for losses**

Octet is not liable for any loss which a Guarantor may suffer because of the exercise or attempted exercise of, failure to exercise, or delay in exercising, any right, power or remedy which Octet may have. This is the case even if the loss was caused by Octet's negligence.

### **6.7 Octet may have other rights**

Octet's rights under this document are in addition to and separate from any other rights which Octet may have at law or under any other documents (including any other *finance document*). Octet may use any money paid by or for the *buyer* towards meeting any part of the *buyer's* liability to Octet, even if the Guarantor has not guaranteed that liability. A Guarantor will not have the right to require Octet to exercise any right, power or remedy under a *security interest* or a *finance document*.

### **6.8 Void transactions and returned payments**

If for any reason:

- (a) any transaction contemplated by a *finance document* is void, set aside or voidable (for example because all or part of any *finance document* is void or voidable); or
- (b) Octet repays or returns any money or asset received from the *buyer* or any Guarantor under any *finance document* or the equivalent in value of that money or asset,



Octet will have rights against each Guarantor in respect of the *guaranteed money* which it would have had if all or the relevant part of the transaction had not taken place or the repayment or return had not occurred. Octet may treat the original receipt as if it had not been made irrespective of whether Octet was required to hand it over. Each Guarantor must do everything required by Octet to restore Octet to the position it was in before (a) or (b) occurred. This clause applies even if Octet has given notice under clause 3.4 to terminate this document.

## 7 Miscellaneous

### 7.1 Power of attorney

For valuable consideration and by way of security each Guarantor irrevocably and unconditionally appoints Octet, each of its *authorised officers* and any lawyers acting on Octet's behalf, jointly and severally, as its attorneys with power:

- (a) in the name of the Guarantor, to do anything the Guarantor can do in connection with the bankruptcy, winding-up or insolvency of the *buyer* or another Guarantor;
- (b) to do anything mentioned in clauses 6.3 or 6.4;
- (c) to apply any money received in payment of money owing under this document; and
- (d) to delegate its powers to any person for any period.

An attorney may delegate and exercise any of those powers despite any conflict of duty or interest.

### 7.2 Guarantors that are also buyer

If a Guarantor is also a *buyer* this document will be a cross guarantee and indemnity. That Guarantor gives the guarantee and indemnity in favour of Octet in accordance with this document in relation to each other *buyer* (whether named as Guarantor or not) and the expressions "Guarantor" and "*buyer*" will be construed accordingly. It does not guarantee and indemnify Octet in respect of its own obligations. This clause does not affect this document to the extent that it applies to a Guarantor which is not also named as a *buyer*.

### 7.3 Guarantors that are also shareholders etc.

If a Guarantor is a shareholder in the *buyer* or another Guarantor that Guarantor unconditionally approves the execution by the *buyer* or the other Guarantor of each *finance document* to which they are a party and the performance of their obligations under each of those documents. Similarly, if a Guarantor is a beneficiary under a trust of which the *buyer* or another Guarantor is the trustee that Guarantor unconditionally approves the execution by the *buyer* or the other Guarantor of each *finance document* to which they are a party and the performance of their obligations under each of those documents.

Each Guarantor represents and warrants to Octet that the *buyer*, the Guarantor and each other Guarantor has done everything which should have been done so that the obligations of the *buyer* and each Guarantor under the *finance documents* are valid, binding and enforceable.

#### **7.4 Joint and individual liability**

If there is more than one Guarantor, each Guarantor is bound by this document jointly and severally. This means Octet can take action against any number of the persons who are Guarantors together or against any one or more of the Guarantors. A reference to "Guarantor" includes all Guarantors and any one or more of them.

#### **7.5 Costs and stamp duty**

Each Guarantor must pay Octet's legal costs and expenses (on a full indemnity basis) in relation to this document and anything done in connection with this document. This includes the enforcement of it and the recovery of any money under it or under any agreement with the *buyer* giving rise to or securing *guaranteed money*.

Each Guarantor must pay all stamp and other duties payable in relation to this document, any transaction entered into in connection with this document and the receipt of any *guaranteed money* by Octet.

#### **7.6 Financial information**

Upon request each Guarantor must provide Octet with information (including copy documents) concerning the financial position (including information concerning assets, liabilities, income and taxation), business, assets and shareholders of the Guarantor, the *buyer* and any *entity* which is related to the Guarantor.

#### **7.7 Assignment**

Octet is entitled, without further approval, to novate, assign or otherwise deal with this document, all interests arising under it and any of Octet's rights or obligations under it in any way Octet considers appropriate but a novation, assignment or dealing may not materially prejudice any rights which a Guarantor may have under this document. In the case of a novation the new party assumes Octet's obligations. At Octet's request a Guarantor must sign and deliver to Octet or any other *entity* Octet specifies any document Octet reasonably requires for this purpose.

#### **7.8 GST**

If all or part of any payment to be made by the Guarantor is the consideration for a taxable supply for *GST* purposes, when the Guarantor makes the payment it must pay to Octet any *GST* chargeable in respect of the supply so that Octet will receive and retain, after payment of any *GST*, the amount otherwise payable for the supply.

#### **7.9 Waivers by Octet**

A waiver of any breach, right, power or remedy under this document or a release from an obligation under it must be in writing signed by Octet or one of its *authorised officers*. A waiver or release is only effective in relation to the particular thing in respect of which it is given. It is not to be taken as an implied waiver or release of any other thing or as an implied waiver or release in relation to any other occasion.

If Octet fails to do, or delays in doing, something it is entitled to do under this document that does not amount to a waiver.

## 7.10 Consents and reasons

Where a *finance document* requires that Octet consent to something, approve of something or agree to something, Octet's prior written consent, approval or agreement is required. The consent, approval or agreement must be signed by Octet or one of its *authorised officers*. Octet will act reasonably when it decides to give or withhold its written consent or approval. Octet does not have to give a Guarantor any reasons for decisions or determinations which it makes under a *finance document*.

## 7.11 Certificates Octet provides

A certificate signed by Octet or one of its *authorised officers* in relation to an amount owing; the balance of an account; a liability, expense, charge, loss or damage suffered or incurred by Octet; or anything arising out of a *finance document* is conclusive evidence of that thing, except in the case of manifest error. A Guarantor must not object to the admissibility of the certificate in any legal proceedings.

Octet may rely upon any signature, act or communication of any *entity* purporting to act on a Guarantor's behalf. The signature, act or communication will be binding on the Guarantor.

## 7.12 Octet's privacy policy

Octet's privacy policy can be viewed on, or downloaded from, [www.octet.com](http://www.octet.com). Alternatively, a Guarantor can ask Octet for a copy. It is incorporated into this document. It is the policy about the management of credit information and credit eligibility information which Octet is required to have by Part IIIA of the Privacy Act 1988 and the policy about the management of personal information which Octet is required to have by Australian Privacy Principle 1.

The collection, use and disclosure of personal information by Octet is subject to the Privacy Act 1988 and the privacy policy. Each Guarantor consents to the collection, use and disclosure of personal information as outlined in the privacy policy. This clause continues until Octet has given the notice under clause 3.4.

## 7.13 Execution

This document may be executed in any number of counterparts. All counterparts taken together will constitute the one instrument.

If this document is executed under a power of attorney, the attorney states that the attorney has no knowledge of the revocation of the power of attorney appointing that attorney.

This document can be entered into by the use of electronic signatures. For example, this document could be in an electronic format and some or all of the parties could sign it using a digital signature or otherwise show their agreement in an electronic form. The resulting agreement will be considered to be made "in writing" by a "document" which is "signed" by the relevant parties. If the Guarantor is a *corporation* both it and the person who provides evidence of the signing represent and warrant to Octet that the signing satisfies section 127(1) of the Corporations Act 2001. However, that representation and warranty is not given if Octet is told, before evidence of the signing is provided to Octet, that the requirements of that section are not satisfied.

## 7.14 Octet can fill in blanks

Each Guarantor irrevocably authorises Octet, one of its *authorised officers*, its lawyers or someone else authorised to act on its behalf to fill in any blanks or correct any manifest errors or omissions in a *finance document*.

## 7.15 Severability

If any part of this document is or becomes void, invalid or unenforceable in any place it is to be treated as not being part of this document in that place. Any void, invalid or unenforceable provision is, so far as that place is concerned, replaced by a lawful and enforceable provision which so far as possible achieves the same economic and other benefits for the parties as the void, invalid or unenforceable provision was intended to achieve. Each Guarantor must, on request by Octet and at Octet's cost, execute any document and do any other thing as Octet may reasonably require to confirm or give effect to the replacement.

## 7.16 Entire agreement

This document contains everything agreed between each Guarantor and Octet in relation to the subject matter it deals with. A Guarantor cannot rely on an earlier document or anything said or done by or on behalf of Octet before the Guarantor signed this document.

## 7.17 Governing law

This document is governed by the law of New South Wales. Each Guarantor submits to the non-exclusive jurisdiction of the courts having jurisdiction in New South Wales. A Guarantor must not object to the venue or claim that it is an inconvenient forum.

To the extent permitted by law, this document prevails to the extent it is inconsistent with any law. A provision of this document which is void under sections 301 or 302 of the Bankruptcy Act 1966 in relation to an individual will still apply in relation to all other *entities*. Octet cannot enforce its rights under this document if and to the extent enforcement would contravene sections 415D, 434J or 451E of the Corporations Act 2001.

# 8 Notices

## 8.1 Notices from Octet

A notice or demand from Octet to a Guarantor must be in writing and be signed by Octet, one of Octet's *authorised officers*, any lawyer acting on Octet's behalf or someone else authorised to act on Octet's behalf. It may be served by giving it to the Guarantor; by sending it to the Guarantor by e-mail or fax; by posting it in a pre-paid envelope to the Guarantor at the Guarantor's address specified in the schedule, the Guarantor's registered office or the Guarantor's business or residential address last known to Octet; or by delivering it to any of those places.

A notice or demand sent by e-mail to a Guarantor's, an officer's or employee's e-mail address last known to Octet is to be treated as having been received by the Guarantor twenty-four hours after Octet sent it unless Octet has, in the meantime, received a message indicating that it has not been received. A notice or demand sent by fax to the Guarantor's last known number is to be treated as having been received by the Guarantor when Octet receives an error free transmission report. A notice or demand sent by post is to be treated as having been received by the Guarantor the next *business day* after it is posted. A notice or demand which is given or delivered is to be treated as having been received by the Guarantor when it is given or delivered. However, if the Guarantor is treated as having received a notice or demand on a day which is not a *business day* or after 5.00pm on a *business day* the Guarantor will be treated as having received it at 9.00am on the next *business day*.

## 8.2 Service of legal process

Anything in connection with legal process (such as court documents) can be served in any of the ways described in clause 8.1 if the law permits this. Nothing in clause 8 affects Octet's right to serve process in any other way permitted by law.

## 8.3 Service is always effective and can be on any Guarantor

Service is effective even if the Guarantor or one of its partners is dead, incompetent, absent from the jurisdiction, insolvent or wound up. It is effective despite anything else, as well. Service on one Guarantor is service on all Guarantors.

## 8.4 Service on Octet

A notice (including a request, such as a request that Octet approve something) from a Guarantor to Octet must be in writing and signed by the Guarantor, by an officer of the Guarantor or someone claiming to be an officer of the Guarantor. The Guarantor must deliver the notice to Octet at its address specified in this document or a substitute address specified by Octet.

# 9 Special provisions

The provisions in item 6 of the schedule prevail over anything in this document that is inconsistent with them, to the extent of the inconsistency.

# 10 Definitions and interpretation

## 10.1 Definitions

In this document the following definitions apply, except to the extent the context requires otherwise, when the term is printed *like this*.

**Authorised officers** means each of Octet's directors and company secretaries; each person who is employed by Octet or an *entity* which is related to Octet whose title includes "manager", "company secretary" or "accountant"; and each person Octet advises is an *authorised officer*.

**Business day** means a day, other than a Saturday, Sunday or public holiday, Octet is open for business in Sydney, Australia.

**Buyer** means the *entity* or *entities* named in item 3 of the schedule, its or their successors in title, transferees and assignees and:

- (a) if two or more persons are named, a reference to "*buyer*" is to all of them and any one or more of them; and
- (b) if the *buyer* at any time acts as the trustee of any trust (whether under a trust deed, deed of settlement or other instrument, or a trust arising by law or implication), a reference to the *buyer* is a reference to it both in its personal capacity and trustee capacity.

**Corporation** means a corporation as defined in section 9 of the Corporations Act 2001.

**Entity** includes an individual, firm, partnership, joint venture, organisation, society, unincorporated body, trust (in each case whether or not having separate legal personality), a *corporation* and any other legal entity under any law.

**Facility agreement** means the agreement or agreements specified in item 4 of the schedule. If two or more agreements are specified, a reference to "*facility agreement*" is to all of them and any one or more of them.

**Finance document** means any agreement (whether in writing or otherwise), deed, document, negotiable instrument, other instrument, letter, letter agreement or exchange of letters (however accepted) entered into at any time between Octet and the *buyer* or any Guarantor (whether with or without other *entities*) or which is provided by the *buyer* or any Guarantor (whether with or without other *entities*) in favour of Octet. It includes a *facility agreement*, this document and any other document under which a *guarantee* or *security interest* is granted or arises in favour of Octet. However, a document is not a *finance document* to the extent that it is a credit contract as defined in the National Credit Code.

**Financial indebtedness** means any indebtedness in respect of money borrowed or raised, and any financial accommodation of any kind. The indebtedness may be present or future. It may be actual, contingent or prospective. It includes:

- (a) financial accommodation provided pursuant to a negotiable instrument, other financial instrument or discounting arrangement;
- (b) an interest, gold or currency exchange, hedge or other arrangement, including a swap, option, futures contract, exchange agreement and purchase agreement;
- (c) the value, premium and dividend (whether declared or not, and whether there are sufficient funds for payment or not) of a share which is redeemable or subject to a *guarantee*;
- (d) indebtedness which the accounting standards (as defined in section 9 of the Corporations Act 2001) would require to be recognised on a balance sheet;
- (e) the deferred purchase price payable for an asset, service or work done, and any related obligation; and
- (f) an obligation to deliver goods or other property, or perform services or work, that have been paid for in advance by a financier or in relation to another financing transaction.

**GST** means any amount paid or payable under any GST law as that expression is defined in section 195-1 of the A New Tax System (Goods and Services Tax) Act 1999.

**Guarantee** means a guarantee, indemnity, guarantee and indemnity, letter of credit, legally binding letter of comfort or suretyship, or any other obligation (including an irrevocable offer) of any kind at all, whatever its nature or title, under which the *entity* providing the commitment is responsible for the indebtedness, obligations or financial condition of another *entity*.

**Guaranteed money** means all money which at any time:

- (a) is actually or contingently owing or remains unpaid; or
- (b) may, because of a then existing arrangement or circumstance, become actually or contingently owing in the future,

to Octet by the *buyer* whether alone or jointly or jointly and severally with others and whether under a *finance document* or otherwise. However, amounts due and payable under a contract are excluded to the extent that the contract is a credit contract as defined in the National Credit Code.

**Interest rate** means the rate referred to as the interest rate in the *facility agreement*. If there is more than one of those rates, it means the higher rate.

**Permitted interest** means a *security interest*, transfer or dealing Octet has approved; a *security interest* in Octet's favour; a charge or lien arising in favour of a government department or agency by operation of statute (other than the *PPSA*) or a lien arising in the ordinary course of a Guarantor's ordinary business in favour of a mechanic or similar person, unless there is a default in payment of money secured by that charge or lien; and a perfected

purchase money security interest which arose in the ordinary course of a Guarantor's ordinary business. However, a *security interest* is not a *permitted interest* if it was granted or arose in breach of another *finance document*.

**PPSA** means Personal Property Securities Act 2009.

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

## 10.2 Contents and headings

The contents and headings are for ease of reference only and do not affect the interpretation of this document.

## 10.3 Interpretation

- (a) Words implying the singular include the plural and vice versa and words implying any one gender also include the other genders.
- (b) A reference to any thing (including any right) includes the whole and each part of it, but this does not mean that performance of part of an obligation constitutes performance of the obligation.
- (c) References to "Guarantor" includes the Guarantor's successors and assigns.
- (d) References to "Octet" includes Octet's successors and assigns.
- (e) A reference to any statute, or a provision of it, includes any modification, amendment, replacement or re-enactment of it, a provision substituted for it and a regulation or statutory instrument issued under it. A reference to a statute of any jurisdiction, or a provision of it, includes any corresponding statute (or provision) of any other applicable jurisdiction.
- (f) A reference in this document to any agreement or document (including a *finance document*) is to that agreement or document as amended, novated, supplemented or replaced (whether in writing or otherwise) from time to time, so long as the change did not contravene a *finance document*.
- (g) The words "including" and "includes" when used to introduce an item do not limit the meaning of the words to which the item relates to items of a similar kind.

## Schedule

### 1 Guarantor

Basile Papadimitriou of 27 Malton Road, Beecroft, New South Wales, 2119

The Forum Group of Companies Pty Ltd (ACN 151 964 626) c/- Rothsay Accounting Services Pty Ltd, Level 1 12-14 O'Connell Street, Sydney NSW, 2000

Forum Group (Qld) Pty Ltd (ACN 103 609 678) c/- Rothsay Accounting Services Pty Ltd, Level 1 12-14 O'Connell Street, Sydney NSW, 2000

Forum Group (Vic) Pty Ltd (ACN 153 062 018) c/- Rothsay Accounting Services Pty Ltd, Level 1 12-14 O'Connell Street, Sydney NSW, 2000

Imagetec Financial Services Pty Ltd (ACN 111 978 182) c/- Rothsay Accounting Services Pty Ltd, Level 1 12-14 O'Connell Street, Sydney NSW, 2000

Forum Security Pty Ltd (ACN 150 890 289) c/- Rothsay Accounting Services Pty Ltd, Level 1 12-14 O'Connell Street, Sydney NSW, 2000

Imagetec Finance Australia Pty Ltd (ACN 155 655 897) c/- Rothsay Accounting Services Pty Ltd, Level 1 12-14 O'Connell Street, Sydney NSW, 2000

Forum Group Finance Pty Ltd (ACN 132 807 080) c/- Rothsay Accounting Services Pty Ltd, Level 1 12-14 O'Connell Street, Sydney NSW, 2000

Forum Fleet Pty Ltd (ACN 155 440 994) c/- Rothsay Accounting Services Pty Ltd, Level 1 12-14 O'Connell Street, Sydney NSW, 2000

Forum Finance Pty Ltd (ACN 153 301 172) c/- Rothsay Accounting Services Pty Ltd, Level 1 12-14 O'Connell Street, Sydney NSW, 2000

Forum Enviro Pty Ltd (ACN 168 709 840) c/- Rothsay Accounting Services Pty Ltd, Level 1 12-14 O'Connell Street, Sydney NSW, 2000

Forum Direct Pty Ltd (ACN 054 890 710) c/- Rothsay Accounting Services Pty Ltd, Level 1 12-14 O'Connell Street, Sydney NSW, 2000

Chilli Print Pty Ltd (ACN 158 095 866) c/- Rothsay Accounting Services Pty Ltd, Level 1 12-14 O'Connell Street, Sydney NSW, 2000

Onesource Australia Holdings Pty Ltd (ACN 120 463 541) c/- Rothsay Accounting Services Pty Ltd, Level 1 12-14 O'Connell Street, Sydney NSW, 2000

Imagetec Solutions Australia Pty Ltd (ACN 074 715 718) c/- Rothsay Accounting Services Pty Ltd, Level 1 12-14 O'Connell Street, Sydney NSW, 2000

Imagetec Solutions Australasia Pty Ltd (ACN 073 804 109) c/- Rothsay Accounting Services Pty Ltd, Level 1 12-14 O'Connell Street, Sydney NSW, 2000



Onesource Australia Pty Ltd (ACN 120 463 836) c/- Rothsay Accounting Services Pty Ltd, Level 1 12-14 O'Connell Street, Sydney NSW, 2000

Imagetec Distributors Pty Ltd (ACN 001 521 375) c/- Rothsay Accounting Services Pty Ltd, Level 1 12-14 O'Connell Street, Sydney NSW, 2000

Aramia Holdings Pty Ltd (ACN 114 958 717) c/- Rothsay Accounting Services Pty Ltd, Level 1 12-14 O'Connell Street, Sydney NSW, 2000

Malton Enterprises Pty Ltd (ACN 153 852 852) c/- Rothsay Accounting Services Pty Ltd, Level 1 12-14 O'Connell Street, Sydney NSW, 2000

Smartprint Fleet Management Pty Ltd (ACN 132 807 080) c/- Rothsay Accounting Services Pty Ltd, Level 1 12-14 O'Connell Street, Sydney NSW, 2000

**2 Octet**

Octet Finance Pty Ltd (ACN 124 477 916) of Level 3, 10-14 Waterloo Street, Surry Hills, New South Wales 2010

**3 Buyer**

Forum Group Pty Ltd (ACN 153 336 997) c/- Rothsay Accounting Services Pty Ltd, Level 1, 12-14 O'Connell Street, Sydney, New South Wales, 2000

**4 Facility Agreement**

The facility offer from Octet to the *buyer* (including the incorporated terms and conditions) dated 27 September 2018 and as varied, under which Octet provides a Business Transaction Facility to the *buyer*.

**5 Guarantor's Trust**

None Specified

**6 Special Provisions**

None Specified

# Execution

Executed by Octet and the Guarantor.

Date:

12 NOVEMBER

2020

## Octet

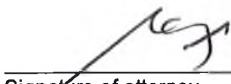
Executed by **Octet Finance Pty Ltd**  
(ACN 124 477 916) by being signed by its  
attorneys pursuant to Power of Attorney dated  
19 July 2019:

  
\_\_\_\_\_  
Signature of attorney

HOA RENARD YOUNG  
\_\_\_\_\_  
Print full name  
In the presence of:

  
\_\_\_\_\_  
Witness signature

Renard Young  
\_\_\_\_\_  
Print full name

  
\_\_\_\_\_  
Signature of attorney

REYNALDO FORES  
\_\_\_\_\_  
Print full name  
In the presence of:

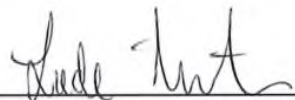
  
\_\_\_\_\_  
Witness signature

Reynaldo Fores  
\_\_\_\_\_  
Print full name

## Guarantor

Signed by **Basile Papadimitriou** in the  
presence of:

  
\_\_\_\_\_  
Signature

  
\_\_\_\_\_  
Witness signature

Jade Tustin  
\_\_\_\_\_  
Print full name

Executed by **Forum Group of Companies Pty Ltd** (ACN 151 964 626) by being signed by:

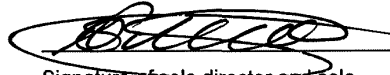


Signature of sole director and sole company secretary

Basile Papadimitriou

Print full name

Executed by **Forum Group (Qld) Pty Ltd** (ACN 103 609 678) by being signed by:



Signature of sole director and sole company secretary

Basile Papadimitriou

Print full name

Executed by **Forum Group (Vic) Pty Ltd** (ACN 153 062 018) by being signed by:



Signature of sole director and sole company secretary

Basile Papadimitriou

Print full name

Executed by **Imagetec Financial Services Pty Ltd** (ACN 111 978 182) by being signed by:

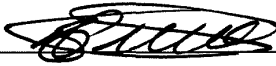


Signature of sole director and sole company secretary

Basile Papadimitriou

Print full name

Executed by **Forum Security Pty Ltd**  
(ACN 150 890 289) by being signed by:




Signature of sole director and sole  
company secretary

Basile Papadimitriou

Print full name

Executed by **Imagetec Finance Australia Pty Ltd** (ACN 155 655 897) by being signed by:



Signature of sole director and sole  
company secretary

Basile Papadimitriou

Print full name

Executed by **Forum Group Finance Pty Ltd** (ACN 132 807 080) by being signed by:



Signature of sole director and sole  
company secretary

Basile Papadimitriou

Print full name

Executed by **Forum Fleet Pty Ltd** (ACN 155 440 994) by being signed by:

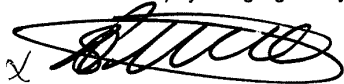


Signature of sole director and sole  
company secretary


Basile Papadimitriou

Print full name

Executed by **Forum Finance Pty Ltd** (ACN 153 301 172) by being signed by:


x   
Signature of director

Basile Papadimitriou  
Print full name

x   
Signature of \*director/\*company secretary  
\*Delete as appropriate


Vincenzo Tesoriero  
Print full name

Executed by **Forum Enviro Pty Ltd** (ACN 168 709 840) by being signed by:

  
Signature of sole director and sole company secretary

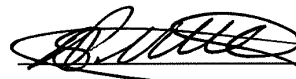
Basile Papadimitriou  
Print full name

Executed by **Forum Direct Pty Ltd** (ACN 054 890 710) by being signed by:

  
Signature of sole director and sole company secretary

Basile Papadimitriou  
Print full name

Executed by **Chilli Print Pty Ltd** (ACN 158 095 866) by being signed by:

  
Signature of sole director and sole company secretary

Basile Papadimitriou  
Print full name

Executed by **Onesource Australia Holdings Pty Ltd** (ACN 120 463 541) by being signed by:




Signature of sole director and sole company secretary

Basile Papadimitriou

Print full name

Executed by **Imagetec Solutions Australia Pty Ltd** (ACN 074 715 718) by being signed by:



Signature of sole director and sole company secretary

Basile Papadimitriou

Print full name

Executed by **Imagetec Solutions Australasia Pty Ltd** (ACN 073 804 109) by being signed by:



Signature of sole director and sole company secretary

Basile Papadimitriou

Print full name

Executed by **Onesource Australia Pty Ltd** (ACN 120 463 836) by being signed by:

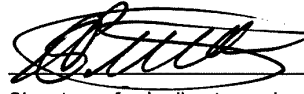


Signature of sole director and sole company secretary

Basile Papadimitriou

Print full name

Executed by **Imagetec Distributors Pty Ltd** (ACN 001 521 375) by being signed by:

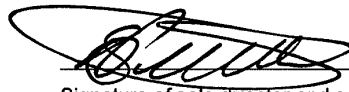


Signature of sole director and sole company secretary

Basile Papadimitriou

Print full name

Executed by **Aramia Holdings Pty Ltd** (ACN 114 958 717) by being signed by:



Signature of sole director and sole company secretary

Basile Papadimitriou

Print full name

Executed by **Malton Enterprises Pty Ltd** (ACN 153 852 852) by being signed by:

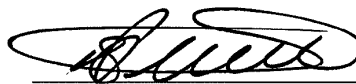


Signature of sole director and sole company secretary

Basile Papadimitriou

Print full name

Executed by **Smartprint Fleet Management Pty Ltd** (ACN 132 807 080) by being signed by:



Signature of sole director and sole company secretary

Basile Papadimitriou

Print full name

**Annexure**

No. NSD616 of 2021


Federal Court of Australia  
District Registry: New South Wales  
Division: General


**Westpac Banking Corporation ABN 33 007 457 141** and another  
Applicant

**Forum Finance Pty Limited ACN 153 301 172** and others named in the Schedule  
Respondents

This is the Annexure marked "**BJQ-10**" shown and produced to **Bianca Josephine Quan** at the time of swearing her affidavit on 28 September 2021.

Deponent signature:

DocuSigned by:  
  
.....E3C6AC0D03C0401.....

Before me: DocuSigned by:  
  
.....BC4298E2AFED404.....

Adrian Lee

Level 10, 114 William Street, Melbourne VIC 3000

An Australian Legal Practitioner within the meaning of the Legal Profession Uniform Law (Vic)

A person authorised under Section 19(1) of the Oaths and Affirmations Act 2018 to take an affidavit.

This affidavit, as signed and notated by the authorised affidavit taker, was signed by the deponent over audio-visual link.

The specified things in respect of the affidavit were done by means of audio-visual link. The affidavit is a scanned hard copy or an electronic copy, not an original.



SMARTPRINT FLEET MANAGEMENT PT

ACN 132 807 080



BJQ-10

ASIC EXTRACT SNAPSHOT

CURRENT ORGANISATION DETAILS

Date Extracted 22/09/2021  
 ACN 132 807 080  
 ABN 35 132 807 080  
 Current Name SMARTPRINT FLEET MANAGEMENT PTY LTD  
 Registered In Queensland  
 Registration Date 19/08/2008  
 Review Date 19/08/2022  
 Company Type ACN (Australian Company Number)  
 Current Directors 1  
 Current Secretaries 1

Start Date 08/07/2021  
 Name SMARTPRINT FLEET MANAGEMENT PTY LTD  
 Name Start Date 24/10/2019  
 Status **\*\* Under External Administration And/Or Controller Appointed \*\***  
 Type Australian Proprietary Company  
 Class Limited By Shares  
 Sub Class Proprietary Company  
 Disclosing Entity No  
 Document No.

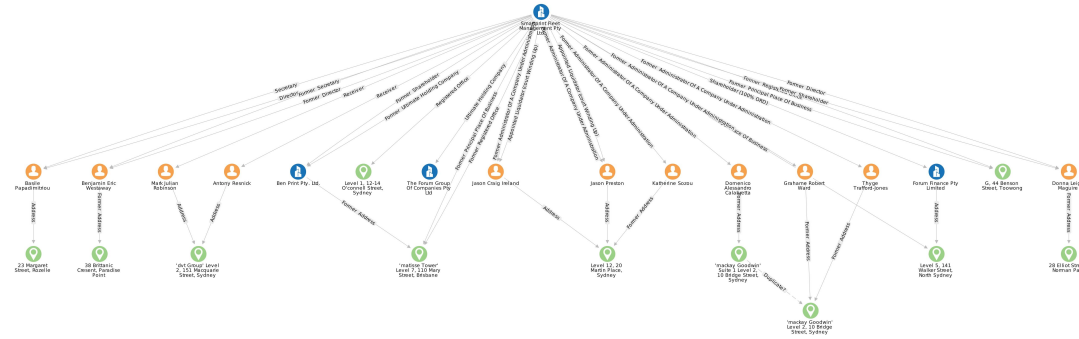
Share Structure (Displaying Top 4 Only)

[Go to Full ASIC Results](#)

Class	Class Type	Shares Issued	Amount Paid
ORD	ORDINARY SHARES	1	\$1.00

REVEAL - Company Visualisation

[Go to full workspace](#)



**InfoTrack**

1800 738 524

**ASIC****Current & Historical Organisation Extract****ASIC Data Extracted 22/09/2021 at 09:09**

This extract contains information derived from the Australian Securities and Investment Commission's (ASIC) database under section 1274A of the Corporations Act 2001. Please advise ASIC of any error or omission which you may identify.

**- 132 807 080 SMARTPRINT FLEET MANAGEMENT PTY LTD -**

**ACN (Australian Company Number):** 132 807 080  
**ABN:** 35 132 807 080  
**Current Name:** SMARTPRINT FLEET MANAGEMENT PTY LTD  
**Registered in:** Queensland  
**Registration Date:** 19/08/2008  
**Review Date:** 19/08/2022  
**Company Bounded By:**

**Document No.****- Current Organisation Details -**

**Name:** SMARTPRINT FLEET MANAGEMENT PTY LTD  
**Name Start Date:** 24/10/2019  
**Status:** \*\* Under External Administration And/Or Controller Appointed \*\*  
**Type:** Australian Proprietary Company  
**Class:** Limited By Shares  
**Sub Class:** Proprietary Company

**- Former Organisation Details from 24/10/2019 to 07/07/2021 -**

**Name:** SMARTPRINT FLEET MANAGEMENT PTY LTD  
**Name Start Date:** 24/10/2019  
**Status:** Registered  
**Type:** Australian Proprietary Company  
**Class:** Limited By Shares  
**Sub Class:** Proprietary Company

**- Former Organisation Details from 02/04/2014 to 23/10/2019 -**

**Name:** FORUM GROUP FINANCE PTY LTD  
**Name Start Date:** 02/04/2014  
**Status:** Registered  
**Type:** Australian Proprietary Company  
**Class:** Limited By Shares  
**Sub Class:** Proprietary Company

7E5954522

**- Former Organisation Details from 28/08/2012 to 01/04/2014 -**

**Name:** CHILLI PRINT FINANCE PTY LTD 027970243  
**Name Start Date:** 28/08/2012  
**Status:** Registered  
**Type:** Australian Proprietary Company  
**Class:** Limited By Shares  
**Sub Class:** Proprietary Company

**- Former Organisation Details from 19/08/2008 to 27/08/2012 -**

**Name:** IMPRESSIONS EQUIPMENT FINANCE PTY. LTD. 1E4698863  
**Name Start Date:** 19/08/2008  
**Status:** Registered  
**Type:** Australian Proprietary Company  
**Class:** Limited By Shares  
**Sub Class:** Proprietary Company

**- Company Addresses -****- Registered Office**

**Address:** ROTHSAY ACCOUNTING SERVICES PTY LTD LEVEL 1 12-14 O'CONNELL STREET 7E5954491  
 SYDNEY NSW 2000  
**Start Date:** 09/04/2014

**- Previous Registered Office**

**Address:** 'MATISSE TOWER' LEVEL 7 110 MARY STREET BRISBANE QLD 4000 1E9753659  
**Start Date:** 11/09/2013  
**Cease Date:** 08/04/2014

**- Previous Registered Office**

**Address:** G 44 BENSON STREET TOOWONG QLD 4066 1E4698863  
**Start Date:** 19/08/2008  
**Cease Date:** 10/09/2013

**- Principal Place of Business**

**Address:** LEVEL 5 141 WALKER STREET NORTH SYDNEY NSW 2060 5EAA12733  
**Start Date:** 01/06/2018

**- Previous Principal Place of Business**

**Address:** 'MATISSE TOWER' LEVEL 7 110 MARY STREET BRISBANE QLD 4000 1E9753659  
**Start Date:** 28/08/2013  
**Cease Date:** 31/05/2018

**- Previous Principal Place of Business**

**Address:** G 44 BENSON STREET TOOWONG QLD 4066 1E4698863  
**Start Date:** 19/08/2008  
**Cease Date:** 27/08/2013

**- Company Officers -**

**Note:**

A date or address shown as UNKNOWN has not been updated since ASIC took over the records in 1991. For details, order the appropriate historical state or territory documents, available in microfiche or paper format.

\* Check documents listed under ASIC Documents Received for recent changes.

**Director**

**Name:** BASILE PAPADIMITRIOU 5EAV00370  
**Address:** 23 MARGARET STREET ROZELLE NSW 2039  
**Birth Details:** 31/08/1972 SYDNEY NSW  
**Appointment Date:** 28/03/2014  
**Cease Date:** //

**Previous Director**

**Name:** BENJAMIN ERIC WESTAWAY 025035389  
**Address:** 38 BRITTANIC CRESENT PARADISE POINT QLD 4216  
**Birth Details:** 26/06/1969 BRISBANE QLD  
**Appointment Date:** 19/08/2008  
**Cease Date:** 28/03/2014

**Name:** DONNA LEIGH MAGUIRE 1E4698863  
**Address:** 28 ELLIOT STREET NORMAN PARK QLD 4170  
**Birth Details:** 17/04/1961 BRISBANE QLD  
**Appointment Date:** 19/08/2008  
**Cease Date:** 19/08/2008

**Secretary**

**Name:** BASILE PAPADIMITRIOU 5EAV00370  
**Address:** 23 MARGARET STREET ROZELLE NSW 2039  
**Birth Details:** 31/08/1972 SYDNEY NSW  
**Appointment Date:** 28/03/2014  
**Cease Date:** //

**Previous Secretary**

**Name:** BENJAMIN ERIC WESTAWAY 025035389  
**Address:** 38 BRITTANIC CRESENT PARADISE POINT QLD 4216  
**Birth Details:** 26/06/1969 BRISBANE QLD  
**Appointment Date:** 19/08/2008  
**Cease Date:** 28/03/2014

**Ultimate Holding Company**

**Name:** 151 964 626 THE FORUM GROUP OF COMPANIES PTY LTD 7E5954491  
**Address:**  
**Appointment Date:** //  
**Cease Date:** //  
**Abn:** 72 151 964 626

**Previous Ultimate Holding Company**

**Name:** 086 402 119 BEN PRINT PTY. LTD. 1E4699209  
**Address:**  
**Appointment Date:** //  
**Cease Date:** //

**Receiver**

**Name:** ANTONY RESNICK 7EBK39332  
**Address:** DVT GROUP 'DVT GROUP' LEVEL 2 151 MACQUARIE STREET SYDNEY NSW 2000  
**Birth Details:**  
**Appointment Date:** 13/08/2021  
**Cease Date:** //

**Name:** MARK JULIAN ROBINSON 7EBK39332  
**Address:** DVT GROUP 'DVT GROUP' LEVEL 2 151 MACQUARIE STREET SYDNEY NSW 2000  
**Birth Details:**  
**Appointment Date:** 13/08/2021  
**Cease Date:** //

**Appointed Liquidator (Court Winding Up)**

**Name:** JASON CRAIG IRELAND 7EBJ96627  
**Address:** MCGRATHNICOL LEVEL 12 20 MARTIN PLACE SYDNEY NSW 2000  
**Birth Details:**  
**Appointment Date:** 28/07/2021  
**Cease Date:** //

**- Court Details Affecting Role -**

**Type:** Federal **State:** New South Wales  
**Application No:** 747 **Application Year:** 2021

**Name:** JASON PRESTON 7EBJ96627  
**Address:** MCGRATHNICOL LEVEL 12 20 MARTIN PLACE SYDNEY NSW 2000  
**Birth Details:**

**Appointment Date:** 28/07/2021  
**Cease Date:** //

**- Court Details Affecting Role -**

**Type:** Federal **State:** New South Wales  
**Application No:** 747 **Application Year:** 2021

**Previous Administrator of a Company under Administration**

**Name:** JASON CRAIG IRELAND 7EBJ70645  
**Address:** MCGRATHNICOL LEVEL 12 20 MARTIN PLACE SYDNEY NSW 2000  
**Birth Details:**  
**Appointment Date:** 21/07/2021  
**Cease Date:** 28/07/2021

**Name:** JASON PRESTON 7EBJ70645  
**Address:** MCGRATHNICOL LEVEL 12 20 MARTIN PLACE SYDNEY NSW 2000  
**Birth Details:**  
**Appointment Date:** 21/07/2021  
**Cease Date:** 28/07/2021

**Name:** KATHERINE SOZOU 7EBJ70645  
**Address:** LEVEL 12 20 MARTIN PLACE SYDNEY NSW 2000  
**Birth Details:**  
**Appointment Date:** 21/07/2021  
**Cease Date:** 28/07/2021

**Name:** DOMENICO ALESSANDRO CALABRETTA 7EBJ31905  
**Address:** MACKAY GOODWIN 'MACKAY GOODWIN' SUITE 1 LEVEL 2 10 BRIDGE STREET SYDNEY NSW 2000  
**Birth Details:**  
**Appointment Date:** 08/07/2021  
**Cease Date:** 21/07/2021

**Name:** GRAHAME ROBERT WARD 7EBJ31905  
**Address:** 'MACKAY GOODWIN' LEVEL 2 10 BRIDGE STREET SYDNEY NSW 2000  
**Birth Details:**  
**Appointment Date:** 08/07/2021  
**Cease Date:** 21/07/2021

**Name:** THYGE TRAFFORD-JONES 7EBJ31905  
**Address:** 'MACKAY GOODWIN' LEVEL 2 10 BRIDGE STREET SYDNEY NSW 2000  
**Birth Details:**  
**Appointment Date:** 08/07/2021  
**Cease Date:** 21/07/2021

**- Share Structure -****Current**

<b>Class:</b>	ORDINARY SHARES	1E4698863
<b>Number of Shares Issued:</b>	1	
<b>Total Amount Paid / Taken to be Paid:</b>	\$1.00	
<b>Total Amount Due and Payable:</b>	\$0.00	

**Note:**

For each class of shares issued by a company, ASIC records the details of the twenty members of the class (based on shareholdings). The details of any other members holding the same number of shares as the twentieth ranked member will also be recorded by ASIC on the database. Where available, historical records show that a member has ceased to be ranked amongst the twenty members. This may, but does not necessarily mean, that they have ceased to be a member of the company.

**- Share/Interest Holding -****Current****- Holding -**

<b>Class:</b>	ORD	<b>Number Held:</b>	1	5EAA12733
<b>Beneficially Owned:</b>	Yes	<b>Fully Paid:</b>	Yes	

**- Members -**

<b>Name:</b>	FORUM FINANCE PTY LIMITED
<b>ACN:</b>	153 301 172
<b>Address:</b>	LEVEL 5 141 WALKER STREET NORTH SYDNEY NSW 2060
<b>Joint Holding:</b>	No
<b>Abn:</b>	16 153 301 172

**Ceased/Former****- Holding -**

<b>Class:</b>	ORD	<b>Number Held:</b>	1	2E0154133
<b>Beneficially Owned:</b>	No	<b>Fully Paid:</b>	Yes	

**- Members -**

<b>Name:</b>	BEN PRINT PTY. LTD.
<b>ACN:</b>	086 402 119
<b>Address:</b>	'MATISSE TOWER' LEVEL 7 110 MARY STREET BRISBANE QLD 4000
<b>Joint Holding:</b>	No

**- Holding -**

<b>Class:</b>	ORD	<b>Number Held:</b>	1	1E4698863
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**Beneficially Owned:** Yes**Fully Paid:** Yes**- Members -**

**Name:** DONNA LEIGH MAGUIRE  
**Address:** 28 ELLIOT STREET NORMAN PARK QLD 4170  
**Joint Holding:** No

**- External Administration Documents -****Note:**

Documents relating to External Administration and/or appointment of Controller.  
This extract may not list all documents relating to this status. State and Territory records should be searched.

Form Type	Description	Date Lodged	Processed	No. Pages	Document No.
5603 5603K	END OF ADMINISTRATION RETURN END RETURN OF ADMINISTRATOR	30/08/2021	30/08/2021	4	7EBK87530
504 504A	NOTIFICATION OF APPOINTMENT OF A RECEIVER	17/08/2021	20/08/2021	8	031373894
505 505A	NOTICE BY EXTERNAL ADMINISTRATOR/CONTROLLER-APPOINT/CEASE APPOINTMENT OF RECEIVER	13/08/2021	13/08/2021	7	7EBK39332
5602 5602K	ANNUAL ADMINISTRATION RETURN RETURN OF ACCOUNTS OF ADMINISTRATOR	09/08/2021	09/08/2021	5	7EBK24327
5011 5011B	COPY OF MINUTES OF MEETING OF MEMBERS, CREDITORS, CONTRIBUTORIES OR COMMITTEE OF INSPECTION UNDER S.436E OR S.439A	04/08/2021	04/08/2021	67	7EBK13039
505 505Y	NOTICE BY EXTERNAL ADMINISTRATOR/CONTROLLER-APPOINT/CEASE RESIGNATION OR REMOVAL OF ADMINISTRATOR OF COMPANY UNDER ADMINISTRATION UNDER S.436E(4), 449B OR 449C	30/07/2021	30/07/2021	2	7EBJ96693
505 505G	NOTICE BY EXTERNAL ADMINISTRATOR/CONTROLLER-APPOINT/CEASE APPOINTMENT OF LIQUIDATOR BY THE COURT	30/07/2021	30/07/2021	2	7EBJ96627
505 505Y	NOTICE BY EXTERNAL ADMINISTRATOR/CONTROLLER-APPOINT/CEASE RESIGNATION OR REMOVAL OF ADMINISTRATOR OF COMPANY UNDER ADMINISTRATION UNDER S.436E(4), 449B OR 449C	27/07/2021	27/07/2021	2	7EBJ85825
531 531C	DECLARATION OF RELEVANT RELATIONSHIPS AND/OR INDEMNITY DIRRI - REVIEWING LIQUIDATOR OR INCOMING ADMINISTRATOR	23/07/2021	23/07/2021	10	7EBJ78319
505		21/07/2021	21/07/2021	3	7EBJ70645



505U	NOTICE BY EXTERNAL ADMINISTRATOR/CONTROLLER-APPOINT/CEASE APPT OF ADMINISTRATOR UNDER S.436A, 436B, 436C, 436E(4), 449B, 449C(1), 449C(4) OR 449(6)				
531		15/07/2021	15/07/2021	5	7EBJ52850
531A	DECLARATION OF RELEVANT RELATIONSHIPS AND/OR INDEMNITY COPY OF A DIRRI				
505		09/07/2021	09/07/2021	3	7EBJ31905
505U	NOTICE BY EXTERNAL ADMINISTRATOR/CONTROLLER-APPOINT/CEASE APPT OF ADMINISTRATOR UNDER S.436A, 436B, 436C, 436E(4), 449B, 449C(1), 449C(4) OR 449(6)				

**- Charges -**

**There are no charges held for this organisation.**

**Notes:**

On 30 January 2012, the Personal Property Securities Register (PPS Register) commenced.

At that time ASIC transferred all details of current charges to the PPS Registrar.

ASIC can only provide details of satisfied charges prior to that date.

Details of current charges, or charge satisfied since 30 January 2012 can be found on the PPS Register, [www.ppsr.gov.au](http://www.ppsr.gov.au). InfoTrack may cap documents for on-file searches to 250.

**- Document List -**

**Notes:**

\* Documents already listed under Registered Charges are not repeated here.

\* Data from Documents with no Date Processed are not included in this Extract.

\* Documents with '0' pages have not yet been imaged and are not available via DOCIMAGE. Imaging takes approximately 2 weeks from date of lodgement.

\* The document list for a current/historical extract will be limited unless you requested ALL documents for this extract.

\* In certain circumstances documents may be capped at 250.

Form Type	Date Received	Date Processed	No. Pages	Effective Date	Document No.
5053	30/07/2021	30/07/2021	2	28/07/2021	7EBJ96941
5053	Notice That Administration of Company Has Ended Under S.435c(2) or (3)				
205	23/10/2019	24/10/2019	2	21/10/2019	0EWH34873
205A	Notification of Resolution Changing Company Name				
484	12/03/2019	12/03/2019	2	12/03/2019	5EAV00370
484A1	Change to Company Details Change Officeholder Name Or Address				
484	05/06/2018	05/06/2018	2	05/06/2018	5EAA12733
484	Change to Company Details				
484C	Change of Principal Place of Business (Address)				

484A2	Change Member Name or Address				
205	02/04/2014	02/04/2014	2	29/03/2014	7E5954522
205A	Notification of Resolution Changing Company Name				
484	02/04/2014	02/04/2014	4	02/04/2014	7E5954491
484	Change to Company Details				
484B	Change of Registered Address				
484D	Change to Ultimate Holding Company				
484E	APPOINTMENT OR CESSATION OF A COMPANY OFFICEHOLDER				
484N	CHANGES TO (MEMBERS) SHARE HOLDINGS				
484	21/01/2014	21/01/2014	2	13/01/2014	2E0154133
484A2	CHANGE TO COMPANY DETAILS CHANGE MEMBER NAME OR ADDRESS				
484	04/09/2013	04/09/2013	2	28/08/2013	1E9753659
484	CHANGE TO COMPANY DETAILS				
484B	CHANGE OF REGISTERED ADDRESS				
484C	CHANGE OF PRINCIPAL PLACE OF BUSINESS (ADDRESS)				
205	27/08/2012	28/08/2012	3	22/08/2012	027970243
205A	NOTIFICATION OF RESOLUTION CHANGING COMPANY NAME				
370	08/09/2008	08/09/2008	2	08/09/2008	1E4754903
370	NOTIFICATION BY OFFICEHOLDER OF RESIGNATION OR RETIREMENT				
	Updates 025 035 389				
484	29/08/2008	01/09/2008	10	01/09/2008	025035389
484	CHANGE TO COMPANY DETAILS				
484E	APPOINTMENT OR CESSATION OF A COMPANY OFFICEHOLDER				
484N	CHANGES TO (MEMBERS) SHARE HOLDINGS				
	Updated by 1E4 754 903				
484	19/08/2008	19/08/2008	2	19/08/2008	1E4699209
484D	CHANGE TO COMPANY DETAILS CHANGE TO ULTIMATE HOLDING COMPANY				
201	19/08/2008	19/08/2008	3	19/08/2008	1E4698863
201C	APPLICATION FOR REGISTRATION AS A PROPRIETARY COMPANY				

**- Company Contact Addresses -**

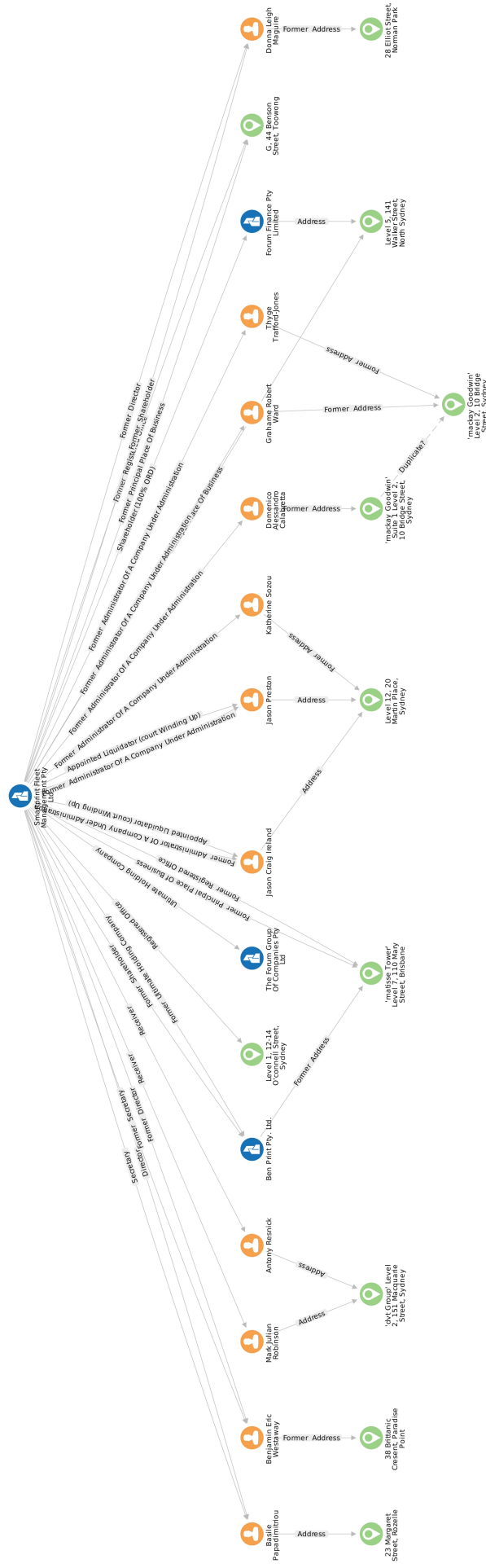
**- Contact Address for ASIC use only**

**Address:** GPO BOX 542 SYDNEY NSW 2001

**Start Date:** 02/04/2014

\*\*\* End of Document \*\*\*

Workspace: SMARTPRINT FLEET MANAGEMENT PTY LTD ACN 132 807 080  
Matter: 1056823  
Created: 22/09/2021 9:09 AM



InfoTrack shall not be liable to the User in negligence or otherwise in respect of anything done, omitted, modified or done by the User in reliance in whole or in part on the Service including any assistance or demonstration provided to the User by InfoTrack and InfoTrack's liability to the User shall in any event be limited to the amount of the fees charged for the particular service to which such liability relates.



## PPSR - Grantor Search Detailed Summary

### Search Summary

Criteria:	ACN 132 807 080	Search Number:	862449238867
Search Date/Time:	22/09/2021 9:10:27 AM	Access Expiry:	19/06/2022 9:10:27 AM
Matter:	1056823		

### Registrations Summary

Total Number of Interests:	21	Migrated Interests:	0
Security Interests:	21	Consumer Registrations:	0
PMSI Interests:	18	Commercial Registrations:	21
Transitional Interests:	0		

### Collateral Summary

Other Goods:	20	All PAP:	1
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### ACN 132 807 080 Registration Summary

Registration	Start Date	Trans	Collateral	PMSI	Secured Parties
<a href="#">201704050067439</a>	5/04/2017 4:59:23 PM	No	Commercial	No	WESTLAWN FINANCE LIMITED ACN-096725218
<a href="#">201904020047633</a>	2/04/2019 3:24:44 PM	No	Commercial		OCTET FINANCE PTY LIMITED ACN-124477916
<a href="#">201910100047194</a>	10/10/2019 3:03:27 PM	No	Commercial	Yes	DYNAMIC SUPPLIES PTY. LTD. ACN-064793862
<a href="#">201910110069161</a>	11/10/2019 4:46:06 PM	No	Commercial	Yes	ALLOYS INTERNATIONAL PRINTER & HARDWARE DIVISION PTY LTD ACN-070112195 INTEGRIX SYSTEMS PTY. LTD. ACN-096255257
<a href="#">201910290049503</a>	29/10/2019 2:26:04 PM	No	Commercial	Yes	SYNNEX AUSTRALIA PTY. LTD. ACN-052285882
<a href="#">202107020032793</a>	2/07/2021 12:23:29 PM	No	Commercial	No	KONICA MINOLTA BUSINESS SOLUTIONS AUSTRALIA PTY LTD ACN-001 065 096
<a href="#">202107090060601</a>	9/07/2021 4:36:50 PM	No	Commercial	Yes	KONICA MINOLTA BUSINESS SOLUTIONS AUSTRALIA PTY LTD ACN-001 065 096
<a href="#">202107090060672</a>	9/07/2021 4:38:27 PM	No	Commercial	Yes	KONICA MINOLTA BUSINESS SOLUTIONS AUSTRALIA PTY LTD ACN-001 065 096
<a href="#">202107090060751</a>	9/07/2021 4:39:30 PM	No	Commercial	Yes	KONICA MINOLTA BUSINESS SOLUTIONS AUSTRALIA PTY LTD ACN-001 065 096
<a href="#">202107090060849</a>	9/07/2021 4:40:16 PM	No	Commercial	Yes	KONICA MINOLTA BUSINESS SOLUTIONS AUSTRALIA PTY LTD ACN-001 065 096
<a href="#">202107090060910</a>	9/07/2021 4:41:12 PM	No	Commercial	Yes	KONICA MINOLTA BUSINESS SOLUTIONS AUSTRALIA PTY LTD ACN-001 065 096
<a href="#">202107090061159</a>	9/07/2021 4:42:12 PM	No	Commercial	Yes	KONICA MINOLTA BUSINESS SOLUTIONS AUSTRALIA PTY LTD ACN-001 065 096
<a href="#">202107090061222</a>	9/07/2021 4:43:03 PM	No	Commercial	Yes	KONICA MINOLTA BUSINESS SOLUTIONS AUSTRALIA PTY LTD ACN-001 065 096
<a href="#">202107090061349</a>	9/07/2021 4:43:53 PM	No	Commercial	Yes	KONICA MINOLTA BUSINESS SOLUTIONS AUSTRALIA PTY LTD ACN-001 065 096
<a href="#">202107090061383</a>	9/07/2021 4:44:47 PM	No	Commercial	Yes	KONICA MINOLTA BUSINESS SOLUTIONS AUSTRALIA PTY LTD ACN-001 065 096
<a href="#">202107090061591</a>	9/07/2021 4:46:18 PM	No	Commercial	Yes	KONICA MINOLTA BUSINESS SOLUTIONS AUSTRALIA PTY LTD ACN-001 065 096
<a href="#">202107090061799</a>	9/07/2021 4:47:25 PM	No	Commercial	Yes	KONICA MINOLTA BUSINESS SOLUTIONS AUSTRALIA PTY LTD ACN-001 065 096
<a href="#">202107090061948</a>	9/07/2021 4:48:48 PM	No	Commercial	Yes	KONICA MINOLTA BUSINESS SOLUTIONS AUSTRALIA PTY LTD ACN-001 065 096
<a href="#">202107090062067</a>	9/07/2021 4:50:08 PM	No	Commercial	Yes	KONICA MINOLTA BUSINESS SOLUTIONS AUSTRALIA PTY LTD ACN-001 065 096
<a href="#">202107090062120</a>	9/07/2021 4:50:56 PM	No	Commercial	Yes	KONICA MINOLTA BUSINESS SOLUTIONS AUSTRALIA PTY LTD ACN-001 065 096
<a href="#">202107090062385</a>	9/07/2021 4:51:37 PM	No	Commercial	Yes	KONICA MINOLTA BUSINESS SOLUTIONS AUSTRALIA PTY LTD ACN-001 065 096

**201704050067439 Commercial Other Goods**

Registration Kind:	SecurityInterest	Giving Notice of Identifier:	CHILLI PRINT/FORUM FINANCE
Is Registration Transitional?	No	Start Date/Time:	5/04/2017 4:59:23 PM
Is Registration Migrated?	No	End Date/Time:	05/04/2042 11:59 PM
Is Subordinate?	No	Last Changed:	5/04/2017 4:59:23 PM

**Change History**

Change number	Change type	Change date
43432418	Create	05/04/2017 04:59 PM

**Secured Party Details**

Secured Party 1  
 Organisation: WESTLAWN FINANCE LIMITED  
 (ACN - 096725218)

**Address For Service**

Addressee: Donna Scott - Compliance Officer  
 Email Address: donnas@westlawn.com.au  
 Contact fax: 0266422822  
 Mailing Address: P O Box 78  
 Grafton, NSW 2460  
 AUSTRALIA

**Collateral Details**

Collateral Type: Commercial  
 Collateral Description: Any property the subject of a lease, rental, hire purchase, bailment and/or any other financing arrangement between the Grantor and the Secured Party, and all proceeds from such property  
 Collateral Class Type: Other Goods  
 Class Description: Other goods  
 Is Inventory? No  
 Are Proceeds Claimed? Yes  
 Proceeds Claimed Description: All present and after acquired property.  
 Is Purchase Money Security Interest? No

**Grantor Details**

Grantor 1  
 Organisation Identifier: ACN 132807080

[Back to registration list](#)

**201904020047633 Commercial All PAP**

Registration Kind:	SecurityInterest	Giving Notice of Identifier:	839
Is Registration Transitional?	No	Start Date/Time:	2/04/2019 3:24:44 PM
Is Registration Migrated?	No	End Date/Time:	No stated end time
Is Subordinate?	No	Last Changed:	19/06/2019 11:34:55 AM

**Change History**

Change number	Change type	Change date
55054902	Address for Service Change	19/06/2019 11:34 AM
53947724	Create	02/04/2019 03:24 PM

**Secured Party Details**

Secured Party 1	
Organisation:	OCTET FINANCE PTY LIMITED (ACN - 124477916)

**Address For Service**

Addressee:	Reynaldo Flores
Email Address:	ppsr@octet.com
Contact fax	
Mailing Address:	10-14 Waterloo Street Surry Hills, NSW 2010 AUSTRALIA

**Collateral Details**

Collateral Type:	Commercial
Collateral Class Type:	All PAP
Class Description:	All present and after-acquired property - No exceptions
Is Purchase Money Security Interest?	

**Grantor Details**

Grantor 1	
Organisation Identifier:	ACN 151964626
Grantor 2	
Organisation Identifier:	ACN 103609678
Grantor 3	
Organisation Identifier:	ACN 153062018
Grantor 4	
Organisation Identifier:	ACN 111978182
Grantor 5	
Organisation Identifier:	ACN 150890289
Grantor 6	
Organisation Identifier:	ACN 155655897
Grantor 7	
Organisation Identifier:	ACN 132807080
Grantor 8	
Organisation Identifier:	ACN 155440994
Grantor 9	
Organisation Identifier:	ACN 153301172
Grantor 10	
Organisation Identifier:	ACN 168709840
Grantor 11	
Organisation Identifier:	ACN 054890710
Grantor 12	
Organisation Identifier:	ACN 158095866
Grantor 13	
Organisation Identifier:	ACN 120463541
Grantor 14	
Organisation Identifier:	ACN 074715718
Grantor 15	
Organisation Identifier:	ACN 073804109
Grantor 16	
Organisation Identifier:	ACN 120463836
Grantor 17	
Organisation Identifier:	ACN 001521375

[Back to registration list](#)

**201910100047194 Commercial Other Goods**

Registration Kind:	SecurityInterest	Giving Notice of Identifier:	SMARTP
Is Registration Transitional?	No	Start Date/Time:	10/10/2019 3:03:27 PM
Is Registration Migrated?	No	End Date/Time:	09/10/2026 11:59 PM
Is Subordinate?	No	Last Changed:	25/02/2020 12:24:20 PM

**Change History**

Change number	Change type	Change date
58871451	Address for Service Change	25/02/2020 12:24 PM
56882609	Create	10/10/2019 03:03 PM

**Secured Party Details**

Secured Party 1  
 Organisation: DYNAMIC SUPPLIES PTY. LTD.  
 (ACN - 064793862)

**Address For Service**

Addressee: Elisha Dosser  
 Email Address: elisha@ds.net.au  
 Contact fax  
 Mailing Address: 66-72 Alexandra Place  
 Murarrie, QLD 4172  
 AUSTRALIA

**Collateral Details**

Collateral Type: Commercial  
 Collateral Description: IT consumables and IT hardware including without limitations printers, photocopiers, scanners, monitors, inkjet cartridges, laser toner cartridges, copier toner, thermal transfer films, imaging and transfer units, inkjet and laser paper, mono and colour laser printers, p-touch laminated tapes, CD and DVD media, data storage media, USB flash drives and compact flash / SD cards, and other products as supplied and or distributed from time to time. Office chairs, desks, sit stand desks, monitor arms  
 Collateral Class Type: Other Goods  
 Class Description: Other goods  
 Is Inventory? Yes  
 Are Proceeds Claimed? Yes  
 Proceeds Claimed Description: All present and after acquired property.  
 Is Purchase Money Security Interest? Yes

**Grantor Details**

Grantor 1  
 Organisation Identifier: ACN 132807080  
[Back to registration list](#)

**201910110069161 Commercial Other Goods**

Registration Kind:	SecurityInterest	Giving Notice of Identifier:	
Is Registration Transitional?	No	Start Date/Time:	11/10/2019 4:46:06 PM
Is Registration Migrated?	No	End Date/Time:	11/10/2026 11:59 PM
Is Subordinate?	No	Last Changed:	11/10/2019 4:46:06 PM

**Change History**

Change number	Change type	Change date
56905471	Create	11/10/2019 04:46 PM

**Secured Party Details****Secured Party 1**

Organisation: ALLOYS INTERNATIONAL  
PRINTER & HARDWARE  
DIVISION PTY LTD (ACN -  
070112195)

**Secured Party 2**

Organisation: INTEGRIX SYSTEMS PTY. LTD.  
(ACN - 096255257)

**Address For Service**

Addressee: Alloys International Printer and  
Hardware Division Pty Ltd

Email Address: accounts\_rec@alloys.com.au

Contact fax:

Mailing Address: PO BOX 385  
COLLINGWOOD, VIC 3066  
AUSTRALIA

Physical Address: PO BOX 385  
COLLINGWOOD, VIC 3066  
AUSTRALIA

**Collateral Details**

Collateral Type: Commercial

Collateral Description: All goods sold, leased, hired,  
rented, bailed, supplied on  
consignment, sold subject to a  
conditional sale agreement  
including retention of title or  
otherwise made available by the  
secured party to the grantor.

Collateral Class Type: Other Goods

Class Description: Other goods

Is Inventory? Yes

Are Proceeds Claimed? Yes

Proceeds Claimed Description: All present & after acquired property

Is Purchase Money Security  
Interest? Yes

**Grantor Details****Grantor 1**

Organisation Identifier: ACN 132807080

[Back to registration list](#)



**201910290049503 Commercial Other Goods**

Registration Kind:	SecurityInterest	Giving Notice of Identifier:	FORUMSP
Is Registration Transitional?	No	Start Date/Time:	29/10/2019 2:26:04 PM
Is Registration Migrated?	No	End Date/Time:	29/10/2026 11:59 PM
Is Subordinate?	No	Last Changed:	29/10/2019 2:26:04 PM

**Change History**

Change number	Change type	Change date
57158968	Create	29/10/2019 02:26 PM

**Secured Party Details**

Secured Party 1  
 Organisation: SYNEX AUSTRALIA PTY. LTD.  
 (ACN - 052285882)

**Address For Service**

Addressee: Roger Wang  
 Email Address: accounts@au.synnex-grp.com  
 Contact fax: 03 85428800  
 Mailing Address: 92 Carroll Road  
 Oakleigh South, VIC 3167  
 AUSTRALIA  
 Physical Address: 92 Carroll Road  
 Oakleigh South, VIC 3167  
 AUSTRALIA

**Collateral Details**

Collateral Type: Commercial  
 Collateral Description: All goods sold, hired, rented,  
 leased, bailed, consigned or  
 otherwise made available to the  
 Grantor by the Secured Party.  
 Collateral Class Type: Other Goods  
 Class Description: Other goods  
 Is Inventory? Yes  
 Are Proceeds Claimed? Yes  
 Proceeds Claimed Description: All present and after acquired  
 property.  
 Is Purchase Money Security  
 Interest? Yes

**Grantor Details**

Grantor 1  
 Organisation Identifier: ACN 132807080

[Back to registration list](#)

**202107020032793 Commercial Other Goods**

Registration Kind:	SecurityInterest	Giving Notice of Identifier:	136274
Is Registration Transitional?	No	Start Date/Time:	2/07/2021 12:23:29 PM
Is Registration Migrated?	No	End Date/Time:	02/07/2028 11:59 PM
Is Subordinate?	No	Last Changed:	14/07/2021 2:44:11 PM

**Change History**

Change number	Change type	Change date
66527524	Amend	14/07/2021 02:44 PM
66453345	Amend	08/07/2021 11:16 AM
66378300	Create	02/07/2021 12:23 PM

**Secured Party Details**

Secured Party 1 Organisation:	KONICA MINOLTA BUSINESS SOLUTIONS AUSTRALIA PTY LTD (ACN - 001 065 096)
----------------------------------	---

**Address For Service**

Addressee:	Credit Team Leader
Email Address:	konicaminolta@pps- autodocs.com.au
Contact fax	
Mailing Address:	4 Drake Avenue Macquarie Park, NSW 2113 AUSTRALIA

**Collateral Details**

Collateral Type:	Commercial
Collateral Description:	SAA2J041006088 SACM2041000451 SAA2M041012452 SAA2J041006897 SAA7R041002584 SAA7R041002587 SAA7R041001468 SAA7R041002566 SAA7R041002564 SAA7R041002527 SAA7R041002173 SAA2J041006883 SAA7R041002827 SAA2J041006882 Printers, parts and consumables supplied.
Collateral Class Type:	Other Goods
Class Description:	Other goods
Is Inventory?	No
Are Proceeds Claimed?	No
Is Purchase Money Security Interest?	No

**Grantor Details**

Grantor 1 Organisation Identifier:	ACN 132 807 080
<a href="#">Back to registration list</a>	

**202107090060601 Commercial Other Goods**

Registration Kind:	SecurityInterest	Giving Notice of Identifier:	
Is Registration Transitional?	No	Start Date/Time:	9/07/2021 4:36:50 PM
Is Registration Migrated?	No	End Date/Time:	09/07/2046 11:59 PM
Is Subordinate?	No	Last Changed:	9/07/2021 4:36:50 PM

**Change History**

Change number	Change type	Change date
66483017	Create	09/07/2021 04:36 PM

**Secured Party Details**

Secured Party 1  
Organisation: KONICA MINOLTA BUSINESS SOLUTIONS AUSTRALIA PTY LTD (ACN - 001 065 096)

**Address For Service**

Addressee: Credit Team Leader  
Email Address: konicaminolta@pps-autodocs.com.au  
Contact fax  
Mailing Address: 4 Drake Avenue  
Macquarie Park, NSW 2113  
AUSTRALIA

**Collateral Details**

Collateral Type: Commercial  
Collateral Description: Goods supplied from time to time under the Right to Resell Agreement.  
Collateral Class Type: Other Goods  
Class Description: Other goods  
Is Inventory? Yes  
Are Proceeds Claimed? Yes  
Proceeds Claimed Description: All present and after acquired property  
Is Purchase Money Security Interest? Yes

**Grantor Details**

Grantor 1  
Organisation Identifier: ACN 132 807 080

[Back to registration list](#)

**202107090060672 Commercial Other Goods**

Registration Kind:	SecurityInterest	Giving Notice of Identifier:	
Is Registration Transitional?	No	Start Date/Time:	9/07/2021 4:38:27 PM
Is Registration Migrated?	No	End Date/Time:	09/07/2046 11:59 PM
Is Subordinate?	No	Last Changed:	9/07/2021 4:38:27 PM

**Change History**

Change number	Change type	Change date
66483036	Create	09/07/2021 04:38 PM

**Secured Party Details**

Secured Party 1  
Organisation: KONICA MINOLTA BUSINESS SOLUTIONS AUSTRALIA PTY LTD (ACN - 001 065 096)

**Address For Service**

Addressee: Credit Team Leader  
Email Address: konicaminolta@pps-autodocs.com.au  
Contact fax  
Mailing Address: 4 Drake Avenue  
Macquarie Park, NSW 2113  
AUSTRALIA

**Collateral Details**

Collateral Type: Commercial  
Collateral Description: Printer bearing serial number SAA2J041006088  
Collateral Class Type: Other Goods  
Class Description: Other goods  
Is Inventory? No  
Are Proceeds Claimed? Yes  
Proceeds Claimed Description: All present and after acquired property  
Is Purchase Money Security Interest? Yes

**Grantor Details**

Grantor 1  
Organisation Identifier: ACN 132 807 080  
[Back to registration list](#)

**202107090060751 Commercial Other Goods**

Registration Kind:	SecurityInterest	Giving Notice of Identifier:	
Is Registration Transitional?	No	Start Date/Time:	9/07/2021 4:39:30 PM
Is Registration Migrated?	No	End Date/Time:	09/07/2046 11:59 PM
Is Subordinate?	No	Last Changed:	9/07/2021 4:39:30 PM

**Change History**

Change number	Change type	Change date
66483052	Create	09/07/2021 04:39 PM

**Secured Party Details**

Secured Party 1  
 Organisation: KONICA MINOLTA BUSINESS SOLUTIONS AUSTRALIA PTY LTD (ACN - 001 065 096)

**Address For Service**

Addressee: Credit Team Leader  
 Email Address: konicaminolta@pps-autodocs.com.au  
 Contact fax  
 Mailing Address: 4 Drake Avenue  
 Macquarie Park, NSW 2113  
 AUSTRALIA

**Collateral Details**

Collateral Type: Commercial  
 Collateral Description: Printer bearing serial number SACM2041000451  
 Collateral Class Type: Other Goods  
 Class Description: Other goods  
 Is Inventory? No  
 Are Proceeds Claimed? Yes  
 Proceeds Claimed Description: All present and after acquired property  
 Is Purchase Money Security Interest? Yes

**Grantor Details**

Grantor 1  
 Organisation Identifier: ACN 132 807 080

[Back to registration list](#)

**202107090060849 Commercial Other Goods**

Registration Kind:	SecurityInterest	Giving Notice of Identifier:	
Is Registration Transitional?	No	Start Date/Time:	9/07/2021 4:40:16 PM
Is Registration Migrated?	No	End Date/Time:	09/07/2046 11:59 PM
Is Subordinate?	No	Last Changed:	9/07/2021 4:40:16 PM

**Change History**

Change number	Change type	Change date
66483065	Create	09/07/2021 04:40 PM

**Secured Party Details**

Secured Party 1  
Organisation: KONICA MINOLTA BUSINESS SOLUTIONS AUSTRALIA PTY LTD (ACN - 001 065 096)

**Address For Service**

Addressee: Credit Team Leader  
Email Address: konicaminolta@pps-autodocs.com.au  
Contact fax  
Mailing Address: 4 Drake Avenue  
Macquarie Park, NSW 2113  
AUSTRALIA

**Collateral Details**

Collateral Type: Commercial  
Collateral Description: Printer bearing serial number SAA2M041012452  
Collateral Class Type: Other Goods  
Class Description: Other goods  
Is Inventory? No  
Are Proceeds Claimed? Yes  
Proceeds Claimed Description: All present and after acquired property  
Is Purchase Money Security Interest? Yes

**Grantor Details**

Grantor 1  
Organisation Identifier: ACN 132 807 080  
[Back to registration list](#)

**202107090060910 Commercial Other Goods**

Registration Kind:	SecurityInterest	Giving Notice of Identifier:	
Is Registration Transitional?	No	Start Date/Time:	9/07/2021 4:41:12 PM
Is Registration Migrated?	No	End Date/Time:	09/07/2046 11:59 PM
Is Subordinate?	No	Last Changed:	9/07/2021 4:41:12 PM

**Change History**

Change number	Change type	Change date
66483076	Create	09/07/2021 04:41 PM

**Secured Party Details**

Secured Party 1  
Organisation: KONICA MINOLTA BUSINESS SOLUTIONS AUSTRALIA PTY LTD (ACN - 001 065 096)

**Address For Service**

Addressee: Credit Team Leader  
Email Address: konicaminolta@pps-autodocs.com.au  
Contact fax  
Mailing Address: 4 Drake Avenue  
Macquarie Park, NSW 2113  
AUSTRALIA

**Collateral Details**

Collateral Type: Commercial  
Collateral Description: Printer bearing serial number SAA2J041006897  
Collateral Class Type: Other Goods  
Class Description: Other goods  
Is Inventory? No  
Are Proceeds Claimed? Yes  
Proceeds Claimed Description: All present and after acquired property  
Is Purchase Money Security Interest? Yes

**Grantor Details**

Grantor 1  
Organisation Identifier: ACN 132 807 080  
[Back to registration list](#)

**202107090061159 Commercial Other Goods**

Registration Kind:	SecurityInterest	Giving Notice of Identifier:	
Is Registration Transitional?	No	Start Date/Time:	9/07/2021 4:42:12 PM
Is Registration Migrated?	No	End Date/Time:	09/07/2046 11:59 PM
Is Subordinate?	No	Last Changed:	9/07/2021 4:42:12 PM

**Change History**

Change number	Change type	Change date
66483107	Create	09/07/2021 04:42 PM

**Secured Party Details**

Secured Party 1  
Organisation: KONICA MINOLTA BUSINESS SOLUTIONS AUSTRALIA PTY LTD (ACN - 001 065 096)

**Address For Service**

Addressee: Credit Team Leader  
Email Address: konicaminolta@pps-autodocs.com.au  
Contact fax  
Mailing Address: 4 Drake Avenue  
Macquarie Park, NSW 2113  
AUSTRALIA

**Collateral Details**

Collateral Type: Commercial  
Collateral Description: Printer bearing serial number SAA7R041002584  
Collateral Class Type: Other Goods  
Class Description: Other goods  
Is Inventory? No  
Are Proceeds Claimed? Yes  
Proceeds Claimed Description: All present and after acquired property  
Is Purchase Money Security Interest? Yes

**Grantor Details**

Grantor 1  
Organisation Identifier: ACN 132 807 080  
[Back to registration list](#)



**202107090061222 Commercial Other Goods**

Registration Kind:	SecurityInterest	Giving Notice of Identifier:	
Is Registration Transitional?	No	Start Date/Time:	9/07/2021 4:43:03 PM
Is Registration Migrated?	No	End Date/Time:	09/07/2046 11:59 PM
Is Subordinate?	No	Last Changed:	9/07/2021 4:43:03 PM

**Change History**

Change number	Change type	Change date
66483120	Create	09/07/2021 04:43 PM

**Secured Party Details**

Secured Party 1  
 Organisation: KONICA MINOLTA BUSINESS SOLUTIONS AUSTRALIA PTY LTD (ACN - 001 065 096)

**Address For Service**

Addressee: Credit Team Leader  
 Email Address: konicaminolta@pps-autodocs.com.au  
 Contact fax  
 Mailing Address: 4 Drake Avenue  
 Macquarie Park, NSW 2113  
 AUSTRALIA

**Collateral Details**

Collateral Type: Commercial  
 Collateral Description: Printer bearing serial number SAA7R041002587  
 Collateral Class Type: Other Goods  
 Class Description: Other goods  
 Is Inventory? No  
 Are Proceeds Claimed? Yes  
 Proceeds Claimed Description: All present and after acquired property  
 Is Purchase Money Security Interest? Yes

**Grantor Details**

Grantor 1  
 Organisation Identifier: ACN 132 807 080  
[Back to registration list](#)

**202107090061349 Commercial Other Goods**

Registration Kind:	SecurityInterest	Giving Notice of Identifier:	
Is Registration Transitional?	No	Start Date/Time:	9/07/2021 4:43:53 PM
Is Registration Migrated?	No	End Date/Time:	09/07/2046 11:59 PM
Is Subordinate?	No	Last Changed:	9/07/2021 4:43:53 PM

**Change History**

Change number	Change type	Change date
66483154	Create	09/07/2021 04:43 PM

**Secured Party Details**

Secured Party 1  
 Organisation: KONICA MINOLTA BUSINESS SOLUTIONS AUSTRALIA PTY LTD (ACN - 001 065 096)

**Address For Service**

Addressee: Credit Team Leader  
 Email Address: konicaminolta@pps-autodocs.com.au  
 Contact fax  
 Mailing Address: 4 Drake Avenue  
 Macquarie Park, NSW 2113  
 AUSTRALIA

**Collateral Details**

Collateral Type: Commercial  
 Collateral Description: Printer bearing serial number SAA7R041001468  
 Collateral Class Type: Other Goods  
 Class Description: Other goods  
 Is Inventory? No  
 Are Proceeds Claimed? Yes  
 Proceeds Claimed Description: All present and after acquired property  
 Is Purchase Money Security Interest? Yes

**Grantor Details**

Grantor 1  
 Organisation Identifier: ACN 132 807 080  
[Back to registration list](#)

**202107090061383 Commercial Other Goods**

Registration Kind:	SecurityInterest	Giving Notice of Identifier:	
Is Registration Transitional?	No	Start Date/Time:	9/07/2021 4:44:47 PM
Is Registration Migrated?	No	End Date/Time:	09/07/2046 11:59 PM
Is Subordinate?	No	Last Changed:	9/07/2021 4:44:47 PM

**Change History**

Change number	Change type	Change date
66483162	Create	09/07/2021 04:44 PM

**Secured Party Details**

Secured Party 1  
Organisation: KONICA MINOLTA BUSINESS SOLUTIONS AUSTRALIA PTY LTD (ACN - 001 065 096)

**Address For Service**

Addressee: Credit Team Leader  
Email Address: konicaminolta@pps-autodocs.com.au  
Contact fax  
Mailing Address: 4 Drake Avenue  
Macquarie Park, NSW 2113  
AUSTRALIA

**Collateral Details**

Collateral Type: Commercial  
Collateral Description: Printer bearing serial number SAA7R041002566  
Collateral Class Type: Other Goods  
Class Description: Other goods  
Is Inventory? No  
Are Proceeds Claimed? Yes  
Proceeds Claimed Description: All present and after acquired property  
Is Purchase Money Security Interest? Yes

**Grantor Details**

Grantor 1  
Organisation Identifier: ACN 132 807 080  
[Back to registration list](#)

**202107090061591 Commercial Other Goods**

Registration Kind:	SecurityInterest	Giving Notice of Identifier:	
Is Registration Transitional?	No	Start Date/Time:	9/07/2021 4:46:18 PM
Is Registration Migrated?	No	End Date/Time:	09/07/2046 11:59 PM
Is Subordinate?	No	Last Changed:	9/07/2021 4:46:18 PM

**Change History**

Change number	Change type	Change date
66483190	Create	09/07/2021 04:46 PM

**Secured Party Details**

Secured Party 1  
Organisation: KONICA MINOLTA BUSINESS SOLUTIONS AUSTRALIA PTY LTD (ACN - 001 065 096)

**Address For Service**

Addressee: Credit Team Leader  
Email Address: konicaminolta@pps-autodocs.com.au  
Contact fax  
Mailing Address: 4 Drake Avenue  
Macquarie Park, NSW 2113  
AUSTRALIA

**Collateral Details**

Collateral Type: Commercial  
Collateral Description: Printer bearing serial number SAA7R041002564  
Collateral Class Type: Other Goods  
Class Description: Other goods  
Is Inventory? No  
Are Proceeds Claimed? Yes  
Proceeds Claimed Description: All present and after acquired property  
Is Purchase Money Security Interest? Yes

**Grantor Details**

Grantor 1  
Organisation Identifier: ACN 132 807 080  
[Back to registration list](#)

**202107090061799 Commercial Other Goods**

Registration Kind:	SecurityInterest	Giving Notice of Identifier:	
Is Registration Transitional?	No	Start Date/Time:	9/07/2021 4:47:25 PM
Is Registration Migrated?	No	End Date/Time:	09/07/2046 11:59 PM
Is Subordinate?	No	Last Changed:	9/07/2021 4:47:25 PM

**Change History**

Change number	Change type	Change date
66483216	Create	09/07/2021 04:47 PM

**Secured Party Details**

Secured Party 1  
 Organisation: KONICA MINOLTA BUSINESS SOLUTIONS AUSTRALIA PTY LTD  
 (ACN - 001 065 096)

**Address For Service**

Addressee: Credit Team Leader  
 Email Address: konicaminolta@pps-autodocs.com.au  
 Contact fax  
 Mailing Address: 4 Drake Avenue  
 Macquarie Park, NSW 2113  
 AUSTRALIA

**Collateral Details**

Collateral Type: Commercial  
 Collateral Description: Printer bearing serial number SAA7R041002527  
 Collateral Class Type: Other Goods  
 Class Description: Other goods  
 Is Inventory? No  
 Are Proceeds Claimed? Yes  
 Proceeds Claimed Description: All present and after acquired property  
 Is Purchase Money Security Interest? Yes

**Grantor Details**

Grantor 1  
 Organisation Identifier: ACN 132 807 080

[Back to registration list](#)

**202107090061948 Commercial Other Goods**

Registration Kind:	SecurityInterest	Giving Notice of Identifier:	
Is Registration Transitional?	No	Start Date/Time:	9/07/2021 4:48:48 PM
Is Registration Migrated?	No	End Date/Time:	09/07/2046 11:59 PM
Is Subordinate?	No	Last Changed:	9/07/2021 4:48:48 PM

**Change History**

Change number	Change type	Change date
66483262	Create	09/07/2021 04:48 PM

**Secured Party Details**

Secured Party 1  
Organisation: KONICA MINOLTA BUSINESS SOLUTIONS AUSTRALIA PTY LTD (ACN - 001 065 096)

**Address For Service**

Addressee: Credit Team Leader  
Email Address: konicaminolta@pps-autodocs.com.au  
Contact fax  
Mailing Address: 4 Drake Avenue  
Macquarie Park, NSW 2113  
AUSTRALIA

**Collateral Details**

Collateral Type: Commercial  
Collateral Description: Printer bearing serial number SAA7R041002173  
Collateral Class Type: Other Goods  
Class Description: Other goods  
Is Inventory? No  
Are Proceeds Claimed? Yes  
Proceeds Claimed Description: All present and after acquired property  
Is Purchase Money Security Interest? Yes

**Grantor Details**

Grantor 1  
Organisation Identifier: ACN 132 807 080  
[Back to registration list](#)

**202107090062067 Commercial Other Goods**

Registration Kind:	SecurityInterest	Giving Notice of Identifier:	
Is Registration Transitional?	No	Start Date/Time:	9/07/2021 4:50:08 PM
Is Registration Migrated?	No	End Date/Time:	09/07/2046 11:59 PM
Is Subordinate?	No	Last Changed:	9/07/2021 4:50:08 PM

**Change History**

Change number	Change type	Change date
66483281	Create	09/07/2021 04:50 PM

**Secured Party Details**

Secured Party 1  
Organisation: KONICA MINOLTA BUSINESS SOLUTIONS AUSTRALIA PTY LTD (ACN - 001 065 096)

**Address For Service**

Addressee: Credit Team Leader  
Email Address: konicaminolta@pps-autodocs.com.au  
Contact fax  
Mailing Address: 4 Drake Avenue  
Macquarie Park, NSW 2113  
AUSTRALIA

**Collateral Details**

Collateral Type: Commercial  
Collateral Description: Printer bearing serial number SAA2J041006883  
Collateral Class Type: Other Goods  
Class Description: Other goods  
Is Inventory? No  
Are Proceeds Claimed? Yes  
Proceeds Claimed Description: All present and after acquired property  
Is Purchase Money Security Interest? Yes

**Grantor Details**

Grantor 1  
Organisation Identifier: ACN 132 807 080  
[Back to registration list](#)

**202107090062120 Commercial Other Goods**

Registration Kind:	SecurityInterest	Giving Notice of Identifier:	
Is Registration Transitional?	No	Start Date/Time:	9/07/2021 4:50:56 PM
Is Registration Migrated?	No	End Date/Time:	09/07/2046 11:59 PM
Is Subordinate?	No	Last Changed:	9/07/2021 4:50:56 PM

**Change History**

Change number	Change type	Change date
66483293	Create	09/07/2021 04:50 PM

**Secured Party Details**

Secured Party 1  
Organisation: KONICA MINOLTA BUSINESS SOLUTIONS AUSTRALIA PTY LTD (ACN - 001 065 096)

**Address For Service**

Addressee: Credit Team Leader  
Email Address: konicaminolta@pps-autodocs.com.au  
Contact fax  
Mailing Address: 4 Drake Avenue  
Macquarie Park, NSW 2113  
AUSTRALIA

**Collateral Details**

Collateral Type: Commercial  
Collateral Description: Printer bearing serial number SAA7R041002827  
Collateral Class Type: Other Goods  
Class Description: Other goods  
Is Inventory? No  
Are Proceeds Claimed? Yes  
Proceeds Claimed Description: All present and after acquired property  
Is Purchase Money Security Interest? Yes

**Grantor Details**

Grantor 1  
Organisation Identifier: ACN 132 807 080  
[Back to registration list](#)



**202107090062385 Commercial Other Goods**

Registration Kind:	SecurityInterest	Giving Notice of Identifier:	
Is Registration Transitional?	No	Start Date/Time:	9/07/2021 4:51:37 PM
Is Registration Migrated?	No	End Date/Time:	09/07/2046 11:59 PM
Is Subordinate?	No	Last Changed:	9/07/2021 4:51:37 PM

**Change History**

Change number	Change type	Change date
66483344	Create	09/07/2021 04:51 PM

**Secured Party Details**

Secured Party 1  
Organisation: KONICA MINOLTA BUSINESS SOLUTIONS AUSTRALIA PTY LTD (ACN - 001 065 096)

**Address For Service**

Addressee: Credit Team Leader  
Email Address: konicaminolta@pps-autodocs.com.au  
Contact fax  
Mailing Address: 4 Drake Avenue  
Macquarie Park, NSW 2113  
AUSTRALIA

**Collateral Details**

Collateral Type: Commercial  
Collateral Description: Printer bearing serial number SAA2J041006882  
Collateral Class Type: Other Goods  
Class Description: Other goods  
Is Inventory? No  
Are Proceeds Claimed? Yes  
Proceeds Claimed Description: All present and after acquired property  
Is Purchase Money Security Interest? Yes

**Grantor Details**

Grantor 1  
Organisation Identifier: ACN 132 807 080  
[Back to registration list](#)

**Annexure**

No. NSD616 of 2021

Federal Court of Australia  
District Registry: New South Wales  
Division: General

**Westpac Banking Corporation ABN 33 007 457 141** and another  
Applicant

**Forum Finance Pty Limited ACN 153 301 172** and others named in the Schedule  
Respondents

This is the Annexure marked "**BJQ-11**" shown and produced to **Bianca Josephine Quan** at the time of swearing her affidavit on 28 September 2021.

Deponent signature:

DocuSigned by:  
*Bianca Quan*  
E3C6A00D03C0401.....

Before me: DocuSigned by:  
*Adrian Lee*  
BC4298F2AFED404.....

Adrian Lee

Level 10, 114 William Street, Melbourne VIC 3000

An Australian Legal Practitioner within the meaning of the Legal Profession Uniform Law (Vic)

A person authorised under Section 19(1) of the Oaths and Affirmations Act 2018 to take an affidavit.

This affidavit, as signed and notated by the authorised affidavit taker, was signed by the deponent over audio-visual link.

The specified things in respect of the affidavit were done by means of audio-visual link. The affidavit is a scanned hard copy or an electronic copy, not an original.



Friday, 13 August 2021

CONTACT NUMBER: 02 9633 3333

CONTACT NAME: Maureen Lowanda

The Proper Officer  
Westpac Banking Corporation  
Compulsory Notices and Insolvencies

By Email: [cnnotifications@westpac.com.au](mailto:cnnotifications@westpac.com.au)

Dear Sir/Madam,

**SMARTPRINT FLEET MANAGEMENT PTY LTD**  
**(In Liquidation) (Receivers Appointed)**  
**A.C.N 132 807 080**  
**A.B.N. 35 132 807 080**  
**Account Details: Unknown**

Antony Resnick and Mark Robinson were appointed Joint and Several Receivers of the above company by a secured creditor of the company on Friday, 13 August 2021. A copy of the Deed of Appointment is attached.

Please **freeze** the account, if any, and cease processing all transactions on the account, including periodical payments, and forward the balance of funds (if any) by EFT to the following bank account:

Account Name: SmartPrint Fleet Management Pty Ltd (Receivers Appointed)  
BSB: 182-222  
Account No: 230832180

Please provide a statement showing the entries making up the balance of funds at the date of our appointment. Please ensure that no further cheques or charges or other items are debited to any accounts that the company has with you. Any further credits to the account are to be allowed. Please also advise of the following:

- The balance of all accounts.
- Details of any periodical payments.
- Whether you hold any security over the company's assets.
- Particulars of any other accounts maintained by the Company with your bank.
- Particulars of any negotiable instruments or certificates of title, which you hold on behalf of the Company.

If you wish to discuss any of the above please contact Maureen Lowanda of this office on (02) 9633 3333.

Yours faithfully

A handwritten signature in blue ink that reads 'Resnick'.

**Antony Resnick**  
Joint & Several Receiver

Liability limited by a scheme approved under Professional Standards Legislation

T 02 9633 3333  
F 02 9633 3040  
E [mail@dvtgroup.com.au](mailto:mail@dvtgroup.com.au)

All correspondence to:  
PO Box 9500 Harris Park NSW 2150

de Vries Tayeh is part of the **dVT Group**  
[dvtgroup.com.au](http://dvtgroup.com.au)

Level 2, 151 Macquarie Street, SYDNEY NSW 2000  
110 Harris Street, HARRIS PARK NSW 2150

with offices throughout mainland Australia and New Zealand

**Annexure**

No. NSD616 of 2021

Federal Court of Australia  
District Registry: New South Wales  
Division: General

**Westpac Banking Corporation ABN 33 007 457 141** and another  
Applicant

**Forum Finance Pty Limited ACN 153 301 172** and others named in the Schedule  
Respondents

This is the Annexure marked "**BJQ-12**" shown and produced to **Bianca Josephine Quan** at the time of swearing her affidavit on 28 September 2021.

Deponent signature:

DocuSigned by:  
*Bianca Quan*  
E3C8AC0D03C0401...

Before me: DocuSigned by:  
*Adrian Lee*  
BC4298F2AFED404...

Adrian Lee

Level 10, 114 William Street, Melbourne VIC 3000

An Australian Legal Practitioner within the meaning of the Legal Profession Uniform Law (Vic)

A person authorised under Section 19(1) of the Oaths and Affirmations Act 2018 to take an affidavit.

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# MinterEllison

16 August 2021

**BY EMAIL:** [b.guan@cornwalls.com.au](mailto:b.guan@cornwalls.com.au); [a.lee@cornwalls.com.au](mailto:a.lee@cornwalls.com.au)

Bianca Quan and Adrian Lee  
Cornwalls  
Level 10, 114 William Street  
Melbourne VIC 3000

Dear Colleagues

**Westpac Banking Corporation & Westpac New Zealand Limited & Smartprint Fleet Management Pty Ltd (in liquidation) (receivers appointed) ACN 132 807 080 ('Smartprint')**

1. We refer to our previous correspondence in connection with Federal Court of Australia proceedings number NSD616/2021 (**Proceedings**), including most recently our previous letter of 13 August 2021 to your office and other parties (**Our Letter**).
2. As you are aware, we act for Westpac Banking Corporation and Westpac New Zealand Limited, the applicants in the Proceedings, against Forum Finance Pty Ltd (in liquidation) ACN 153 301 172 (**Forum Finance**) and others as respondents.
3. We understand that on 13 August 2021 your clients Antony Resnick and Mark Robinson were appointed as Receivers of Smartprint, a company which is wholly-owned by The Forum Group of Companies Pty Ltd ACN 151 964 626 (in liquidation) and which was ultimately controlled by Basile Papadimitriou (also known as Bill Papas), by Octet Finance Pty Ltd ACN 124 477 916 (**Octet**) under a security interest granted by Smartprint in favour of Octet.
4. We understand the following events have recently transpired in connection with Smartprint:
  - (a) The Liquidators of Smartprint have been seeking to sell certain assets of the Smartprint business (being stock, goodwill, customer contracts and intellectual property) during the course of last week for a total purchase price of \$634,542.85 inclusive of GST for certain fixed assets and intellectual property, plus a \$58,560.75 payment to Vestone Capital (which we understand is a funder to the underlying clients) in respect of unpaid lease payments in circumstances where they may have claimed some entitlement to cash held by Smartprint (**Liquidator Asset Sale**).
  - (b) The Liquidator Asset Sale was predicated on Octet releasing its security interest over the assets of Smartprint, and the proceeds of sale (**Liquidator Sale Proceeds**) being paid into a trust account with the entitlement to the Liquidator Sale Proceeds to be determined at a later date (noting the proprietary claims made by the our clients and the Liquidators of Smartprint).
  - (c) Octet did not agree to release its security interest for the Liquidator Asset Sale to complete, and your clients were appointed as Receivers of Smartprint by Octet on 13 August 2021 to complete a substantially similar transaction to the Liquidator Asset Sale (**Receiver Asset Sale**) and to pay the sale proceeds to Octet (less the amounts the Liquidators of Smartprint are entitled to pursuant to their lien) in repayment of secured debt owed to Octet (**Receiver Sale Proceeds**).



5. We note that our clients had indicated their consent to the Liquidator Asset Sale on the basis that it was to be completed by the Liquidators of Smartprint, as opposed to the Receivers appointed by Octet.
6. We understand that the Receivers of Smartprint have recently completed a Receiver Asset Sale in relation to some or all of the assets of Smartprint, and that your clients are holding the Receiver Sale Proceeds.
7. Whilst our clients do not take issue with the validity of Octet's security over the assets of Smartprint, for the reasons set out in Our Letter, our clients' position is that the property of Smartprint may be impressed with a trust in accordance with the principles set out in *Black v S Freedman & Co* (1910) 12 CLR 105 at 110.
8. To the extent that your client pay away any Receiver Sale Proceeds to Octet, your clients do so at their own risk, given they are on notice of our clients' claim to a proprietary interest in the property of Smartprint.
9. We note that Allens, the solicitors for the Liquidators of Smartprint, are copied to this correspondence.
10. All of our clients' rights are expressly reserved.

Yours faithfully  
**MinterEllison**



Contact: Anthony Sommer T: +61 2 9921 4182  
anthony.sommer@minterellison.com  
Partner: Michael Hughes T: +61 2 9921 4647  
OUR REF: 1353397

**COPY TO:**

Chris Prestwich / Kirsty Prinsloo  
Allens  
[Chris.Prestwich@allens.com.au](mailto:Chris.Prestwich@allens.com.au) / [Kirsty.Prinsloo@allens.com.au](mailto:Kirsty.Prinsloo@allens.com.au)

**Annexure**

No. NSD616 of 2021

Federal Court of Australia  
District Registry: New South Wales  
Division: General

**Westpac Banking Corporation ABN 33 007 457 141** and another  
Applicant

**Forum Finance Pty Limited ACN 153 301 172** and others named in the Schedule  
Respondents

This is the Annexure marked "**BJQ-13**" shown and produced to **Bianca Josephine Quan** at the time of swearing her affidavit on 28 September 2021.

Deponent signature:

DocuSigned by:  
*Bianca Quan*  
.....E3C6AC0D03C0401.....

Before me: DocuSigned by:  
*Adrian Lee*  
.....BG4298F2AFED404.....

Adrian Lee

Level 10, 114 William Street, Melbourne VIC 3000

An Australian Legal Practitioner within the meaning of the Legal Profession Uniform Law (Vic)

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**Annabelle Cangy**

---

**From:** CNI Notifications <cninotifications@westpac.com.au>  
**Sent:** Monday, 16 August 2021 2:32 PM  
**To:** Denysa Andriani  
**Subject:** SMARTPRINT FLEET MANAGEMENT PTY LTD - ACN 132 807 080

Good Afternoon,

We refer to your letter dated **(13/08/2021)**.

Please note we have located accounts held in the name of **(SMARTPRINT FLEET MANAGEMENT PTY LTD)** with **(Westpac)**. A freeze has been placed on the following account:

Account Name	BSB / Account Number	Balance as at 16/08/2021
SMARTPRINT FLEET MANAGEMENT PTY LTD	XXX061 – XXX417	793398.04 CR

We will be in touch within 7 business days to provide further information in regards to accounts/services held.

Please be advised, company does not hold any accounts with **(St George)**

***This response relates to Westpac, St-George, Bank SA, Bank of Melbourne accounts only. Please contact BT, ASGARD and RAMS for any accounts held there.***

**Please do not resend request to avoid duplication.**

OUR REFERENCE: EFHYZ723

Kind Regards,

**Rafi**

Team member – Compulsory Notices & Insolvencies

02 8767 3854

1 King St

Concord West, NSW, 2138



**W** GROUP

---

Confidential communication  
Westpac Banking Corporation (ABN 33 007 457 141, AFSL 233714)  
Westpac Institutional Bank is a division of Westpac Banking Corporation

---



**Annexure**

No. NSD616 of 2021

Federal Court of Australia  
District Registry: New South Wales  
Division: General

**Westpac Banking Corporation ABN 33 007 457 141** and another  
Applicant

**Forum Finance Pty Limited ACN 153 301 172** and others named in the Schedule  
Respondents

This is the Annexure marked "**BJQ-14**" shown and produced to **Bianca Josephine Quan** at the time of swearing her affidavit on 28 September 2021.

Deponent signature:

DocuSigned by:  
*Bianca Quan*  
E3C6AC0D03G0401:.....

Before me: DocuSigned by:  
*Adrian Lee*  
.....BC4298F2AFED404.....

Adrian Lee

Level 10, 114 William Street, Melbourne VIC 3000

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Monday, 16 August 2021

CONTACT NUMBER: 02 9633 3333  
CONTACT NAME: Maureen Lowanda

The Proper Officer  
Westpac Banking Corporation  
Compulsory Notices and Insolvencies

By Email: [cninotifications@westpac.com.au](mailto:cninotifications@westpac.com.au)

Dear Sir/Madam,

**SMARTPRINT FLEET MANAGEMENT PTY LTD**  
**(Receivers Appointed) (In Liquidation)**  
**A.C.N 132 807 080**

We refer to our appointment as Joint & Several Receivers of the above-named Company, our letter to you dated 13 August 2021, and your response on 16 August 2021 advising the following account being held with Westpac:

BSB/Account Number	Account Balance
XXX061 / XXX417	\$793,398.04 CR

You have not actioned the below requests in our letter of 13 August 2021:

- Provide statements showing the entries making up the balance of funds at the date of our appointment; and
- Transfer the balance of funds to the following bank account:

Bank: Macquarie Bank  
Account name: SmartPrint Fleet Management Pty Ltd (Receivers Appointed)  
BSB: 182-222  
Account number: 230832180

The Receivers require the above requests to be actioned by COB on Wednesday, 18 August 2021.

Yours faithfully  
**SMARTPRINT FLEET MANAGEMENT PTY LTD**  
**(Receivers Appointed) (In Liquidation)**  
**A.C.N 132 807 080**

A handwritten signature in blue ink, appearing to read 'Mark Robinson', written over a light blue horizontal line.

**Mark Robinson**  
Joint & Several Receiver

Liability limited by a scheme approved under Professional Standards Legislation

T 02 9633 3333  
F 02 9633 3040  
E [mail@dvtgroup.com.au](mailto:mail@dvtgroup.com.au)

**All correspondence to:**  
PO Box 9500 Harris Park NSW 2150

de Vries Tayeh is part of the **dVT Group**  
[dvtgroup.com.au](http://dvtgroup.com.au)

Level 2, 151 Macquarie Street, SYDNEY NSW 2000  
110 Harris Street, HARRIS PARK NSW 2150

with offices throughout mainland Australia and New Zealand

**Annexure**

No. NSD616 of 2021

Federal Court of Australia  
District Registry: New South Wales  
Division: General


**Westpac Banking Corporation ABN 33 007 457 141** and another  
Applicant

**Forum Finance Pty Limited ACN 153 301 172** and others named in the Schedule  
Respondents

This is the Annexure marked "**BJQ-15**" shown and produced to **Bianca Josephine Quan** at the time of swearing her affidavit on 28 September 2021.

Deponent signature:

DocuSigned by:  
  
.....E3C6AC0D03C0401.....

Before me: DocuSigned by:  
  
.....BC4298F2AFED404.....

Adrian Lee

Level 10, 114 William Street, Melbourne VIC 3000

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24 08 2021

**ATTN: Denysa Andriani**

Compulsory Notices & Insolvencies  
 GPO Box 3433  
 Sydney NSW 2001  
 T. 02 8767 3854  
 F. 02 8767 0778  
 E. Cnoinotifications@westpac.com.au  
 Ref: EFHYZ723

Dear Sir/ Madam,

RE: Company Name: SMARTPRINT FLEET MANAGEMENT PTY LTD  
 ACN Number: 132 807 080

Thank you for your letter dated 13 08 2021 in respect of the above mentioned Company. Please find below the information you requested:

- The Company holds the following Brand account: WBC

Account Name	BSB / Account Number	Balance as at 24/08/2021
SMARTPRINT FLEET MANAGEMENT PTY LTD	034061 347417	\$ 793,398.04 CR EDIT

- We have placed a Post Credits Only status on account as requested.
- There are currently no periodical payments held on the account.
- Unable to transfer funds as freezing order on account still in placed.
- Please find enclosed statements as requested.

In terms of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, all signatories who will be giving instructions to Westpac regarding the disbursement of funds held in the accounts of the company must be identified before Westpac will release moneys held in the account(s). If any of the signatories have not been identified, they will need to visit a convenient Westpac branch to complete the appropriate identification requirements. Information on Westpac's Customer Identification Procedure can be obtained by contacting their nearest Westpac branch or referring to our website [www.westpac.com.au/aml](http://www.westpac.com.au/aml). Once identified, we would ask they request the branch to contact this office and advise details.

The above information is confidential and is supplied by the Bank under compulsion of law, on a confidential basis.

As you may be aware, from 22 February 2018 mandatory data breach notification (MDBN) requirements come into force under the Privacy Act 1988 (Cth). The MDBN provisions require entities subject to the Privacy Act to notify affected individuals and the Office of the Australian Information Commissioner (OAIC) if any personal information the entity holds is impacted by a data breach that is likely to cause serious harm to any individuals.



We may be required or authorised by law to provide you with personal information of Westpac Group (**Westpac**) customers and employees. To help us meet our MDBN reporting requirements, if a data breach occurs that impacts our customers' or employees' personal information provided to you, we ask for your cooperation and that you:

Tell us as soon as possible about the data breach (including the types of personal information affected or suspected to be affected, the root cause of the incident if known, possible impacts on individuals, and any preliminary actions and recommendations); and Keep us informed about any decisions to notify the OAIC and impacted Westpac customers or employees, and give us reasonable notice before you issue any such notifications.

If you have any further questions, please contact our Compulsory Notices & Insolvencies team on (02) 8767 3854. Please have your reference number EFHYZ723 ready when you speak to us

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Fruita' followed by a flourish.

Team Manager,  
Transactional Banking Services

**Annexure**

No. NSD616 of 2021

Federal Court of Australia  
District Registry: New South Wales  
Division: General

**Westpac Banking Corporation ABN 33 007 457 141** and another  
Applicant

**Forum Finance Pty Limited ACN 153 301 172** and others named in the Schedule  
Respondents

This is the Annexure marked "**BJQ-16**" shown and produced to **Bianca Josephine Quan** at the time of swearing her affidavit on 28 September 2021.

Deponent signature:

DocuSigned by:  
*Bianca Quan*  
.....E3C6AC0D03C0401.....

Before me: DocuSigned by:  
*Adrian Lee*  
.....BC4298P2AFED404.....

Adrian Lee

Level 10, 114 William Street, Melbourne VIC 3000

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Thursday, 26 August 2021

CONTACT NUMBER:  
CONTACT NAME:

02 9633 3333  
Maureen Lowanda

The Proper Officer  
Westpac Banking Corporation  
Compulsory Notices and Insolvencies

**By Email:** [insolvency@westpac.com.au](mailto:insolvency@westpac.com.au)

Dear Sir/Madam,

**SMARTPRINT FLEET MANAGEMENT PTY LTD**  
**(Receivers Appointed) (In Liquidation)**  
**A.C.N 132 807 080**

We refer to our appointment as Joint & Several Receivers of the above-named Company, our letters to you dated 13 August 2021, 16 August 2021 and 23 August 2021, and your advice that the following account was held with Westpac:

BSB/Account Number	Account Balance
034061 / 347417	\$793,398.04 CR

To date, you still have not actioned our request below as per our previous letters to you:

- Provide an excel formatted datafile containing receipts and payments of the bank account for the period of 24 months from the date of our appointment.

The Receivers require a response by COB on Friday, 27 August 2021.

Yours faithfully  
**SMARTPRINT FLEET MANAGEMENT PTY LTD**  
**(Receivers Appointed) (In Liquidation)**  
**A.C.N 132 807 080**

A handwritten signature in black ink, appearing to read "Mark Robinson".

**Mark Robinson**  
Joint & Several Receiver

Liability limited by a scheme approved under Professional Standards Legislation

T 02 9633 3333  
F 02 9633 3040  
E [mail@dvtgroup.com.au](mailto:mail@dvtgroup.com.au)

**All correspondence to:**  
PO Box 9500 Harris Park NSW 2150

de Vries Tayeh is part of the dVT Group  
[dvtgroup.com.au](http://dvtgroup.com.au)

Level 2, 151 Macquarie Street, SYDNEY NSW 2000  
110 Harris Street, HARRIS PARK NSW 2150

with offices throughout mainland Australia and New Zealand

Handwritten initials in the bottom right corner of the page.

**Annexure**

No. NSD616 of 2021

Federal Court of Australia  
District Registry: New South Wales  
Division: General

**Westpac Banking Corporation ABN 33 007 457 141** and another  
Applicant

**Forum Finance Pty Limited ACN 153 301 172** and others named in the Schedule  
Respondents

This is the Annexure marked "**BJQ-17**" shown and produced to **Bianca Josephine Quan** at the time of swearing her affidavit on 28 September 2021.

Deponent signature:

DocuSigned by:  
*Bianca Quan*  
E3C6AC0D03C0401.....

Before me: DocuSigned by:  
*Adrian Lee*  
BC4298F2AFED404.....

Adrian Lee

Level 10, 114 William Street, Melbourne VIC 3000

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Your reference:  
Our reference: BJQ:AHL:1056417



1 September 2021

Caitlin Murray  
MinterEllison

**By email:** [caitlin.murray@minterellison.com](mailto:caitlin.murray@minterellison.com);  
[anthony.sommer@minterellison.com](mailto:anthony.sommer@minterellison.com)

Dear Ms Murray

**SMARTPRINT FLEET MANAGEMENT PTY LTD (RECEIVERS APPOINTED) (IN LIQUIDATION)  
("COMPANY")**

1. As you are aware, we act for Antony Resnick and Mark Robinson, the joint and several receivers of Forum Group Pty Ltd (**FG**), Forum Finance Pty Ltd (**FF**) and Smartprint Fleet Management Pty Ltd (**Smartprint**).

**Background**

2. We write in relation to the following bank account (**Account**) held by Smartprint with your client:

Account Name	BSB / Account Number	Balance as at 16/08/2021
SMARTPRINT FLEET MANAGEMENT PTY LTD	XXX061 – XXX417	793398.04 CR

3. Our clients' appointor, Octet Finance Pty Ltd (**Octet**), has a first ranking security interest over all present and after acquired property of Smartprint. The Account is an asset of Smartprint over which Octet holds security, and is an asset over which our clients have been appointed receivers.
4. We are instructed that, pursuant to our clients' powers as receivers of the assets of Smartprint, our clients have made several requests to your client to release the funds in the Account to our clients. A copy of our clients' letter dated 13 August 2021 is **enclosed** for ease of reference.
5. We are further instructed that your client has refused to remit the funds to our clients on the basis that there is a current freezing order affecting the Account. A copy of your client's letter dated 24 August 2021 is also **enclosed** for ease of reference.
6. Our clients are not aware of any freezing orders that have been made in relation to the Account. As such, please provide us with a copy of the relevant freezing order which your client asserts prevents the funds from being released.
7. Further, we note that in previous correspondence (for instance, your letter of 13 and 16 August 2021), your client has confirmed that:

A L10 114 William St, Melbourne Vic 3000 P GPO Box 1466, Melbourne Vic 3001 • DX 636 Melbourne  
T +61 3 9608 2000 W [cornwalls.com.au](http://cornwalls.com.au)



*Cornwalls is a group of independently owned and operated law firms comprising of Cornwall's ABN 19 738 311 557 (a limited partnership), Cornwall's (QLD) ABN 18 604 548 601 (individual liability limited by a scheme approved under professional standards legislation) and Cornwall's (NSW) ABN 68 626 837 223 (liability limited by a scheme approved under professional standards legislation).*

BJQ:1056417:M:D7118339

- 
- (a) it does not take issue with the validity of the security interest of Octet; and
- (b) it does not presently seek to prevent Octet exercising its rights as a secured creditor.
8. Whilst we acknowledge that some of your client's comments were made in relation to FG's assets, based on our clients' investigations, the funds in the Account appear to have been received in the ordinary course of Smartprint's business and not as a result of any alleged fraud perpetrated by Mr Basile Papas. Accordingly, the same position should be adopted in relation to Smartprint's Account.
9. If your client asserts that the Account contains funds fraudulent obtained by Mr Papas, please let us know and provide us with supporting documentation. Our clients will then consider their position further.

**Demand to release funds**

10. In the absence of any freezing order affecting the Account, our clients consider that your client must immediately release the funds to the account nominated by our clients (as contained in our clients' letter of 13 August 2021).
11. Please provide us with a response as soon as possible and by no later than 8 September 2021.
12. In the event that the funds in the Account are not released to our clients by 8 September 2021, we will seek our clients' instructions to take further action as appropriate.

Yours sincerely



**CORNWALLS**

**Contact**

Bianca Quan  
Partner  
b.quan@cornwalls.com.au  
+61 3 9608 2258  
0422 288 046

**Annexure**

No. NSD616 of 2021

Federal Court of Australia  
District Registry: New South Wales  
Division: General

**Westpac Banking Corporation ABN 33 007 457 141** and another  
Applicant

**Forum Finance Pty Limited ACN 153 301 172** and others named in the Schedule  
Respondents

This is the Annexure marked "**BJQ-18**" shown and produced to **Bianca Josephine Quan** at the time of swearing her affidavit on 28 September 2021.

Deponent signature:

DocuSigned by:  
*Bianca Quan*  
.....E3C6AC0D03C0401.....

Before me: DocuSigned by:  
*Adrian Lee*  
.....BC4298F2AFED404.....

Adrian Lee

Level 10, 114 William Street, Melbourne VIC 3000

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BJQ-18

**JONES DAY**

AURORA PLACE • LEVEL 41, 88 PHILLIP STREET • SYDNEY NSW 2000

TELEPHONE: +61.2.8272.0500 • FACSIMILE: +61.2.8272.0599

3 September 2021

**Partner**

Maria Yiasemides / Roger Dobson  
Telephone: +61 2 8272 0770 / 0534  
Email: [myiasemides@jonesday.com](mailto:myiasemides@jonesday.com)  
[rodbobson@jonesday.com](mailto:rodbobson@jonesday.com)

Bianca Quan and Adrian Lee  
Cornwalls  
Level 10, 114 William Street  
Melbourne VIC 3000

Dear Colleagues

**Smartprint Fleet Management Pty Ltd (in liquidation)**Jones Day acts for SMBC Leasing and Finance Inc. (**SMBC L&F**).**Background**

We understand that your clients, Anthony Resnick and Julian Robinson, are the joint and several receivers of, inter alios, Smartprint Fleet Management Pty Ltd (in liquidation) (**Smartprint**). We also understand that your clients have now facilitated the sale of various assets of Smartprint (including its stock, goodwill, customer lists and IP) on behalf of a secured party, Octet Finance Pty Ltd (**Octet**), and that Octet's intention is to take the proceeds of that sale. We understand that you also act for Octet.

On 12 August 2021, we provided confirmation to Allens, the solicitors acting for Smartprint's appointed liquidators, McGrathNicol (**Liquidators**), that SMBC L&F was prepared to limit its extant proprietary claims against Smartprint (outlined below) to the proceeds of that sale. The purpose of this letter is to notify your clients that SMBC L&F maintains any proprietary claims it may have over the proceeds of the sale of Smartprint.

We understand the following events have recently transpired in connection with Smartprint:

- (a) The Liquidators of Smartprint had been seeking to sell certain assets of the Smartprint business (being stock, goodwill, customer contracts and intellectual property) for a total purchase price of \$634,542.85 inclusive of GST for certain fixed assets and intellectual property, plus a \$58,560.75 payment to Vestone Capital (which we understand is a funder to the underlying clients) in respect of unpaid lease payments in circumstances where they may have claimed some entitlement to cash held by Smartprint (**Liquidator Asset Sale**).
- (b) The Liquidator Asset Sale was predicated on Octet releasing its security interest over the assets of Smartprint, and the proceeds of sale (**Liquidator Sale Proceeds**) being paid into a trust account with the entitlement to the Liquidator Sale Proceeds to be determined

at a later date (noting the proprietary claims made by SMBC L&F and the Liquidators of Smartprint).

- (c) Octet did not agree to release its security interest for the Liquidator Asset Sale to complete, and your clients were appointed as Receivers of Smartprint by Octet on 13 August 2021 to complete a substantially similar transaction to the Liquidator Asset Sale (**Receiver Asset Sale**) and to pay the sale proceeds to Octet (less the amounts the Liquidators of Smartprint are entitled to pursuant to their lien) in repayment of secured debt owed to Octet (**Receiver Sale Proceeds**).

We note that SMBC L&F had indicated its consent to the Liquidator Asset Sale on the basis that it was to be completed by the Liquidators of Smartprint, as opposed to the Receivers appointed by Octet.

We understand that the Receivers of Smartprint have recently completed a Receiver Asset Sale in relation to some or all of the assets of Smartprint, and that your clients are holding the Receiver Sale Proceeds.

Whilst SMBC L&F does not take issue with the validity of Octet's security over the assets of Smartprint, for the reasons set out below, SMBC L&F's position is that the property of Smartprint may be impressed with a trust in favour of SMBC L&F in accordance with the principles set out in *Black v S Freedman & Co* (1910) 12 CLR 105 at 110. That trust continues over the Receiver Sale Proceeds in the hands of the Receivers, and in the hands of Octet if the Receiver Sale Proceeds are transferred to Octet.

### **Basis of SMBC L&F's Proprietary Claims**

As you are aware, SMBC L&F has commenced proceedings in the Federal Court of Australia (Proceedings No: 681/2021) against Mr Basile Papadimitriou (also known as Bill Papas) (**Mr Papas**) and various companies under his ownership or control (**Papas Controlled Entities**) in relation to a fraud of which SMBC L&F was a victim. You were provided with a copy of SMBC L&F's Amended Originating Application and Statement of Claim on 6 August 2021.

SMBC L&F was a party to a Master Receivables Acquisition Servicing Agreement and related agreements (**2018 Agreements**) with Flexirent Capital Pty Ltd (**Flexirent**) and Forum Enviro (Aust) Pty Ltd (**FEA**), pursuant to which SMBC L&F paid \$29,709,714.14 to Flexirent, and Flexirent paid at least \$23,083,860.80 of those funds on to Forum Enviro Pty Ltd (**FE**).

SMBC L&F was also a party to a Master Receivables Acquisition Servicing Agreement and related agreements (**2020 Agreements**) directly with FEA, pursuant to which SMBC L&F paid \$83,993,909.47 to FEA.

In respect of the 2018 Agreements, FEA provided fraudulent documents to Flexirent and caused Flexirent to provide those fraudulent documents to SMBC L&F. The fraudulent documents purported to be equipment leases which did not in fact exist and documents relating to the non-existent equipment leases. Pursuant to the terms of the 2018 Agreements, between 6 August 2018 and 20 December 2020, FE obtained payments from SMBC L&F via Flexirent totalling at least \$23,083,860.80 in reliance on the fraudulent documents. Those payments were obtained by FE as a result of fraud.

In respect of the 2020 Agreements, FEA provided fraudulent documents to SMBC L&F. The fraudulent documents purported to be equipment leases which did not in fact exist and documents relating to the non-existent equipment leases. Pursuant to the terms of the 2020 Agreements, between 30 July 202 and 21 May 2021, FEA sought and obtained payments from SMBC L&F

totalling \$83,993,909.47 in reliance on the fraudulent documents. Those payments were obtained by FEA as a result of fraud.

The bank account statements obtained by us and by the Liquidators show that numerous intercompany transactions have occurred between FE, FEA and the Papas Controlled Entities, which transactions involved, directly or indirectly, the funds obtained from SMBC L&F by fraud. Forensic investigations to date indicate that a significant proportion of the funds paid by SMBC L&F to FE and FEA as a result of the fraud was subsequently transferred to Forum Group Financial Services Pty Ltd (**FGFS**).

The Liquidators have identified that, in late 2019, FGFS provided \$4.6 million dollars to another Papas Controlled Entity, Forum Group Of Companies Pty Ltd (**FGOC**), for the purpose of FGOC's acquisition of Smartprint.

Mr Papas was a director of each of FE, FEA, FGFS, FGOC and Smartprint. He was instrumental in carrying out the frauds. Mr Papas' knowledge of the fraud can be imputed to each of those companies. The companies were at the very least fully aware of the fraud, or they were involved in the continued operation of the fraud.

In the circumstances, the funds fraudulently obtained by FE and FEA from SMBC L&F may be traceable into the purchase of Smartprint. If so, a proprietary claim in SMBC L&F's favour exists over the Receiver Sale Proceeds.

SMBC L&F accepts that it is not yet able to prove the particular amounts that may be traceable into the Receiver Sale Proceeds. As the forensic tracing investigation advances, the tracing claim will become clearer. We anticipate that additional Papas Controlled Entities who were recipients or conduits of the fraudulently obtained funds or their traceable proceeds will be joined as respondents to SMBC L&F's Federal Court proceedings in order for SMBC L&F to pursue proprietary and other claims against those entities.

In the circumstances, your clients are aware that SMBC L&F claims it may have a proprietary interest in the Receiver Sale Proceeds in the nature of the trust recognised in *Black v S Freedman & Co*, but that SMBC L&F also accepts that it is not in a position to fully establish that claim at the present time. The consequence is that SMBC L&F does not seek to prevent the Receivers or Octet from exercising or purporting to exercise such rights as they claim to have as receivers and secured creditor respectively in relation to the Receiver Sale Proceeds. However, to the extent that your clients exercise any rights in relation to the Receiver Sale Proceeds, they act at their own risk, and on notice of SMBC L&F's claim to a proprietary interest in the Receiver Sale Proceeds.

Please let us know if we can provide any further information that would be of assistance.

All of our client's rights are expressly reserved.

Yours sincerely



**Roger Dobson**  
Partner



**Maria Yiasemides**  
Partner

**Annexure**

No. NSD616 of 2021

Federal Court of Australia  
District Registry: New South Wales  
Division: General

**Westpac Banking Corporation ABN 33 007 457 141** and another  
Applicant

**Forum Finance Pty Limited ACN 153 301 172** and others named in the Schedule  
Respondents

This is the Annexure marked "**BJQ-19**" shown and produced to **Bianca Josephine Quan** at the time of swearing her affidavit on 28 September 2021.

Deponent signature:

DocuSigned by:  
*Bianca Quan*  
E3C8AC0D03C0401...

Before me: DocuSigned by:  
*Adrian Lee*  
BC4298F2AFED404...

Adrian Lee

Level 10, 114 William Street, Melbourne VIC 3000

An Australian Legal Practitioner within the meaning of the Legal Profession Uniform Law (Vic)

A person authorised under Section 19(1) of the Oaths and Affirmations Act 2018 to take an affidavit.

This affidavit, as signed and notated by the authorised affidavit taker, was signed by the deponent over audio-visual link.

The specified things in respect of the affidavit were done by means of audio-visual link. The affidavit is a scanned hard copy or an electronic copy, not an original.



Federal Court of Australia

District Registry: New South Wales

Division: General

No: NSD616/2021

**WESTPAC BANKING CORPORATION ABN 33 007 457 141**

Applicant

**FORUM FINANCE PTY LIMITED** and others named in the schedule

Respondent

### ORDER

**JUDGE:** JUSTICE LEE

**DATE OF ORDER:** 02 July 2021

**WHERE MADE:** Sydney

#### THE COURT ORDERS THAT:

##### Provisional liquidation of the first respondent

1. Prayers 9 – 11 of the interlocutory application dated 28 June 2021 be made returnable at 9.30am (AEST) on 9 July 2021.
2. The respondents to file and serve any evidence opposition to the appointment of a provisional liquidator of the first respondent by 5.00pm (AEST) on 7 July 2021.
3. The parties provide any outline of submissions in relation to the application to appoint a provisional liquidator of the first respondent by 5.00pm on 8 July 2021.

##### Freezing orders

4. The freezing orders made against the first respondent by order 5 of the orders made by Justice Lee on 28 June 2021 (**28 June Orders**), be extended until 5.00pm (AEST) on 9 July 2021, and be amended to be in the form of Annexure A to these orders.
5. The freezing orders made against the second respondent by order 6 of the 28 June Orders be extended until 5.00pm (AEST) on 9 July 2021, and be amended to be in the form of Annexure B to these orders.





6. The time for the first respondent to provide:
- (a) the affidavit referred to in paragraph 9 of Annexure A – Freezing Order to the 28 June Orders; and
  - (b) the affidavit referred to in paragraph 23 of Annexure C – Search Order to the 28 June Orders,
- be extended to 5.00pm (AEST) on 5 July 2021.
7. The time for the second respondent to provide:
- (a) the affidavit referred to in paragraph 8 of Annexure B – Freezing Order to the 28 June Orders; and
  - (b) the affidavit referred to in paragraph 24 of Annexure D – Search Order to the 28 June Orders,
- be extended to 5:00pm (AEST) on 5 July 2021.

Access to documents and materials produced in relation to search orders

8. The time for compliance by the Independent Solicitors in relation to the Brisbane Premises to deliver their report to the Court is extended to 12.00pm (AEST) on 5 July 2021.
9. The Independent Solicitors deliver any hard copy documents seized in accordance with:
- (a) Annexure C – Search Order of the 28 June Orders made against the first respondent; and
  - (b) Annexure D – Search Order of the 28 June Orders made against the second respondent,
- (together, the **Search Orders**), to the Court by delivery to the Registry by 10.00am (AEST) on 5 July 2021.



10. The second respondent provide and by his solicitor, inform Rodney McKemmish and Yian Sun, of CYTER, Suite 2, 301A Castlereagh Street, Sydney NSW 2000, by 9.00am (AEST) on 5 July 2021 (**Independent Computer Experts**) the Microsoft BitLocker Recovery key for the Dell XPS laptop and the relevant passwords for the iPad seized from 23 Margaret Street, Rozelle NSW 2039 by 5.00pm (AEST) on 5 July 2021.
11. The respondents have first access to any documents delivered to the Court under order 9 until 10:15am (AEST) on 8 July 2021.
12. The applicant has access from 10.15am (AEST) on 8 July 2021 to any documents delivered to the Court under order 9, other than those in relation to which any application is made before 10.15am (AEST) on 8 July 2021 to prevent access.
13. By 12:00pm (AEST) on 5 July 2021 or as soon as practicable, the Independent Solicitors are to deliver all electronic copies of computer hard drives and storage media (**electronic copies**) obtained in accordance with the Search Orders, to the Independent Computer Experts for the purpose of the Independent Computer Experts recovering and examining the electronic copies to search for the Listed Things (as defined in the Search Orders) in accordance with written instructions provided by the applicant's solicitors.
14. As soon as practicable, and in any event on or before 5.00pm (AEST) on 12 July 2021, the Independent Computer Experts shall:
  - (a) provide a report to the Independent Solicitors of whether any Listed Things (as defined in the Search Orders) were or had been located on any of the electronic copies;
  - (b) return to the Independent Solicitors all the electronic copies.
15. Within 2 business days of receipt by the Independent Solicitors of the further report of the Independent Computer Experts referred to in order 14(a), the Independent Solicitors shall:

- 4 -



- (a) deliver to the Court all things received from the Independent Computer Expert in accordance with order 14(b); and
- (b) serve a copy of the further report in accordance with order 14(a) on all the parties' legal representatives.

16. The applicant's lawyers are immediately discharged from the undertakings:

- (a) at paragraphs 6 and 7 of Schedule B of the Annexure C – Search Order on page 29 of the 28 June Orders; and
- (b) at paragraphs 6 and 7 of Schedule B of the Annexure D – Search Order on page 42 of the 28 June Orders.

17. The undertakings at:

- (a) at paragraphs 3 of Schedule B of the Annexure C – Search Order on page 28 of the 28 June Orders; and
- (b) at paragraphs 6 and 7 of Schedule B of the Annexure C – Search Order on page 41 of the 28 June Orders,
- (c) be amended to permit any disclosure for the purposes of any market announcement.

#### Subpoenas

18. The applicant has leave to file and issue a subpoena to produce documents to each of:

- (a) National Australia Bank Limited ACN 004 044 937 (Annexure C to these orders); and
- (b) Rothsay Accounting Pty Ltd ACN 003 647 701 (Annexure D to these orders).

#### Other

19. These orders are to be entered forthwith.

20. The costs of the interlocutory application are costs in the proceedings.



21. The originating application is adjourned to 9:30am (AEST) on 9 July 2021.

Date that entry is stamped: 2 July 2021

*Sia Lagos*  
Registrar

**ANNEXURE A – FREEZING ORDER****PENAL NOTICE – FREEZING ORDER**

**TO:** FORUM FINANCE PTY LIMITED ACN 153 301 172

**IF YOU (BEING THE PERSON BOUND BY THIS ORDER):**

- (A) **REFUSE OR NEGLECT TO DO ANY ACT WITHIN THE TIME SPECIFIED IN THIS ORDER FOR THE DOING OF THE ACT; OR**
- (B) **DISOBEY THE ORDER BY DOING AN ACT WHICH THE ORDER REQUIRES YOU NOT TO DO,**

**YOU WILL BE LIABLE TO IMPRISONMENT, SEQUESTRATION OF PROPERTY OR OTHER PUNISHMENT.**

**ANY OTHER PERSON WHO KNOWS OF THIS ORDER AND DOES ANYTHING WHICH HELPS OR PERMITS YOU TO BREACH THE TERMS OF THIS ORDER MAY BE SIMILARLY PUNISHED.**

**TO:** FORUM FINANCE PTY LIMITED ACN 153 301 172

This is a 'freezing order' made against you on 28 June 2021 by Justice Lee at a hearing without notice to you after the Court was given the undertakings set out in Schedule A to this order and after the Court read the affidavits listed in Schedule B to this order.

**THE COURT ORDERS:**

**INTRODUCTION**

- (1) (a) The application for this order is made returnable immediately.
- (b) The time for service of the application, supporting affidavits and originating process is abridged and service is to be effected by 5.00pm (AEST) on 29 June 2021 with service to be effected by 3pm on 28 June 2021 by email to Vobis Equity Attorneys, at the email address [francis.farmakidis@vobis.com.au](mailto:francis.farmakidis@vobis.com.au), and by leaving a copy of them at the registered office of the first respondent, being Level 5, 141 Walker Street, North Sydney.
- (2) Subject to the next paragraph, this order has effect up to and including 5pm on 9 July 2021 (**Return Date**). On the Return Date at 9:30am there will be a further hearing in respect of this order before Justice Lee.



- (3) Anyone served with or notified of this order, including you, may apply to the Court at any time to vary or discharge this order or so much of it as affects the person served or notified.
- (4) In this order:
- (a) **applicant**, if there is more than one applicant, includes all the applicants;
  - (b) **you**, where there is more than one of you, includes all of you and includes you if you are a corporation;
  - (c) **third party** means a person other than you and the applicant;
  - (d) **unencumbered value** means value free of mortgages, charges, liens or other encumbrances.
  - (e) **Relevant Amount** means the amount of AUD\$262,907,838.23.
- (5) (a) If you are ordered to do something, you must do it by yourself or through directors, officers, partners, employees, agents or others acting on your behalf or on your instructions.
- (b) If you are ordered not to do something, you must not do it yourself or through directors, officers, partners, employees, agents or others acting on your behalf or on your instructions or with your encouragement or in any other way.

#### **FREEZING OF ASSETS**

- (6) (a) You must not remove from Australia or New Zealand or in any way dispose of, deal with or diminish the value of any of your assets in Australia and New Zealand (**Australian and New Zealand assets**) up to the unencumbered value of AUD\$262,907,838.23, being Relevant Amount.
- (b) If the unencumbered value of your Australian and New Zealand assets exceeds the Relevant Amount, you may remove any of those assets from Australia and New Zealand or dispose of or deal with them or diminish their value, so long as the total unencumbered value of your Australian assets still exceeds the Relevant Amount.
- (7) For the purposes of this order,
- (a) your assets include:
    - (i) all your assets, whether or not they are in your name and whether they are solely or co-owned;
    - (ii) any asset which you have the power, directly or indirectly, to dispose of or deal with as if it were your own (you are to be regarded as having such power if a third party holds or controls the asset in accordance with your direct or indirect instructions); and
    - (iii) the following assets in particular:



- (A) the assets of the business, Forum Finance Pty Ltd (the first respondent), carried on at Level 5 141 Walker St, North Sydney, New South Wales or, if any or all of the assets have been sold, the net proceeds of the sale; and
  - (B) the bank account with BSB 082 080 and account number 848483695 held with the National Australia Bank Limited (**NAB**); and
  - (C) the bank account with BSB 082 080 and account number 761644257 held with the NAB.
- (b) the value of your assets is the value of the interest you have individually in your assets.

### **PROVISION OF INFORMATION**

- (8) Subject to paragraph 9, you must:
- (a) at or before the further hearing on the Return Date (or within such further time as the Court may allow) to the best of your ability inform the applicant in writing of all your assets in Australian and New Zealand, giving their value, location and details (including any mortgages, charges or other encumbrances to which they are subject) and the extent of your interest in the assets;
  - (b) within two working days after being served with this order, swear by a proper officer and serve on the applicant an affidavit setting out the above information.
- (9) (a) This paragraph (9) applies if you are not a corporation and you wish to object to complying with paragraph 8 on the grounds that some or all of the information required to be disclosed may tend to prove that you:
- (i) have committed an offence against or arising under an Australian law or a law of a foreign country; or
  - (ii) are liable to a civil penalty.
- (b) This paragraph (9) also applies if you are a corporation and all of the persons who are able to comply with paragraph 8 on your behalf and with whom you have been able to communicate, wish to object to your complying with paragraph 8 on the grounds that some or all of the information required to be disclosed may tend to prove that they respectively:
- (i) have committed an offence against or arising under an Australian law or a law of a foreign country; or
  - (ii) are liable to a civil penalty.
- (c) You must:
- (i) disclose so much of the information required to be disclosed to which no objection is taken; and



- (ii) prepare an affidavit containing so much of the information required to be disclosed to which objection is taken, and deliver it to the Court in a sealed envelope; and
- (iii) file and serve on each other party a separate affidavit setting out the basis of the objection.

### **EXCEPTIONS TO THIS ORDER**

- (10) This order does not prohibit:
  - (a) paying \$25,000 on your reasonable legal expenses;
  - (b) dealing with or disposing of any of your assets in the ordinary and proper course of your business, including paying business expenses bona fide and properly incurred; and
  - (c) in relation to matters not falling within (a) or (b), dealing with or disposing of any of your assets in discharging obligations bona fide and properly incurred under a contract entered into before this order was made, provided that before doing so you give the applicant, if possible, at least two working days written notice of the particulars of the obligation.
- (11) You and the applicant may agree in writing that the exceptions in the preceding paragraph are to be varied. In that case the applicant or you must as soon as practicable file with the Court and serve on the other a minute of a proposed consent order recording the variation signed by or on behalf of the applicant and you, and the Court may order that the exceptions are varied accordingly.
- (12) (a) This order will cease to have effect if you:
  - (i) pay the sum of \$262,907,838.23 into Court; or
  - (ii) pay that sum into a joint bank account in the name of your lawyer and the lawyer for the applicant as agreed in writing between them; or
  - (iii) provide security in that sum by a method agreed in writing with the applicant to be held subject to the order of the Court.
- (b) Any such payment and any such security will not provide the applicant with any priority over your other creditors in the event of your insolvency.
- (c) If this order ceases to have effect pursuant 12(a) above, you must as soon as practicable file with the Court and serve on the applicant notice of that fact.

### **COSTS**





- 10 -

- (13) The costs of this application are reserved to the Court hearing the application on the Return Date.

**PERSONS OTHER THAN THE APPLICANT AND RESPONDENT**

**(14) Set off by banks**

This order does not prevent any bank from exercising any right of set off it has in respect of any facility which it gave you before it was notified of this order.

**(15) Bank withdrawals by the respondent**

No bank need inquire as to the application or proposed application of any money withdrawn by you if the withdrawal appears to be permitted by this order.

**(16) Persons outside Australia and New Zealand**

- (a) Except as provided in subparagraph (b) below, the terms of this order do not affect or concern anyone outside Australia or New Zealand.
- (b) The terms of this order will affect the following persons outside Australia and New Zealand:
- (i) you and your directors, officers, employees and agents (except banks and financial institutions);
  - (ii) any person (including a bank or financial institution) who:
    - (A) is subject to the jurisdiction of this Court; and
    - (B) has been given written notice of this order, or has actual knowledge of the substance of the order and of its requirements; and
    - (C) is able to prevent or impede acts or omissions outside Australia which constitute or assist in a disobedience of the terms of this order; and
  - (iii) any other person (including a bank or financial institution), only to the extent that this order is declared enforceable by or is enforced by a court in a country or state that has jurisdiction over that person or over any of that person's assets.

**(17) Assets located outside Australia and in New Zealand**

Nothing in this order shall, in respect of assets located outside Australia or New Zealand, prevent any third party from complying or acting in conformity with what it reasonably believes to be its bona fide and properly incurred legal obligations, whether contractual or pursuant to a court order or otherwise, under the law of the country or state in which those assets are situated or under the proper law of any contract between a third party and you, provided that in the case of any future order of a court of that country or state made on your or the third party's application, reasonable written notice of the making of the application is given to the applicant.



## SCHEDULE A

### UNDERTAKINGS GIVEN TO THE COURT BY THE APPLICANT

- (1) The applicant undertakes to submit to such order (if any) as the Court may consider to be just for the payment of compensation (to be assessed by the Court or as it may direct) to any person (whether or not a party) affected by the operation of the order.
- (2) As soon as practicable, the applicant will file and serve upon the respondent copies of:
  - (a) this order;
  - (b) the application for this order for hearing on the return date;
  - (c) the following material in so far as it was relied on by the applicant at the hearing when the order was made:
    - (i) affidavits (or draft affidavits);
    - (ii) exhibits capable of being copied;
    - (iii) any written submission; and
    - (iv) any other document that was provided to the Court.
  - (d) a transcript, or, if none is available, a note, of any exclusively oral allegation of fact that was made and of any exclusively oral submission that was put, to the Court;
  - (e) the originating process, or, if none was filed, any draft originating process produced to the Court.
- (3) As soon as practicable, the applicant will cause anyone notified of this order to be given a copy of it.
- (4) The applicant will pay the reasonable costs of anyone other than the respondents which have been incurred as a result of this order, including the costs of finding out whether that person holds any of the respondent's assets.
- (5) If this order ceases to have effect the applicant will promptly take all reasonable steps to inform in writing anyone to who has been notified of this order, or who he has reasonable grounds for supposing may act upon this order, that it has ceased to have effect.
- (6) The applicant will not, without leave of the Court, use any information obtained as a result of this order for the purpose of any civil or criminal proceedings, either in or outside Australia, other than this proceeding.
- (7) The applicant will not, without leave of the Court, seek to enforce this order in any country outside Australia or seek in any country outside Australia an order of a similar



nature or an order conferring a charge or other security against the respondent or the respondent's assets.

## **SCHEDULE B**

### **AFFIDAVITS RELIED ON**

<b>Name of deponent</b>	<b>Date affidavit made</b>
(1) Geoffrey Keith Anderson	28 June 2021
(2) Nicholas Antony O'Brien	27 June 2021
(3) Caitlin Maria Murray	28 June 2021

### **NAME AND ADDRESS OF APPLICANT'S LAWYERS**

The applicant's lawyers are:

MinterEllison  
Governor Macquarie Tower  
Level 40, 1 Farrer Place  
Sydney NSW 2000

Attention: Caitlin Murray  
[caitlin.murray@minterellison.com](mailto:caitlin.murray@minterellison.com) ; T +61 2 9921 8514 ; M +61 422 977 971 ; +61 2 9921 8123 ref: CMM:1353397

**ANNEXURE B – FREEZING ORDER****PENAL NOTICE – FREEZING ORDER**

**TO:** BASILE PAPADIMITRIOU

**IF YOU (BEING THE PERSON BOUND BY THIS ORDER):**

- (A) REFUSE OR NEGLECT TO DO ANY ACT WITHIN THE TIME SPECIFIED IN THIS ORDER FOR THE DOING OF THE ACT; OR
- (B) DISOBEY THE ORDER BY DOING AN ACT WHICH THE ORDER REQUIRES YOU NOT TO DO,

**YOU WILL BE LIABLE TO IMPRISONMENT, SEQUESTRATION OF PROPERTY OR OTHER PUNISHMENT.**

**ANY OTHER PERSON WHO KNOWS OF THIS ORDER AND DOES ANYTHING WHICH HELPS OR PERMITS YOU TO BREACH THE TERMS OF THIS ORDER MAY BE SIMILARLY PUNISHED.**

**TO** BASILE PAPADIMITRIOU

This is a *'freezing order'* made against you on 28 June 2021 by Justice Lee at a hearing without notice to you after the Court was given the undertakings set out in Schedule A to this order and after the Court read the affidavits listed in Schedule B to this order.

**THE COURT ORDERS:****INTRODUCTION**

- (1) (a) The application for this order is made returnable immediately.  
(b) The time for service of the application, supporting affidavits and originating process is abridged and service is to be effected by 3pm 28 June 2021 with service to be effected by email to bpapas@forumgroup.com.au.
- (2) Subject to the next paragraph, this order has effect up to and including 5.00pm (AEST) on 9 July 2021 (**Return Date**). On the Return Date at 9:30am (AEST) there will be a further hearing in respect of this order before Justice Lee.
- (3) Anyone served with or notified of this order, including you, may apply to the Court at any time to vary or discharge this order or so much of it as affects the person served or notified.
- (4) In this order:



- (a) **applicant**, if there is more than one applicant, includes all the applicants;
  - (b) **you**, where there is more than one of you, includes all of you and includes you if you are a corporation;
  - (c) **third party** means a person other than you and the applicant;
  - (d) **unencumbered value** means value free of mortgages, charges, liens or other encumbrances.
  - (e) **Relevant Amount** means the amount of AUD\$262,907,838.23.
- (5) (a) If you are ordered to do something, you must do it by yourself or through directors, officers, partners, employees, agents or others acting on your behalf or on your instructions.
- (b) If you are ordered not to do something, you must not do it yourself or through directors, officers, partners, employees, agents or others acting on your behalf or on your instructions or with your encouragement or in any other way.

#### **FREEZING OF ASSETS**

- (6) (a) You must not remove from Australia or in any way dispose of, deal with or diminish the value of any of your assets in Australia (**Australian assets**) up to the unencumbered value of AUD\$262,907,838.23, being the Relevant Amount.
- (b) If the unencumbered value of your Australian assets exceeds the Relevant Amount, you may remove any of those assets from Australia or dispose of or deal with them or diminish their value, so long as the total unencumbered value of your Australian assets still exceeds the Relevant Amount.
- (c) If the unencumbered value of your Australian assets is less than the Relevant Amount, and you have assets outside Australia and in New Zealand (**New Zealand assets**):
- (i) You must not dispose of, deal with or diminish the value of any of your Australian assets and New Zealand assets up to the unencumbered value of your Australian and New Zealand assets of the Relevant Amount; and
  - (ii) You may dispose of, deal with or diminish the value of any of your New Zealand assets, so long as the unencumbered value of your Australian assets and New Zealand assets still exceeds the Relevant Amount.
- (7) For the purposes of this order,
- (a) your assets include:
    - (i) all your assets, whether or not they are in your name and whether they are solely or co-owned;
    - (ii) any asset which you have the power, directly or indirectly, to dispose of or deal with as if it were your own (you are to be regarded as having such



power if a third party holds or controls the asset in accordance with your direct or indirect instructions); and

- (iii) the following assets in particular:
  - (A) the assets of your business, Forum Finance Pty Ltd (the first respondent), carried on at Level 5 141 Walker St, North Sydney New South Wales or, if any or all of the assets have been sold, the net proceeds of the sale ; and
  - (B) the bank account with BSB 082 080 and account number 848483695 held with the National Australia Bank Limited (**NAB**); and
  - (C) the bank account with BSB 082 080 and account number 761644257 held with the NAB.
- (b) the value of your assets is the value of the interest you have individually in your assets.

#### **PROVISION OF INFORMATION**

- (8) Subject to paragraph 9, you must:
  - (a) at or before the further hearing on the Return Date (or within such further time as the Court may allow) to the best of your ability inform the applicant in writing of all your assets in Australia, giving their value, location and details (including any mortgages, charges or other encumbrances to which they are subject) and the extent of your interest in the assets;
  - (b) within 6 working days after being served with this order, swear and serve on the applicant an affidavit setting out the above information.
- (9) (a) This paragraph 9 applies if you are not a corporation and you wish to object to complying with paragraph 8 on the grounds that some or all of the information required to be disclosed may tend to prove that you:
  - (i) have committed an offence against or arising under an Australian law or a law of a foreign country; or
  - (ii) are liable to a civil penalty.
- (b) This paragraph 9 also applies if you are a corporation and all of the persons who are able to comply with paragraph 8 on your behalf and with whom you have been able to communicate, wish to object to your complying with paragraph 8 on the grounds that some or all of the information required to be disclosed may tend to prove that they respectively:
  - (i) have committed an offence against or arising under an Australian law or a law of a foreign country; or
  - (ii) are liable to a civil penalty.



- (c) You must:
- (i) disclose so much of the information required to be disclosed to which no objection is taken; and
  - (ii) prepare an affidavit containing so much of the information required to be disclosed to which objection is taken, and deliver it to the Court in a sealed envelope; and
  - (iii) file and serve on each other party a separate affidavit setting out the basis of the objection.

### **EXCEPTIONS TO THIS ORDER**

- (10) This order does not prohibit:
- (a) you paying up to \$2,500 a week on your ordinary living expenses;
  - (b) paying \$25,000 on your reasonable legal expenses;
  - (c) dealing with or disposing of any of your assets in the ordinary and proper course of your business, including paying business expenses bona fide and properly incurred; and
  - (d) in relation to matters not falling within (a), (b) or (c), dealing with or disposing of any of your assets in discharging obligations bona fide and properly incurred under a contract entered into before this order was made, provided that before doing so you give the applicant, if possible, at least two working days written notice of the particulars of the obligation.
- (11) You and the applicant may agree in writing that the exceptions in the preceding paragraph are to be varied. In that case the applicant or you must as soon as practicable file with the Court and serve on the other a minute of a proposed consent order recording the variation signed by or on behalf of the applicant and you, and the Court may order that the exceptions are varied accordingly.
- (12) (a) This order will cease to have effect if you:
- (i) pay the sum of \$262,907,838.23 into Court; or
  - (ii) pay that sum into a joint bank account in the name of your lawyer and the lawyer for the applicant as agreed in writing between them; or
  - (iii) provide security in that sum by a method agreed in writing with the applicant to be held subject to the order of the Court.
- (b) Any such payment and any such security will not provide the applicant with any priority over your other creditors in the event of your insolvency.
- (c) If this order ceases to have effect pursuant 12(a) above, you must as soon as practicable file with the Court and serve on the applicant notice of that fact.



## **COSTS**

- (13) The costs of this application are reserved to the Court hearing the application on the Return Date.

## **PERSONS OTHER THAN THE APPLICANT AND RESPONDENT**

### **(14) Set off by banks**

This order does not prevent any bank from exercising any right of set off it has in respect of any facility which it gave you before it was notified of this order.

### **(15) Bank withdrawals by the respondent**

No bank need inquire as to the application or proposed application of any money withdrawn by you if the withdrawal appears to be permitted by this order.

### **(16) Persons outside Australia**

- (a) Except as provided in subparagraph (b) below, the terms of this order do not affect or concern anyone outside Australia.
- (b) The terms of this order will affect the following persons outside Australia:
- (i) you and your directors, officers, employees and agents (except banks and financial institutions);
  - (ii) any person (including a bank or financial institution) who:
    - (A) is subject to the jurisdiction of this Court; and
    - (B) has been given written notice of this order, or has actual knowledge of the substance of the order and of its requirements; and
    - (C) is able to prevent or impede acts or omissions outside Australia which constitute or assist in a disobedience of the terms of this order; and
  - (iii) any other person (including a bank or financial institution), only to the extent that this order is declared enforceable by or is enforced by a court in a country or state that has jurisdiction over that person or over any of that person's assets.

### **(17) Assets located outside Australia**

Nothing in this order shall, in respect of assets located outside Australia, prevent any third party from complying or acting in conformity with what it reasonably believes to be its bona fide and properly incurred legal obligations, whether contractual or pursuant to a court order or otherwise, under the law of the country or state in which those assets are situated or under the proper law of any contract between a third party and you, provided that in the case of any future order of a court of that country or state made on your or the third party's application, reasonable written notice of the making of the application is given to the applicant.





## SCHEDULE A

### UNDERTAKINGS GIVEN TO THE COURT BY THE APPLICANT

- (1) The applicant undertakes to submit to such order (if any) as the Court may consider to be just for the payment of compensation (to be assessed by the Court or as it may direct) to any person (whether or not a party) affected by the operation of the order.
- (2) As soon as practicable, the applicant will file and serve upon the respondent copies of:
  - (a) this order;
  - (b) the application for this order for hearing on the return date;
  - (c) the following material in so far as it was relied on by the applicant at the hearing when the order was made:
    - (i) affidavits (or draft affidavits);
    - (ii) exhibits capable of being copied;
    - (iii) any written submission; and
    - (iv) any other document that was provided to the Court.
  - (d) a transcript, or, if none is available, a note, of any exclusively oral allegation of fact that was made and of any exclusively oral submission that was put, to the Court;
  - (e) the originating process, or, if none was filed, any draft originating process produced to the Court.
- (3) As soon as practicable, the applicant will cause anyone notified of this order to be given a copy of it.
- (4) The applicant will pay the reasonable costs of anyone other than the respondent which have been incurred as a result of this order, including the costs of finding out whether that person holds any of the respondent's assets.
- (5) If this order ceases to have effect the applicant will promptly take all reasonable steps to inform in writing anyone to who has been notified of this order, or who he has reasonable grounds for supposing may act upon this order, that it has ceased to have effect.
- (6) The applicant will not, without leave of the Court, use any information obtained as a result of this order for the purpose of any civil or criminal proceedings, either in or outside Australia, other than this proceeding.
- (7) The applicant will not, without leave of the Court, seek to enforce this order in any country outside Australia or seek in any country outside Australia an order of a similar



nature or an order conferring a charge or other security against the respondent or the respondent's assets.

## SCHEDULE B

### AFFIDAVITS RELIED ON

<b>Name of deponent</b>	<b>Date affidavit made</b>
(1) Geoffrey Keith Anderson	28 June 2021
(2) Nicholas Antony O'Brien	27 June 2021
(3) Caitlin Maria Murray	28 June 2021

### NAME AND ADDRESS OF APPLICANT'S LAWYERS

The applicant's lawyers are:

MinterEllison

Governor Macquarie Tower

Level 40, 1 Farrer Place

Sydney NSW 2000

Attention: Caitlin Murray

[caitlin.murray@minterellison.com](mailto:caitlin.murray@minterellison.com) ; T +61 2 9921 8514 ; M +61 422 977 971 ; +61 2 9921

8123 ref: CMM:1353397

- 20 -

**Annexure C**

Form 43B  
Rule 24.13(1)(b)

**Subpoena to produce documents**

No. NSD616/2021

Federal Court of Australia  
District Registry: New South Wales  
Division: General

**Westpac Banking Corporation ABN 33 007 457 141**

Applicant

**Forum Finance Pty Limited ACN 153 301 172** and others named in the Schedule

Respondents

To: The Proper Officer, National Australia Bank Limited ACN 004 044 937  
Level 1, 800 Bourke Street, Docklands Victoria 3008

**You are ordered to produce this subpoena or a copy of it and the documents or things specified in the Schedule of documents. See next page for details.**

**Failure to comply with this subpoena without lawful excuse is a contempt of court and may result in your arrest.**

Please read Notes 1 to 13 at the end of this subpoena.

The last date for service of this subpoena is

. (See Note 1)



Date: 2 July 2021

.....  
Signed by an officer acting with the authority  
of the District Registrar

Issued at the request of the Applicant, whose address for service is:

Place: Level 40, Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000

Attention: Caitlin Murray

Email: [caitlin.murray@minterellison.com](mailto:caitlin.murray@minterellison.com)



### Details of subpoena

You must comply with this subpoena:

- (a) by attending to produce this subpoena or a copy of it and the documents or things specified in the Schedule of documents below at the date, time and place specified for attendance and production; or
- (b) by delivering or sending this subpoena or a copy of it and the documents or things specified in the Schedule of documents below to a Registrar at the address below, or if there is more than one address below, at any one of those addresses, so that they are received not less than 2 clear business days before the date specified for attendance and production. (*See Notes 5–9*)

Date, time and place at which you must attend to produce the subpoena or a copy of it and documents or things, unless you receive a notice of a later date or time from the issuing party, in which case the later date or time is substituted:

Date: 8 July 2021

Time: 9.00am (AEST)

Place: Federal Court of Australia, New South Wales District Registry

[NSWInspections@fedcourt.gov.au](mailto:NSWInspections@fedcourt.gov.au)

Address, or any address, to which the subpoena (or copy) and documents or things may be delivered or posted:

The Registrar  
Federal Court of Australia  
New South Wales District Registry  
Law Courts Building  
Queens Square  
SYDNEY NSW 2000



### Schedule of documents

The documents and things you must produce are as follows:

1. A copy of the account opening statements for:
  - a. the Forum Finance Accounts;
  - b. any Company Account; and
  - c. any Papas Account.
2. A copy of the statements of account for the Relevant Period for:
  - a. the Forum Finance Accounts;
  - b. any Company Account; and
  - c. any Papas Account.
3. A copy of the Documents recording the names of all individuals or entities who are, or have been, the holder or signatory in the Relevant Period on:
  - a. the Forum Finance Accounts;
  - b. any Company Account; and
  - c. any Papas Account.
4. A copy of Documents recording the limits on the authority of signatories on:
  - a. the Forum Finance Accounts;
  - b. any Company Account; and
  - c. any Papas Account.

In this Schedule, the following words have the definitions set out below:

- (a) **Company Account** means any account held in the name of Forum Finance Pty Ltd ACN 153 301 172.
- (b) **Documents** means any record of information and includes:
  - (i) anything on which there is writing; or
  - (ii) anything on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them;

- 24 -



- (iii) anything from which sounds, images, or writing can be reproduced with or without the aid of anything else; or
  - (iv) a map, plan, drawing or photograph,
- and any reference to a document includes a reference to:
- (i) any part of the document; or
  - (ii) any copy, reproduction or duplicate of the document or any part of the document; or
  - (iii) any such copy, reproduction or duplicate.
- (c) **Forum Finance Accounts** means the following accounts held with National Australia Bank Limited:
- (i) BSB 082 080 account number 848483695; and
  - (ii) BSB 082 080 account number 761644257.
- (d) **Papas Account** means any account held in the name of, or to the benefit of, Basile Papadimitriou (date of birth 31 August 1972) (also known as Bill Papas; Bill Pappas).
- (e) **Relevant Period** means 1 August 2018 to current.



### *Notes*

#### **Last day for service**

1. You need not comply with the subpoena unless it is served on you on or before the date specified in the subpoena as the last date for service of the subpoena.

#### **Informal service**

2. Even if this subpoena has not been served personally on you, you must, nevertheless, comply with its requirements, if you have, by the last date for service of the subpoena, actual knowledge of the subpoena and of its requirements.

#### **Addressee a corporation**

3. If the subpoena is addressed to a corporation, the corporation must comply with the subpoena by its appropriate or proper officer.

#### **Conduct money**

4. You need not comply with the subpoena in so far as it requires you to attend to give evidence unless conduct money sufficient to meet your reasonable expenses of attending as required by the subpoena is handed or tendered to you a reasonable time before the date your attendance is required.

#### **Production of subpoena or copy of it and documents or things by delivery or post**

5. If this subpoena requires production of the subpoena (or a copy of it) and a document or thing, instead of attending to produce the subpoena (or a copy of it) and the document or thing, you may comply with the subpoena by delivering or sending the subpoena (or a copy of it) and the document or thing to a Registrar:
  - (a) at the address specified in the subpoena for the purpose; or
  - (b) if more than one address is specified - at any of those addresses;so that they are received not less than 2 clear business days before the date specified in the subpoena for attendance and production, or if you receive notice of a later date from the issuing party, before the later date or time.
6. If you object to a document or thing produced in response to this subpoena being inspected by a party to the proceeding or any other person, you must, at the time of





production, notify a Registrar in writing of your objection and of the grounds of your objection.

7. Unless the Court otherwise orders, if you do not object to a document or thing produced by you in response to the subpoena being inspected by any party to the proceeding, a Registrar may permit the parties to the proceeding to inspect the document or thing.

#### **Production of a number of documents or things**

8. If you produce more than one document or thing, you must, if requested by a Registrar, produce a list of the documents or things produced.

#### **Production of copy instead of original**

9. You may, with the consent of the issuing party, produce a copy, instead of the original, of any document that the subpoena requires you to produce.

- 9A. The copy of a document may be:

- (a) a photocopy; or
- (b) in an electronic form in any of the following electronic formats:
  - .doc and .docx – Microsoft Word documents
  - .pdf – Adobe Acrobat documents
  - .xls and .xlsx – Microsoft Excel spreadsheets
  - .jpg – image files
  - .rtf – rich text format
  - .gif – graphics interchange format
  - .tif – tagged image format

#### **Applications in relation to subpoena**

10. You have the right to apply to the Court:
  - (a) for an order setting aside the subpoena (or a part of it) or for relief in respect of the subpoena; and
  - (b) for an order with respect to your claim for privilege, public interest immunity or confidentiality in relation to any document or thing the subject of the subpoena.

#### **Loss or expense of compliance**

11. If you are not a party to the proceeding, you may apply to the Court for an order that the issuing party pay an amount (in addition to conduct money and any witness's

- 27 -



expenses) in respect of the loss or expense, including legal costs, reasonably incurred in complying with the subpoena.

**Contempt of court - arrest**

12. Failure to comply with a subpoena without lawful excuse is a contempt of court and may be dealt with accordingly.
13. Note 12 is without prejudice to any power of the Court under any rules of the Court (including any rules of the Court providing for the arrest of an addressee who defaults in attendance in accordance with a subpoena) or otherwise, to enforce compliance with a subpoena.

- 28 -

**Annexure D**

Form 43B  
Rule 24.13(1)(b)

**Subpoena to produce documents**

No. NSD616/2021

Federal Court of Australia  
District Registry: New South Wales  
Division: General

**Westpac Banking Corporation ABN 33 007 457 141**

Applicant

**Forum Finance Pty Limited ACN 153 301 172** and others named in the Schedule

Respondents

To: The Proper Officer, Rothsay Accounting Services Pty Ltd ACN 003 647 701  
Level 1, 12-14 O'Connell Street, Sydney NSW 2000

**You are ordered to produce this subpoena or a copy of it and the documents or things specified in the Schedule of documents.** See next page for details.

**Failure to comply with this subpoena without lawful excuse is a contempt of court and may result in your arrest.**

Please read Notes 1 to 13 at the end of this subpoena.

The last date for service of this subpoena is . (See Note 1)



Date: 2 July 2021

.....  
Signed by an officer acting with the authority  
of the District Registrar

Issued at the request of the Applicant, whose address for service is:

Place: Level 40, Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000

Attention: Caitlin Murray

Email: [caitlin.murray@minterellison.com](mailto:caitlin.murray@minterellison.com)



### Details of subpoena

You must comply with this subpoena:

- (c) by attending to produce this subpoena or a copy of it and the documents or things specified in the Schedule of documents below at the date, time and place specified for attendance and production; or
- (d) by delivering or sending this subpoena or a copy of it and the documents or things specified in the Schedule of documents below to a Registrar at the address below, or if there is more than one address below, at any one of those addresses, so that they are received not less than 2 clear business days before the date specified for attendance and production. (*See Notes 5–9*)

Date, time and place at which you must attend to produce the subpoena or a copy of it and documents or things, unless you receive a notice of a later date or time from the issuing party, in which case the later date or time is substituted:

Date: 8 July 2021

Time: 9.00am (AEST)

Place: Federal Court of Australia, New South Wales District Registry

[NSWInspections@fedcourt.gov.au](mailto:NSWInspections@fedcourt.gov.au)

Address, or any address, to which the subpoena (or copy) and documents or things may be delivered or posted:

The Registrar  
Federal Court of Australia  
New South Wales District Registry  
Law Courts Building  
Queens Square  
SYDNEY NSW 2000



### Schedule of documents

The documents and things you must produce are as follows:

5. A copy of the management accounts and financial accounts of Forum Finance in the Relevant Period.
6. A copy of the Documents recording or referring to any Funds received by Forum Finance in the Relevant Period.
7. A copy of the Documents recording or referring to the use or disbursement of any Funds in the Relevant Period.

In this Schedule, the following words have the definitions set out below:

- (f) **Customer** means any one of the following:
- (i) Veolia Environmental Services (Australia) Pty Ltd ACN 051 316 584;
  - (ii) WesTrac Pty Limited ACN 009 342 572;
  - (iii) ALH Group Pty Limited ACN 098 212 134;
  - (iv) Scentre Shopping Centre Management Pty Ltd ACN 000 712 710;
  - (v) Coles Supermarkets Australia Pty Limited ACN 004 189 708;
  - (vi) Catholic Healthcare Limited ACN 064 946 318; and
  - (vii) The Martinez HWL Practice Trust & The East HWL Practice Trust & The Warat HWL Practice Trust & The Marin HWL Practice Trust & Others trading as 'HWL Ebsworth Lawyers' ABN 37 246 549 189.
- (g) **Customer Agreement** means an agreement between Forum Finance and a Customer.
- (h) **Documents** means any record of information and includes:
- (i) anything on which there is writing; or
  - (ii) anything on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them;
  - (iii) anything from which sounds, images, or writing can be reproduced with or without the aid of anything else; or
  - (iv) a map, plan, drawing or photograph,



and any reference to a document includes a reference to:

- (v) any part of the document; or
  - (vi) any copy, reproduction or duplicate of the document or any part of the document; or
  - (vii) any such copy, reproduction or duplicate.
- (i) **Forum Finance** means Forum Finance Pty Ltd ACN 153 301 172.
  - (j) **Funds** means any amount paid to Forum Finance by Westpac in connection with a Customer Agreement.
  - (k) **Relevant Period** means 1 August 2018 to current.
  - (l) **Westpac** means Westpac Banking Corporation ABN 33 007 457 141.



### *Notes*

#### **Last day for service**

14. You need not comply with the subpoena unless it is served on you on or before the date specified in the subpoena as the last date for service of the subpoena.

#### **Informal service**

15. Even if this subpoena has not been served personally on you, you must, nevertheless, comply with its requirements, if you have, by the last date for service of the subpoena, actual knowledge of the subpoena and of its requirements.

#### **Addressee a corporation**

16. If the subpoena is addressed to a corporation, the corporation must comply with the subpoena by its appropriate or proper officer.

#### **Conduct money**

17. You need not comply with the subpoena in so far as it requires you to attend to give evidence unless conduct money sufficient to meet your reasonable expenses of attending as required by the subpoena is handed or tendered to you a reasonable time before the date your attendance is required.

#### **Production of subpoena or copy of it and documents or things by delivery or post**

18. If this subpoena requires production of the subpoena (or a copy of it) and a document or thing, instead of attending to produce the subpoena (or a copy of it) and the document or thing, you may comply with the subpoena by delivering or sending the subpoena (or a copy of it) and the document or thing to a Registrar:
- (a) at the address specified in the subpoena for the purpose; or
  - (b) if more than one address is specified - at any of those addresses;
- so that they are received not less than 2 clear business days before the date specified in the subpoena for attendance and production, or if you receive notice of a later date from the issuing party, before the later date or time.
19. If you object to a document or thing produced in response to this subpoena being inspected by a party to the proceeding or any other person, you must, at the time of





production, notify a Registrar in writing of your objection and of the grounds of your objection.

20. Unless the Court otherwise orders, if you do not object to a document or thing produced by you in response to the subpoena being inspected by any party to the proceeding, a Registrar may permit the parties to the proceeding to inspect the document or thing.

#### **Production of a number of documents or things**

21. If you produce more than one document or thing, you must, if requested by a Registrar, produce a list of the documents or things produced.

#### **Production of copy instead of original**

22. You may, with the consent of the issuing party, produce a copy, instead of the original, of any document that the subpoena requires you to produce.

- 9A. The copy of a document may be:

- (a) a photocopy; or
- (b) in an electronic form in any of the following electronic formats:
  - .doc and .docx – Microsoft Word documents
  - .pdf – Adobe Acrobat documents
  - .xls and .xlsx – Microsoft Excel spreadsheets
  - .jpg – image files
  - .rtf – rich text format
  - .gif – graphics interchange format
  - .tif – tagged image format

#### **Applications in relation to subpoena**

23. You have the right to apply to the Court:
- (a) for an order setting aside the subpoena (or a part of it) or for relief in respect of the subpoena; and
  - (b) for an order with respect to your claim for privilege, public interest immunity or confidentiality in relation to any document or thing the subject of the subpoena.

#### **Loss or expense of compliance**

24. If you are not a party to the proceeding, you may apply to the Court for an order that the issuing party pay an amount (in addition to conduct money and any witness's



expenses) in respect of the loss or expense, including legal costs, reasonably incurred in complying with the subpoena.

**Contempt of court - arrest**

25. Failure to comply with a subpoena without lawful excuse is a contempt of court and may be dealt with accordingly.
26. Note 12 is without prejudice to any power of the Court under any rules of the Court (including any rules of the Court providing for the arrest of an addressee who defaults in attendance in accordance with a subpoena) or otherwise, to enforce compliance with a subpoena.



**Schedule**

No: NSD616/2021

Federal Court of Australia  
District Registry: New South Wales  
Division: General

Applicant	Westpac Banking Corporation ABN 33 007 457 141
First Respondent	Forum Finance Pty Limited ACN 153 301 172
Second Respondent	Basile Papadimitriou
Third Respondent	Vincenzo Frank Tesoriero

**Annexure**

No. NSD616 of 2021

Federal Court of Australia  
District Registry: New South Wales  
Division: General

**Westpac Banking Corporation ABN 33 007 457 141** and another  
Applicant

**Forum Finance Pty Limited ACN 153 301 172** and others named in the Schedule  
Respondents

This is the Annexure marked "**BJQ-20**" shown and produced to **Bianca Josephine Quan** at the time of swearing her affidavit on 28 September 2021.

Deponent signature:

DocuSigned by:  
*Bianca Quan*  
E3C6AC0D03C0401.....

Before me: DocuSigned by:  
*Adrian Lee*  
BC4298F2AFED404.....

Adrian Lee

Level 10, 114 William Street, Melbourne VIC 3000

An Australian Legal Practitioner within the meaning of the Legal Profession Uniform Law (Vic)

A person authorised under Section 19(1) of the Oaths and Affirmations Act 2018 to take an affidavit.

This affidavit, as signed and notated by the authorised affidavit taker, was signed by the deponent over audio-visual link.

The specified things in respect of the affidavit were done by means of audio-visual link. The affidavit is a scanned hard copy or an electronic copy, not an original.

**FEDERAL COURT OF AUSTRALIA****Westpac Banking Corporation v Forum Finance Pty Limited [2021] FCA****807**

File number: NSD 616 of 2021

Judgment of: **LEE J**

Date of judgment: 9 July 2021

Catchwords: **CORPORATIONS** – appointment of liquidator – allegations of an elaborate fraud by company in excess of \$250 million – evidence led by Westpac unchallenged by company – purported mastermind Mr Papas located somewhere in Europe – Delphic details of his whereabouts and questionable whether he will return – application for appointment of liquidator ultimately consented to by company – just and equitable that company be wound up – consideration of appropriate liquidators

Legislation: *Corporations Act 2001* (Cth) s 461  
*Evidence Act 1995* (Cth) s 129A

Cases cited: *Ashby v Slipper* [2014] FCAFC 15; (2014) 219 FCR 322  
*Australian Securities and Investments Commission v Austimber Pty Ltd* [1999] FCA 566; (1999) 17 ACLC 893  
*Ex parte Spackman* (1849) 1 Mac & G 170; (1849) 41 ER 1228  
*Hillig v Darkinjung Local Aboriginal Land Council* [2006] NSWSC 1371; (2006) 205 FLR 450  
*Precision Plastics Pty Ltd v Demir* (1975) 132 CLR 362  
*Re Producer's Real Estate v Finance Co Ltd* [1936] VLR 235  
*Re Westbourne Galleries Ltd* [1973] AC 360

Division: General Division

Registry: New South Wales

National Practice Area: Commercial and Corporations

Sub-area: Commercial Contracts, Banking, Finance and Insurance

Number of paragraphs: 27

Date of hearing:	9 July 2021
Counsel for the Applicant:	Mr J Giles SC with Mr J Arnott and Ms C Hamilton-Jewell
Solicitor for the Applicant:	MinterEllison
Counsel for the First Respondent:	Mr A Martin
Solicitor for the First Respondent:	Hunts.Law
Counsel for the Second Respondent:	Mr A Hourigan
Solicitor for the Second Respondent:	Panetta Lawyers
Counsel for the Third Respondent:	Mr G McNally SC
Solicitor for the Third Respondent:	Fortis Law
Counsel for National Australia Bank:	Mr C Colquhoun
Solicitor for National Australia Bank:	Dentons
Counsel for Forum Group Pty Ltd (in administration) (receivers appointed):	Mr D Sulan
Solicitor for Forum Group Pty Ltd (in administration) (receivers appointed):	Cornwalls
Counsel for Societe Generale:	Mr S Gray
Solicitor for Societe Generale:	Ashurst

## ORDERS

NSD 616 of 2021

**BETWEEN:**                    **WESTPAC BANKING CORPORATION ABN 33 007 457 141**  
Applicant

**AND:**                         **FORUM FINANCE PTY LIMITED**  
First Respondent

**MR BASILE PAPADIMITRIOU**  
Second Respondent

**VINCENZO FRANK TESORIERO**  
Third Respondent

**ORDER MADE BY: LEE J**

**DATE OF ORDER: 9 JULY 2021**

### THE COURT ORDERS THAT:

1A. Prayers for relief 7 and 8 in the amended interlocutory application dated 8 July 2021 be determined separately and on a final basis before the balance of the relief sought in that application.

### Winding up of the first respondent

1. Pursuant to s 461(1)(k) of the *Corporations Act 2001* (Cth) (**Act**), the first respondent be wound up on the basis that the Court is of the opinion that it is just and equitable that the first respondent be wound up.
2. Pursuant to s 472(1) of the Act, Jason Preston and Jason Ireland of McGrathNicol, Level 12, 20 Martin Place, Sydney NSW 2000, are appointed jointly and severally as liquidators of the first respondent (**Liquidators**).
3. Compliance with r 5.6 of the *Federal Court (Corporations) Rules 2000* (Cth) be dispensed with.
4. The Liquidators have liberty to apply for directions in relation to the conduct of the liquidation.

5. The Liquidators have access to all documents of the first respondent seized in accordance with the search orders made against the first respondent by order 7 of the orders made by Justice Lee on 28 June 2021.

### **Freezing orders**

6. The freezing order made against the first respondent by order 4 of the orders made by Justice Lee on 2 July 2021 in relation to the interlocutory application dated 28 June 2021 (the **2 July Orders**) be extended until 5pm (AEST) on 16 July 2021.
7. The freezing order made against the second respondent by order 5 of the 2 July Orders be extended until further order.
8. The freezing order made against the third respondent by order 4 of the orders made by Justice Lee on 2 July 2021 in relation to the interlocutory application dated 2 July 2021 be varied in the form of Annexure A and be extended and apply until further order.

### **Orders sought by the Receivers**

9. The freezing order made by Justice Lee on 28 June 2021 in the form of Annexure A be varied by adding:

“(10) This order does not prohibit:

...

- (d) without limiting subparagraphs (b) and (c), dealing with the bank account in the name of Forum Group Pty Ltd with BSB 082-080 Account Number 12-178-2934 held with National Australia Bank Ltd by discharging business expenses of Forum Group Pty Ltd bona fide and properly incurred not limited to obligations bona fide and properly owing to Octet Finance Pty Ltd ACN 124 477 916.

10. The freezing order made by Justice Lee on 28 June 2021 in the form of annexure B be varied by adding:

“(10) This order does not prohibit:

...



- (e) without limiting subparagraphs (b) and (c), dealing with the bank account in the name of Forum Group Pty Ltd with BSB 082-080 Account Number 12- 178-2934 held with National Australia Bank Ltd by discharging business expenses of Forum Group Pty Ltd bona fide and properly incurred not limited to obligations bona fide and properly owing to Octet Finance Pty Ltd ACN 124 477 916.

### **Search Orders**

11. The time for compliance by the Independent Computer Experts with order 14 of the 2 July Orders be extended insofar as it applies for the Sydney Premises as follows:
- a. the Independent Computer Expert provide an interim report to the Independent Solicitor of whether any Listed Things (as defined in the search orders in the 28 June Orders) were or had been located on any of the electronic copies by 5pm on 12 July 2021;
  - b. the Independent Computer Expert provide a final report to the Independent Solicitor of whether any Listed Things were or had been located on any of the electronic copies (but not including the Our Kloud Servers) by 5pm on 19 July 2021;
  - c. the Independent Computer Expert provide a further report to the Independent Solicitor of whether any Listed Things were or had been located on the Our Kloud Servers as soon as practicable; and
  - d. return as soon as practicable to the Independent Solicitor all of the electronic copies.

### **Access to documents**

12. Upon the applicant by its counsel giving the usual undertaking as to damages, until further order, the first and second respondents are restrained from deleting or altering (other than in the ordinary course of business) any data held for or on behalf of the first respondent which is stored on servers hosted by Our Kloud Pty Ltd (ACN 603 675 529).

13. The first and second respondents have first access to any documents delivered to the Court from the Brisbane search until 5pm (AEST) on 13 July 2021.
14. Any application by any person to prevent access by the applicant to any hard copy documents delivered to the Court as a result of any of the search orders in these proceedings is to be made and notified to the Associate to Lee J by 4pm on 13 July 2021.
15. The applicant is to have access from 5pm (AEST) on 13 July 2021 to any hard copy documents delivered to the Court as a result of any of the search orders in these proceedings that is not the subject of any application made in accordance with Order 14.

**Other**

16. These orders are to be entered forthwith.
17. The second and third respondents file notice of appearance by no later than 5pm Monday 12 July 2021.
18. The applicant file and serve any application to further amend its originating application by 26 July 2021.
19. The applicant serve the statement of claim it would file if leave were granted to amend the originating application by 26 July 2021.
20. The matter otherwise be relisted for further case management on a date to be fixed as soon as practicable after 2 August 2021 before the docket judge.
21. The parties have liberty to apply on notice to the other parties.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

**ANNEXURE A – FREEZING ORDER****PENAL NOTICE – FREEZING ORDER**

**TO: VINCENZO FRANK TESORIERO**

**IF YOU (BEING THE PERSON BOUND BY THIS ORDER):**

- (A) **REFUSE OR NEGLECT TO DO ANY ACT WITHIN THE TIME SPECIFIED IN THIS ORDER FOR THE DOING OF THE ACT; OR**
- (B) **DISOBEY THE ORDER BY DOING AN ACT WHICH THE ORDER REQUIRES YOU NOT TO DO,**

**YOU WILL BE LIABLE TO IMPRISONMENT, SEQUESTRATION OF PROPERTY OR OTHER PUNISHMENT.**

**ANY OTHER PERSON WHO KNOWS OF THIS ORDER AND DOES ANYTHING WHICH HELPS OR PERMITS YOU TO BREACH THE TERMS OF THIS ORDER MAY BE SIMILARLY PUNISHED.**

**TO VINCENZO FRANK TESORIERO**

This is a '*freezing order*' made against you on 2 July 2021 by Justice Lee at a hearing without notice to you after the Court was given the undertakings set out in Schedule A to this order and after the Court read the affidavits listed in Schedule B to this order and varied on 9 July 2021 by Justice Lee at a hearing with notice.

**THE COURT ORDERS:**

**INTRODUCTION**

- (1) [Deleted]
- (2) Subject to the next paragraph, this order has effect until further order of the Court.
- (3) Anyone served with or notified of this order, including you, may apply to the Court at any time to vary or discharge this order or so much of it as affects the person served or notified.
- (4) In this order:
  - (a) '*applicant*', if there is more than one applicant, includes all the applicants;
  - (b) '*you*', where there is more than one of you, includes all of you and includes you if you are a corporation;
  - (c) '*third party*' means a person other than you and the applicant;
  - (d) '*unencumbered value*' means value free of mortgages, charges, liens or other encumbrances.
  - (e) '*Relevant Amount*' means the amount of AUD\$254,219,440.23.

- (5) (a) If you are ordered to do something, you must do it by yourself or through directors, officers, partners, employees, agents or others acting on your behalf or on your instructions.
- (b) If you are ordered not to do something, you must not do it yourself or through directors, officers, partners, employees, agents or others acting on your behalf or on your instructions or with your encouragement or in any other way.

#### **FREEZING OF ASSETS**

- (6) (a) You must not remove from Australia or in any way dispose of, deal with or diminish the value of any of your assets in Australia ('Australian assets') up to the unencumbered value of AUD\$254,219,440.23. (the *Relevant Amount*).
- (b) If the unencumbered value of your Australian assets exceeds the Relevant Amount, you may remove any of those assets from Australia or dispose of or deal with them or diminish their value, so long as the total unencumbered value of your Australian assets still exceeds the Relevant Amount.
- (7) For the purposes of this order,
- (a) your assets include:
- (i) all your assets, whether or not they are in your name and whether they are solely or co-owned;
  - (ii) any asset which you have the power, directly or indirectly, to dispose of or deal with as if it were your own (you are to be regarded as having such power if a third party holds or controls the asset in accordance with your direct or indirect instructions); and
  - (iii) the following assets in particular:
    - (A) your shares in each of the following companies:
      - a. 23 Margaret Street Pty Limited ACN 623 715 373;
      - b. 1160 Glen Huntly Road Pty Limited ACN 639 447 984;
      - c. 14 Kirwin Road Morwell Pty Limited ACN 641 402 093;
      - d. 64-66 Berkeley St Hawthorn Pty Limited ACN 643 838 662;
      - e. 14 James Street Pty Limited ACN 638 449 206;
      - f. Canner Investments Pty Limited ACN 624 176 049;
      - g. Tesoriero Investment Group Pty Limited ACN 161 088 115;
      - h. 123 High Street Taradale Pty Limited ACN 639 872 512;
      - i. 160 Murray Valley Hwy Lake Boga Pty Limited ACN 641 392 921;
      - j. 31 Ellerman Street Dimboola Pty Limited ACN 641 392 887;
      - k. 4 Cowslip Street Violet Town Pty Limited ACN 639 872 352;

- l. 55 Nolan Street Maryborough Pty Limited ACN 641 392 912;
  - m. 89 Betka Road Mallacoota Pty Limited ACN 641 393 179;
  - n. 9 Gregory Street Ouyen Pty Limited ACN 641 392 707;
  - o. 9 Main Street Derrinallum Pty Limited ACN 639 872 736;
  - p. Forum Group Financial Services Pty Limited ACN 623 033 705;
  - q. 26 Edmonstone Road Pty Limited ACN 622 944 129;
  - r. 5 Bulkara Street Pty Limited ACN 630 982 160; and
  - s. 6 Bulkara Street Pty Limited ACN 639 734 473.
- (b) the value of your assets is the value of the interest you have individually in your assets.

### PROVISION OF INFORMATION

- (8) Subject to paragraph 9, you must:
- (a) at or before **5pm on 14 July 2021** (or within such further time as the Court may allow) to the best of your ability inform the applicant in writing of all your assets in Australia, giving their value, location and details (including any mortgages, charges or other encumbrances to which they are subject) and the extent of your interest in the assets;
  - (b) by **5pm on 14 July 2021**, swear and serve on the applicant an affidavit setting out the above information.
- (9) (a) This paragraph (9) applies if you are not a corporation and you wish to object to complying with paragraph 8 on the grounds that some or all of the information required to be disclosed may tend to prove that you:
- (i) have committed an offence against or arising under an Australian law or a law of a foreign country; or
  - (ii) are liable to a civil penalty.
- (b) This paragraph (9) also applies if you are a corporation and all of the persons who are able to comply with paragraph 8 on your behalf and with whom you have been able to communicate, wish to object to your complying with paragraph 8 on the grounds that some or all of the information required to be disclosed may tend to prove that they respectively:
- (i) have committed an offence against or arising under an Australian law or a law of a foreign country; or
  - (ii) are liable to a civil penalty.
- (c) You must:
- (i) disclose so much of the information required to be disclosed to which no objection is taken; and

- (ii) prepare an affidavit containing so much of the information required to be disclosed to which objection is taken, and deliver it to the Court in a sealed envelope; and
- (iii) file and serve on each other party a separate affidavit setting out the basis of the objection.

#### EXCEPTIONS TO THIS ORDER

(10) This order does not prohibit:

- (a) you paying up to \$5,000 a week on your ordinary living expenses;
- (b) paying \$30,000 per month (up to the sum of \$350,000 unless varied by subsequent order) on your reasonable legal expenses;
- (c) dealing with or disposing of any of your assets in the ordinary and proper course of your business, including paying business expenses bona fide and properly incurred; and
- (d) in relation to matters not falling within (a), (b) or (c), dealing with or disposing of any of your assets in discharging obligations bona fide and properly incurred under a contract entered into before this order was made, provided that before doing so you give the applicant, if possible, at least two working days written notice of the particulars of the obligation.

(10A) This order does not prohibit:

- (a) you from directing Australia and New Zealand Banking Group Limited in respect of the bank account in the name of 65 Nelson St Enterprises Pty Ltd (CAN 612 614 632) as trustee of the 65 Nelson Street Enterprises Trust (ABN 74 545 512 288) (65 Nelson St Co) to make payments in respect of bona fide expenses:
  - (i) for weekly wage payments for employees employed by and working in the business operated by 65 Nelson St Co;
  - (ii) lease payments for premises occupied by the business operated by 65 Nelson St Co;
  - (iii) operating expenses incurred by the business operated by 65 Nelson St Co;
- (b) you from directing any financial institution that holds bank accounts for any of the following entities:
  - (i) 23 Margaret Street Pty Limited ACN 623 715 373;
  - (ii) 1160 Glen Huntly Road Pty Limited ACN 639 447 984;
  - (iii) 14 Kirwin Road Morwell Pty Limited ACN 641 402 093;
  - (iv) 64-66 Berkeley St Hawthorn Pty Limited ACN 643 838 662;
  - (v) 14 James Street Pty Limited ACN 638 449 206;
  - (vi) Forum Group Financial Services Pty Ltd ACN 623 033 705;

- (vii) Canner Investments Pty Limited ACN 624 176 049;
- (viii) 123 High Street Taradale Pty Limited ACN 639 872 512;
- (ix) 160 Murray Valley Hwy Lake Boga Pty Limited ACN 641 392 921;
- (x) 31 Ellerman Street Dimboola Pty Limited ACN 641 392 887;
- (xi) 4 Cowslip Street Violet Town Pty Limited ACN 639 872 352;
- (xii) 55 Nolan Street Maryborough Pty Limited ACN 641 392 912;
- (xiii) 89 Betka Road Mallacoota Pty Limited ACN 641 393 179;
- (xiv) 9 Gregory Street Ouyen Pty Limited ACN 641 392 707;
- (xv) 9 Main Street Derrinallum Pty Limited ACN 639 872 736;
- (xvi) 26 Edmonstone Road Pty Limited ACN 622 944 129;
- (xvii) 5 Bulkara Street Pty Limited ACN 630 982 160; and
- (xviii) 6 Bulkara Street Pty Limited ACN 639 734 473,

▲ to make payments in respect of bona fide expenses of the following types in relation to properties owned by the entity:

- (xix) repayments of registered mortgages that were in existence before 2 July 2021;
- (xx) land tax;
- (xxi) insurance premiums;
- (xxii) council rates;
- (xxiii) water.

(11) You and the applicant may agree in writing that the exceptions in the preceding paragraph are to be varied. In that case the applicant or you must as soon as practicable file with the Court and serve on the other a minute of a proposed consent order recording the variation signed by or on behalf of the applicant and you, and the Court may order that the exceptions are varied accordingly.

(12) (a) This order will cease to have effect if you:

- (i) pay the sum of \$254,219,440.23 into Court; or
- (ii) pay that sum into a joint bank account in the name of your lawyer and the lawyer for the applicant as agreed in writing between them; or
- (iii) provide security in that sum by a method agreed in writing with the applicant to be held subject to the order of the Court.

(b) Any such payment and any such security will not provide the applicant with any priority over your other creditors in the event of your insolvency.

(c) If this order ceases to have effect pursuant 12(a) above, you must as soon as practicable file with the Court and serve on the applicant notice of that fact.



**COSTS**

- (13) The costs of this application are reserved to the Court hearing the application on the Return Date.

**PERSONS OTHER THAN YOU AND THE APPLICANT****(14) Set off by banks**

This order does not prevent any bank from exercising any right of set off it has in respect of any facility which it gave you before it was notified of this order.

**(15) Bank withdrawals by you**

No bank need inquire as to the application or proposed application of any money withdrawn by you if the withdrawal appears to be permitted by this order.

**(16) Persons outside Australia**

- (a) Except as provided in subparagraph (b) below, the terms of this order do not affect or concern anyone outside Australia.
- (b) The terms of this order will affect the following persons outside Australia:
- (i) you and your directors, officers, employees and agents (except banks and financial institutions);
  - (ii) any person (including a bank or financial institution) who:
    - (A) is subject to the jurisdiction of this Court; and
    - (B) has been given written notice of this order, or has actual knowledge of the substance of the order and of its requirements; and
    - (C) is able to prevent or impede acts or omissions outside Australia which constitute or assist in a disobedience of the terms of this order; and
  - (iii) any other person (including a bank or financial institution), only to the extent that this order is declared enforceable by or is enforced by a court in a country or state that has jurisdiction over that person or over any of that person's assets.

**(17) Assets located outside Australia**

Nothing in this order shall, in respect of assets located outside Australia, prevent any third party from complying or acting in conformity with what it reasonably believes to be its bona fide and properly incurred legal obligations, whether contractual or pursuant to a court order or otherwise, under the law of the country or state in which those assets are situated or under the proper law of any contract between a third party and you, provided that in the case of any future order of a court of that country or state made on your or the third party's application, reasonable written notice of the making of the application is given to the applicant.



**SCHEDULE A****UNDERTAKINGS GIVEN TO THE COURT BY THE APPLICANT**

- (1) The applicant undertakes to submit to such order (if any) as the Court may consider to be just for the payment of compensation (to be assessed by the Court or as it may direct) to any person (whether or not a party) affected by the operation of the order.
- (2) As soon as practicable, the applicant will file and serve upon you copies of:
  - (a) this order;
  - (b) the application for this order for hearing on the return date;
  - (c) the following material in so far as it was relied on by the applicant at the hearing when the order was made:
    - (i) affidavits (or draft affidavits);
    - (ii) exhibits capable of being copied;
    - (iii) any written submission; and
    - (iv) any other document that was provided to the Court.
  - (d) a transcript, or, if none is available, a note, of any exclusively oral allegation of fact that was made and of any exclusively oral submission that was put, to the Court;
  - (e) the originating process.
- (3) As soon as practicable, the applicant will cause anyone notified of this order to be given a copy of it.
- (4) The applicant will pay the reasonable costs of anyone other than you and the respondents which have been incurred as a result of this order, including the costs of finding out whether that person holds any of your assets.
- (5) If this order ceases to have effect the applicant will promptly take all reasonable steps to inform in writing anyone who has been notified of this order, or who the applicant has reasonable grounds for supposing may act upon this order, that it has ceased to have effect.
- (6) The applicant will not, without leave of the Court, use any information obtained as a result of this order for the purpose of any civil or criminal proceedings, either in or outside Australia, other than this proceeding except for the purposes of any police, regulatory authority or prudential disclosure.
- (7) The applicant will not, without leave of the Court, seek to enforce this order in any country outside Australia or seek in any country outside Australia an order of a similar nature or an order conferring a charge or other security against you or your assets.

**SCHEDULE B****AFFIDAVITS RELIED ON**

<b>Name of deponent</b>	<b>Date affidavit made</b>
(1) Caitlin Maria Murray	2 July 2021 (2 affidavits)
(2) Nicholas Antony O'Brien	1 July 2021
(3) Geoffrey Keith Anderson	28 June 2021
(4) Nicholas Anthony O'Brien	27 June 2021
(5) Caitlin Maria Murray	28 June 2021 (2 affidavits)

**NAME AND ADDRESS OF APPLICANT'S LAWYERS**

The applicant's lawyers are:

MinterEllison  
Governor  
Macquarie  
Tower Level  
40, 1 Farrer  
Place  
Sydney NSW 2000

Attention: Caitlin Murray  
[caitlin.murray@minterellison.com](mailto:caitlin.murray@minterellison.com); T +61 2 9921 8514; M +61 422 977 971; +61 2 9921  
8123 ref: CMM:1353397

## REASONS FOR JUDGMENT

### (Revised from the Transcript)

**LEE J:**

#### **A INTRODUCTION**

1 This application for the appointment of a liquidator and related relief arises in singular  
circumstances.

2 The evidence on this application indicates that in late May, the first of a series of events  
occurred which ultimately led to Westpac Banking Corporation (**Westpac**) making a sobering  
discovery: a routine call between a Westpac employee and one of its customers identified an  
apparent anomaly with a lease finance facility in the customer's name. A couple of weeks later,  
Westpac discovered that equipment contracts provided to it, as having been entered into  
between the customer and the first respondent, Forum Finance Pty Limited (**Forum Finance**),  
were of doubtful veracity.

3 This initial discovery led to a cascading series of events and investigations, and immediately  
prior to the commencement of this proceeding on an urgent basis in late June, Westpac formed  
the view that in a little under three years, it had paid the staggering sum of in excess of \$254  
million to Forum Finance in Australia pursuant to equipment contracts with seven customers,  
the substantial bulk of which have, it appears on the unchallenged evidence before me, been  
identified by the relevant customer as a forgery.

4 If this is not bad enough, further inquiries revealed an amount of NZ\$42 million has been paid  
to a related entity of Forum Finance by Westpac New Zealand in relation to a contract also  
thought by Westpac to be fraudulent (although no relief is presently sought by Westpac in  
relation to those transactions in this proceeding).

5 During this period of payments, the evidence discloses that Forum Finance had, at least for  
some time, two directors. The first is Basile Papadimitriou (also known as Mr Papas), who has  
been a director since incorporation of the company in 2011. The other director was Vincenzo  
Tesoriero, who was appointed in April 2017. Although Mr Tesoriero continues to be listed as  
a director of Forum Finance in the records of the Australian Securities and Investments  
Commission, I am informed by senior counsel acting on his behalf that he attempted to resign  
on 15 April 2020; although it appears that the requisite documents have not yet been lodged

with the regulator. It is unnecessary to make a finding in relation to the position of Mr Tesoriero at this time. It suffices to note for present purposes that Mr Papas and Mr Tesoriero are the second and third respondents to this proceeding, respectively.

6 In this proceeding to date, Forum Finance, Mr Papas and Mr Tesoriero have not provided any explanation, cogent or otherwise, for what appears to have happened and it looks as though Forum Finance, at least, does not propose to provide any explanation.

## **B PROCEDURAL DEVELOPMENTS**

7 This matter was originally listed before me today, as the Duty Judge, as an application for the appointment of a provisional liquidator. That changed this morning, when Mr Martin, who appeared on behalf of Forum Finance, consented to an order that Forum Finance be liquidated and that appropriate liquidators be appointed: see T7.33–6 and T25.19. Prior to this concession, it would have been necessary for the Court to make a series of interlocutory findings on an interlocutory application pending a final hearing as to whether Forum Finance should be liquidated. The position taken by Forum Finance today, if I may say so, is a sensible one, which has had the effect of saving considerable time.

8 As a consequence, by consent, I made an order that prayers for relief 7 and 8 in the amended interlocutory application dated 8 July 2021 (seeking the winding up of Forum Finance and the appointment of liquidators) be determined separately and on a final basis before the balance of the relief sought in that application.

9 Importantly, a consequence of this forensic decision is that no other evidence will emerge which might cast a different or qualifying light on the picture that is painted from the evidence that has been read before me on a final basis today. As a general proposition, unchallenged evidence which is not inherently incredible ought to be accepted by the tribunal of fact: *Precision Plastics Pty Ltd v Demir* (1975) 132 CLR 362 (at 370–1 per Gibbs J, with whom Stephen J agreed and Murphy J generally agreed). However, it can be rejected if it is contradicted by facts otherwise established by the evidence or particular circumstances point to its rejection: *Ashby v Slipper* [2014] FCAFC 15; (2014) 219 FCR 322 (at 347 [77] per Mansfield and Gilmour JJ). There is no such contradiction nor countervailing circumstances present here.

10 The evidence adduced before me was not inherently unbelievable and should be accepted. The position that emerges from the affidavit material and accompanying documents is alarming. It

is not an overstatement to remark that it appears Forum Finance has, by some means or another, been involved in a long-running, calculated and elaborate fraud ranking high in the catalogue of corporate misfeasance.

11 As I have said, the Court has not heard from the man who appears to be primarily responsible, at least until recent times, for the conduct of the affairs of Forum Finance; the apparently peripatetic Mr Papas, who left Australia for Europe for reasons not established on the evidence (but coincident with when things started to unravel with Westpac). In addition to no details emerging as to any likely defence to the serious allegations made by Westpac, Mr Papas has not, despite two court deadlines, complied with a disclosure order (as that term is defined in s 128A of the *Evidence Act 1995* (Cth)); nor has he caused Forum Finance to provide details of its assets and liabilities.

### C THE APPLICATION

12 Westpac puts its application for the appointment of a liquidator on two grounds: *first*, that Forum Finance should be wound up on the ground of insolvency; and *secondly*, that Forum Finance should be wound up on the basis that it is just and equitable to do so. For reasons I will explain, it is unnecessary for me to form a final view in relation to the solvency or otherwise of Forum Finance; although, given the nature of the evidence advanced there must, at the very least, be real concerns as the company's financial position generally and, more particularly, its capacity to pay its debts as they fall due.

13 A court may order a winding up if it is of the opinion that it is just and equitable that a company be wound up: see s 461(1)(k) of the *Corporations Act 2001* (Cth) (**Act**). That provision has been said to authorise the court to apply broad equitable considerations. Winding up on the just and equitable ground has a long history stemming from s 5(8) of the *Joint Stock Companies Winding Up Act 1848* (UK). It appears that until the end of the 19<sup>th</sup> Century it was thought that winding up on a just and equitable ground only covered situations which were comparable to those envisaged in preceding subsections of that Act. That idea, expressed by Lord Cottenham LC in *Ex parte Spackman* (1849) 1 Mac & G 170; (1849) 41 ER 1228 (at 1229–30), was later abandoned, but courts still tended to limit the breadth of the section by subdividing its application into relevantly narrow categories.

14 The flaw in this approach was made clear by the House of Lords in *Re Westbourne Galleries Ltd* [1973] AC 360 (at 374 per Lord Wilberforce, with whom Viscount Dilhorne, Lord Pearson and Lord Salmon agreed, and at 383–4 per Lord Cross of Chelsea). In that case, their Lordships

stressed that the provision confers upon a court a discretionary power of very wide character and that courts should be ready to apply it to new situations falling outside previous illustrations. However, given the seriousness of the remedy, the discretion must be exercised judicially.

15 This is quite an unusual application because the winding up is consented to by the company. Of course, if a company by special resolution so resolves, it can agree to be wound up by the Court: see s 461(1)(a) of the Act. At least in my experience, this is rarely done because the members could adopt the alternative course of a voluntary winding up. But as Barrett J explained in *Hillig v Darkinjung Local Aboriginal Land Council* [2006] NSWSC 1371; (2006) 205 FLR 450 (at 458 [35]), the body of shareholders have a statutory right to decide that the company should be wound up by the court, being a right exercisable by whatever procedures are sufficient to cause a special resolution to be passed. Although this course has not been undertaken (formally or otherwise), the fact of express consent, through the company's counsel, to orders being made by the court on the application of a third party does seem to me to inform the ultimate consideration of whether it is just and equitable for the company to be wound up.

16 There is no point traversing the various non-exclusive categories where such orders have been made. They include, for example, where a company cannot be carried on consistently with candid and straightforward dealings with the public: see *Australian Securities and Investments Commission v Austimber Pty Ltd* [1999] FCA 566; (1999) 17 ACLC 893 (at 895 per Merkel J), citing *Re Producer's Real Estate v Finance Co Ltd* [1936] VLR 235 (at 246 per Mann CJ). Other examples include where there is a lack of propriety in the management and conduct of a company's affairs and there are public interest considerations which make it desirable that a company, however solvent, be wound up (although most of the examples falling into this category generally relate to applications made on behalf of a regulator).

17 As I have noted, both Mr Papas and Mr Tesoriero have not sought to be heard; nor have they sought to challenge any of the evidence read on this application. At present, it is only necessary to make factual findings for the purposes of determining the separate question as to whether Forum Finance should be wound up, but on the evidence, I have no confidence at all in the ability of Mr Papas to discharge his obligations as a director of Forum Finance in a way which is consistent with the legitimate conduct of the affairs of the company (if the company was to continue to trade in some form).

- 18 I have already mentioned the fact that Mr Papas is presently overseas. He has previously failed to apprise his solicitor of his whereabouts at a level of specificity other than that he is somewhere on the continent of Europe, although it is now said that he either is in, or presently *en route* to, the Greek capital of Athens. Delphic details of a proposed return to Australia have been provided orally, but no itinerary or corroborative material showing details of a suggested Japan Airlines flight have been provided. It may be that Mr Papas returns to Australia tomorrow, although at present, this is not entirely clear.
- 19 Forum Finance has two named directors: one of whom does not consider himself a director; and the other is currently not being candid, even with his solicitor, as to his whereabouts and has apparently let the company engage in fraudulent transactions. To use considerable understatement, this is a suboptimal state of affairs. Indeed it is a state of affairs that should not continue. In circumstances where the relevant provision of the Act confers upon a court a discretionary power of very wide character, the company agrees to orders it should be wound up on a just and equitable ground, and no shareholder or officer of the company opposes such a course, I am amply satisfied that such an order should be made.

## **D THE LIQUIDATORS**

- 20 We then come to the question of the identity of the liquidators to be appointed. There are two competing proposals; although, of course, it is a matter for the Court as to the liquidator that should ultimately be appointed.
- 21 Westpac proposes the appointment of two registered liquidators from McGrathNicol, being Mr Jason Preston and Mr Jason Ireland. Forum Finance (by which I infer Mr Papas) proposes the appointment of Mr Rahul Goyal and Mr Scott Langdon of KordaMentha. I have no doubt, given the identity of the firms for which these proposed liquidators work, all proposed appointees are fit and proper persons to discharge the role with a high degree of competence.
- 22 The factors relied upon by Mr Martin to support the appointment of the KordaMentha liquidators are as follows: (1) KordaMentha has a presence and office in New Zealand and there is at least some suggestion that work will need to be done in relation to the liquidation in that country; (2) the fees charged by the two partners of KordaMentha are less than McGrathNicol; and (3) KordaMentha are well known to Westpac, having acted for them on many occasions. Mr Martin also points to the conduct of Forum Finance in consenting to the liquidation, which has been consistent with facilitating the prompt and inexpensive resolution of this aspect of the proceeding.

- 23 Mr Giles SC, who appears on behalf of Westpac, indicates that: (1) McGrathNicol also has a presence in New Zealand; (2) one of the liquidators chosen (Mr Preston), is the chairman of McGrathNicol, and his seniority gives Westpac a degree of comfort in relation to the appointment of that firm; and (3) Westpac reposes particular confidence in McGrathNicol discharging its role because, among other things, it has a global affiliation with other firms.
- 24 To be frank, consistent with what I have said concerning competence, I do not think that there is anything that separates the proposed nominees on the grounds of their ability to conduct the work both in Australia and New Zealand. Although there is reason to think that KordaMentha may be less expensive than McGrathNicol, this is a fairly marginal difference. The prevailing rate for partners of insolvency firms doing this work has reached a stage (one might be forgiven to think somewhat remarkably) where a practitioner can charge \$847 (inclusive of GST) in the case of McGrathNicol and \$797.50 (inclusive of GST) in the case of KordaMentha.
- 25 The key difference is that in the context of the proposed provisional liquidation it appears Westpac and McGrathNicol have come to at least a preliminary arrangement that an indemnity be provided in the amount of \$250,000 for the purposes of initial inquiries being undertaken. Mr Martin makes the valid point that, in the limited time available, no evidence has been adduced by Westpac to the effect that a similar commercial arrangement could not be struck with any other reputable liquidator. This point is well made, however, in circumstances where it is Westpac that is footing the bill initially, it is fair that it do so in circumstances where it has the comfort of reposing confidence in the particular liquidators appointed.
- 26 Finally, I note that leave was given for a further creditor, Societe Generale, to provide submissions on the identity of the liquidators to be appointed (although no evidence was read to support the fact that Societe Generale was a creditor, this was not put in dispute). Societe Generale also indicated its preference for the liquidators suggested by Westpac.
- 27 In all the circumstances, I propose to appoint Messrs Jason Preston and Jason Ireland of McGrathNicol as liquidators of Forum Finance and will make orders accordingly.

I certify that the preceding twenty-seven (27) numbered paragraphs are a true copy of the Reasons for Judgment of the Honourable Justice Lee.



Associate: *E. Hynard*

Dated: 15 July 2021

**Annexure**

No. NSD616 of 2021

Federal Court of Australia  
District Registry: New South Wales  
Division: General

**Westpac Banking Corporation ABN 33 007 457 141** and another  
Applicant

**Forum Finance Pty Limited ACN 153 301 172** and others named in the Schedule  
Respondents

This is the Annexure marked "**BJQ-21**" shown and produced to **Bianca Josephine Quan** at the time of swearing her affidavit on 28 September 2021.

Deponent signature:

DocuSigned by:  
*Bianca Quan*  
.....E3C6AC6D03C6401.....

Before me: DocuSigned by:  
*Adrian Lee*  
.....BC4298F2AFED404.....

Adrian Lee

Level 10, 114 William Street, Melbourne VIC 3000

An Australian Legal Practitioner within the meaning of the Legal Profession Uniform Law (Vic)

A person authorised under Section 19(1) of the Oaths and Affirmations Act 2018 to take an affidavit.

This affidavit, as signed and notated by the authorised affidavit taker, was signed by the deponent over audio-visual link.

The specified things in respect of the affidavit were done by means of audio-visual link. The affidavit is a scanned hard copy or an electronic copy, not an original.



Federal Court of Australia

District Registry: New South Wales

Division: General

No: NSD616/2021

**WESTPAC BANKING CORPORATION ABN 33 007 457 141**  
Applicant

**FORUM FINANCE PTY LIMITED** and others named in the schedule  
Respondent

### ORDER

**JUDGE:** JUSTICE LEE

**DATE OF ORDER:** 15 July 2021

**WHERE MADE:** Sydney

#### THE COURT ORDERS THAT:

##### Joinder of parties and leave to proceed

1. To the extent necessary, the applicant have leave under s 440D(1)(b) of the *Corporations Act 2001* (Cth) (**Corporations Act**) to add:
  - (a) Forum Group Financial Services Pty Ltd ACN 623 033 705 (**FGFS**) as the fourth respondent;
  - (b) Forum Group Pty Ltd ACN 153 336 997 (receivers appointed) (administrators appointed) (**Forum Group**) as the fifth respondent;
  - (c) Forum Enviro Pty Ltd ACN 168 709 840 (**FE**) as the sixth respondent; and
  - (d) Forum Enviro (Aust) Pty Ltd ACN 607 484 364 (**FEA**) as the seventh respondent.
2. To the extent necessary, the applicant have leave under s 440D(1)(b) of the *Corporations Act* to file a further amended originating application in the form annexed to the interlocutory application filed on 12 July 2021.



3. The applicant have leave under s 471B of the Corporations Act to proceed as against the first respondent for the purposes of these proceedings.
4. The applicant is to file and serve a statement of claim by 5pm on 21 July 2021.

#### Production by NAB

5. Pursuant to s 23 of the *Federal Court of Australia Act 1976* (Cth) and/or r 7.22 of the *Federal Court Rules 2011* (Cth) (**FCR**) and/or FCR 20.23, National Australia Bank Limited ABN 12 004 044 937 (**NAB**) is to give discovery to the applicant by 4pm (AEST) on 15 July 2021 of all bank statements for transactions from 1 September 2018 to date for any account held with NAB or any of its subsidiaries in the name of any of the persons or entities named in Annexure A to these orders.
6. The applicant is to pay NAB's costs and expenses in complying with order 5, as agreed or (failing agreement) as determined by the Court.
7. The parties to these proceedings have access to any documents discovered in accordance with order 5.
8. The applicant in this proceeding (NSD616/2021) be released from the implied obligation of confidence (described in *Hearne v Street* [2008] HCA 36; 235 CLR 125) to the extent necessary to, and be permitted to, provide documents produced on subpoena or discovered (or to be produced or discovered) in these proceedings, including by NAB, to the applicant in proceeding number NSD642/2021 Société Générale (**SocGen**) and the applicant in proceeding number NSD681/2021 SMBC Leasing and Finance, Inc (**SMBC**).

#### Appointment of provisional liquidators of the Forum Group Companies

9. Upon the applicant giving the usual undertaking as to damages, pursuant to s 472(2) of the Corporations Act, Jason Preston and Jason Ireland of Level 12, 20 Martin Place, Sydney NSW 2000 are appointed jointly and severally as provisional liquidators (**Provisional Liquidators**) of each of:
  - (a) FGFS;



(b) FE; and

(c) FEA,

together the **Companies**.

10. Pursuant to s 447A of the Corporations Act and/or s 90-15 of the Insolvency Practice Schedule (Corporations) (**IPSC**) (Schedule 2 to the Corporations Act), the voluntary administration of each of the Companies terminate with immediate effect from the appointment of the Provisional Liquidators.
11. The Provisional Liquidators have control over all of the assets of each of the Companies.
12. Pursuant to s 472(3)(b) of the Corporations Act, the Provisional Liquidators may exercise the following functions and powers:
  - (a) all functions and powers conferred on the Provisional Liquidators by the Corporations Act or the *Federal Court (Corporations) Rules 2000* (Cth) (**Corporations Rules**) (including those described in s 472(4) of the Corporations Act);
  - (b) the power to carry on the business of the Companies;
  - (c) the power to enter the premises of the Companies;
  - (d) the power to take possession of all of the books and records of the Companies;
  - (e) to investigate and report to the court on the assets of the Companies wherever located, giving their value, location and details (including any mortgages, charges or other encumbrances to which they are subject) and the extent of the interest of the Companies in the assets; and
  - (f) to investigate and report to the court on where any funds obtained by any of the Companies that originated from any of the applicants is located or has been dispersed to and whether it was used to acquire, in whole or part, any assets and, if so, who holds those assets and where those assets are.



13. By no later than 4pm (AEST) on 19 July 2021, the applicant is to:
  - (a) lodge an office copy of these orders with the Australian Securities and Investments Commission;
  - (b) serve a copy of these orders on the Companies at their registered office; and
  - (c) give to the Provisional Liquidators an office copy of these orders and a written statement that it has served a copy of these orders on the Companies at their registered office.
14. The applicant and the Provisional Liquidators otherwise have liberty to apply for directions in relation to the conduct of the provisional liquidation.
15. The Provisional Liquidators have access to all documents seized in accordance with the search orders made by order 7 of the orders made by Justice Lee on 28 June 2021.
16. The application for the appointment of the Provisional Liquidators in relation to the sixth respondent, Forum Group, be adjourned to 2.15pm on 22 July 2021.
17. Any submissions and evidence in relation to the application to appoint the Provisional Liquidators to Forum Group to be filed and served by 5pm on 21 July 2021.

#### Subpoena to Our Kloud

18. The applicant have leave to file and issue a subpoena to produce documents to Our Kloud Pty Ltd in the form of Annexure B to these orders.

#### Orders relating to Search Orders

19. Order 11 of the Court's orders of 9 July 2021 be varied as follows:

*The time for compliance by the Independent Computer Experts with order 14 of the 2 July Orders be extended insofar as it applies for electronic material obtained or to be obtained from the Brisbane, Perth, Melbourne and Sydney Premises as follows:*



*(a) the Independent Computer Expert provide an interim report to the Independent Solicitor of whether any Listed Things (as defined in the search orders in the 28 June Orders) were or had been located on any of the electronic copies by 5pm on 12 July 2021;*

*(b) the Independent Computer Expert provide a final report to the Independent Solicitor of whether any Listed Things were or had been located on any of the electronic copies (but not including the Our Kloud Servers) by 5pm on ~~19~~ 28 July 2021;*

*(c) the Independent Computer Expert provide a further report to the Independent Solicitor of whether any Listed Things were or had been located on the Our Kloud Servers as soon as practicable; and*

*(d) return as soon as practicable to the Independent Solicitor all of the electronic copies.*

#### Freezing orders

20. The freezing orders made against the second respondent by order 6 on 28 June 2021 (as varied on 2 July 2021 and 9 July 2021) be amended to be in the form of Annexure C to these orders.
21. The solicitor for the second respondent file and serve, by no later than 5pm (AEST) on Monday 19 July 2021, an affidavit that:
  - (a) identifies the proposed travel plans of the second respondent in relation to his return to Australia,
  - (b) identifies with specificity the steps that have been taken to obtain from the second respondent the affidavit disclosing his assets required to be provided by order 8 of the freezing orders (**Disclosure Affidavit**);
  - (c) annexes a proposed copy of the Disclosure Affidavit; and

- 6 -



- (d) to the extent that an objection is taken pursuant to order 9(c) of the freezing orders, sets out the basis of that objection.
22. Any information or affidavit provided to the applicant by the second respondent, pursuant to orders 8 or 9 of the freezing orders, or pursuant to order 21 is also to be provided to SocGen and SMBC.
23. SMBC and SocGen are to be given the same notice as is given to the applicant of any application to vary or vacate the freezing orders.

General orders

24. Leave to enter these orders forthwith.

Date that entry is stamped: 16 July 2021

*Sia Lagos*  
Registrar





### Annexure A

	Name	Company number
1.	The Forum Group of Companies Pty Limited (Administrators Appointed)	ACN 151 964 626
2.	Forum Group Pty Ltd (Receivers Appointed) (Administrators Appointed)	ACN 153 336 997
3.	Forum Group (QLD) Pty Ltd (Administrators Appointed)	ACN 103 609 678
4.	Forum Group (VIC) Pty Ltd (Administrators Appointed)	ACN 153 062 018
5.	Forum Fleet Pty Limited (Administrators Appointed)	ACN 155 440 994
6.	Forum Enviro Pty Ltd (Administrators Appointed)	ACN 168 709 840
7.	Forum Direct Pty Ltd (Administrators Appointed)	ACN 054 890 710
8.	Forum Enviro (Aust) Pty Ltd (Administrators Appointed)	ACN 607 484 364
9.	Forum Group Financial Services Pty Ltd (Administrators Appointed)	ACN 623 033 705
10.	Iugis Pty Ltd (Administrators Appointed)	ACN 632 882 243
11.	Iugis Investments Pty Ltd (Administrators Appointed)	ACN 647 627 745
12.	Iugis (NZ) Limited	Registration number 6765037 and NZBN number 9429046666581
13.	Iugis Waste Services Pty Ltd (Administrators Appointed)	ACN 647 212 299
14.	Imagetec Financial Services Pty Ltd (Administrators Appointed)	ACN 111 978 182
15.	Imagetec Solutions Australia Pty Ltd (Administrators Appointed)	ACN 074 715 718
16.	Onesource Australia Holdings Pty Limited (Administrators Appointed)	ACN 120 463 541
17.	Smartprint Fleet Management Pty Ltd (Administrators Appointed)	ACN 132 807 080
18.	Autonomous Energy Pty Ltd (Administrators Appointed)	ACN 113 593 383
19.	14 James Street Pty Ltd (Administrators Appointed)	ACN 638 449 206
20.	26 Edmonstone Road Pty Ltd (Administrators Appointed)	ACN 622 944 129
21.	5 Bulkara Street Pty Ltd (Administrators Appointed)	ACN 630 982 160
22.	6 Bulkara Street Pty Ltd (Administrators Appointed)	ACN 639 734 473

- 8 -

**Annexure B**

Form 43B  
Rule 24.13(1)(b)

**Subpoena to produce documents**

No. NSD616/2021

Federal Court of Australia  
District Registry: New South Wales  
Division: General

**Westpac Banking Corporation ABN 33 007 457 141**

Applicant

**Forum Finance Pty Limited ACN 153 301 172** and others named in the Schedule

Respondents

To: The Proper Officer  
Our Kloud Pty Ltd  
C/- Rothsay Accounting Services Pty Ltd  
Level 1, 12-14 O'Connell Street  
Sydney NSW 2000

**You are ordered to produce this subpoena or a copy of it and the documents or things specified in the Schedule of documents.** See next page for details.

**Failure to comply with this subpoena without lawful excuse is a contempt of court and may result in your arrest.**

Please read Notes 1 to 13 at the end of this subpoena.

The last date for service of this subpoena is 5:00pm (AEST) on 16 July 2021. *(See Note 1)*



Date: 16 July 2021

.....  
Signed by an officer acting with the authority  
of the District Registrar

Issued at the request of the Applicant, whose address for service is:

Place: Level 40, Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000

Attention: Caitlin Murray

Email: [caitlin.murray@minterellison.com](mailto:caitlin.murray@minterellison.com)



## Details of subpoena

You must comply with this subpoena:

- (a) by attending to produce this subpoena or a copy of it and the documents or things specified in the Schedule of documents below at the date, time and place specified for attendance and production; or
- (b) by delivering or sending this subpoena or a copy of it and the documents or things specified in the Schedule of documents below to a Registrar at the address below, or if there is more than one address below, at any one of those addresses, so that they are received not less than 2 clear business days before the date specified for attendance and production. *(See Notes 5–9)*

Date, time and place at which you must attend to produce the subpoena or a copy of it and documents or things, unless you receive a notice of a later date or time from the issuing party, in which case the later date or time is substituted:

Date: 21 July 2021

Time: 9:30am (AEST) before his Honour Justice Lee

Place: Federal Court of Australia, New South Wales District Registry

[NSWdr@fedcourt.gov.au](mailto:NSWdr@fedcourt.gov.au) and [NSWInspections@fedcourt.gov.au](mailto:NSWInspections@fedcourt.gov.au)

Address, or any address, to which the subpoena (or copy) and documents or things may be delivered or posted:

The Registrar  
Federal Court of Australia  
New South Wales District Registry  
Law Courts Building  
Queens Square  
SYDNEY NSW 2000

- 11 -



### **Schedule of documents**

The documents and things you must produce are as follows:

1. A copy of the most recent full backup of all 28 servers which relate to your client “Forum Group” as described in Option 1 of your letter dated 13 July 2021 (a copy of which is at Annexure A to this subpoena).
2. A copy of a full backup of all 28 servers which relate to your client “Forum Group” which was completed in March 2021.



### *Notes*

#### **Last day for service**

1. You need not comply with the subpoena unless it is served on you on or before the date specified in the subpoena as the last date for service of the subpoena.

#### **Informal service**

2. Even if this subpoena has not been served personally on you, you must, nevertheless, comply with its requirements, if you have, by the last date for service of the subpoena, actual knowledge of the subpoena and of its requirements.

#### **Addressee a corporation**

3. If the subpoena is addressed to a corporation, the corporation must comply with the subpoena by its appropriate or proper officer.

#### **Conduct money**

4. You need not comply with the subpoena in so far as it requires you to attend to give evidence unless conduct money sufficient to meet your reasonable expenses of attending as required by the subpoena is handed or tendered to you a reasonable time before the date your attendance is required.

#### **Production of subpoena or copy of it and documents or things by delivery or post**

5. If this subpoena requires production of the subpoena (or a copy of it) and a document or thing, instead of attending to produce the subpoena (or a copy of it) and the document or thing, you may comply with the subpoena by delivering or sending the subpoena (or a copy of it) and the document or thing to a Registrar:
  - (a) at the address specified in the subpoena for the purpose; or
  - (b) if more than one address is specified - at any of those addresses;so that they are received not less than 2 clear business days before the date specified in the subpoena for attendance and production, or if you receive notice of a later date from the issuing party, before the later date or time.
6. If you object to a document or thing produced in response to this subpoena being inspected by a party to the proceeding or any other person, you must, at the time of production, notify a Registrar in writing of your objection and of the grounds of your objection.



7. Unless the Court otherwise orders, if you do not object to a document or thing produced by you in response to the subpoena being inspected by any party to the proceeding, a Registrar may permit the parties to the proceeding to inspect the document or thing.

**Production of a number of documents or things**

8. If you produce more than one document or thing, you must, if requested by a Registrar, produce a list of the documents or things produced.

**Production of copy instead of original**

9. You may, with the consent of the issuing party, produce a copy, instead of the original, of any document that the subpoena requires you to produce.

- 9A. The copy of a document may be:

- (a) a photocopy; or
- (b) in an electronic form in any of the following electronic formats:
  - .doc and .docx – Microsoft Word documents
  - .pdf – Adobe Acrobat documents
  - .xls and .xlsx – Microsoft Excel spreadsheets
  - .jpg – image files
  - .rtf – rich text format
  - .gif – graphics interchange format
  - .tif – tagged image format

**Applications in relation to subpoena**

10. You have the right to apply to the Court:
- (a) for an order setting aside the subpoena (or a part of it) or for relief in respect of the subpoena; and
  - (b) for an order with respect to your claim for privilege, public interest immunity or confidentiality in relation to any document or thing the subject of the subpoena.

**Loss or expense of compliance**

11. If you are not a party to the proceeding, you may apply to the Court for an order that the issuing party pay an amount (in addition to conduct money and any witness's expenses) in respect of the loss or expense, including legal costs, reasonably incurred in complying with the subpoena.

**Contempt of court - arrest**

12. Failure to comply with a subpoena without lawful excuse is a contempt of court and may be dealt with accordingly.

- 14 -



13. Note 12 is without prejudice to any power of the Court under any rules of the Court (including any rules of the Court providing for the arrest of an addressee who defaults in attendance in accordance with a subpoena) or otherwise, to enforce compliance with a subpoena.





**Schedule**

No. NSD616/2021

Federal Court of Australia

District Registry: New South Wales

Division: General

**Respondents**

First Respondent: Forum Finance Pty Limited ACN 153 301 172

Second Respondent: Basile Papadimitriou

Third Respondent: Vincenzo Frank Tesoriero



## Annexure A to Our Kloud subpoena



OUR KLOUD PTY LTD

### FORUM GROUP DATA RETRIEVAL

4 Birmingham Street, Alexandria, NSW 2015 | Phone 1300 700 929 | www.ok.com.au

13<sup>th</sup> July, 2021

Dear Jim,

As discussed, I have spoken with my NOC team that manages our Data Centres and we have 2 ways in which to obtain the backups of ALL of our client Forum Group (FG) Servers.

**Option 1: Provide you a NAS with all Veeam Backup Files of the servers**

- **Cost:** \$5,100 + GST
- **Scope Of Works:**
  - o Attend Data Centre & connect / configure a dedicated port for a NAS with at least 16TB usable storage capacity
  - o Extract the most recent full backup of all 28 servers specific to FG
  - o Supply & configure NAS
- **Estimated Time To Complete:** 2 Days
- **NOTE:**
  - o Provided these files **ARE NOT** mounted & activated / hosted, we can provide these in good faith despite being Our Kloud's SPLA Licenses for inspection data extraction purposes only and upon completion of the extraction, AtomicBit &/OR Mackay Goodwin acting as Administrators for FG must sign an undertaking to destroy this data utilising any Our Kloud SPLA licenses
  - o AtomicBit &/OR Mackay Goodwin acting as Administrators for FG must indemnify Our Kloud Group for any breach to Our Kloud Group's SPLA licensing limited to the licenses used by FG for this purpose

**Option 2: Provide you a NAS with an export of all files & directories from Veeam**

- **Cost:** \$7,350 + GST
- **Scope Of Works:**
  - o Attend Data Centre & connect / configure a dedicated port for a NAS with at least 16TB usable storage capacity
  - o Mount the most recent full backup of all 28 servers specific to FG
  - o Extract a File Level restore of all directory & files and copy to a NAS
  - o Supply & configure NAS
- **Estimated Time To Complete:** 10 days – 14 Days

Please let me know which option you would like to proceed with & thanks.

Regards,

Eric Constantinidis  
Group CEO

**SYDNEY**  
4 Birmingham St,  
Alexandria  
NSW, 2015

**BRISBANE**  
L22, 69 Ann Street  
Brisbane, QLD 4000

**MELBOURNE**  
South Rialto Tower, S17,  
L27, 525 Collins Street,  
Melbourne VIC 3000

**MELBOURNE**  
S21 / L3, 799  
Springvale Rd,  
Mulgrave VIC 3170

**ATHENS**  
Vouliagmenis Avenue  
99, Athens, P.C.  
11636, 3rd floor

NBN | CLOUD | VOICE | DATA | IT | SECURITY | VIDEO

pg. 1

**ANNEXURE C – FREEZING ORDER****PENAL NOTICE – FREEZING ORDER**

**TO:** BASILE PAPADIMITRIOU

**IF YOU (BEING THE PERSON BOUND BY THIS ORDER):**

- (A) **REFUSE OR NEGLECT TO DO ANY ACT WITHIN THE TIME SPECIFIED IN THIS ORDER FOR THE DOING OF THE ACT; OR**
- (B) **DISOBEY THE ORDER BY DOING AN ACT WHICH THE ORDER REQUIRES YOU NOT TO DO,**

**YOU WILL BE LIABLE TO IMPRISONMENT, SEQUESTRATION OF PROPERTY OR OTHER PUNISHMENT.**

**ANY OTHER PERSON WHO KNOWS OF THIS ORDER AND DOES ANYTHING WHICH HELPS OR PERMITS YOU TO BREACH THE TERMS OF THIS ORDER MAY BE SIMILARLY PUNISHED.**

**TO** BASILE PAPADIMITRIOU

This is a 'freezing order' made against you on 28 June 2021 by Justice Lee at a hearing without notice to you after the Court was given the undertakings set out in Schedule A to this order and after the Court read the affidavits listed in Schedule B to this order. It was extended to further order at the hearing on 2 July 2021 and 9 July 2021. On 9 July 2021, it was extended until further order.

**THE COURT ORDERS:**

**INTRODUCTION**

- (1) (a) The application for this order is made returnable immediately.
- (b) The time for service of the application, supporting affidavits and originating process is abridged and service is to be effected by 3pm 28 June 2021 with service to be effected by email to bpapas@forumgroup.com.au.
- (2) Subject to the next paragraph, in accordance with the order 7 of the orders made by Justice Lee on 9 July 2021, this order has effect until further order.
- (3) Anyone served with or notified of this order, including you, may apply to the Court at any time to vary or discharge this order or so much of it as affects the person served or notified.
- (4) In this order:
  - (a) **applicant**, if there is more than one applicant, includes all the applicants;



- (b) **you**, where there is more than one of you, includes all of you and includes you if you are a corporation;
  - (c) **third party** means a person other than you and the applicant;
  - (d) **unencumbered value** means value free of mortgages, charges, liens or other encumbrances.
  - (e) **Relevant Amount** means the amount of AUD\$361,829,083.68.
- (5) (a) If you are ordered to do something, you must do it by yourself or through directors, officers, partners, employees, agents or others acting on your behalf or on your instructions.
- (b) If you are ordered not to do something, you must not do it yourself or through directors, officers, partners, employees, agents or others acting on your behalf or on your instructions or with your encouragement or in any other way.

### **FREEZING OF ASSETS**

- (6) (a) You must not remove from Australia or in any way dispose of, deal with or diminish the value of any of your assets in Australia (**Australian assets**) up to the unencumbered value of AUD\$361,829,083.68, being the Relevant Amount.
- (b) If the unencumbered value of your Australian assets exceeds the Relevant Amount, you may remove any of those assets from Australia or dispose of or deal with them or diminish their value, so long as the total unencumbered value of your Australian assets still exceeds the Relevant Amount.
- (c) If the unencumbered value of your Australian assets is less than the Relevant Amount, and you have assets outside Australia, including but not limited to assets in New Zealand, the United Arab Emirates, Singapore, Greece, the United Kingdom, and Germany (**Worldwide Assets**):
- (i) You must not dispose of, deal with or diminish the value of any of your Australian assets or your Worldwide Assets up to the unencumbered value of the Relevant Amount; and
  - (ii) You may dispose of, deal with or diminish the value of any of your Worldwide Assets, so long as the unencumbered value of all of your Australian assets and Worldwide Assets still exceeds the Relevant Amount.
- (7) For the purposes of this order,
- (a) your assets include:
    - (i) all your assets, whether or not they are in your name and whether they are solely or co-owned;
    - (ii) any asset which you have the power, directly or indirectly, to dispose of or deal with as if it were your own (you are to be regarded as having such power if a third party holds or controls the asset in accordance with your direct or indirect instructions); and
    - (iii) the following assets in particular:



- (A) the assets of your business, Forum Finance Pty Ltd (the first respondent), carried on at Level 5 141 Walker St, North Sydney New South Wales or, if any or all of the assets have been sold, the net proceeds of the sale ; and
- (B) the bank account with BSB 082 080 and account number 848483695 held with the National Australia Bank Limited (**NAB**);
- (C) the bank account with BSB 082 080 and account number 761644257 held with the NAB;
- (D) any interest you hold, directly or indirectly, in Xanthi FC football club; and
- (E) your shareholding or interest in any company including:

Australian companies

- a. 14 James Street Pty Ltd (Administrators Appointed) ACN 638 449 206
- b. 26 Edmonstone Road Pty. Ltd. (Administrators Appointed) ACN 622 944 129
- c. 5 Bulkara Street Pty. Ltd. (Administrators Appointed) ACN 630 982 160
- d. 6 Bulkara Street Pty Ltd (Administrators Appointed) ACN 639 734 473
- e. 64-66 Berkeley St Hawthorn Pty Ltd ACN 643 838 662
- f. Aramia Holdings Pty Ltd (Administrators Appointed) ACN 114 958 717
- g. ELFG Pty Ltd ACN 118 311 096
- h. Eros Management Pty Ltd (Administrators Appointed) ACN 622 298 346
- i. Forum Direct Pty Ltd (Administrators Appointed) ACN 054 890 710
- j. Forum Enviro (Aust) Pty Ltd (Administrators Appointed) ACN 607 484 364
- k. Forum Enviro Pty Ltd (Administrators Appointed) ACN 168 709 840
- l. Forum Finance Pty Limited (Administrators Appointed) ACN 153 301 172



- m. Forum Fleet Pty Limited (Administrators Appointed) ACN 155 440 994
- n. Forum Group (Qld) Pty Ltd (Administrators Appointed) ACN 103 609 678
- o. Forum Group (Vic) Pty Ltd (Administrators Appointed) ACN 153 062 018
- p. Forum Group Financial Services Pty Ltd (Administrators Appointed) ACN 623 033 705
- q. Forum Group Pty Ltd (Administrators Appointed) ACN 153 336 997
- r. Green Eco International Pty Ltd ACN 602 735 697
- s. Ifish Finance Pty Ltd ACN 118 683 542
- t. Imagetec Financial Services Pty Ltd (Administrators Appointed) ACN 111 978 182
- u. Imagetec Solutions Australia Pty Ltd (Administrators Appointed) ACN 074 715 718
- v. Intrashield Investment Group Pty Ltd (Administrators Appointed) ACN 645 578 829
- w. Intrashield Pty Ltd (Administrators Appointed) ACN 133 426 534
- x. iugis Investments Pty Ltd (Administrators Appointed) ACN 647 627 745
- y. iugis Pty Ltd (Administrators Appointed) ACN 632 882 243
- z. iugis Waste Solutions Pty Ltd (Administrators Appointed) ACN 647 212 299
- aa. Lion Star Management Pty Ltd ACN 609 224 713
- bb. Malton Enterprises Pty Ltd ACN 153 852 852
- cc. Nocelle Foods Pty Ltd ACN 613 169 958
- dd. Onesource Australia Holdings Pty Limited (Administrators Appointed) ACN 120 463 541
- ee. Orca Enviro Solutions Pty Ltd (Administrators Appointed) ACN 626 552 645
- ff. Orca Enviro Systems Pty Ltd (Administrators Appointed) ACN 627 597 782
- gg. Palante Pty Ltd ACN 135 344 151



- hh. Smartprint Fleet Management Pty Ltd (Administrators Appointed)  
ACN 132 807 080
- ii. Spartan Consulting Group Pty Ltd (Administrators Appointed)  
ACN 168 989 544
- jj. TA Cap Investments Pty Ltd ACN 144 885 941
- kk. Autonomous Energy Pty Ltd (Administrators Appointed) ACN  
113 593 383
- ll. The Forum Group of Companies Pty Ltd (Administrators  
Appointed) ACN 151 964 626

Singapore companies

- mm. Environmental Solutions International Pte. Ltd.

New Zealand companies

- nn. Forum Group NZ Limited

- oo. iugis (NZ) Limited

German companies

- pp. iugis (EU) Gmbh

UK companies

- qq. iugis (UK) Limited
- rr. iugis Finance Limited
- ss. iugis Global Financial Services Limited
- tt. iugis Holdings Limited

Greek companies

- uu. iugis Hellas IKE
- vv. Mazcon Investments Hellas IKE

United Arab Emirates companies

- ww. iugis Holdings Limited
- xx. Envirofina

- (b) the value of your assets is the value of the interest you have individually in your assets.

**PROVISION OF INFORMATION**

- (8) Subject to paragraph 9, you must:
  - (a) at or before the further hearing on 2 July 2021 (or within such further time as the Court may allow) to the best of your ability inform the applicant in writing of all your assets in



Australia, giving their value, location and details (including any mortgages, charges or other encumbrances to which they are subject) and the extent of your interest in the assets;

- (b) within 6 working days after being served with the 28 June 2021 orders, swear and serve on the applicant an affidavit setting out the above information.
- (9) (a) This paragraph 9 applies if you are not a corporation and you wish to object to complying with paragraph 8 on the grounds that some or all of the information required to be disclosed may tend to prove that you:
- (i) have committed an offence against or arising under an Australian law or a law of a foreign country; or
  - (ii) are liable to a civil penalty.
- (b) This paragraph 9 also applies if you are a corporation and all of the persons who are able to comply with paragraph 8 on your behalf and with whom you have been able to communicate, wish to object to your complying with paragraph 8 on the grounds that some or all of the information required to be disclosed may tend to prove that they respectively:
- (i) have committed an offence against or arising under an Australian law or a law of a foreign country; or
  - (ii) are liable to a civil penalty.
- (c) You must:
- (i) disclose so much of the information required to be disclosed to which no objection is taken; and
  - (ii) prepare an affidavit containing so much of the information required to be disclosed to which objection is taken, and deliver it to the Court in a sealed envelope; and
  - (iii) file and serve on each other party a separate affidavit setting out the basis of the objection.

### **EXCEPTIONS TO THIS ORDER**

- (10) This order does not prohibit:
- (a) you paying up to \$2,500 a week on your ordinary living expenses;
  - (b) paying \$50,000 on your reasonable legal expenses;
  - (c) dealing with or disposing of any of your assets in the ordinary and proper course of your business, including paying business expenses bona fide and properly incurred; and
  - (d) in relation to matters not falling within (a), (b) or (c), dealing with or disposing of any of your assets in discharging obligations bona fide and properly incurred under a contract entered into before this order was made, provided that before doing so you give the applicant, if possible, at least two working days written notice of the particulars of the obligation; and
  - (e) without limiting subparagraphs (b) and (c), dealing with the bank account in the name of Forum Group Pty Ltd with BSB 082-080 Account Number 12-178-2934 held with National Australia Bank Ltd by discharging business expenses of Forum Group Pty Ltd bona fide and





properly incurred not limited to obligations bona fide and properly owing to Octet Finance Pty Ltd ACN 124 477 916.

- (11) You and the applicant may agree in writing that the exceptions in the preceding paragraph are to be varied. In that case the applicant or you must as soon as practicable file with the Court and serve on the other a minute of a proposed consent order recording the variation signed by or on behalf of the applicant and you, and the Court may order that the exceptions are varied accordingly.
- (12) (a) This order will cease to have effect if you:
- (i) pay the sum of AUD\$361,829,083.68 into Court; or
  - (ii) pay that sum into a joint bank account in the name of your lawyer and the lawyer for the applicant as agreed in writing between them; or
  - (iii) provide security in that sum by a method agreed in writing with the applicant to be held subject to the order of the Court.
- (b) Any such payment and any such security will not provide the applicant with any priority over your other creditors in the event of your insolvency.
- (c) If this order ceases to have effect pursuant 12(a) above, you must as soon as practicable file with the Court and serve on the applicant notice of that fact.

## **COSTS**

- (13) The costs of this application are reserved to the Court hearing the application on the Return Date.

## **PERSONS OTHER THAN THE APPLICANT AND RESPONDENT**

### **(14) Set off by banks**

This order does not prevent any bank from exercising any right of set off it has in respect of any facility which it gave you before it was notified of this order.

### **(15) Bank withdrawals by the respondent**

No bank need inquire as to the application or proposed application of any money withdrawn by you if the withdrawal appears to be permitted by this order.

### **(16) Persons outside Australia**

- (a) Except as provided in subparagraph (b) below, the terms of this order do not affect or concern anyone outside Australia.
- (b) The terms of this order will affect the following persons outside Australia:
- (i) you and your directors, officers, employees and agents (except banks and financial institutions);
  - (ii) any person (including a bank or financial institution) who:
    - (A) is subject to the jurisdiction of this Court; and
    - (B) has been given written notice of this order, or has actual knowledge of the substance of the order and of its requirements; and

- 24 -



(C) is able to prevent or impede acts or omissions outside Australia which constitute or assist in a disobedience of the terms of this order; and

(iii) any other person (including a bank or financial institution), only to the extent that this order is declared enforceable by or is enforced by a court in a country or state that has jurisdiction over that person or over any of that person's assets.

**(17) Assets located outside Australia**

Nothing in this order shall, in respect of assets located outside Australia, prevent any third party from complying or acting in conformity with what it reasonably believes to be its bona fide and properly incurred legal obligations, whether contractual or pursuant to a court order or otherwise, under the law of the country or state in which those assets are situated or under the proper law of any contract between a third party and you, provided that in the case of any future order of a court of that country or state made on your or the third party's application, reasonable written notice of the making of the application is given to the applicant.



## SCHEDULE A

### UNDERTAKINGS GIVEN TO THE COURT BY THE APPLICANT

- (1) The applicant undertakes to submit to such order (if any) as the Court may consider to be just for the payment of compensation (to be assessed by the Court or as it may direct) to any person (whether or not a party) affected by the operation of the order.
- (2) As soon as practicable, the applicant will file and serve upon the respondent copies of:
  - (a) this order;
  - (b) the application for this order for hearing on the return date;
  - (c) the following material in so far as it was relied on by the applicant at the hearing when the order was made:
    - (i) affidavits (or draft affidavits);
    - (ii) exhibits capable of being copied;
    - (iii) any written submission; and
    - (iv) any other document that was provided to the Court.
  - (d) a transcript, or, if none is available, a note, of any exclusively oral allegation of fact that was made and of any exclusively oral submission that was put, to the Court;
  - (e) the originating process, or, if none was filed, any draft originating process produced to the Court.
- (3) As soon as practicable, the applicant will cause anyone notified of this order to be given a copy of it.
- (4) The applicant will pay the reasonable costs of anyone other than the respondent which have been incurred as a result of this order, including the costs of finding out whether that person holds any of the respondent's assets.
- (5) If this order ceases to have effect the applicant will promptly take all reasonable steps to inform in writing anyone to who has been notified of this order, or who he has reasonable grounds for supposing may act upon this order, that it has ceased to have effect.
- (6) The applicant will not, without leave of the Court, use any information obtained as a result of this order for the purpose of any civil or criminal proceedings, either in or outside Australia, other than this proceeding.
- (7) The applicant will not, without leave of the Court, seek to enforce this order in any country outside Australia or seek in any country outside Australia an order of a similar nature or an order conferring a charge or other security against the respondent or the respondent's assets.

- 26 -

**SCHEDULE B****AFFIDAVITS RELIED ON**

<b>Name of deponent</b>	<b>Date affidavit made</b>
(1) Geoffrey Keith Anderson	28 June 2021; 8 July 2021
(2) Nicholas Anthony O'Brien	27 June 2021; 1 July 2021
(3) Caitlin Maria Murray	28 June 2021; 2 July 2021; 7 July 2021; 8 July 2021; 12 July 2021; 14 July 2021; 15 July 2021
(4) Vince Damiano	14 July 2021

**NAME AND ADDRESS OF APPLICANT'S LAWYERS**

The applicant's lawyers are:

MinterEllison  
Governor Macquarie Tower  
Level 40, 1 Farrer Place  
Sydney NSW 2000

Attention: Caitlin Murray  
[caitlin.murray@minterellison.com](mailto:caitlin.murray@minterellison.com); T +61 2 9921 8514 ; M +61 422 977 971 ; +61 2 9921 8123 ref:  
CMM:1353397

- 27 -

**Schedule**

No: NSD616/2021

Federal Court of Australia

District Registry: New South Wales

Division: General

- First Respondent: Forum Finance Pty Limited (in liquidation) (Receivers Appointed)  
ACN 153 301 172
- Second Respondent: Basile Papadimitriou
- Third Respondent: Vincenzo Frank Tesoriero
- Fourth Respondent: Forum Group Financial Services Pty Ltd (Administrators  
Appointed) ACN 623 033 705
- Fifth Respondent: Forum Group Pty Ltd (Receivers Appointed) (Administrators  
Appointed) ACN 153 336 997
- Sixth Respondent: Forum Enviro Pty Ltd (Administrators Appointed)  
ACN 168 709 840
- Seventh Respondent: Forum Enviro (Aust) Pty Ltd (Administrators Appointed) ACN 607  
484 364

**Annexure**

No. NSD616 of 2021

Federal Court of Australia  
District Registry: New South Wales  
Division: General

**Westpac Banking Corporation ABN 33 007 457 141** and another  
Applicant

**Forum Finance Pty Limited ACN 153 301 172** and others named in the Schedule  
Respondents

This is the Annexure marked "**BJQ-22**" shown and produced to **Bianca Josephine Quan** at the time of swearing her affidavit on 28 September 2021.

Deponent signature:

DocuSigned by:  
*Bianca Quan*  
E3C6AC6D03C0401:.....

Before me: DocuSigned by:  
*Adrian Lee*  
BC4298F2AFED404:.....

Adrian Lee

Level 10, 114 William Street, Melbourne VIC 3000

An Australian Legal Practitioner within the meaning of the Legal Profession Uniform Law (Vic)

A person authorised under Section 19(1) of the Oaths and Affirmations Act 2018 to take an affidavit.

This affidavit, as signed and notated by the authorised affidavit taker, was signed by the deponent over audio-visual link.

The specified things in respect of the affidavit were done by means of audio-visual link. The affidavit is a scanned hard copy or an electronic copy, not an original.



5 July 2021

**URGENT**

**HAND DELIVERED**

National Australia Bank  
Level 4 (UB4440)  
800 Bourke Street  
Docklands VIC 3008

National Australia Bank  
Attention: Bankruptcy & Administrative Services Team  
Attention: Doug Moore, Strategic Business Services  
Team

**BY EMAIL:** [bankruptcy@nab.com.au](mailto:bankruptcy@nab.com.au); [doug.moore@nab.com.au](mailto:doug.moore@nab.com.au)

Dear Sir / Madam

**FORUM GROUP PTY LTD (RECEIVERS APPOINTED) ("COMPANY")  
NAB ACCOUNT BSB 082 080 ACCOUNT NUMBER 12 178 2934 in the name of FORUM GROUP  
PTY LTD ("ACCOUNT")**

**Background**

1. Pursuant to a Business Transaction Facility (**Facility**) (incorporating Business Transaction Facility Terms and Conditions (Buyer S6/2017 version)) dated on or about 27 September 2018 as varied from time to time including by letters of variation dated on or about 22 March 2019, 13 July 2020 and 9 November 2020 between Octet Finance Pty Ltd (**Octet**) and the Company, Octet provided financial accommodation to the Company.
2. As security for its obligations under the Facility, the Company provided Octet with a security interest over all or substantially all of the Company's property pursuant to a General Security Deed dated on or about 11 October 2018 executed by the Company as a deed poll in favour of Octet (**Security Deed**). The security interest arising under the Security Deed was registered on the Personal Property Securities Register in registration number 201810050021344 on 5 October 2018 (**Security Interest**).
3. Pursuant to the Facility, Octet is entitled to draw on the Account to take payment of minimum payments required to be paid by the Company and any other amounts specified by Octet. Further, pursuant to the Security Deed, Octet has a security interest in all personal and after acquired property of the Company, including the Account.
4. An event of default has occurred under the Facility and the Security Deed. As a consequence of the default (which continues to subsist as at the date of this notice) the Security Interest created by the Security Deed has become enforceable. All monies owing by the Company under the Security Deed are immediately due and payable by the Company to Octet.

Liability limited by a scheme approved under Professional Standards Legislation

T 02 9633 3333  
F 02 9633 3040  
E [mail@dvtgroup.com.au](mailto:mail@dvtgroup.com.au)

All correspondence to:  
PO Box 218 Parramatta NSW 2124

de Vries Tayeh is part of the dVT **Group**

[dvtgroup.com.au](http://dvtgroup.com.au)

Level 2, 151 Macquarie Street, SYDNEY NSW 2000  
Level 3, 95 Macquarie Street, PARRAMATTA NSW 2150

with offices throughout mainland Australia and New Zealand

5. Following the default, on 5 July 2021, Antony Resnick and Mark Robinson (**Receivers**) have been appointed by Octet as joint and several receivers to the property of the Company charged by it in favour of Octet pursuant to the Security Deed.

#### **Freezing Orders**

6. Pursuant to Orders made by Justice Lee on 2 July 2021 in Federal Court proceeding number NSD616/2021 (**Proceeding**) (**Orders**), his Honour made orders freezing various assets of Basile Papadimitriou (**Papadimitriou**) and Forum Finance Pty Ltd (**Forum Finance**). Papadimitriou is a director of both the Company and Forum Finance.
7. Mr Craig Rollinson, a senior executive of the Company has today informed the Receivers that the Account has been frozen by NAB by virtue of the Orders.

#### **TAKE NOTICE THAT:**

For the following reasons, Octet and the Receivers consider that NAB has misconstrued the Orders and improperly frozen the Account:

1. the Company is not a party to the Proceeding and is not expressly identified in any part of the Orders. The Company's Account is also not expressly listed in the list of bank accounts affected by Orders. Accordingly, on its face, the Company's assets (including the Account) are not affected by the Orders;
2. the Account is not an asset of Forum Finance or Papadimitriou, nor is it an asset that Papadimitriou or Forum Finance has "... the power, directly or indirectly, to dispose of or deal with as if it were [his/its] own ..." Notwithstanding that Papadimitriou may be a signatory to the Account, neither NAB nor the Company holds the Account in accordance with Papadimitriou's instructions but rather, in accordance with the instructions of the Company; and
3. even if the Account is an asset which is frozen by operation of the Orders, which is not admitted but is expressly denied, the Orders do not prohibit the Company from dealing with its assets in the ordinary course of business, nor from dealing with its assets to discharge its obligations under a contract entered into prior to the date of the Orders. The Orders therefore envisage and permit, at minimum:
  - a. the minimum monthly payment due to Octet under the Facility; and
  - b. payment of all amounts owing under the Facility and the Security Deed to Octet, being contracts entered into by the Company prior to the date of the Orders. To the extent that notice to Westpac Banking Corporation (**Westpac**) as the applicant in the Proceeding is required, please note that this notice has been copied to Westpac's solicitors and operates as such notice.

The amount presently owing by the Company to Octet is \$1,792,831.99 excluding costs and interest which continue to accrue. The Company and Octet are suffering ongoing losses as a result of NAB's decision to improperly freeze the Account.


The Company and Octet require NAB to immediately release the Account and transfer the balance of funds to the Receivers in accordance with the correspondence sent by the receivers to NAB earlier today, a copy of which is **attached**.

**Further, the Receivers understand that a direct debit run for monies due to the Company in the amount of \$996,842.11 sent to NAB on 1 July 2021 was not processed. These funds were to be debited from the Company's customers and deposited into the Account. The Receivers reiterate that for the reasons outlined above, the Orders do not prohibit the processing of these direct debit payments, which are in the ordinary course of the Company's business. The Receivers require that the direct debits be processed immediately, and the funds deposited into the Account and released to the Receivers and paid into the nominated account in accordance with their correspondence of 5 July 2021.**



In the absence of payment, the Company and Octet each expressly reserves its rights to claim from NAB any loss and damage suffered arising out of the freezing of the Account, and its failure to release and transfer any funds contained in the Account in accordance with this notice.

Yours faithfully,



Signed by Antony Resnick, joint and several receiver of Forum Group Pty Ltd (receivers appointed)



Signed by Mark Robinson, joint and several receiver of Forum Group Pty Ltd (receivers appointed)

**Annexure**

No. NSD616 of 2021


Federal Court of Australia  
District Registry: New South Wales  
Division: General


**Westpac Banking Corporation ABN 33 007 457 141** and another  
Applicant

**Forum Finance Pty Limited ACN 153 301 172** and others named in the Schedule  
Respondents

This is the Annexure marked "**BJQ-23**" shown and produced to **Bianca Josephine Quan** at the time of swearing her affidavit on 28 September 2021.

Deponent signature:

DocuSigned by:  
  
E3C6AC0D03C0401...

Before me: DocuSigned by:  
  
BG4298F2AFED404...

Adrian Lee

Level 10, 114 William Street, Melbourne VIC 3000

An Australian Legal Practitioner within the meaning of the Legal Profession Uniform Law (Vic)

A person authorised under Section 19(1) of the Oaths and Affirmations Act 2018 to take an affidavit.

This affidavit, as signed and notated by the authorised affidavit taker, was signed by the deponent over audio-visual link.

The specified things in respect of the affidavit were done by means of audio-visual link. The affidavit is a scanned hard copy or an electronic copy, not an original.

**Annabelle Cangy**

---

**From:** Bianca Quan  
**Sent:** Monday, 5 July 2021 7:27 PM  
**To:** caitlin.murray@minterellison.com  
**Cc:** Gregory Clayton; Adrian Lee  
**Subject:** Forum Group Pty Ltd (Receivers Appointed)  
**Attachments:** Letter to NAB 5.7.21.pdf

Dear Caitlin,

We act on behalf of Antony Resnick and Mark Robinson in their capacity as receivers of Forum Group Pty Ltd (receivers appointed).

Please find **attached** letter sent to NAB by the receivers today.

Regards,  
Bianca

**Bianca Quan**  
Partner



**E** [b.quan@cornwalls.com.au](mailto:b.quan@cornwalls.com.au)  
**T** +61 3 9608 2258  
**A** Level 10, 114 William Street, Melbourne, VIC, 3000, Australia  
**W** [cornwalls.com.au](http://cornwalls.com.au)

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**Annexure**

No. NSD616 of 2021


Federal Court of Australia  
District Registry: New South Wales  
Division: General


**Westpac Banking Corporation ABN 33 007 457 141** and another  
Applicant

**Forum Finance Pty Limited ACN 153 301 172** and others named in the Schedule  
Respondents

This is the Annexure marked "**BJQ-24**" shown and produced to **Bianca Josephine Quan** at the time of swearing her affidavit on 28 September 2021.

Deponent signature:

DocuSigned by:  
  
E3C6AC0B03C0401.....

Before me: DocuSigned by:  
  
BG4208F2AFED404.....

Adrian Lee

Level 10, 114 William Street, Melbourne VIC 3000

An Australian Legal Practitioner within the meaning of the Legal Profession Uniform Law (Vic)

A person authorised under Section 19(1) of the Oaths and Affirmations Act 2018 to take an affidavit.

This affidavit, as signed and notated by the authorised affidavit taker, was signed by the deponent over audio-visual link.

The specified things in respect of the affidavit were done by means of audio-visual link. The affidavit is a scanned hard copy or an electronic copy, not an original.

# MinterEllison

6 July 2021

**BY EMAIL:** [b.guan@cornwalls.com.au](mailto:b.guan@cornwalls.com.au)

Bianca Quan  
Partner  
Cornwalls  
Level 10, 114 William Street  
Melbourne VIC 3000

Dear Ms Quan

**Westpac Banking Corporation v Forum Finance Pty Ltd & Forum Group Pty Ltd  
(Receivers Appointed)**

We refer to your email of 5 July 2017 at 7.27pm (AEST) (**Your Email**).

As you would be aware, we act for Westpac Banking Corporation. Our client is the applicant in Federal Court of Australia proceedings number NSD616/2021 (**Proceedings**), against Forum Finance Pty Ltd (**Forum Finance**) and others as respondents.

We understand from Your Email that you act for Antony Resnick and Mark Robinson in their capacity as receivers of Forum Group Pty Ltd (Receivers Appointed) (**Forum Group**), having been appointed on 5 July 2021 by Octet Finance Pty Ltd (**Octet**) under securities granted by Forum Group in favour of Octet.

Whilst our client does not take issue with the validity of Octet's security over the assets of Forum Group, we wish to place your clients on notice that our client has a strong prima facie case that all of Forum Finance's assets are impressed with a trust in accordance with the principles set out in *Black v S Freeman & Co* (1910) 12 CLR 105 at 110. Based on our client's investigations to date, which are continuing, our client considers that moneys held by Forum Group may also be impressed with such trust as payments of the misappropriated moneys appear to have been made from Forum Finance to Forum Group. To the extent your clients exercise rights, under the Octet securities, over the property of Forum Group, they should ensure that they do not interfere in our client's rights.

All of our client's rights are expressly reserved.

Yours faithfully  
**MinterEllison**



Contact: Anthony Sommer T: +61 2 9921 4182  
anthony.sommer@minterellison.com  
Partner: Caitlin Murray T: +61 2 9921 4279  
OUR REF: AGS:CMM 1353397



**Annexure**

No. NSD616 of 2021

Federal Court of Australia  
District Registry: New South Wales  
Division: General

**Westpac Banking Corporation ABN 33 007 457 141** and another  
Applicant

**Forum Finance Pty Limited ACN 153 301 172** and others named in the Schedule  
Respondents

This is the Annexure marked "**BJQ-25**" shown and produced to **Bianca Josephine Quan** at the time of swearing her affidavit on 28 September 2021.

Deponent signature:

DocuSigned by:  
*Bianca Quan*  
.....E3C6AC0D03C0401.....

Before me: DocuSigned by:  
*Adrian Lee*  
.....BC4298F2AFED404.....

Adrian Lee

Level 10, 114 William Street, Melbourne VIC 3000

An Australian Legal Practitioner within the meaning of the Legal Profession Uniform Law (Vic)

A person authorised under Section 19(1) of the Oaths and Affirmations Act 2018 to take an affidavit.

This affidavit, as signed and notated by the authorised affidavit taker, was signed by the deponent over audio-visual link.

The specified things in respect of the affidavit were done by means of audio-visual link. The affidavit is a scanned hard copy or an electronic copy, not an original.

大成 DENTONSJustin Kang  
Partnerjustin.kang@dentons.com  
D +61 2 9931 4771+61 2 9931 4771+61 2  
9931 4771

BJQ-25

Dentons Australia Limited  
ABN 69 100 963 308  
77 Castlereagh Street  
Sydney NSW 2000  
Australia

dentons.com

7 July 2021

Bianca Quan, Partner  
Cornwalls  
Level 10, 114 William Street  
MELBOURNE VIC 3000By email [b.quan@cornwalls.com.au](mailto:b.quan@cornwalls.com.au)

Our ref: J Kang/41028982

Dear Colleague

**Our client:** National Australia Bank Limited (NAB)  
**Your clients:** Anthony Resnick and Mark Robinson ('Receivers') as receivers and managers of Forum Group Pty Ltd (receivers appointed)

We confirm that we act for NAB and note you act for the Receivers.

We refer to the Receivers' two letters to NAB of 5 July 2021, seeking that NAB transfer all funds held in Forum Group Pty Ltd's account ending 2934 (**Account**) into the Receivers' nominated Macquarie Bank account.

NAB at this stage declines to do so for the reasons discussed below.

**Freezing Orders**As your clients' above correspondence notes, there are extant freezing orders (**Freezing Orders**) in respect of Forum Finance Pty Ltd and Basile Papadimitriou.

The Freezing Orders have currently been extended until 5pm on 9 July 2021.

It would appear the Receivers contend that the Freezing Orders do not extend to the Account, because NAB holds the Account in accordance with the instructions of Forum Group Pty Ltd, not Forum Finance Pty Ltd or Mr Papadimitriou.

Respectfully we do not agree with this contention, in particular noting that:

1. the Freezing Orders expressly capture any assets over which Forum Finance Pty Ltd or Mr Papadimitriou have power, directly or indirectly, to dispose of or deal with as if it were their own, whether or not that asset is in their name;

Larraín Rencoret ▶ Hamilton Harrison &amp; Mathews ▶ Mardemootoo Balgobin ▶ HPRP ▶ Zain &amp; Co ▶ Delany Law ▶ Dinner Martin ▶ Maclay Murray &amp; Spens ▶ Gallo Barrios Pickmann ▶ Muñoz ▶ Cardenas &amp; Cardenas ▶ Lopez Velarde ▶ Rodyk ▶ Boekel ▶ OPF Partners

2. Mr Papadimitriou, as well as being a signatory of the Account, is the sole director and secretary both of Forum Group Pty Ltd and its ultimate holding company, The Forum Group of Companies Pty Ltd;
3. another of Forum Group Pty Ltd's accounts (ending 4257) is expressly included in the assets of Forum Finance Pty Ltd and Mr Papadimitriou in paragraph number 7(a)(iii)(C) of each of the Freezing Orders; and
4. the fact that your clients may now be exercising certain functions as receivers does not necessarily mean that the Account can no longer be considered part of the "assets" caught by the Freezing Orders, noting that our client is not privy to any daily decisions your clients choose to make or any interaction they may have with Mr Papadimitriou in the course of their receivership.

NAB is not a party to the proceedings in which the Freezing Orders were made and maintains that the Freezing Orders read on their face capture the Account.

If the Receivers are of the view that the Account should be excluded from the Freezing Orders, then the Receivers can request the parties to those proceedings, or the Receivers themselves (if contending they are affected by the Freezing Orders) could, seek and provide us with orders amending or clarifying the scope of the Freezing Orders to remove the Account.

In the meantime, NAB has updated its records for the Account to add the Receivers' contact details. By amending the Account details in this way, we do not accept that the Account falls outside the freezing orders and the Account will remain stopped to debits. Debit transactions attempted on the Account since service of the Freezing Orders have been declined.

Alternatively, if the Receivers seek a payment, withdrawal or transfer (**Proposed Payment**) from the Account under the 'Exceptions' identified in the Freezing Orders, NAB requests confirmation in writing from Minter Ellison as the solicitors for Westpac Banking Corporation (**Westpac**) that Westpac as the applicant of the Freezing Orders agrees or consents to:

- (a) a Proposed Payment as an exception and a transaction permitted under the Freezing Orders; and/or
- (b) a protocol (with the relevant detail provided) as between the Receivers and Westpac for the making of any Proposed Payment under the Exceptions regarding the Account.

Indeed noting that the Receivers' longer letter to NAB of 5 July 2021 stated that it had been copied to Minter Ellison, we would be grateful if you could let us know whether there has been any response from other parties.

If the Receivers seek to have a Proposed Payment made from the Account under the 'Exceptions' identified in the Freezing Orders, then please also provide:

1. the amounts and payees in relation to any Proposed Payment;
2. the paragraph number or paragraph numbers of the Freezing Orders under which the Receivers say any Proposed Payment falls and is permitted by the Freezing Orders;
3. any other appropriate documentation which the Receivers say supports their position that any Proposed Payment would be permitted by the Freezing Orders;

In this regard, we understand the Receivers wish to apply funds in the Account to meet Forum Group Pty Ltd's employee pay run this Friday 9 July 2021, and are instructed that NAB would be prepared to allow this transaction if satisfied with written confirmation from Minter Ellison that this transaction (with the details, including the amount of the transaction identified) will not contravene the Freezing Orders.

Otherwise NAB is willing to consider any submission made (with any appropriate supporting material) that a Proposed Payment sought by your clients is permitted under the Freezing Orders. In this regard, we also wrote on behalf of NAB to the lawyers acting for Forum Group Pty Ltd (we understand on the



instructions of its director) on 5 July 2021 requesting details of any proposed payments to be made under the Exceptions. Doug Moore of NAB also wrote to the former lawyer Vobis Equity Attorneys on 30 June 2021 requesting details of any proposed payments to be made under the Exceptions, without response.

**Declined transfer of \$996,842.11**

The Receivers' longer above letter to NAB of 5 July 2021 refers to the above direct debit transfer sent to NAB on 1 July 2021 which was not processed.

In this regard, and aside from what we say above, that amount of \$996,842.11 exceeded the approved limit of Forum Group Pty Ltd's direct debit facility, and accordingly our client was entitled to decline the transfer on that basis in and of itself.

**First registered All PAP security held by NAB**

NAB holds the first registered ALL PAP General Security Agreement from Forum Group Pty Ltd, being security interest registered on the Personal Property Securities Register on 14 October 2013 as registration number 201310140035597.

NAB's above security interest was taken and registered well prior, and ranks in priority to, the security interest registered for your client's appointor.

Furthermore your clients' appointments as receivers and managers is an event of default under NAB's security interest.

NAB is currently reviewing any amounts which might be secured under its above security interest and reserves its rights to apply the funds in the Account against any such amounts in priority to any security interest sought to be exercised by the Receivers or their appointor.

Yours sincerely



Justin Kang  
**Partner**  
Dentons Australia

**Annexure**

No. NSD616 of 2021


Federal Court of Australia  
District Registry: New South Wales  
Division: General


**Westpac Banking Corporation ABN 33 007 457 141** and another  
Applicant

**Forum Finance Pty Limited ACN 153 301 172** and others named in the Schedule  
Respondents

This is the Annexure marked "**BJQ-26**" shown and produced to **Bianca Josephine Quan** at the time of swearing her affidavit on 28 September 2021.

Deponent signature:

DocuSigned by:  
  
E3C6AC0D03C0401...

Before me: DocuSigned by:  
  
BC4298F2AFED404...  
Adrian Lee

Level 10, 114 William Street, Melbourne VIC 3000

An Australian Legal Practitioner within the meaning of the Legal Profession Uniform Law (Vic)

A person authorised under Section 19(1) of the Oaths and Affirmations Act 2018 to take an affidavit.

This affidavit, as signed and notated by the authorised affidavit taker, was signed by the deponent over audio-visual link.

The specified things in respect of the affidavit were done by means of audio-visual link. The affidavit is a scanned hard copy or an electronic copy, not an original.

Your reference:  
Our reference: BQ:AHL:1056380



8 July 2021

Caitlin Murray  
Minter Ellison

**By email:** [caitlin.murray@minterellison.com](mailto:caitlin.murray@minterellison.com)

Dear Ms Murray

**FORUM GROUP PTY LTD (RECEIVERS APPOINTED) (“COMPANY”)**

We refer to your letter of 6 July 2021.

Unless otherwise stated, we adopt the defined terms in our clients' letter dated 5 July 2021.

As you are aware, NAB has applied an unconditional freeze over the Account and is presently preventing the Company from making payments in the ordinary course of its business, including to Octet.

NAB's position is incorrect. In particular, NAB has misconstrued the Orders and has no justification for preventing payment to our client particularly in light of paragraph 10(d) of the freezing order.

Your client is on notice that, as a consequence of the Orders, Octet is suffering ongoing loss and damage as a consequence of the Orders. Octet and our clients expressly reserve their rights in relation to any loss and damage suffered as a result of the Orders and the stance being taken by NAB.

We have copied NAB's solicitors to this letter. We demand that you urgently confirm to NAB by return letter (copied to NAB's solicitors) that the Orders do not, properly construed, prevent NAB from allowing payment to be made from the Account to our client.

For the avoidance of doubt, if your clients give the confirmation and then assuming that NAB acts upon that confirmation and releases funds from the Account, our clients intend to pay the secured debt together with enforcement costs and then retire.

In the event that this issue is not resolved by close of business we put you (and NAB) on notice that our clients intend appear at the hearing listed for Friday 9 July 2021.

Finally, our clients (and Octet) are aware that your client is investigating claims in respect of the Forum Group. Our clients (and Octet) will not regard your client's confirmation to NAB as any form of admission in respect of your client's potential claims. That is, should your client later seek to assert a trust our clients will not regard the confirmation as preventing any such claim from being made.

In the meantime all rights are reserved.

---

A L10 114 William St, Melbourne Vic 3000 P GPO Box 1466, Melbourne Vic 3001 DX 636 Melbourne  
T +61 3 9608 2000 W [cornwalls.com.au](http://cornwalls.com.au)



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BJQ:1056380:M:D7043052

Yours sincerely



**CORNWALLS**

**Contact**

Bianca Quan

Partner

b.quan@cornwalls.com.au

+61 3 9608 2258

0422 288 046

**Annexure**

No. NSD616 of 2021

Federal Court of Australia  
District Registry: New South Wales  
Division: General

**Westpac Banking Corporation ABN 33 007 457 141** and another  
Applicant

**Forum Finance Pty Limited ACN 153 301 172** and others named in the Schedule  
Respondents

This is the Annexure marked "**BJQ-27**" shown and produced to **Bianca Josephine Quan** at the time of swearing her affidavit on 28 September 2021.

Deponent signature:

DocuSigned by:  
*Bianca Quan*  
E3C06AC0D03C0401.....

Before me: DocuSigned by:  
*Adrian Lee*  
BG4298F2AFED404.....

Adrian Lee

Level 10, 114 William Street, Melbourne VIC 3000

An Australian Legal Practitioner within the meaning of the Legal Profession Uniform Law (Vic)

A person authorised under Section 19(1) of the Oaths and Affirmations Act 2018 to take an affidavit.

This affidavit, as signed and notated by the authorised affidavit taker, was signed by the deponent over audio-visual link.

The specified things in respect of the affidavit were done by means of audio-visual link. The affidavit is a scanned hard copy or an electronic copy, not an original.

# MinterEllison

8 July 2021

**BY EMAIL:** [b.guan@cornwalls.com.au](mailto:b.guan@cornwalls.com.au)

Bianca Quan  
Partner  
Cornwalls  
Level 10, 114 William Street  
Melbourne VIC 3000

Dear Ms Quan

**Westpac Banking Corporation & Forum Finance Pty Ltd & Forum Group Pty Ltd  
(Receivers Appointed)**

We refer to:

- (a) our letter of 6 July 2021 (**Our Letter**); and
- (b) your letter of 8 July 2021 (**Your Letter**).

Unless otherwise, capitalised terms in this letter have the same meaning in Our Letter.

In response to the matters set out in Your Letter, without admissions as to whether or not our client has a proprietary interest in the moneys in held in the relevant account (or more accurately, the relevant chose in action), our client accepts that paragraph 10(d) of the freezing order does not prevent payment to your clients because they are exercising Octet's rights which were created by a bona fide transaction prior to the grant of the freezing order.

In the event that such payments are made by your clients, your clients act at their own risk, and on notice of our client's claim to a proprietary interest in the moneys for the reasons given in Our Letter.

We note that the solicitors for NAB are copied to this correspondence.

All of our client's rights are expressly reserved.

Yours faithfully  
**MinterEllison**



Contact: Anthony Sommer T: +61 2 9921 4182  
anthony.sommer@minterellison.com  
Partner: Caitlin Murray T: +61 2 9921 4279  
OUR REF: AGS:CMM 1353397



**Annexure**

No. NSD616 of 2021

Federal Court of Australia  
District Registry: New South Wales  
Division: General

**Westpac Banking Corporation ABN 33 007 457 141** and another  
Applicant

**Forum Finance Pty Limited ACN 153 301 172** and others named in the Schedule  
Respondents

This is the Annexure marked "**BJQ-28**" shown and produced to **Bianca Josephine Quan** at the time of swearing her affidavit on 28 September 2021.

Deponent signature:

DocuSigned by:  
  
E3C6AC0D03C0401...

Before me: DocuSigned by:  
  
BC4298F2AFED494...

Adrian Lee

Level 10, 114 William Street, Melbourne VIC 3000

An Australian Legal Practitioner within the meaning of the Legal Profession Uniform Law (Vic)

A person authorised under Section 19(1) of the Oaths and Affirmations Act 2018 to take an affidavit.

This affidavit, as signed and notated by the authorised affidavit taker, was signed by the deponent over audio-visual link.

The specified things in respect of the affidavit were done by means of audio-visual link. The affidavit is a scanned hard copy or an electronic copy, not an original.

**Annabelle Cangy**

---

**From:** Bianca Quan  
**Sent:** Thursday, 8 July 2021 7:28 PM  
**To:** Kang, Justin  
**Cc:** Leen, Delano; Adrian Lee  
**Subject:** FW: Forum Group Pty Ltd (Receivers Appointed) [ME-ME.FID6264995] [CLM-MEL\_DOCS.FID2152582]  
**Attachments:** Westpac v Forum - Letter to Cornwalls - 08.07.21.PDF; Westpac v Forum - Letter to Cornwalls - 06.07.21.PDF  
**Importance:** High

Dear Justin,

We refer to the **attached** letter from MinterEllison earlier this evening. For completeness, we also **attach** the letter from MinterEllison dated 6 July 2021, which is referred to in its subsequent correspondence.

By that correspondence, Westpac confirms that it accepts that the freezing order made by Justice Lee on 28 June 2021 does not prevent the payment sought by our clients from the Account (as defined in our clients' letter to you dated 5 July 2021). In the circumstances, any continued freeze of the Account by NAB is improper and without basis.

We confirm that in the absence of written confirmation from your client that it will unfreeze the Account so as to enable our client to make payment from the Account of the amount owing, we have instructions to approach the Court tomorrow in relation to this issue. In the interim, we trust that you will not act in accordance with the instructions of any other party, noting that our clients have been appointed as receivers to and are in control of the property of the Company.

As stated in our letter to MinterEllison of earlier today and copied to you, our clients intend to pay the secured debt and enforcement costs and then retire.

In light of the correspondence received from MinterEllison this evening, we do not consider that your client requires substantial additional time to confirm its position. Please obtain instructions and confirm the above as a matter of urgency and by no later than **9:00 am** tomorrow morning.

In the absence of same, our clients will progress their application and put you on notice that they will produce this correspondence to the Court on the question of costs.

Regards,  
Bianca

---

**From:** Anthony Sommer <Anthony.Sommer@minterellison.com>  
**Sent:** Thursday, 8 July 2021 5:58 PM  
**To:** Bianca Quan <b.quan@cornwalls.com.au>; Adrian Lee <A.Lee@cornwalls.com.au>; Gregory Clayton <g.clayton@cornwalls.com.au>  
**Cc:** Caitlin Murray <Caitlin.Murray@minterellison.com>; Michael Hughes <Michael.Hughes@minterellison.com>; justin.kang@dentons.com; delano.leen@dentons.com  
**Subject:** RE: Forum Group Pty Ltd (Receivers Appointed) [ME-ME.FID6264995][CLM-MEL\_DOCS.FID2152582]  
**Importance:** High

Dear Colleagues

Please see the attached correspondence.

Regards

---

**Anthony Sommer**



Senior Associate

T +61 2 9921 4182 M +61 431 058 780

anthony.sommer@minterellison.com

**MinterEllison** Governor Macquarie Tower 1 Farrer Place Sydney NSW 2000

minterellison.com **Follow us on LinkedIn and Twitter**



---

**From:** Adrian Lee <[A.Lee@cornwalls.com.au](mailto:A.Lee@cornwalls.com.au)>

**Sent:** Thursday 8 July 2021 02:45 PM

**To:** Caitlin Murray <[Caitlin.Murray@minterellison.com](mailto:Caitlin.Murray@minterellison.com)>

**Cc:** Michael Hughes <[Michael.Hughes@minterellison.com](mailto:Michael.Hughes@minterellison.com)>; Bianca Quan <[b.quan@cornwalls.com.au](mailto:b.quan@cornwalls.com.au)>; Gregory Clayton <[g.clayton@cornwalls.com.au](mailto:g.clayton@cornwalls.com.au)>; Anthony Sommer <[Anthony.Sommer@minterellison.com](mailto:Anthony.Sommer@minterellison.com)>; [justin.kang@dentons.com](mailto:justin.kang@dentons.com); [delano.leen@dentons.com](mailto:delano.leen@dentons.com)

**Subject:** RE: Forum Group Pty Ltd (Receivers Appointed) [ME-ME.FID6264995] [CLM-MEL\_DOCS.FID2152582]

**Importance:** High

Dear Ms Murray

Please see our **attached** letter.

Regards

Adrian

**Adrian Lee**

Associate



**E** [A.Lee@cornwalls.com.au](mailto:A.Lee@cornwalls.com.au)

**T** +61 3 9608 2132

**A** Level 10, 114 William Street, Melbourne, VIC, 3000, Australia

**W** [cornwalls.com.au](http://cornwalls.com.au)



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**Annexure**

No. NSD616 of 2021


Federal Court of Australia  
District Registry: New South Wales  
Division: General


**Westpac Banking Corporation ABN 33 007 457 141** and another  
Applicant

**Forum Finance Pty Limited ACN 153 301 172** and others named in the Schedule  
Respondents

This is the Annexure marked "**BJQ-29**" shown and produced to **Bianca Josephine Quan** at the time of swearing her affidavit on 28 September 2021.

Deponent signature:

DocuSigned by:  
  
E3C6AC0D03C0401...

Before me: DocuSigned by:  
  
BC4298F2AFED404...

Adrian Lee

Level 10, 114 William Street, Melbourne VIC 3000

An Australian Legal Practitioner within the meaning of the Legal Profession Uniform Law (Vic)

A person authorised under Section 19(1) of the Oaths and Affirmations Act 2018 to take an affidavit.

This affidavit, as signed and notated by the authorised affidavit taker, was signed by the deponent over audio-visual link.

The specified things in respect of the affidavit were done by means of audio-visual link. The affidavit is a scanned hard copy or an electronic copy, not an original.

The logo for Dentons, featuring the Chinese characters '大成' followed by the word 'DENTONS' in a bold, sans-serif font, all contained within a purple arrow-shaped graphic pointing to the right.

**Justin Kang**  
Partner

justin.kang@dentons.com  
D +61 2 9931 4771

Dentons Australia Limited  
ABN 69 100 963 308  
77 Castlereagh Street  
Sydney NSW 2000  
Australia

dentons.com

19 July 2021

Caitlin Murray  
Minter Ellison  
Governor Macquarie Tower 1  
Farrer Place  
Sydney NSW 2000

**By email:** [caitlin.murray@minterellison.com](mailto:caitlin.murray@minterellison.com)

Our ref: J Kang/41028982

Dear Ms Murray

**Our client:** National Australia Bank Limited  
**Your client:** Westpac Banking Corporation

We confirm that we act for National Australia Bank Limited (**NAB**) and note you act for Westpac Banking Corporation (**Westpac**).

We refer to the current freezing orders (**Freezing Orders**) in the Federal Court of Australia proceedings NSD616/2021 (**Proceedings**) commenced by Westpac against Basile Papadimitriou and Vincent Tesoriero.

We note the Freezing Orders have been extended until further order.

We note that Freezing Orders initially made in the Proceedings against Forum Finance Pty Ltd expired last Friday 16 July 2021 at 5pm.

The Freezing Orders expressly capture any assets over which Mr Papadimitriou and/or Vincent Tesoriero have power, directly or indirectly, to dispose of or deal with as if they were their own, whether or not that asset is in their name.

Accordingly, after receiving notice of the Freezing Orders, NAB placed stops to debits on various NAB accounts:

1. in the names of Mr Papadimitriou and/or Mr Tesoriero; and
2. which have Mr Papadimitriou and Mr Tesoriero listed as a signatory.

Larraín Rencoret ▶ Hamilton Harrison & Mathews ▶ Mardemootoo Balgobin ▶ HPRP ▶ Zain & Co ▶ Delany Law ▶ Dinner Martin ▶ Maclay Murray & Spens ▶ Gallo Barrios Pickmann ▶ Muñoz ▶ Cardenas & Cardenas ▶ Lopez Velarde ▶ Rodyk ▶ Boekel ▶ OPF Partners

We note that a number of companies (**Externally Administered Companies**) whose accounts have been captured under the Freezing Orders, are now under one or more forms of insolvent administration, namely voluntary administration, receivership, provisional liquidation and liquidation.

To date NAB has received correspondence from or on behalf of insolvency practitioners in their capacities as the appointees under respective insolvent administrations for some of the Externally Administered Companies, calling for NAB to transfer credit funds held by NAB on account of those Externally Administered Companies to the appointees' account established for their particular administration. Given the number of Externally Administered Companies, NAB anticipates the receipt of further such correspondence.

In terms of any application of the Freezing Orders to the assets of companies which are now Externally Administered Companies, NAB considers that the position may have changed in that Mr Papadimitriou and Mr Tesoriero's powers as directors and as signatories on accounts of the Externally Administered Companies have been suspended, such that Mr Papadimitriou and Mr Tesoriero no longer has the ability to deal with the assets, including any NAB accounts, of the Externally Administered Companies.

Accordingly, would you please confirm whether Westpac acknowledges and agrees that:

1. any payment, transfer or application of funds held by NAB on account of an Externally Administered Company; and/or
2. any discharge or release by NAB of any security held from an Externally Administered Company;

to, or at the direction of, any appointee under an insolvent administration for that Externally Administered Company, will not contravene the Freezing Orders.

In the circumstances, we request your response to the above by COB tomorrow 20 July 2021 to assist our client in providing some clarity of the position in dealing with the correspondence received and anticipated from Externally Administered Companies.

Assuming Westpac provides NAB with the acknowledgement sought above, NAB will not take such an acknowledgement as a waiver of any rights that Westpac may otherwise have. NAB's rights to apply to the Court at any time to seek clarification or a variation of the Freezing Orders is reserved.

We look forward to hearing from you. Please contact us if there are any queries or matters you wish to discuss.

Yours sincerely



Justin Kang  
**Partner**  
Dentons Australia

Cc.

**By email:** [chris.prestwich@allens.com.au](mailto:chris.prestwich@allens.com.au); [matthew.youssef@ashurst.com](mailto:matthew.youssef@ashurst.com);  
[b.guan@cornwalls.com.au](mailto:b.guan@cornwalls.com.au); [cnehme@fortislaw.com.au](mailto:cnehme@fortislaw.com.au); [kieran.kelly@hiltonbradley.com.au](mailto:kieran.kelly@hiltonbradley.com.au);  
[r.panetta@panetta.com.au](mailto:r.panetta@panetta.com.au); [rdoobson@jonesday.com](mailto:rdoobson@jonesday.com)

**Annexure**

No. NSD616 of 2021

Federal Court of Australia  
District Registry: New South Wales  
Division: General

**Westpac Banking Corporation ABN 33 007 457 141** and another  
Applicant

**Forum Finance Pty Limited ACN 153 301 172** and others named in the Schedule  
Respondents

This is the Annexure marked "**BJQ-30**" shown and produced to **Bianca Josephine Quan** at the time of swearing her affidavit on 28 September 2021.

Deponent signature:

DocuSigned by:  
*Bianca Quan*  
E3C6AC0D03C0401...

Before me: DocuSigned by:  
*Adrian Lee*  
BC4298F2AFED404...

Adrian Lee

Level 10, 114 William Street, Melbourne VIC 3000

An Australian Legal Practitioner within the meaning of the Legal Profession Uniform Law (Vic)

A person authorised under Section 19(1) of the Oaths and Affirmations Act 2018 to take an affidavit.

This affidavit, as signed and notated by the authorised affidavit taker, was signed by the deponent over audio-visual link.

The specified things in respect of the affidavit were done by means of audio-visual link. The affidavit is a scanned hard copy or an electronic copy, not an original.

# MinterEllison

22 July 2021

**BY EMAIL:** [justin.kang@dentons.com](mailto:justin.kang@dentons.com)

Justin Kang  
Partner  
Dentons  
77 Castlereagh Street  
Sydney NSW 2000

Dear Mr Kang

**Westpac Banking Corporation & Forum Finance Pty Ltd (in liquidation) & Ors**

We refer to your letter of 19 July 2021 (**Your Letter**). Unless otherwise, capitalised terms in this letter have the same meaning in Your Letter.

Our client agrees that the powers of Mr Papadimitriou and Mr Tesoriero as directors of the Externally Administered Companies are suspended in accordance with section 198G(1) of the *Corporations Act 2001* (Cth).

In response to the request set out on page 2 of Your Letter, we are instructed to confirm that our client acknowledges and agrees that:

1. any payment, transfer or application of funds held by NAB on account of an Externally Administered Company; and/or
2. any discharge or release by NAB of any security held from an Externally Administered Company, to, or at the direction of, any appointee under an insolvent administration for that Externally Administered Company, will not contravene the Freezing Orders.

Yours faithfully  
**MinterEllison**



Contact: Anthony Sommer T: +61 2 9921 4182  
anthony.sommer@minterellison.com  
Partner: Caitlin Murray T: +61 2 9921 4279  
OUR REF: AGS:CMM 1353397



**Annexure**

No. NSD616 of 2021

Federal Court of Australia  
District Registry: New South Wales  
Division: General

**Westpac Banking Corporation ABN 33 007 457 141** and another  
Applicant

**Forum Finance Pty Limited ACN 153 301 172** and others named in the Schedule  
Respondents

This is the Annexure marked "**BJQ-31**" shown and produced to **Bianca Josephine Quan** at the time of swearing her affidavit on 28 September 2021.

Deponent signature:

DocuSigned by:  
*Bianca Quan*  
E3C6AC0D03C0401...

Before me: DocuSigned by:  
*Adrian Lee*  
BC4298F2AFED404...  
Adrian Lee

Level 10, 114 William Street, Melbourne VIC 3000

An Australian Legal Practitioner within the meaning of the Legal Profession Uniform Law (Vic)

A person authorised under Section 19(1) of the Oaths and Affirmations Act 2018 to take an affidavit.

This affidavit, as signed and notated by the authorised affidavit taker, was signed by the deponent over audio-visual link.

The specified things in respect of the affidavit were done by means of audio-visual link. The affidavit is a scanned hard copy or an electronic copy, not an original.



**Allens**

Deutsche Bank Place  
Corner Hunter and Phillip Streets  
Sydney NSW 2000 Australia

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GPO Box 50  
Sydney NSW 2001 Australia

ABN 47 702 595 758

**Allens > < Linklaters**

30 July 2021

Justin Kang  
Partner  
Dentons Australia Limited  
77 Castlereagh Street  
Sydney NSW 2000  
**By Email**  
[Justin.kang@dentons.com](mailto:Justin.kang@dentons.com)

Antony Resnick and Mark Robinson of de Vries  
Tayeh as receivers of Forum Group Pty Ltd  
(Receivers Appointed) (In liquidation)  
C/- Bianca Quan & Adrian Lee  
Cornwalls  
**By Email**  
[b.quan@cornwalls.com.au](mailto:b.quan@cornwalls.com.au);  
[a.lee@cornwalls.com.au](mailto:a.lee@cornwalls.com.au)

Domenic Calabretta, Grahame Ward and Thyge  
Trafford-Jones of Mackay Goodwin  
as former administrators of Forum Group Pty Ltd  
(Receivers Appointed) (In liquidation)  
C/- Kieran Kelly  
Hilton Bradley Lawyers  
**By Email**  
[Kieran.kelly@hiltonbradley.com.au](mailto:Kieran.kelly@hiltonbradley.com.au)

Westlawn Finance Limited  
C/- Peter Stokes, McCullough Robertson  
**By Email**  
[PStokes@mccullough.com.au](mailto:PStokes@mccullough.com.au)

Westpac Banking Corporation  
C/- Caitlin Murray & Anthony Sommer  
Minter Ellison  
**By Email**  
[Caitlin.murray@minterellison.com](mailto:Caitlin.murray@minterellison.com);  
[Anthony.sommer@minterellison.com](mailto:Anthony.sommer@minterellison.com)

Dear Colleagues

**Forum Group Pty Ltd (Receivers Appointed) (In Liquidation)**

We act for Jason Preston and Jason Ireland (**Liquidators**) in their capacity as joint and several liquidators of Forum Group Pty Ltd (Receivers Appointed) (In Liquidation) (**Company**).

We refer to Dentons' letter dated 28 July 2021 in respect the funds currently held by NAB in an account ending 2934 (**Account**) in the Company's name and the proposed action for dealing with the Account.

Given the various competing claims to the monies held in the Account (including proprietary claims and potentially prior ranking claims) the Liquidators consider that that the appropriate course would be for the full amount held in the Account to be paid into Court to enable those claims to be determined.

In relation to the proceeding that would be commenced when the funds are paid into Court, given the complexity of the claims, the number of parties with competing claims and the limited funds available, it is also appropriate for the parties to consider an abbreviated process for the determination of the competing claims. By way of example, the following process could be suggested to the Court:

- 1 The relevant parties agree a single set of the relevant bank account statements, security documents and registrations to be relied upon at the hearing;

**Our Ref** 121031672:121031672  
IYSS 515617289v2 121031672 30.7.2021

2 Each party advancing a claim in respect of funds in the Account have the opportunity to provide written submissions (subject to a small page limit) to the Court as to their position; and

3 For the hearing of the issue to be listed at the next available opportunity.

The Attorney-General's Department may also need to be a party to such a proceeding as a result of payments made under the Fair Entitlements Guarantee scheme.

Would you please advise whether any party disagrees with the above proposed course of action by no later than Wednesday 4 August 2021.

Yours faithfully



**Christopher Prestwich**

Partner

Allens

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**Kirsty Prinsloo**

Managing Associate

Allens

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**Annexure**

No. NSD616 of 2021

Federal Court of Australia  
District Registry: New South Wales  
Division: General

**Westpac Banking Corporation ABN 33 007 457 141** and another  
Applicant

**Forum Finance Pty Limited ACN 153 301 172** and others named in the Schedule  
Respondents

This is the Annexure marked "**BJQ-32**" shown and produced to **Bianca Josephine Quan** at the time of swearing her affidavit on 28 September 2021.

Deponent signature:

DocuSigned by:  
*Bianca Quan*  
E3G6AG0D03G0401.....

Before me: DocuSigned by:  
*Adrian Lee*  
BC4298F2AFED404.....

Adrian Lee

Level 10, 114 William Street, Melbourne VIC 3000

An Australian Legal Practitioner within the meaning of the Legal Profession Uniform Law (Vic)

A person authorised under Section 19(1) of the Oaths and Affirmations Act 2018 to take an affidavit.

This affidavit, as signed and notated by the authorised affidavit taker, was signed by the deponent over audio-visual link.

The specified things in respect of the affidavit were done by means of audio-visual link. The affidavit is a scanned hard copy or an electronic copy, not an original.

# MinterEllison

4 August 2021

**BY EMAIL**

Justin Kang and Delano Leen  
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Bianca Quan and Adrian Lee  
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Peter Stokes  
McCullough Robertson  
Level 11, 66 Eagle Street  
BRISBANE QLD 4000  
Email: [pstokes@mccullough.com.au](mailto:pstokes@mccullough.com.au)

Dear Colleagues

**Forum Group Pty Limited (receivers appointed)(in liquidation) ('Company')**

We refer to:

1. the letter from Dentons dated 28 July 2021;
2. the letter from Allens dated 30 July 2021 (**Allens Letter**); and
3. the letter from McCullough Robertson dated 2 August 2021,

in relation to the funds held in the Company account with NAB ending in 2934 (**Account**).

As you are all aware, it is our client's position that it likely has a proprietary interest in the funds held in the Account, as a result of the very significant fraud that has been perpetrated on it, including by the Company. We agree that, in the circumstances of our client's claim, as well as the claims by various other parties on those funds, NAB's proposal is not appropriate.

We agree with the proposal put forward in the Allens Letter, save that our client considers that the timing of any steps in connection with a hearing on the issues between the parties should await the outcome of



the investigations being carried out, including through the issue of subpoenas to NAB and other financial institutions, regarding the movement of funds fraudulently obtained from our client.

All of our client's rights are reserved.

Yours faithfully

**MinterEllison**



Caitlin Murray

Partner

Contact: Caitlin Murray T: +61 2 9921 4279  
F: +61 2 9921 8391 caitlin.murray@minterellison.com  
Partner: Caitlin Murray T: +61 2 9921 4279  
OUR REF: CMM: 1353397

**Annexure**

No. NSD616 of 2021

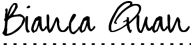
Federal Court of Australia  
District Registry: New South Wales  
Division: General


**Westpac Banking Corporation ABN 33 007 457 141** and another  
Applicant

**Forum Finance Pty Limited ACN 153 301 172** and others named in the Schedule  
Respondents

This is the Annexure marked "**BJQ-33**" shown and produced to **Bianca Josephine Quan** at the time of swearing her affidavit on 28 September 2021.

Deponent signature:

DocuSigned by:  
  
E3C8AC0D03C0401...

Before me: DocuSigned by:  
  
BC4208F2AFED404...

Adrian Lee

Level 10, 114 William Street, Melbourne VIC 3000

An Australian Legal Practitioner within the meaning of the Legal Profession Uniform Law (Vic)

A person authorised under Section 19(1) of the Oaths and Affirmations Act 2018 to take an affidavit.

This affidavit, as signed and notated by the authorised affidavit taker, was signed by the deponent over audio-visual link.

The specified things in respect of the affidavit were done by means of audio-visual link. The affidavit is a scanned hard copy or an electronic copy, not an original.

Your reference:  
Our reference: BJQ:AHL:1056417



10 August 2021

Caitlin Murray  
MinterEllison

**By email:** [caitlin.murray@minterellison.com](mailto:caitlin.murray@minterellison.com)

Dear Ms Murray

**RECEIVERSHIP OF FORUM GROUP PTY LTD (RECEIVERS APPOINTED) (IN LIQUIDATION)  
("COMPANY")**

1. We refer to your letter of 4 August 2021.
2. As you know, NAB presently holds approximately \$3,353,094.68 in an account ending 2934 in the name of the Company (**Account**).
3. Our clients' position as to the principles to be applied in dealing with the funds in the Account are set out in our **enclosed** letter dated 29 July 2021 addressed to Dentons. Our clients are otherwise considering the proposals put forward by the liquidators in correspondence from Allens dated 30 July 2021 and further proposal by NAB in correspondence from Dentons dated 6 August 2021 and will revert to the relevant parties in due course.
4. In respect of the alleged proprietary claims made by your client, we are instructed to make the following preliminary observations in relation to your client's claims:
  - (a) in an affidavit sworn on 13 July 2021, Mr Ireland deposes that of funds received by Forum Finance Pty Ltd (**FF**) from your client, approximately \$16.12 million was paid from an account in the name of FF to the Company in September and October 2018, more than 2 years ago;
  - (b) the Account is the primary or sole trading account used by the Company to make various payments to the Company's suppliers and financiers. The Company also operated a significant business and, in the month of October 2018 alone, the Account had debits of \$21,773,622.60. In the following month of November 2018, the Account had debits of about \$10.5 million;
  - (c) in the premises, even if it is assumed that the entirety of the \$16.12 million paid into the Account were funds fraudulently obtained from Westpac by FF, those funds are well and truly dissipated and no longer remain the Account;
  - (d) as your client is aware, Octet holds a registered security interest over all of the assets of the Company, including all funds in the Account. Your client has not at any time disputed Octet's security interest. At the time Octet registered its security interest, Octet had no notice of any fraud purportedly committed by FF or, to the extent asserted by Westpac, the Company. Accordingly, to the extent any traceable funds remain in the Account, which is

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*Cornwalls is a group of independently owned and operated law firms comprising of Cornwall's ABN 19 738 311 557 (a limited partnership), Cornwall's (QLD) ABN 18 604 548 601 (individual liability limited by a scheme approved under professional standards legislation) and Cornwall's (NSW) ABN 68 626 837 223 (liability limited by a scheme approved under professional standards legislation).*

BJQ:1056417:M:D7118339

not admitted, Octet would have priority as against any proprietary claims made by Westpac;  
and

- (e) we note that your client has served subpoenas to various parties, including NAB, and ought to be in a position to show, within a short timeframe, whether any purportedly traceable funds remain in the Account.
5. In the absence of evidence that the Account contains funds which were procured from your client by FF and/or the Company as a result of the alleged fraud, our clients consider that your client has no interest in the funds in the Account. In the circumstances, our clients ask that Westpac withdraw its letter of 4 August 2021 by no later than **17 August 2021**.
6. If your client nevertheless continues to make a claim to the funds in the Account and/or participate in any court process to determine these issues, our clients expressly reserve their rights to seek costs from your client on an indemnity basis.

Yours sincerely



**CORNWALLS**

**Contact**

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Copy to: [Chris.Prestwich@allens.com.au](mailto:Chris.Prestwich@allens.com.au); [Kirsty.Prinsloo@allens.com.au](mailto:Kirsty.Prinsloo@allens.com.au); [tbowles@mccullough.com.au](mailto:tbowles@mccullough.com.au)



**Annexure**

No. NSD616 of 2021

Federal Court of Australia  
District Registry: New South Wales  
Division: General

**Westpac Banking Corporation ABN 33 007 457 141** and another  
Applicant

**Forum Finance Pty Limited ACN 153 301 172** and others named in the Schedule  
Respondents

This is the Annexure marked "**BJQ-34**" shown and produced to **Bianca Josephine Quan** at the time of swearing her affidavit on 28 September 2021.

Deponent signature:

DocuSigned by:  
*Bianca Quan*  
E3C8ACD0D03CD401.....

Before me: DocuSigned by:  
*Adrian Lee*  
BG4298F2AFED404.....

Adrian Lee

Level 10, 114 William Street, Melbourne VIC 3000

An Australian Legal Practitioner within the meaning of the Legal Profession Uniform Law (Vic)

A person authorised under Section 19(1) of the Oaths and Affirmations Act 2018 to take an affidavit.

This affidavit, as signed and notated by the authorised affidavit taker, was signed by the deponent over audio-visual link.

The specified things in respect of the affidavit were done by means of audio-visual link. The affidavit is a scanned hard copy or an electronic copy, not an original.

# MinterEllison

BJQ-34

13 August 2021

## BY EMAIL

Bianca Quan and Adrian Lee  
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Dear Colleagues

### Forum Group Pty Limited (receivers appointed)(in liquidation) ('Forum Group')

1. We refer to
  - (a) our letter of 4 August 2021 (**Our Letter**). Unless otherwise defined, capitalised terms in this letter have the same meaning given in Our Letter; and'
  - (b) Cornwalls' letter addressed to us of 10 August 2021 (**Cornwalls Letter**).
2. We note that paragraph 3 of the Cornwalls Letter states that the Receivers and Octet are considering the proposal set out in Allens Letter, with which we agree on the basis set out in Our Letter, as you are aware.



3. Our clients do not accept the allegation in paragraph 5 of the Cornwalls Letter that "*[our] client has no interest in the funds in the Account*", at least as stated in those absolute terms. In the circumstances of our clients' proprietary claims against the various respondents in Federal Court of Australia proceedings NSD616/2021 (**Proceedings**), and given such claims have been notified in our previous correspondence to Cornwalls and others, our clients' position is that the property of Forum Group (being a named respondent in the Proceedings) including some or all of the funds (which are likely to be mixed funds) in the Account may be impressed with a trust in accordance with the principles set out in *Black v S Freedman & Co* (1910) 12 CLR 105 at 110. We also think there can be little doubt that if our clients do not establish a trust of the type recognised in *Black v S Freedman & Co*, the whole of the assets of Forum Group will be subject of an equitable charge in favour of our client (and likely the other defrauded banks), although recognise that may have different consequences in terms of priorities.
4. However, and in response to the matters set out in paragraph 4 of the Cornwalls Letter, our clients' investigations are ongoing. They are not in a position at this stage to provide all of the evidence demanded in the Cornwalls Letter at this stage in the Proceedings. That is, as you are aware, that can be no real doubt that our clients are victims of a very substantial fraud: *Westpac Banking Corporation v Forum Finance Pty Limited* [2021] FCA 807 at [10]. There is also no difficulty in tracing the funds in which our clients have a proprietary interest to Forum Finance Pty Limited (in liquidation) (**Forum Finance**) and Forum Group Financial Services Pty Limited (in liquidation) (**FGFS**). There is also no difficulty in showing our clients' funds being paid to Forum Group. However, at that point the tracing exercise becomes more complex. We accept that our clients cannot presently prove that particular amounts presently held by Forum Group are the property of our clients.
5. In that circumstance, your clients are aware that our clients claim they may have a proprietary interest in the Account in the nature of the trust recognised in *Black v S Freedman & Co*, but that our clients also accept they are not in a position to establish that claim. The consequence is that our clients do not seek to prevent, relevantly, NAB or Octet exercising or purporting to exercise such rights as each claims to have as a secured creditor in relation to the Account (the position is different in relation to the property of Forum Finance and FGFS where our clients consider they can presently prove a trust of the type recognised in *Black v S Freedman & Co*). However, to the extent your clients exercise any rights in relation to the Account, they act at their own risk, and on notice of our clients' claim to a proprietary interest in the Account.
6. Given the above matters, our clients do not consider that it is appropriate to withdraw Our Letter. Nor do our clients see any basis on which your clients have a right to seek costs, let alone indemnity costs, as against our clients in a potential court application in relation to the Account.
7. All of our clients' rights are reserved.

Yours faithfully  
**MinterEllison**



Contact: Anthony Sommer T: +61 2 9921 4182  
anthony.sommer@minterellison.com  
Partner: Caitlin Murray T: +61 2 9921 4279  
OUR REF: 1353397