

Brookfield International Finance Australia Pty Ltd  
(ABN 53 154 271 351)

19 April 2012

The Manager  
Company Announcements Office  
ASX Limited  
Level 10, 20 Bridge Street  
SYDNEY NSW 2000  
Fax: 0800 449 707

Ron Chio, Company Secretary  
THG  
Thakral House  
Level 12, 301 George Street  
SYDNEY NSW 2000  
Fax: (02) 9272 8799

**Notice of initial substantial holder – Thakral Holdings Limited ACN 054 346 315 (THG)**

Brookfield International Finance Australia Pty Ltd (formerly known as Trilon Australia Financier Pty Ltd) (**BIFA**), an affiliate of Brookfield Asset Management Inc., gives this notice of initial substantial holding in respect of THG.

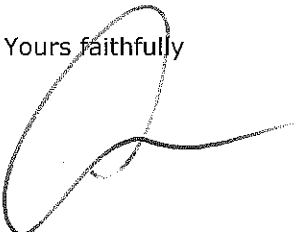
BIFA has enforced its security under a debenture issued by Replay Investments Pty Ltd (**Replay**) and consequently acquired a relevant interest in the securities in THG identified in this notice. Details of the debenture were announced on the ASX on 19 December 2011. Prior to this, BIFA did not have a relevant interest because of the operation of section 609(1) of the *Corporations Act 2001* (Cth) (as amended by ASIC instrument 11-1339).

Under the terms of the security documents, BIFA now has the power to control the exercise of voting rights attaching to the THG securities, as well as power to control the exercise of a power to dispose of those securities. Therefore, BIFA now has a relevant interest in 225,964,627 fully paid and 40,000,000 partly paid THG securities, which together represent voting power in THG of 38.6%.

The fully-paid stapled securities the subject of this notice are registered in the name of AET Structured Finance Services Pty Ltd ABN 12 106 424 088 (**AET**) (as debenture trustee) and the partly-paid stapled securities the subject of this notice are registered in the name of Replay Investments Pty Ltd as trustee for Replay Unit Trust.

We expect that the Receivers and Managers who have been appointed to Replay Investments Pty Ltd (Receivers and Managers appointed), Replay Investments Pty Ltd as trustee for Replay Unit Trust (Receivers and Managers appointed), ACN 101 806 099 Pty Ltd (Receivers and Managers appointed) and ACN 101 765 306 Pty Ltd (Receivers and Managers appointed) will make an announcement in due course regarding how they propose to take the enforcement process forward.

Yours faithfully



**Neil Olofsson**  
Company Secretary

**Form 603**  
Corporations Act 2001  
Section 671B

## Notice of initial substantial holder

To Company Name/Scheme	THAKRAL HOLDINGS LIMITED (THG)
ACN/ARSN	054 346 315
This notice is given by Brookfield International Finance Australia Pty Ltd on behalf of itself and each of its related bodies corporate.	
<b>1. Details of substantial holder (1)</b>	
Name	Brookfield International Finance Australia Pty Ltd and its related bodies corporate
ACN/ARSN (if applicable)	154 271 351

The holder became a substantial holder on 19/04/2012

### 2. Details of voting power

The total number of votes attached to all the voting shares in the company or voting interests in the scheme that the substantial holder or an associate (2) had a relevant interest (3) in on the date the substantial holder became a substantial holder are as follows:

Class of securities (4)	Number of securities	Person's votes (5)	Voting power (6)
Fully paid stapled securities	225,964,627	225,964,627	38.58%
Partly paid stapled securities (paid to 0.5 cents of a nominal value of 50 cents)	40,000,000	400,000	0.07%

### 3. Details of relevant interests

The nature of the relevant interest the substantial holder or an associate had in the following voting securities on the date the substantial holder became a substantial holder are as follows:

Holder of relevant interest	Nature of relevant interest (7)	Class and number of securities
BIFA	BIFA has the power to control the exercise of a voting right and a power to control the exercise of a power to dispose of securities based on BIFA's enforcement under a Mortgage of Marketable Securities between Replay Investments Pty Ltd (Receivers and Managers appointed) (Replay) and AET Structured Finance Services Pty Ltd ABN 12 106 424 088 (formerly ABN Amro Trustees Pty Limited) (AET) of 29 pages dated 1 December 2008, a copy of which accompanies this notice and is marked "B".	107,000,000 fully paid securities
BIFA	BIFA has the power to control the exercise of a voting right and a power to control the exercise of a power to dispose of securities based on BIFA's enforcement rights under a Mortgage of Marketable Securities between Replay as trustee for Replay Unit Trust (Receivers and Managers appointed) and AET of 29 pages dated 1 December 2008, a copy of which accompanies this notice and is marked "C".	82,732,896 fully paid securities
BIFA	BIFA has the power to control the exercise of a voting right and a power to control the exercise of a power to dispose of securities based on BIFA's enforcement rights under a Mortgage of Marketable Securities between ACN 101 806 099 Pty Ltd (Receivers and Managers appointed) and AET of 29 pages dated 1 December 2008, a copy of which accompanies this notice and is marked "D".	6,180,054 fully paid securities
BIFA	BIFA has the power to control the exercise of a voting right and a power to control the exercise of a power to dispose of securities based on BIFA's enforcement rights under a Mortgage of Marketable Securities between ACN 101 765 306 Pty Ltd (Receivers and Managers appointed) and AET of 29 pages dated 1 December 2008, a copy of which accompanies this notice and is marked "E".	30,051,677 fully paid securities
BIFA	BIFA has the power to control the exercise of a voting right and a power to control the exercise of a power to dispose of securities based on BIFA's enforcement rights under a Fixed and Floating Charge between Replay as trustee for Replay Unit Trust (Receivers and Managers appointed) and AET of 34 pages dated 1 December 2008, a copy of which accompanies this notice and is marked "F".	40,000,000 partly paid securities
Each of the entities listed in Annexure "A"	Taken under section 608(3)(b) of the Corporations Act to have a relevant interest by reason of having control of BIFA.	225,964,627 fully paid securities and 40,000,000 partly paid securities

### 4. Details of present registered holders

The persons registered as holders of the securities referred to in paragraph 3 above are as follows:

Holder of relevant interest	Registered holder of securities	Person entitled to be registered as holder (8)	Class and number of securities
BIFA	AET as debenture trustee	AET under a legal mortgage arrangement	107,000,000 fully paid securities
BIFA	AET as debenture trustee	AET under a legal mortgage arrangement	82,732,896 fully paid securities
BIFA	AET as debenture trustee	AET under a legal mortgage arrangement	6,180,054 fully paid securities
BIFA	AET as debenture trustee	AET under a legal mortgage arrangement	30,051,677 fully paid securities
BIFA	Replay Investments Pty Ltd as trustee for Replay Unit Trust	AET under the terms of a fixed and floating charge	40,000,000 partly paid securities

### 5. Consideration

The consideration paid for each relevant interest referred to in paragraph 3 above, and acquired in the four months prior to the day that the substantial holder became a substantial holder is as follows:

Holder of relevant interest	Date of acquisition	Consideration (9)	Class and number of securities
BIFA and each of the entities listed in Annexure A	19/04/2012	The relevant interest was acquired as a result of BIFA becoming entitled to control disposal of the securities under the terms of the documents accompanying this notice as annexures B to F in respect of financial accommodation of approximately \$189 million as at today's date.	225,964,627 fully paid securities and 40,000,000 partly paid securities

#### 6. Associates

The reasons the persons named in paragraph 3 above are associates of the substantial holder are as follows:

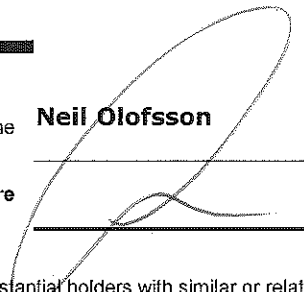
Name and ACN/ARSN (if applicable)	Nature of association
Each of the entities listed in Annexure A	Body corporate which controls BIFA

#### 7. Addresses

The addresses of persons named in this form are as follows:

Name	Address
BIFA	Level 22, 135 King Street SYDNEY 2000 NSW
BIFA's related bodies corporate	As set out in the list of 1 page annexed to this notice and marked "A".

#### Signature

print name **Neil Olofsson** capacity Company secretary  
 sign here  date 19 April 2012

#### DIRECTIONS

- (1) If there are a number of substantial holders with similar or related relevant interests (eg. a corporation and its related corporations, or the manager and trustee of an equity trust), the names could be included in an annexure to the form. If the relevant interests of a group of persons are essentially similar, they may be referred to throughout the form as a specifically named group if the membership of each group, with the names and addresses of members is clearly set out in paragraph 7 of the form.
- (2) See the definition of "associate" in section 9 of the Corporations Act 2001.
- (3) See the definition of "relevant interest" in sections 608 and 671B(7) of the Corporations Act 2001.
- (4) The voting shares of a company constitute one class unless divided into separate classes.
- (5) The total number of votes attached to all the voting shares in the company or voting interests in the scheme (if any) that the person or an associate has a relevant interest in.
- (6) The person's votes divided by the total votes in the body corporate or scheme multiplied by 100.
- (7) Include details of:
  - (a) any relevant agreement or other circumstances by which the relevant interest was acquired. If subsection 671B(4) applies, a copy of any document setting out the terms of any relevant agreement, and a statement by the person giving full and accurate details of any contract, scheme or arrangement, must accompany this form, together with a written statement certifying this contract, scheme or arrangement; and
  - (b) any qualification of the power of a person to exercise, control the exercise of, or influence the exercise of, the voting powers or disposal of the securities to which the relevant interest relates (indicating clearly the particular securities to which the qualification applies).

See the definition of "relevant agreement" in section 9 of the Corporations Act 2001.
- (8) If the substantial holder is unable to determine the identity of the person (eg. if the relevant interest arises because of an option) write "unknown."
- (9) Details of the consideration must include any and all benefits, moneys and other, that any person from whom a relevant interest was acquired has, or may, become entitled to receive in relation to that acquisition. Details must be included even if the benefit is conditional on the happening or not of a contingency. Details must be included of any benefit paid on behalf of the substantial holder or its associate in relation to the acquisitions, even if they are not paid directly to the person from whom the relevant interest was acquired.

**List of BIFA's controlling entities**

This is **Annexure A** of 1 page referred to in form 603 (Notice of initial substantial holder) given by Brookfield International Finance Australia Pty Ltd in relation to THG (ACN 054 346 315)

Name	Address	Country of incorporation
Brookfield Asset Management Inc.	Brookfield Place, Suite 300 181 Bay Street Toronto, ON M5J 2T3	Canada
Brascan Asset Management Holdings Limited	Brookfield Place, Suite 300 181 Bay Street Toronto, ON M5J 2T3	Canada
Brookfield Financial Corp.	Brookfield Place, Suite 300 181 Bay Street Toronto, ON M5J 2T3	Canada
Brookfield International Bank Inc..	Cedar Court, 2nd Floor Wilkey Business Park St. Michael	Barbados

print name

**Neil Olofsson**

capacity

Company secretary

sign here

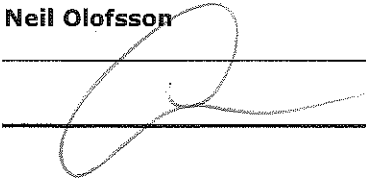
date

19 April 2012



**Replay Mortgage of Marketable Securities**

This is **Annexure B** of 29 pages referred to in form 603 (Notice of initial substantial holder) given by Brookfield International Finance Australia Pty Ltd in relation to THG (ACN 054 346 315)

print name	<b>Neil Olofsson</b>	capacity	Company secretary
sign here		date	19 April 2012

Execution Version

Amended and restated on 1 December 2008

# Mortgage of Marketable Securities

Replay Investments Pty Ltd (**Mortgagor**)

AET Structured Finance Services Pty Limited (**Debenture  
Trustee**)

MinterEllison

L A W Y E R S

AURORA PLACE, 88 PHILLIP STREET, SYDNEY NSW 2000, DX 117 SYDNEY  
TEL: +61 2 9921 6888 FAX: +61 2 9921 8123  
[www.minterellison.com](http://www.minterellison.com)

# Mortgage of Marketable Securities

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**Signing page**

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## Details

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### Date

9 July 2004 as amended and restated on **1 December 2008**

### Parties

Name	<b>Replay Investments Pty Ltd</b>
ABN	28 106 160 089
Short form name	<b>Mortgagor</b>
Notice details	Thakral House, Level 12, 301 George Street, Sydney NSW 2000 Facsimile: (02) 9272 8741 Attention: Manjit Singh Gill
	with a copy to:
	Pasricha & Gove, Level 16, 390 St. Kilda Road, Melbourne, Vic 3004
	Facsimile: (03) 9866 5335
	Attention: Katherine Gove

Name	<b>AET Structured Finance Services Pty Limited</b>
ABN	12 106 424 088
Short form name	<b>Debenture Trustee</b>
Notice details	Level 22, 207 Kent Street, Sydney NSW 2000 Facsimile: (02) 9028 5942 Attention: Glenn White

## Background

This document sets out the terms on which the Mortgagor grants a legal mortgage of the Mortgaged Property to the Debenture Trustee as security for the payment of the Secured Money.

# Agreed terms

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## 1. Defined terms & interpretation

### 1.1 Debenture Trust Deed defined terms

Terms defined in the Debenture Trust Deed or incorporated by reference in the Debenture Trust Deed shall, unless otherwise defined herein, bear the same meanings herein.

### 1.2 Defined terms

In this document:

**Attorney** means an attorney appointed under a Collateral Security.

**Authorisation** includes:

- (a) any consent, authorisation, registration, filing, agreement, notarisation, certificate, permission, licence, approval or exemption from, by or with a Public Authority; or
- (b) in relation to anything which is prohibited or restricted by law if a Public Authority takes certain action within a specified period, the expiry of that period without the Public Authority taking that action.

**Authorised Officer** means:

- (a) in respect of the Mortgagor, a person appointed by the Mortgagor and notified to the Debenture Trustee to act as its Authorised Officer for the purposes of the Debenture Documents (the notice must be signed by the secretary or a director of the Mortgagor and be given to the Debenture Trustee with a specimen signature of the person); and
- (b) in respect of the Debenture Trustee, a person holding or acting in the office of director, chief executive or secretary, or whose title includes the word '*Manager*', '*Director*', '*Chief*', '*Head*' or any person notified to each Stockholder and the Mortgagor to act as its Authorised Officer for the purposes of the Debenture Documents.

**Collateral Security** means each present or future Security Interest, Guarantee or other document or agreement created or entered into with the Debenture Trustee (in its capacity as such) as security (directly or indirectly) for the payment of the Secured Money or the performance by the Mortgagor of any of its obligations to a Secured Party under a Debenture Document. It includes each Security.

**Debenture Documents** has the meaning given to it in the Debenture Trust Deed and includes, without limitation:

- (a) this document;
- (b) each Subscription Agreement;
- (c) the Debenture Trust Deed; and
- (d) each Collateral Security.

**Debenture Trust Deed** means the debenture trust deed dated 9 July 2004 between the Mortgagor and the Debenture Trustee.

**Dollars and \$** means Australian dollars.

**Event of Default** means an 'Event of Default' as defined under any Subscription Agreement, any other event so described in a Debenture Document or any event which entitles the Debenture Trustee or any other Secured Party under any Debenture Document to accelerate the time for payment of any Secured Money or to terminate any obligation to provide funding to the Chargor.

**External Administrator** means an administrator, receiver, receiver and manager, trustee, provisional liquidator, liquidator or any other person (however described) holding or appointed to an analogous office or acting or purporting to act in an analogous capacity.

**GST** has the meaning given to it in the GST Act.

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

**Insolvency** of an entity includes:

- (a) the Winding Up of an entity;
- (b) the appointment of an External Administrator to the person; and
- (c) any composition, compromise, arrangement, merger, amalgamation, reconstruction (other than a solvent reconstruction), administration, assignment for the benefit of creditors or insolvency of, by, or adversely affecting the person and any procedure which is equivalent or analogous in any jurisdiction.

**Loss** means a loss, claim, action, damage, liability, cost, charge, expense, penalty, compensation, fine, outgoing or payment suffered, paid or incurred.

**Marketable Security** means:

- (a) a marketable security as defined in the *Corporations Act*;
- (b) a negotiable instrument; and
- (c) a unit or other interest in a trust or partnership.

**Mortgage** means the mortgage created under this document.

**Mortgaged Property** means all present and future Securities, Rights and Proceeds and any certificate or other evidence of ownership of the Mortgaged Property.

**Permitted Security Interest** has the meaning given to it in a Subscription Agreement.

**Potential Event of Default** means any event, thing or circumstance which with the giving of notice or passage of time or both would become an Event of Default.

**Power** means any right, power, discretion or remedy of the Debenture Trustee, a Receiver or an Attorney under any Debenture Document or applicable law.

**Proceeds** means all money (in whatever currency) payable to the Mortgagor or to which the Mortgagor is entitled (whether alone or with any other person) on any account or in way whatever under or in connection with the Securities and Rights, including distributions, dividends, bonuses, return of capital, interest and all proceeds of sale, redemption or disposal.

**Receiver** means a receiver or receiver and manager appointed under a Collateral Security. When two or more persons are appointed, the expression 'Receiver' refers to each of those persons severally as well as to two or more of them jointly.

**Records** means all the information which relates in any way to a specified person's business or any transaction entered into by the person, whether the information is recorded electronically, magnetically or otherwise.

**Rights** means:



- (a) rights to acquire Marketable Securities arising because the Mortgagor has an interest in the Securities;
- (b) any other rights of the Mortgagor of any kind in connection with the Securities, including:
  - (i) in relation to any payment, repayment, debt, dividend, profit, interest, benefit, privilege, bonus or distribution; and
  - (ii) those resulting from any allotment, offer, substitution, conversion, consolidation, reclassification, redemption, reconstruction, amalgamation, subdivision, reduction of capital, Winding Up or scheme of arrangement.

**Secured Money means:**

- (a) all money that the Mortgagor or a Transaction Party now owes or in the future may come to owe, actually or contingently, for any reason, to one or more of the Stockholders or to any combination of Stockholders in connection with any Stock; and
- (b) all money that the Mortgagor or a Transaction Party now owes or in the future may come to owe, actually or contingently, for any reason, to a Secured Party on any account under or in connection with a Debenture Document,

and includes all or part of the Secured Money. Where the Mortgagor or a Transaction Party would have owed money but for its Winding Up, it will be taken still to owe that money.

**Securities means:**

- (a) stapled securities comprising:
  - (i) fully-paid ordinary shares in the capital of THL; and
  - (ii) fully-paid non-voting units in THT which are stapled to the shares specified in paragraph (i);
- (b) Marketable Securities:
  - (i) that the Mortgagor deposits (or which are deemed to be deposited under s262(6) of the Corporations Act) with the Debenture Trustee;
  - (ii) resulting from any allotment, offer, substitution, conversion, consolidation, reclassification, redemption, reconstruction, amalgamation, subdivision or any scheme of arrangement of or in relation to any Securities;
  - (iii) acquired by the Mortgagor, or to which the Mortgagor becomes entitled, because the Mortgagor holds the Securities; and
  - (iv) that the parties otherwise designate as Mortgaged Property for the purposes of this document.

**Subscription Agreement** has the meaning given to it in the Debenture Trust Deed.

**THG** means Thakral Holdings Group, which is comprised of THL and THT.

**THL** means Thakral Holdings Limited ACN 054 346 315.

**THT** means Thakral Holdings Trust ABSN 092 850 827.

**Transaction Party** means the Mortgagor, the Chargor and any other person providing a Collateral Security.

**Winding Up** includes:

- (a) dissolution, liquidation, provisional liquidation and bankruptcy; and

- (b) any analogous or equivalent procedure in any jurisdiction.

### **1.3 Interpretation**

Clause 1.2 of the Debenture Trust Deed is incorporated into this document with any necessary amendments.

### **1.4 Subsisting Events of Default**

An Event of Default or Potential Event of Default is 'subsisting' if it has not been either remedied or waived in accordance with the relevant Debenture Document.

### **1.5 Certified copies of documents**

The Debenture Trustee may require any copy of a document provided or to be provided to it under this document to be certified as a true and complete copy by a director or secretary of the Mortgagor.

### **1.6 Things required to be done on a Business Day**

If anything (other than the making of a payment) is required by this document to be done on or by a day which is not a Business Day, then it must be done on or by the next following Business Day.

### **1.7 Incorporation of provisions from Debenture Trust Deed**

Clause 3.6 of the Debenture Trust Deed is incorporated in and applies to this document as if set out in full in this document, with any necessary changes.

### **1.8 Debenture Document for the purposes of the Debenture Trust Deed**

This document is a Security and a Collateral Security and also a Debenture Document for the purposes of the Debenture Trust Deed.

## **2. Mortgage**

### **2.1 Creation**

The Mortgagor:

- (a) mortgages the Mortgaged Property in favour of the Debenture Trustee as security for the due and punctual payment of the Secured Money; and
- (b) as legal and beneficial owner absolutely assigns to the Debenture Trustee all its interest and rights in the Mortgaged Property as security for the due and punctual payment of the Secured Money.

The Mortgage is a first legal mortgage and ranks ahead of all other Security Interests.

### **2.2 Continuing security and discharging the Mortgage**

- (a) The Mortgage is a continuing security. It remains in effect until the Debenture Trustee gives a final discharge to the Mortgagor.
- (b) The Mortgagor is only entitled to a final discharge and reassignment if:
  - (i) all of the Secured Money has been irrevocably paid in full and all commitments which might give rise to Secured Money have terminated; and
  - (ii) the Debenture Trustee is satisfied that there are no amounts which will subsequently fall within the description of the Secured Money due to an Avoidance of Payment (as defined in clause 15.7),

at which time the Debenture Trustee will reassign the Mortgaged Property to the Mortgagor at the request and cost of the Mortgagor. In satisfying itself under paragraph (ii), the Debenture Trustee may consider any matters it thinks relevant, including the possibility that a payment to reduce the Secured Money might be repayable, void or voidable under a law relating to insolvency or protection of creditors.

### **2.3 Priority amount - maximum prospective liability**

The nature of the 'prospective liability' (as defined in section 261(1) of the Corporations Act) secured by the Mortgage is advances, interest, fees, costs, indemnities and any other Secured Money. The maximum prospective liability secured by the Mortgage is \$520,000,000 or its equivalent, as may be varied from time to time by the Debenture Trustee lodging, on the Mortgagor's behalf, a notice under section 268(2) of the Corporations Act. Any maximum prospective liability amount and this clause apply only to fix priority under section 282(3) of the Corporations Act and do not in any way fix a limit on the amount which may be secured by or recoverable under this document.

## **3. Payment obligations**

### **3.1 Secured Money**

The Mortgagor must pay the Secured Money (free from any deduction, set-off or counterclaim) to or as directed by the Debenture Trustee:

- (a) at the times and in the way specified in the Debenture Documents; and
- (b) otherwise, immediately on demand,

in the currency in which it is owed.

### **3.2 Payments to be on a Business Day**

Subject to any other Debenture Document, if a payment under this document falls due on a day that is not a Business Day, it must be paid on the next Business Day, unless that Business Day falls in the next calendar month in which case the payment must be made on the preceding Business Day.

### **3.3 Costs and expenses**

Subject to any contrary agreement between the parties, the Mortgagor must immediately pay or reimburse on demand all costs and expenses of:

- (a) each Secured Party, a Receiver or an Attorney (and any of their respective officers, employees and agents) relating to or in connection with:
  - (i) the negotiation, preparation, execution, delivery, registration and completion of, and payment of Taxes on, the Debenture Documents;
  - (ii) any variation or discharge of any Debenture Document;
  - (iii) the exercise, enforcement, protection or waiver, or attempted exercise, enforcement or protection, of any Debenture Document or Power;
  - (iv) obtaining or receiving payment of any of the Secured Money and its distribution;
  - (v) an Event of Default or Potential Event of Default;
  - (vi) any payment required under a Debenture Document not being made on its due date;

- (vii) any Secured Money (or money which would be Secured Money if it were recoverable) not being recoverable from the Mortgagor or a Transaction Party, or a liability or obligation to pay the Secured Money under a Debenture Document not being enforceable against the Mortgagor or Transaction Party;
  - (viii) the giving by it of a consent or approval in connection with a Debenture Document;
  - (ix) any enquiry by a Public Authority concerning a Transaction Party or the involvement of the Debenture Trustee in a Debenture Document;
  - (x) maintaining, preserving or protecting the Mortgaged Property;
  - (xi) surveying, valuing, inspecting or reporting on the Mortgaged Property; and
  - (xii) obtaining advice from a professional person or consultant about any matter of concern to the Debenture Trustee, a Receiver or an Attorney in connection with a Debenture Document;
- (b) the Debenture Trustee relating to fees payable to it in its capacity as Debenture Trustee and custodian as agreed by letter dated 25 November 2008; and
  - (c) the Debenture Trustee or the Subscribers relating to fees payable to the Debenture Trustee under the Debenture Documents,

including any legal costs and expenses (on a full indemnity basis), any professional consultant's fees (including professional tax consultants) and the costs (calculated on a time employed basis) of in-house legal counsel;

### 3.4 Mortgagor to pay Taxes

The Mortgagor must pay, or immediately on demand reimburse the Debenture Trustee, for, all Taxes, fees and charges which may be payable or determined to be payable by the Debenture Trustee in connection with any Debenture Document or a payment, receipt, supply of goods or services or other transaction contemplated by or carried out under or pursuant to any Debenture Document, including Taxes passed onto the Debenture Trustee by another financial institution or supplier of goods and services.

### 3.5 Fines and penalties

The Mortgagor must pay all fines and penalties for late payment or non-payment of the Taxes referred to in clause 3.4 except where the Mortgagor places the Debenture Trustee in cleared funds to make the payment not less than 10 Business Days prior to the due date and the Debenture Trustee fails to make the payment.

### 3.6 Indemnity

The Mortgagor must immediately indemnify the Debenture Trustee and each other Secured Party on demand against, and must pay to the Debenture Trustee on demand amounts equal to, any Loss which the Debenture Trustee, each other Secured Party, a Receiver or an Attorney determines will or has been (directly or indirectly) suffered by the Debenture Trustee, each other Secured Party, a Receiver or an Attorney (and, , any of their respective officers, employees and agents) as a result of or in connection with:

- (a) any Tax in respect of this document or a transaction or payment under this document;
- (b) an indemnity given by the Debenture Trustee to a Receiver or administrator of the Mortgagor;
- (c) the occurrence of an Event of Default or Potential Event of Default;

- (d) a Winding-Up in relation to the Mortgagor or another Transaction Party;
- (e) any Environmental Liability;
- (f) the Mortgaged Property or the exercise or attempted exercise of any Power;
- (g) the Debenture Trustee acting or relying in good faith on any notice or other communication from, or genuinely believed to be from, the Mortgagor; or
- (h) the Debenture Trustee relying on information supplied by or on behalf of the Mortgagor which proves to be a misrepresentation or to be misleading or deceptive (including by omission of other information),

including any legal costs and expenses (on a full indemnity basis), any professional consultant's fees in connection with the above.

### 3.7 Mortgagor's liabilities not affected

The Mortgagor's liabilities under this document are not affected by any act, omission or other thing which would reduce or discharge those liabilities, including:

- (a) a Secured Party granting time or any other indulgence or concession to a Transaction Party or any other person;
- (b) a Secured Party increasing the amount of, opening further accounts in connection with or otherwise varying or replacing the type or terms of, financial accommodation provided to a Transaction Party or any other person;
- (c) any transaction or agreement, or variation, novation or assignment of a transaction or agreement (including any Debenture Document), between a Secured Party and a Transaction Party or any other person;
- (d) an Insolvency in relation to a Transaction Party or any other person, or a Secured Party becoming a party to or bound by any Insolvency;
- (e) any judgment, proceedings or order being obtained or made against a Transaction Party or any other person;
- (f) an obligation of a Transaction Party or any other person or any provision of a Debenture Document being void, voidable, unenforceable, defective, released, waived, impaired, novated, enforced or impossible or illegal to perform;
- (g) the whole or partial discharge or release of, or the granting of, a Security;
- (h) any Secured Money not being recoverable or the liability of a Transaction Party or any other person to a Secured Party ceasing (including as a result of giving a release or discharge or by law);
- (i) the failure of a Transaction Party or any other person to execute any Debenture Document, properly or at all;
- (j) the Mortgagor not being a party to a Debenture Document (such as a Debenture Document solely between the Debenture Trustee and a Transaction Party);
- (k) a Secured Party exercising or not exercising its rights (including any right to elect to terminate a contract) under a Debenture Document or at law against a Transaction Party or any other person;
- (l) any default, misrepresentation, negligence, breach of contract, misconduct, acquiescence, delay, waiver, mistake, failure to give notice or other action or inaction of any kind (whether or not prejudicial to the Mortgagor) by a Secured Party or any other person;

- (m) any change to, or in the membership of, any partnership, joint venture or association; or
  - (n) any Mortgaged Property being destroyed, forfeited, extinguished, surrendered or resumed,
- whether or not the Mortgagor, a Transaction Party, a Secured Party or any other person is aware of it or consents to it and despite any legal rule to the contrary.

### 3.8 Exclusion of subrogation and other rights

The Mortgagor must not (either directly or indirectly):

- (a) claim, exercise or attempt to exercise a right of set-off or counterclaim or any other right or raise any defence which might reduce or discharge the Mortgagor's liability under this document;
- (b) claim or exercise a right of subrogation, marshalling or contribution or claim the benefit of a Security; or
- (c) unless expressly permitted in a Debenture Document or the Debenture Trustee has given a direction to do so (in which case it must do so in accordance with the direction as trustee for the Debenture Trustee):
  - (i) prove, claim or vote in, or receive the benefit of a distribution, dividend or payment arising out of, the Insolvency of a Transaction Party; or
  - (ii) demand, or accept payment of, any money owed to the Mortgagor by a Transaction Party.

### 3.9 Prove in Liquidation

- (a) The Mortgagor, for valuable consideration, irrevocably appoints each of the Debenture Trustee and its Authorised Representatives separately as its attorney to prove in the Insolvency of a Transaction Party for all money that the Mortgagor can claim against that person on any account whatever. The terms of appointment are that:
  - (i) the attorney must pay to the Mortgagor dividends it receives in excess of the Secured Money, without interest, and any other dividends must be paid to the Debenture Trustee; and
  - (ii) the attorney may delegate its powers (including the power to delegate) to any person for any period and may revoke the delegation.
- (b) The Mortgagor agrees to ratify anything done by an attorney under this clause. The power of attorney created under this clause is granted to secure the Mortgagor's performance of its obligations under each Debenture Document to which it is a party.

### 3.10 Default interest

- (a) The Mortgagor must immediately on demand pay to the Debenture Trustee interest on any of the Secured Money which is due and payable by it and not paid.
- (b) Unless another Debenture Document provides otherwise, interest payable under paragraph (a) is calculated on a daily basis:
  - (i) up to (but excluding) the date of actual payment from and including the due date or (in the case of an amount payable by way of reimbursement or indemnity) the date of disbursement or Loss, if earlier (**Calculation Date**); and
  - (ii) at the rate (**Default Rate**) determined by the Debenture Trustee as at the Calculation Date, and then at monthly intervals, as the higher of:

- (A) if the Mortgagor's liability is the subject of a judgment or order, the rate payable under that judgment or order; and
  - (B) the sum of 2% per annum and the Debenture Trustee's cost of funding the overdue amount.
- (c) If the Mortgagor's liability under a Debenture Document is the subject of a judgment or order, the obligation to pay interest under this clause is an obligation separate from the judgment or order and will subsist despite the making of the judgment or order and the interest accrues both before and after judgement at the higher of the rate determined under paragraph (b) and the rate payable under that judgment or order.
  - (d) Unless another Debenture Document provides otherwise, interest payable under this clause that has not been paid may be capitalised at intervals of not less than one month as determined by the Debenture Trustee from time to time. Capitalised interest will itself bear interest (calculated on a daily basis) at the Default Rate from and including the date of capitalisation up to the date of actual payment.
  - (e) The Mortgagor must pay to the Debenture Trustee accrued interest under this clause 3.10 on the last Business Day of each calendar month on demand.

### 3.11 Deduction or withholding required

If the Mortgagor must deduct or withhold Taxes from a payment to the Debenture Trustee, it must:

- (a) make that deduction and/or withholding, pay to the appropriate Public Authority an amount equal to the full amount deducted and/or withheld as required by law and give the Debenture Trustee a receipt for the payment; and
- (b) increase its payment to the Debenture Trustee to an amount which will result in the Debenture Trustee receiving at the time the payment is due (after deduction or withholding of any Taxes in respect of the increased payment) the full amount which it would have received if no deduction or withholding had been required.

### 3.12 Payments and receipts in foreign currency

If for any reason the Debenture Trustee receives or recovers any amount (**Paid Amount**) under or in relation to a Debenture Document in a currency other than the currency in which it is payable under the Debenture Document (**Agreed Currency**), the amount which the Debenture Trustee will be taken to have received or recovered for the purposes of the Debenture Documents will be the Agreed Currency amount to which the Debenture Trustee could have converted the Paid Amount in accordance with its normal procedures at the time of the receipt or recovery less the costs of the conversion.

### 3.13 GST

- (a) Notwithstanding any other provision in this document, any amount payable to the Debenture Trustee under the Debenture Documents does not include any GST. Terms defined in the GST Act have the same meaning in this document.
- (b) To the extent that any supply under or in connection with this document made or incurred, by the Debenture Trustee constitutes a taxable supply, the consideration payable will automatically be increased to include an additional amount on account of GST. That amount will be the product of the value of the consideration for the supply and the prevailing GST rate. The Debenture Trustee will provide the Mortgagor with a tax invoice complying with the GST Act in respect of any supply made by the Debenture Trustee to the Mortgagor.

## 4. Warranties and undertakings

### 4.1 Representations and warranties

- (a) The Mortgagor represents and warrants to the Debenture Trustee (and for the benefit of the other Secured Parties) that all of its representations and warranties in the Debenture Documents are true and correct (or if not yet made, will be true and correct when made).
- (b) The Mortgagor represents and warrants to the Debenture Trustee (and for the benefit of the other Secured Parties) that as at the date of this Mortgage it has no property other than property located in Victoria for the purposes of any Australian State or Territory stamp duty law.
- (c) The Mortgagor repeats each representation and warranty in this clause 4.1 with reference to the facts and circumstances at the time when representations and warranties are repeated in a Subscription Agreement.
- (d) The Mortgagor acknowledges that:
  - (i) the Debenture Trustee has, and each other Secured Party has, entered into the Debenture Documents in reliance on the representations and warranties in this clause 4.1; and
  - (ii) those representations and warranties survive execution and delivery of the Debenture Documents and the provision of financial accommodation under them.

### 4.2 Mortgagor undertakings

The Mortgagor must:

- (a) **(Secured Money)** pay the Secured Money at the times and in the way specified in the Debenture Documents, or otherwise on demand;
- (b) **(other obligations)** fully and punctually perform all of its obligations under each Debenture Document to which it is a party at the time and in the manner specified in the relevant Debenture Document;
- (c) **(no Event of Default)** ensure that no Event of Default occurs;
- (d) **(no set-off)** not directly or indirectly claim, exercise or attempt to exercise a right of set-off or counterclaim (whether its or any other person's right) against the Debenture Trustee;
- (e) **(compliance with laws)** comply with all laws and requirements of Government Agencies in respect of the Charged Property, and ensure that any person occupying or using the Charged Property does the same;
- (f) **(comply with other interests)** comply with the terms of each Security Interest binding on it in respect of the Mortgaged Property from time to time;
- (g) **(maintain value)** not do, allow or omit anything which is likely to lower the value of the Mortgaged Property.

### 4.3 Dealing with Mortgaged Property

Subject to any other Debenture Document, the Mortgagor may not, without the prior consent of the Debenture Trustee:

- (a) subject to paragraph (b), dispose of, part with possession of, create or permit to exist an interest in or otherwise deal with any of the Mortgaged Property; or
- (b) create or permit to exist a Security Interest, other than a Permitted Security Interest, over any of the Mortgaged Property or if the creation of a Security Interest cannot by law be



restricted, create such a Security Interest without the holder of the Security Interest first entering into a deed of priority in form and substance acceptable to the Debenture Trustee (acting on the instructions of the Majority Stockholders).

## 5. Obligations in relation to voting rights and dividends

Subject to the Debenture Documents:

- (a) until an Event of Default occurs, the Debenture Trustee must exercise any voting power it has as holder of the Mortgaged Property in accordance with the instructions of the Mortgagor; and
- (b) after an Event of Default, the Debenture Trustee must abstain from exercising any voting power it has as holder of the Mortgaged Property, unless otherwise instructed by the Majority Stockholders.

## 6. Further assurances

The Mortgagor must, at the Mortgagor's cost, do whatever the Debenture Trustee requires to:

- (a) more satisfactorily secure the Mortgaged Property to the Debenture Trustee for payment of the Secured Money; or
- (b) enable the better exercise of any Power,

or both and must make anyone else who has an interest in the Mortgaged Property or claims under or in trust for the Mortgagor do the same.

## 7. Debenture Trustee's powers after Event of Default

### 7.1 Acceleration of Secured Money

If an Event of Default occurs, the Debenture Trustee may by notice to the Mortgagor declare that the Secured Money is immediately due and payable. On receipt of that notice, the Mortgagor must immediately pay the Secured Money to the Debenture Trustee.

### 7.2 General rights, powers and remedies

After an Event of Default occurs, the Debenture Trustee may, without making demand or giving notice to anyone (unless notice is required as described in clause 7.6), do all things that a mortgagee or an absolute owner of the Mortgaged Property can do, and exercise all rights, powers and remedies:

- (a) of a mortgagee or an absolute owner of the Mortgaged Property;
- (b) given to a Receiver under the Corporations Act; and
- (c) specified in clause 7.3.

### 7.3 Specific powers

After an Event of Default occurs, the Debenture Trustee may do any one or more of the following:

- (a) **(recover, posses and control) (recover, possess and control)** access, recover, manage, take up or give up possession of the Mortgaged Property;
- (b) **(receive)** receive all Proceeds;
- (c) **(sell)** sell or help sell the Mortgaged Property on such terms and in such manner as it thinks fit, whether or not the Debenture Trustee has taken possession;

- (d) **(options)** give an option to purchase the Mortgaged Property on the terms it thinks fit;
- (e) **(give rights)** give rights over the Mortgaged Property in the name of the Mortgagor or otherwise (whether or not the Debenture Trustee has taken possession) on whatever terms the Debenture Trustee thinks fit;
- (f) **(sell together with other property)** sell the Mortgaged Property with or without any other property in any manner that the Debenture Trustee thinks expedient, with full power to apportion costs, expenses, purchase money, rent and other proceeds between the items of properties sold;
- (g) **(hive off assets or obligations)** promote the formation of any company so that the company may purchase or acquire the Mortgaged Property or assume obligations of the Mortgagor or both;
- (h) **(effect hive-off)** sell or assign the Mortgaged Property to a person and have that person assume some or all of the Mortgagor's obligations;
- (i) **(Rights)** subject to compliance with clause 5, exercise Rights (including the right to appoint proxies) in relation to the Mortgaged Property;
- (j) **(effect transfers)** effect transfers of any Securities to any person (including the Debenture Trustee) including the completion of any necessary forms or documents or the giving of instructions;
- (k) **(bank accounts)** open and operate bank accounts in the name of the Mortgagor to the exclusion of the Mortgagor;
- (l) **(rights)**
  - (i) perform the Mortgagor's obligations under;
  - (ii) enforce or exercise or not exercise the Mortgagor's rights and powers under; and
  - (iii) vary, terminate or rescind,

a contract, instrument, arrangement or right forming part of the Mortgaged Property;
- (m) **(perform Mortgagor's obligations)** do everything it thinks necessary to comply with the obligations of the Mortgagor under a Debenture Document;
- (n) **(remedy breach)** do everything it thinks necessary to make good a breach or default inherent in an Event of Default, to its own satisfaction;
- (o) **(deposit money in suspense or other accounts)** invest, deposit or hold the Mortgaged Property in any way that, and for as long as, the Debenture Trustee thinks fit and vary, transpose or reinvest the Mortgaged Property;
- (p) **(pay calls)** pay calls or other money payable in connection with the Mortgaged Property;
- (q) **(recover, protect Mortgaged Property)** do everything the Debenture Trustee thinks necessary to recover or protect the Mortgaged Property;
- (r) **(Insolvency process)** Wind Up any person and participate in any Insolvency of any person (including voting at meetings and appointing proxies);
- (s) **(proceedings generally)** commence, prosecute, defend, discontinue, compromise, accept any arrangement, submit to arbitration and settle proceedings which the Debenture Trustee considers expedient in connection with this document or the Mortgaged Property in or before a Public Authority in the name of the Mortgagor or otherwise;
- (t) **(acquire Securities)** acquire by purchase, subscription or otherwise any Securities;

- (u) **(exchange)** exchange the Mortgaged Property for any other property or rights (with or without giving or receiving any other consideration for the exchange);
- (v) **(surrender Mortgaged Property)** surrender or release any of the Mortgaged Property;
- (w) **(transfer obligations)** effect a novation of or otherwise transfer to any person obligations of the Mortgagor which arise under a Debenture Document or otherwise;
- (x) **(improve Mortgaged Property)** do anything which the Debenture Trustee considers would help improve the value of the Mortgaged Property, obtain income or returns from it or make it saleable or more saleable;
- (y) **(execute documents)** enter into agreements and execute documents itself or on behalf of the Mortgagor for any purpose in connection with a Debenture Document;
- (z) **(raise money, secure)** in the name of the Mortgagor or otherwise:
  - (i) obtain financial accommodation (including from the Debenture Trustee or from a party associated with the Debenture Trustee) or give Guarantees for any purpose which the Debenture Trustee considers expedient in connection with its powers under a Debenture Document; and
  - (ii) secure the payment or repayment of indebtedness relating to any such financial accommodation or Guarantees by a Security Interest over the Mortgaged Property, however it ranks in priority with the Mortgage or any other Collateral Security;
- (aa) **(receipts)** give receipts for money and other property it receives;
- (bb) **(employ and appoint persons)** employ or discharge staff, professional advisers, consultants, contractors, agents or auctioneers for any purpose, and at the remuneration, that the Debenture Trustee thinks fit;
- (cc) **(delegate)** delegate to any person for any time that the Debenture Trustee thinks fit any of the powers of the Debenture Trustee under this document, including this right of delegation;
- (dd) **(Authorisations)** apply for any Authorisation which is necessary or desirable in connection with the exercise of a Power; and
- (ee) **(incidental power)** do anything the Debenture Trustee thinks expedient in its interests and incidental to any of its Powers, without limiting those Powers.

#### 7.4 To discharge or acquire prior Security Interest

- (a) After an Event of Default occurs, the Debenture Trustee may do any one or more of the following:
  - (i) purchase a debt secured by a prior Security Interest (including a debt secured by a Permitted Security Interest);
  - (ii) pay the amount required to discharge or satisfy that debt; and
  - (iii) take a transfer or assignment of that Security Interest and any Guarantee, document or right ancillary or collateral to it.
- (b) If the Debenture Trustee exercises its rights under paragraph (a):
  - (i) the Mortgagor is indebted to the Debenture Trustee for the same amount paid by the Debenture Trustee or the amount of the debt acquired (whichever is higher) and that debt is immediately payable to the Debenture Trustee and forms part of the Secured Money;

- (ii) the Debenture Trustee may rely on a written confirmation from the holder of a prior Security Interest, or an ancillary or collateral document, as to the amount and property secured by it;
- (iii) the person with the benefit of the prior Security Interest need not enquire whether there is any money owing under a Debenture Document; and
- (iv) the Mortgagor irrevocably directs any person with the benefit of a prior Security Interest to give the Debenture Trustee any information it requires in connection with the prior Security Interest.

## **7.5 To appoint Receivers**

After an Event of Default occurs, the Debenture Trustee may do any one or more of the following:

- (a) appoint one or more persons (severally, unless specified otherwise in the instrument of appointment) to be a receiver or receiver and manager of all or any of the Mortgaged Property;
- (b) fix the Receiver's remuneration at an amount agreed between the Debenture Trustee and the Receiver and vary the remuneration;
- (c) terminate a receivership or remove or replace a Receiver; and
- (d) appoint a replacement or additional Receiver.

The power to appoint a Receiver may be exercised even though an order or resolution has been passed for the Liquidation of the Mortgagor, and even though the Receiver may not in all respects act as the Mortgagor's agent.

## **7.6 Notice or lapse of time required before rights exercised**

- (a) If notice or lapse of time is required under any statute before the Debenture Trustee can exercise a Power, then that notice or lapse of time is dispensed with.
- (b) Paragraph (a) only applies if the relevant statute allows notice or lapse of time to be dispensed with.
- (c) If the relevant statute does not allow notice or lapse of time to be dispensed with, but allows it to be shortened, then for the purposes of this document, the period of notice or lapse of time is one day.

## **7.7 To give up possession and terminate receivership**

The Debenture Trustee may at any time give up possession of the whole or any part of the Mortgaged Property or terminate a receivership, or both.

# **8. Receiver's powers**

## **8.1 General**

Unless the terms of the Receiver's appointment say otherwise, the Receiver has the following powers over the Mortgaged Property which the Receiver is appointed to deal with:

- (a) all the rights, powers, discretions or remedies given by law to mortgagees in possession, receivers or receivers and managers; and
- (b) all the Powers of the Debenture Trustee under this document and at law (other than the power to appoint Receivers).

The Receiver may exercise these rights and powers in the name of the Mortgagor or otherwise.

## 8.2 Receiver is agent of Mortgagor

To the extent permitted by law, a Receiver is the agent of the Mortgagor and the Mortgagor alone is responsible for the Receiver's acts and defaults. A Receiver may become the agent of the Debenture Trustee if the Debenture Trustee gives a notice to the Receiver in writing to that effect. The Debenture Trustee may appoint a Receiver, even if a resolution or order to Wind Up the Mortgagor has been passed or made and even though the Receiver may not, or may not in some respects, act as the Mortgagor's agent.

## 9. Protection of Debenture Trustee, Receiver and Attorney

To the extent permitted by law, neither the Debenture Trustee nor any Receiver or Attorney is liable in relation to any act or omission on its part in the exercise or non-exercise of any Power nor for any resulting Loss, except where the Debenture Trustee, Receiver or Attorney has committed a breach of trust, is negligent or fraudulent.

## 10. Protection of third parties

### 10.1 Persons dealing not bound to enquire

A person dealing with the Debenture Trustee, a Receiver or an Attorney need not enquire whether:

- (a) there has been a default under a Debenture Document any Secured Money has become due or whether the Receiver or the Attorney has been properly appointed; or
- (b) the Debenture Trustee, Receiver or Attorney has executed or registered an instrument or exercised a Power properly or with authority,

and whenever the Debenture Trustee, a Receiver or an Attorney deals with the Mortgaged Property, that dealing is authorised and valid as far as anyone involved with that dealing is concerned despite any actual or constructive notice to the contrary.

### 10.2 Receipts

The receipt of the Debenture Trustee, a Receiver or an Attorney (or of their Authorised Officer) for any money payable to or asset receivable by it discharges the person paying that money or delivering the asset to the extent of the payment or delivery (as the case may be).

## 11. Power of attorney

### 11.1 Appointment and powers

The Mortgagor for valuable consideration appoints the Debenture Trustee, each Authorised Officer of the Debenture Trustee and each Receiver separately as its attorney to do any one or more of the following on the Mortgagor's behalf and in the name of the Mortgagor or the attorney on the occurrence of an Event of Default:

- (a) prove in the Winding-Up of a Transaction Party;
- (b) anything which the Mortgagor must do under a Debenture Document or under law in connection with a Debenture Document;
- (c) anything which, in the opinion of the attorney, gives effect to a Power or its exercise;
- (d) anything which the attorney considers necessary or expedient for giving effect to or perfecting any Debenture Document; and

- (e) anything which the attorney is expressly empowered to do under this document or another Debenture Document on behalf of the Mortgagor,

including executing any documents, and the Mortgagor agrees to ratify anything done by an attorney under this power of attorney.

## **11.2 Attorney may delegate powers**

Subject to the Debenture Trust Deed, an attorney appointed under this document may delegate its powers (including the power to delegate) to any person for any period and may revoke the delegation.

## **11.3 Purpose**

The power of attorney created under this clause is irrevocable and is granted to secure the performance by the Mortgagor of the Mortgagor's obligations under each Debenture Document to which it is a party.

## **12. Deposited documents**

Any document deposited with the Debenture Trustee by the Mortgagor or on its behalf, including any transfer in blank, may be completed, dealt with and given effect to on enforcement of this document without any further act on the part of the Mortgagor.

## **13. Mortgagor's obligations - performance by Debenture Trustee**

The Debenture Trustee may do anything which the Mortgagor must do under this document but does not do or does not do to the Debenture Trustee's satisfaction. This does not limit or exclude the Debenture Trustee's powers in any way.

## **14. Notices and demands**

### **14.1 How given**

- (a) Subject to paragraph (b), a notice, request, demand, approval, consent or other communication (**Notice**) given by a party in connection with this document:
- (i) must be given by the party or an Authorised Officer of the party or, in the case of a Notice given by the Debenture Trustee, may be given by a solicitor or other lawyer acting for the Debenture Trustee;
  - (ii) must be in writing and in English;
  - (iii) must be left at the address of the addressee, or sent by prepaid ordinary post (airmail if posted to or from a place outside Australia) to the address of the addressee or sent by facsimile to the facsimile number of the addressee as specified in the notice details for that party in this document or any alternative address notified by the party.
- (b) Paragraph (a) does not limit any method of giving notices or serving demands provided for by statute or in another Debenture Document.

### **14.2 Validity**

A Notice is validly given even if:

- (a) the Mortgagor has been Wound Up or the Mortgagor is absent from the place the Notice is left at, or delivered or sent to; or

- (b) the Notice is returned unclaimed.

#### **14.3 Effect**

Unless a later time is specified in it, a Notice takes effect from the time it is received.

#### **14.4 Deemed receipt**

A Notice is taken to be received:

- (a) in the case of a posted Notice, on the third Business Day after posting for domestic mail and seventh Business Day after posting for international mail; and
- (b) in the case of facsimile, on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient,

but if the delivery or receipt is on a day which is not a business day in the place of delivery or receipt or is after 4.00pm (addressee's time), it is taken to be received at the commencement of business on the next day which is a business day in that place.

### **15. Preserving the Debenture Trustee's Powers**

#### **15.1 Preservation**

- (a) The fact that the Debenture Trustee or a Receiver exercises, does not exercise, or delays the exercise of, any Power does not affect, or constitute a representation in relation to, the Power or any other Power.
- (b) Without limiting paragraph (a), the fact that the Debenture Trustee or a Receiver exercises a Power does not prevent the Debenture Trustee or Receiver from exercising that Power again.
- (c) Unless expressly provided in a Debenture Document, no Power nor any Debenture Document merges in, adversely affects or is adversely affected by any other Power or Debenture Document or any Security Interest, judgment or remedy which the Debenture Trustee or a Receiver (or anyone claiming through either of them) may have or obtain.

#### **15.2 No obligation to exercise rights or give consent**

Each of the Debenture Trustee and a Receiver may:

- (a) exercise or not exercise any Power;
- (b) give or not give its consent; and
- (c) make or not make a decision,

under this document in its absolute discretion, unless this document expressly provides otherwise. A consent given by the Debenture Trustee or a Receiver subject to conditions does not take effect until the conditions are complied with to the satisfaction of the Debenture Trustee or Receiver.

#### **15.3 Powers**

- (a) The Powers provided by the Debenture Documents are cumulative and not exclusive of any other rights, powers, discretions or remedies provided by law.
- (b) Where a Power under the Debenture Documents is inconsistent with a Power at law, the Debenture Documents prevail to the extent permitted by law. A Power at law is not inconsistent with the Debenture Documents merely because it is more extensive than a

similar Power in the Debenture Documents or because there is no similar Power in the Debenture Documents.

#### 15.4 Choice of securities and Guarantees

The Debenture Trustee need not resort to any Security Interest, Guarantee or any other Power before resorting to any other of them.

#### 15.5 Indemnities generally

- (a) Each indemnity in the Debenture Documents:
  - (i) is absolute and unconditional;
  - (ii) is a continuing obligation despite any settlement of account or the occurrence of any other thing;
  - (iii) must be discharged without set-off, deduction, abatement, counterclaim, suspension or deferment;
  - (iv) constitutes a separate and independent obligation of the party giving the indemnity from its other obligations under the Debenture Documents; and
  - (v) survives termination of any Debenture Document.
- (b) It is not necessary for the Debenture Trustee or a Receiver to incur an expense or make a payment before enforcing a right of indemnity conferred by a Debenture Document.

#### 15.6 Consent and waivers

A consent or waiver by the Debenture Trustee or a Receiver is effective only if in writing. If given subject to conditions, the consent or waiver only takes effect when the conditions are complied with the Debenture Trustee or Receiver's satisfaction.

#### 15.7 Avoidance of transaction

If any payment or other transaction relating to the Secured Money is void, voidable, unenforceable or defective or is claimed to be so (each an **Avoidance of Payment**) and that claim is upheld or settled then:

- (a) the liability of the Mortgagor under each Debenture Document and each Power will be what it would have been but for the Avoidance of Payment; and
- (b) the Mortgagor must immediately execute all documents and do all other things necessary or required by the Debenture Trustee to restore the Debenture Trustee to the position it was in immediately before the Avoidance of Payment (including reinstating any Debenture Document),

even if the Debenture Trustee knew or ought to have known that the payment or transaction was void, voidable, unenforceable or defective. This clause survives any termination or full or partial discharge or release of any Debenture Document.

#### 15.8 Effect of release

A full or partial release of this Mortgage by the Debenture Trustee does not release the Mortgagor from personal liability under this document until the Debenture Trustee receives the Secured Money, regardless of any:

- (a) receipt given, payout figure quoted or other form of account stated; or
- (b) error or miscalculation by the Debenture Trustee.



**15.9 Moratorium legislation**

A moratorium does not apply to a Debenture Document or the recovery of the Secured Money except if:

- (a) the Debenture Trustee agrees in writing that it does; or
- (b) it cannot be excluded by law.

**16. Other provisions****16.1 Notification from Mortgagor**

If the Mortgagor is required under this document to notify the Debenture Trustee about anything, it must do so in writing.

**16.2 Debenture Trustee may set off**

Without any demand or notice, the Debenture Trustee may, if an Event of Default is subsisting, set off and apply indebtedness it owes to the Mortgagor (whatever the currency) against any money owing to it by any Transaction Party under any Debenture Document:

- (a) whether the amount owed by the Debenture Trustee or the Transaction Party is owed by it alone or with any other person; and
- (b) whether or not the amount owed by the Debenture Trustee or the Transaction Party is immediately payable.

The Mortgagor irrevocably authorises the Debenture Trustee to do anything necessary (including to sign any document and effect appropriate currency exchanges) for that purpose.

**16.3 Mortgagor may not set off**

The Mortgagor may not (either directly or indirectly) claim, exercise or attempt to exercise a right of set-off or counterclaim against the Debenture Trustee (whether the right is the Mortgagor's or any other person's) or any other right which might have the effect of reducing the Secured Money.

**16.4 Notices or demands as evidence**

A notice or certificate from or demand by the Debenture Trustee stating:

- (a) that a specified sum of money is owing or payable under a Debenture Document;
- (b) that an Event of Default has occurred; or
- (c) any other fact or determination relevant to the rights or obligations of the Debenture Trustee or the Mortgagor under a Debenture Document,

is taken to be correct unless the contrary is proved.

**16.5 Severability**

- (a) A construction of a Debenture Document that results in all provisions being enforceable and effective is to be preferred to a construction that does not.
- (b) If, despite the application of paragraph (a), a provision of a Debenture Document is illegal, unenforceable or ineffective, then the provision will be inoperative, but only to the extent to which, and during such time as, it is illegal, unenforceable or ineffective and the remainder of the Debenture Document will continue in force.
- (c) To the extent permitted by law, the Mortgagor will use its best endeavours (including by obtaining any necessary Authorisation) to include within the scope of clauses 2 and 3 any

obligation or property which is within the scope of the definition of Secured Money or Mortgaged Property but with respect to which either clause is deemed inoperative under paragraph (b).

#### **16.6 Variation of agreement**

A variation of a Debenture Document must be in writing and signed by or on behalf of each party to it.

#### **16.7 Authorised Officers and communications**

The Mortgagor irrevocably authorises the Debenture Trustee to rely on:

- (a) a certificate by any person purporting to be a director or secretary of the Mortgagor as to the identity and signatures of its Authorised Officers. The Mortgagor warrants that its Authorised Officers have been authorised to give notices and communications under or in connection with the Debenture Documents; and
- (b) any notice or other document contemplated by any Debenture Document which bears the purported signature (whether given by facsimile or otherwise) of an Authorised Officer of the Mortgagor.

#### **16.8 Receipt of money and application**

The provisions of clause 4 of the Debenture Trust Deed shall apply in relation to money received by the Debenture Trustee under or in connection with this document.

#### **16.9 Surplus proceeds**

If surplus money remains in the hands of the Debenture Trustee, Receiver, Attorney or an External Administrator after payment of all the Secured Money (and satisfaction of any obligation ranking in priority to the Secured Money or secured by a Security Interest):

- (a) no trust arises over that surplus money; and
- (b) that surplus money does not carry interest and the Debenture Trustee, Receiver, Attorney or External Administrator must pay it to an account in the name of the Mortgagor (whether or not opened by the Debenture Trustee or External Administrator for that purpose). The Debenture Trustee or External Administrator is then no longer liable for the surplus money.

#### **16.10 Credit of available funds**

In applying money received by the Debenture Trustee towards the satisfaction of the Secured Money:

- (a) the account of the Mortgagor will be credited with only so much of the money available for the purpose as is actually received by the Debenture Trustee and not credited to a suspense account; and
- (b) the credit will date from the time of receipt (as determined by the Debenture Trustee).

#### **16.11 Tacking**

For the purpose of applying section 282 of the *Corporations Act 2001* (Cth), if a Stockholder is obliged to make further advances under a Debenture Document, that Debenture Document is taken to be incorporated in this document so that this document imposes on the Stockholder an obligation to advance that money.

**16.12 Payments after notice of subsequent Security Interests**

- (a) Any legal rule to the effect that the earliest payment into an account is deemed to be the first to be withdrawn or that the earliest debit is deemed to be the first to be extinguished will not, to the extent legally possible, apply to reduce the amount of the Secured Money for which the Debenture Trustee may claim priority as against the holder of any other Security Interest.
- (b) To the extent that a legal rule of the type described in paragraph (a) is applicable and will have the effect described in that paragraph, any money forming part of the Secured Money which is received by the Debenture Trustee will be applied (or deemed to have been applied) progressively in reduction of later debits, beginning with the latest debit.

**16.13 Debenture Trustee may assign rights**

- (a) The Debenture Trustee may assign its rights under this document without the consent of the Mortgagor. If it does so, the Secured Money will include all liabilities of the Mortgagor to the assignee which are within the scope of the definition whether or not the liabilities arose or were contemplated before the date of the assignment.
- (b) Subject to the Debenture Documents, the Debenture Trustee may disclose to a potential assignee any information provided to the Debenture Trustee by the Mortgagor which it considers appropriate.

**16.14 Governing law and jurisdiction**

- (a) This document is governed by the laws of Victoria.
- (b) The Mortgagor irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria. The Mortgagor waives any right it has to object to an action being brought in those courts, including by claiming that the action has been brought in an inconvenient forum or that those courts do not have jurisdiction.

**16.15 Debenture Trustee need not execute**

This document is enforceable by the Debenture Trustee even if the Debenture Trustee does not execute it.

**16.16 Attorneys**

Each attorney signing this document under a power of attorney certifies, by the attorney's signature, that the attorney has no notice of the revocation of the power of attorney.

**16.17 Counterparts**

This document may be executed in any number of counterparts. Each counterpart constitutes an original of this document, all of which together constitute one instrument. A party who has executed a counterpart of this document may exchange it with another party by faxing, or by emailing a pdf (portable document format) copy of, the executed counterpart to that other party, and if requested by that other party, will promptly deliver the original by hand or post. Failure to make that delivery will not affect the validity of this document.

# Signing page

---

**EXECUTED** as a deed

**Signed sealed and delivered by**  
**KATHERINE JUDITH GOVE**  
 as attorney for **Replay Investments Pty Ltd**  
 under power of attorney dated 18 November  
 2008

in the presence of

_____	←	_____	←
Signature of witness		Attorney	

\_\_\_\_\_  
 Name of witness (print)

**The common seal of AET Structured Finance  
 Services Pty Limited** is duly affixed to this  
 document by authority of its directors  
 in the presence of

_____	←	_____	←
Signature of authorised person		Signature of authorised person	

_____	←	_____
Name of authorised person and office held (print)		Name of authorised person and office held (print)

# Signing page

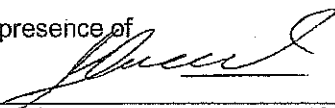
**EXECUTED** as a deed.

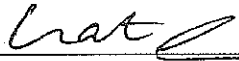
Each attorney signing this document under a power of attorney certifies, by the attorney's signature, that the attorney has no notice of the revocation of the power of attorney.

## CHARGOR

Signed sealed and delivered by  
KATHERINE JUDITH GOVE  
as attorney for **Replay Investments Pty Ltd**  
as trustee for the **Replay Unit Trust** under  
power of attorney dated 18 November 2008

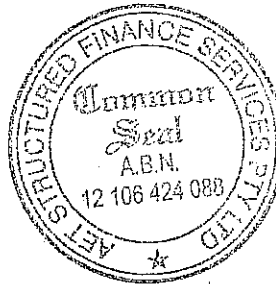
in the presence of

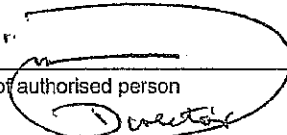
Signature of witness   
**JAMES THOMAS CREECH**  
Solicitor of the Supreme Court  
of New South Wales  
Aurora Place  
88 Phillip Street  
Sydney

←  ←  
Attorney

## DEBENTURE TRUSTEE

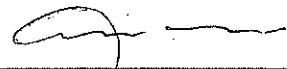
The common seal of **AET Structured Finance Services Pty Limited** is duly affixed to this document by authority of its directors in the presence of



Signature of authorised person 

**Philip John Walter Joseph**

Name of authorised person and office held (print)

←  ←  
Signature of authorised person

**Glenn David White**

Name of authorised person and office held (print)

**Replay Unit Trust Mortgage of Marketable Securities**

This is **Annexure C** of 29 pages referred to in form 603 (Notice of initial substantial holder) given by Brookfield International Finance Australia Pty Ltd in relation to THG (ACN 054 346 315)

print name	<b>Neil Olofsson</b>	capacity	Company secretary
sign here		date	19 April 2012

Execution Version

# Mortgage of Marketable Securities

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Replay Investments Pty Ltd as trustee for the Replay Unit  
Trust (**Mortgagor**)

AET Structured Finance Services Pty Limited (**Debenture  
Trustee**)

MinterEllison

---

L A W Y E R S

AURORA PLACE, 88 PHILLIP STREET, SYDNEY NSW 2000, DX 117 SYDNEY  
TEL: +61 2 9921 6888 FAX: +61 2 9921 6123  
[www.minterellison.com](http://www.minterellison.com)

# Mortgage of Marketable Securities

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**Signing page**

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## Details

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Date 1 DECEMBER 2008

## Parties

Name	<b>Replay Investments Pty Ltd</b>
ABN	28 106 160 089
Capacity	as trustee of the Replay Unit Trust
Short form name	<b>Mortgagor</b>
Notice details	Thakral House, Level 12, 301 George Street, Sydney NSW 2000 Facsimile: (02) 9272 8741 Attention: Manjit Singh Gill
	with a copy to: Pasricha & Gove, Level 16, 390 St. Kilda Road, Melbourne, Vic 3004 Facsimile: (03) 9866 5335 Attention: Katherine Gove

Name	<b>AET Structured Finance Services Pty Limited</b>
ABN	12 106 424 088
Short form name	<b>Debenture Trustee</b>
Notice details	Level 22, 207 Kent Street, Sydney NSW 2000 Facsimile: (02) 9028 5942 Attention: Glenn White

## Background

This document sets out the terms on which the Mortgagor grants a legal mortgage of the Mortgaged Property to the Debenture Trustee as security for the payment of the Secured Money.

# Agreed terms

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## 1. Defined terms & interpretation

### 1.1 Debenture Trust Deed defined terms

Terms defined in the Debenture Trust Deed or incorporated by reference in the Debenture Trust Deed shall, unless otherwise defined herein, bear the same meanings herein.

### 1.2 Defined terms

In this document:

**Attorney** means an attorney appointed under a Collateral Security.

**Authorisation** includes:

- (a) any consent, authorisation, registration, filing, agreement, notarisation, certificate, permission, licence, approval or exemption from, by or with a Public Authority; or
- (b) in relation to anything which is prohibited or restricted by law if a Public Authority takes certain action within a specified period, the expiry of that period without the Public Authority taking that action.

**Authorised Officer** means:

- (a) in respect of the Mortgagor, a person appointed by the Mortgagor and notified to the Debenture Trustee to act as its Authorised Officer for the purposes of the Debenture Documents (the notice must be signed by the secretary or a director of the Mortgagor and be given to the Debenture Trustee with a specimen signature of the person); and
- (b) in respect of the Debenture Trustee, a person holding or acting in the office of director, chief executive or secretary, or whose title includes the word '*Manager*', '*Director*', '*Chief*', '*Head*' or any person notified to each Stockholder and the Mortgagor to act as its Authorised Officer for the purposes of the Debenture Documents.

**Collateral Security** means each present or future Security Interest, Guarantee or other document or agreement created or entered into with the Debenture Trustee (in its capacity as such) as security (directly or indirectly) for the payment of the Secured Money or the performance by the Mortgagor of any of its obligations to a Secured Party under a Debenture Document. It includes each Security.

**Debenture Documents** has the meaning given to it in the Debenture Trust Deed and includes, without limitation:

- (a) this document;
- (b) each Subscription Agreement;
- (c) the Debenture Trust Deed; and
- (d) each Collateral Security.

**Debenture Trust Deed** means the debenture trust deed dated 9 July 2004 between the Mortgagor and the Debenture Trustee.

**Dollars and \$** means Australian dollars.

**Event of Default** means an 'Event of Default' as defined under any Subscription Agreement, any other event so described in a Debenture Document or any event which entitles the Debenture Trustee or any other Secured Party under any Debenture Document to accelerate the time for payment of any Secured Money or to terminate any obligation to provide funding to the Issuer.

**External Administrator** means an administrator, receiver, receiver and manager, trustee, provisional liquidator, liquidator or any other person (however described) holding or appointed to an analogous office or acting or purporting to act in an analogous capacity.

**GST** has the meaning given to it in the GST Act.

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

**Insolvency** of an entity includes:

- (a) the Winding Up of an entity;
- (b) the appointment of an External Administrator to the person; and
- (c) any composition, compromise, arrangement, merger, amalgamation, reconstruction (other than a solvent reconstruction), administration, assignment for the benefit of creditors or insolvency of, by, or adversely affecting the person and any procedure which is equivalent or analogous in any jurisdiction.

**Loss** means a loss, claim, action, damage, liability, cost, charge, expense, penalty, compensation, fine, outgoing or payment suffered, paid or incurred.

**Marketable Security** means:

- (a) a marketable security as defined in the *Corporations Act*;
- (b) a negotiable instrument; and
- (c) a unit or other interest in a trust or partnership.

**Mortgage** means the mortgage created under this document.

**Mortgaged Property** means all present and future Securities, Rights and Proceeds and any certificate or other evidence of ownership of the Mortgaged Property.

**Permitted Security Interest** has the meaning given to it in a Subscription Agreement.

**Potential Event of Default** means any event, thing or circumstance which with the giving of notice or passage of time or both would become an Event of Default.

**Power** means any right, power, discretion or remedy of the Debenture Trustee, a Receiver or an Attorney under any Debenture Document or applicable law.

**Proceeds** means all money (in whatever currency) payable to the Mortgagor or to which the Mortgagor is entitled (whether alone or with any other person) on any account or in way whatever under or in connection with the Securities and Rights, including distributions, dividends, bonuses, return of capital, interest and all proceeds of sale, redemption or disposal.

**Receiver** means a receiver or receiver and manager appointed under a Collateral Security. When two or more persons are appointed, the expression 'Receiver' refers to each of those persons severally as well as to two or more of them jointly.

**Records** means all the information which relates in any way to a specified person's business or any transaction entered into by the person, whether the information is recorded electronically, magnetically or otherwise.

**Replay Unit Trust** means the trust established by a trust deed dated 14 November 2008.

**Rights means:**

- (a) rights to acquire Marketable Securities arising because the Mortgagor has an interest in the Securities;
- (b) any other rights of the Mortgagor of any kind in connection with the Securities, including:
  - (i) in relation to any payment, repayment, debt, dividend, profit, interest, benefit, privilege, bonus or distribution; and
  - (ii) those resulting from any allotment, offer, substitution, conversion, consolidation, reclassification, redemption, reconstruction, amalgamation; subdivision, reduction of capital, Winding Up or scheme of arrangement.

**Secured Money means:**

- (a) all money that the Mortgagor or a Transaction Party now owes or in the future may come to owe, actually or contingently, for any reason, to one or more of the Stockholders or to any combination of Stockholders in connection with any Stock; and
- (b) all money that the Mortgagor or a Transaction Party now owes or in the future may come to owe, actually or contingently, for any reason, to a Secured Party on any account under or in connection with a Debenture Document,

and includes all or part of the Secured Money. Where the Mortgagor or a Transaction Party would have owed money but for its Winding Up, it will be taken still to owe that money.

**Securities means:**

- (a) stapled securities comprising:
  - (i) fully-paid ordinary shares in the capital of THL; and
  - (ii) fully-paid non-voting units in THT which are stapled to the shares specified in paragraph (i);
- (b) Marketable Securities:
  - (i) that the Mortgagor deposits (or which are deemed to be deposited under s262(6) of the Corporations Act) with the Debenture Trustee;
  - (ii) resulting from any allotment, offer, substitution, conversion, consolidation, reclassification, redemption, reconstruction, amalgamation, subdivision or any scheme of arrangement of or in relation to any Securities;
  - (iii) acquired by the Mortgagor, or to which the Mortgagor becomes entitled, because the Mortgagor holds the Securities; and
  - (iv) that the parties otherwise designate as Mortgaged Property for the purposes of this document.

**Subscription Agreement** has the meaning given to it in the Debenture Trust Deed.

**THG** means Thakral Holdings Group, which is comprised of THL and THT.

**THL** means Thakral Holdings Limited ACN 054 346 315.

**THT** means Thakral Holdings Trust ABSN 092 850 827.

**Transaction Party** means the Mortgagor, the Issuer and any other person providing a Collateral Security.

**Trust** means, in respect of the Mortgagor, each trust of which the Mortgagor is or becomes trustee. It includes, the Replay Unit Trust.

**Winding Up** includes:

- (a) dissolution, liquidation, provisional liquidation and bankruptcy; and
- (b) any analogous or equivalent procedure in any jurisdiction.

### **1.3 Interpretation**

Clause 1.2 of the Debenture Trust Deed is incorporated into this document with any necessary amendments.

### **1.4 Subsisting Events of Default**

An Event of Default or Potential Event of Default is 'subsisting' if it has not been either remedied or waived in accordance with the relevant Debenture Document.

### **1.5 Certified copies of documents**

The Debenture Trustee may require any copy of a document provided or to be provided to it under this document to be certified as a true and complete copy by a director or secretary of the Mortgagor.

### **1.6 Things required to be done on a Business Day**

If anything (other than the making of a payment) is required by this document to be done on or by a day which is not a Business Day, then it must be done on or by the next following Business Day.

### **1.7 Incorporation of provisions from Debenture Trust Deed**

Clause 3.6 of the Debenture Trust Deed is incorporated in and applies to this document as if set out in full in this document, with any necessary changes.

### **1.8 Debenture Document for the purposes of the Debenture Trust Deed**

This document is a Security and a Collateral Security and also a Debenture Document for the purposes of the Debenture Trust Deed.

## **2. Mortgage**

### **2.1 Creation**

The Mortgagor:

- (a) mortgages the Mortgaged Property in favour of the Debenture Trustee as security for the due and punctual payment of the Secured Money; and
- (b) as legal and beneficial owner absolutely assigns to the Debenture Trustee all its interest and rights in the Mortgaged Property as security for the due and punctual payment of the Secured Money.

The Mortgage is a first legal mortgage and ranks ahead of all other Security Interests.

### **2.2 Continuing security and discharging the Mortgage**

- (a) The Mortgage is a continuing security. It remains in effect until the Debenture Trustee gives a final discharge to the Mortgagor.
- (b) The Mortgagor is only entitled to a final discharge and reassignment if:

- (i) all of the Secured Money has been irrevocably paid in full and all commitments which might give rise to Secured Money have terminated; and
- (ii) the Debenture Trustee is satisfied that there are no amounts which will subsequently fall within the description of the Secured Money due to an Avoidance of Payment (as defined in clause 15.7),

at which time the Debenture Trustee will reassign the Mortgaged Property to the Mortgagor at the request and cost of the Mortgagor. In satisfying itself under paragraph (ii), the Debenture Trustee may consider any matters it thinks relevant, including the possibility that a payment to reduce the Secured Money might be repayable, void or voidable under a law relating to insolvency or protection of creditors.

### **2.3 Priority amount - maximum prospective liability**

The nature of the 'prospective liability' (as defined in section 261(1) of the Corporations Act) secured by the Mortgage is advances, interest, fees, costs, indemnities and any other Secured Money. The maximum prospective liability secured by the Mortgage is \$520,000,000 or its equivalent, as may be varied from time to time by the Debenture Trustee lodging, on the Mortgagor's behalf, a notice under section 268(2) of the Corporations Act. Any maximum prospective liability amount and this clause apply only to fix priority under section 282(3) of the Corporations Act and do not in any way fix a limit on the amount which may be secured by or recoverable under this document.

## **3. Payment obligations**

### **3.1 Secured Money**

The Mortgagor must pay the Secured Money (free from any deduction, set-off or counterclaim) to or as directed by the Debenture Trustee:

- (a) at the times and in the way specified in the Debenture Documents; and
- (b) otherwise, immediately on demand,

in the currency in which it is owed.

### **3.2 Payments to be on a Business Day**

Subject to any other Debenture Document, if a payment under this document falls due on a day that is not a Business Day, it must be paid on the next Business Day, unless that Business Day falls in the next calendar month in which case the payment must be made on the preceding Business Day.

### **3.3 Costs and expenses**

Subject to any contrary agreement between the parties, the Mortgagor must immediately pay or reimburse on demand all costs and expenses of:

- (a) each Secured Party, a Receiver or an Attorney (and any of their respective officers, employees and agents) relating to or in connection with:
  - (i) the negotiation, preparation, execution, delivery, registration and completion of, and payment of Taxes on, the Debenture Documents;
  - (ii) any variation or discharge of any Debenture Document;
  - (iii) the exercise, enforcement, protection or waiver, or attempted exercise, enforcement or protection, of any Debenture Document or Power;



- (iv) obtaining or receiving payment of any of the Secured Money and its distribution;
  - (v) an Event of Default or Potential Event of Default;
  - (vi) the giving by it of a consent or approval in connection with a Debenture Document;
  - (vii) any enquiry by a Public Authority concerning a Transaction Party or the involvement of the Debenture Trustee in a Debenture Document;
  - (viii) maintaining, preserving or protecting the Mortgaged Property;
  - (ix) surveying, valuing, inspecting or reporting on the Mortgaged Property; and
  - (x) obtaining advice from a professional person or consultant about any matter of concern to the Debenture Trustee, a Receiver or an Attorney in connection with a Debenture Document;
- (b) the Debenture Trustee relating to fees payable to it in its capacity as Debenture Trustee and custodian as agreed by letter dated 25 November 2008; and
- (c) the Debenture Trustee or the Subscribers relating to fees payable to the Debenture Trustee under the Debenture Documents,

including any legal costs and expenses (on a full indemnity basis), any professional consultant's fees (including professional tax consultants) and the costs (calculated on a time employed basis) of in-house legal counsel;

### **3.4 Mortgagor to pay Taxes**

The Mortgagor must pay, or immediately on demand reimburse the Debenture Trustee, for, all Taxes, fees and charges which may be payable or determined to be payable by the Debenture Trustee in connection with any Debenture Document or a payment, receipt, supply of goods or services or other transaction contemplated by or carried out under or pursuant to any Debenture Document, including Taxes passed onto the Debenture Trustee by another financial institution or supplier of goods and services.

### **3.5 Fines and penalties**

The Mortgagor must pay all fines and penalties for late payment or non-payment of the Taxes referred to in clause 3.4 except where the Mortgagor places the Debenture Trustee in cleared funds to make the payment not less than 10 Business Days prior to the due date and the Debenture Trustee fails to make the payment.

### **3.6 Indemnity**

The Mortgagor must immediately indemnify the Debenture Trustee and each other Secured Party on demand against, and must pay to the Debenture Trustee on demand amounts equal to, any Loss which the Debenture Trustee, each other Secured Party, a Receiver or an Attorney determines will or has been (directly or indirectly) suffered by the Debenture Trustee, each other Secured Party, a Receiver or an Attorney (and, , any of their respective officers, employees and agents) as a result of or in connection with:

- (a) any Tax in respect of this document or a transaction or payment under this document;
- (b) an indemnity given by the Debenture Trustee to a Receiver or administrator of the Mortgagor;
- (c) the occurrence of an Event of Default or Potential Event of Default;
- (d) a Winding-Up in relation to the Mortgagor or another Transaction Party;

- (e) any payment required under a Debenture Document not being made on its due date;
- (f) any Secured Money (or money which would be Secured Money if it were recoverable) not being recoverable from the Mortgagor or a Transaction Party, or a liability or obligation to pay the Secured Money under a Debenture Document not being enforceable against the Mortgagor or Transaction Party;
- (g) any Environmental Liability;
- (h) the Mortgaged Property or the exercise or attempted exercise of any Power;
- (i) the Debenture Trustee acting or relying in good faith on any notice or other communication from, or genuinely believed to be from, the Mortgagor; or
- (j) the Debenture Trustee relying on information supplied by or on behalf of the Mortgagor which proves to be a misrepresentation or to be misleading or deceptive (including by omission of other information),

including any legal costs and expenses (on a full indemnity basis), any professional consultant's fees in connection with the above.

### 3.7 Mortgagor's liabilities not affected

The Mortgagor's liabilities under this document are not affected by any act, omission or other thing which would reduce or discharge those liabilities, including:

- (a) a Secured Party granting time or any other indulgence or concession to a Transaction Party or any other person;
- (b) a Secured Party increasing the amount of, opening further accounts in connection with or otherwise varying or replacing the type or terms of, financial accommodation provided to a Transaction Party or any other person;
- (c) any transaction or agreement, or variation, novation or assignment of a transaction or agreement (including any Debenture Document), between a Secured Party and a Transaction Party or any other person;
- (d) an Insolvency in relation to a Transaction Party or any other person, or a Secured Party becoming a party to or bound by any Insolvency;
- (e) any judgment, proceedings or order being obtained or made against a Transaction Party or any other person;
- (f) an obligation of a Transaction Party or any other person or any provision of a Debenture Document being void, voidable, unenforceable, defective, released, waived, impaired, novated, enforced or impossible or illegal to perform;
- (g) the whole or partial discharge or release of, or the granting of, a Security;
- (h) any Secured Money not being recoverable or the liability of a Transaction Party or any other person to a Secured Party ceasing (including as a result of giving a release or discharge or by law);
- (i) the failure of a Transaction Party or any other person to execute any Debenture Document, properly or at all;
- (j) the Mortgagor not being a party to a Debenture Document (such as a Debenture Document solely between the Debenture Trustee and a Transaction Party);

- (k) a Secured Party exercising or not exercising its rights (including any right to elect to terminate a contract) under a Debenture Document or at law against a Transaction Party or any other person;
- (l) any default, misrepresentation, negligence, breach of contract, misconduct, acquiescence, delay, waiver, mistake, failure to give notice or other action or inaction of any kind (whether or not prejudicial to the Mortgagor) by a Secured Party or any other person;
- (m) any change to, or in the membership of, any partnership, joint venture or association; or
- (n) any Mortgaged Property being destroyed, forfeited, extinguished, surrendered or resumed, whether or not the Mortgagor, a Transaction Party, a Secured Party or any other person is aware of it or consents to it and despite any legal rule to the contrary.

### 3.8 Exclusion of subrogation and other rights

The Mortgagor must not (either directly or indirectly):

- (a) claim, exercise or attempt to exercise a right of set-off or counterclaim or any other right or raise any defence which might reduce or discharge the Mortgagor's liability under this document;
- (b) claim or exercise a right of subrogation, marshalling or contribution or claim the benefit of a Security; or
- (c) unless expressly permitted in a Debenture Document or the Debenture Trustee has given a direction to do so (in which case it must do so in accordance with the direction as trustee for the Debenture Trustee):
  - (i) prove, claim or vote in, or receive the benefit of a distribution, dividend or payment arising out of, the Insolvency of a Transaction Party; or
  - (ii) demand, or accept payment of, any money owed to the Mortgagor by a Transaction Party.

### 3.9 Prove in Liquidation

- (a) The Mortgagor, for valuable consideration, irrevocably appoints each of the Debenture Trustee and its Authorised Representatives separately as its attorney to prove in the Insolvency of a Transaction Party for all money that the Mortgagor can claim against that person on any account whatever. The terms of appointment are that:
  - (i) the attorney must pay to the Mortgagor dividends it receives in excess of the Secured Money, without interest, and any other dividends must be paid to the Debenture Trustee; and
  - (ii) the attorney may delegate its powers (including the power to delegate) to any person for any period and may revoke the delegation.
- (b) The Mortgagor agrees to ratify anything done by an attorney under this clause. The power of attorney created under this clause is granted to secure the Mortgagor's performance of its obligations under each Debenture Document to which it is a party.

### 3.10 Default interest

- (a) The Mortgagor must immediately on demand pay to the Debenture Trustee interest on any of the Secured Money which is due and payable by it and not paid.
- (b) Unless another Debenture Document provides otherwise, interest payable under paragraph (a) is calculated on a daily basis:

- (i) up to (but excluding) the date of actual payment from and including the due date or (in the case of an amount payable by way of reimbursement or indemnity) the date of disbursement or Loss, if earlier (**Calculation Date**); and
- (ii) at the rate (**Default Rate**) determined by the Debenture Trustee as at the Calculation Date, and then at monthly intervals, as the higher of:
  - (A) if the Mortgagor's liability is the subject of a judgment or order, the rate payable under that judgment or order; and
  - (B) the sum of 2% per annum and the Debenture Trustee's cost of funding the overdue amount.
- (c) If the Mortgagor's liability under a Debenture Document is the subject of a judgment or order, the obligation to pay interest under this clause is an obligation separate from the judgment or order and will subsist despite the making of the judgment or order and the interest accrues both before and after judgement at the higher of the rate determined under paragraph (b) and the rate payable under that judgment or order.
- (d) Unless another Debenture Document provides otherwise, interest payable under this clause that has not been paid may be capitalised at intervals of not less than one month as determined by the Debenture Trustee from time to time. Capitalised interest will itself bear interest (calculated on a daily basis) at the Default Rate from and including the date of capitalisation up to the date of actual payment.
- (e) The Mortgagor must pay to the Debenture Trustee accrued interest under this clause 3.10 on the last Business Day of each calendar month on demand.

### 3.11 Deduction or withholding required

If the Mortgagor must deduct or withhold Taxes from a payment to the Debenture Trustee, it must:

- (a) make that deduction and/or withholding, pay to the appropriate Public Authority an amount equal to the full amount deducted and/or withheld as required by law and give the Debenture Trustee a receipt for the payment; and
- (b) increase its payment to the Debenture Trustee to an amount which will result in the Debenture Trustee receiving at the time the payment is due (after deduction or withholding of any Taxes in respect of the increased payment) the full amount which it would have received if no deduction or withholding had been required.

### 3.12 Payments and receipts in foreign currency

If for any reason the Debenture Trustee receives or recovers any amount (**Paid Amount**) under or in relation to a Debenture Document in a currency other than the currency in which it is payable under the Debenture Document (**Agreed Currency**), the amount which the Debenture Trustee will be taken to have received or recovered for the purposes of the Debenture Documents will be the Agreed Currency amount to which the Debenture Trustee could have converted the Paid Amount in accordance with its normal procedures at the time of the receipt or recovery less the costs of the conversion.

### 3.13 GST

- (a) Notwithstanding any other provision in this document, any amount payable to the Debenture Trustee under the Debenture Documents does not include any GST. Terms defined in the GST Act have the same meaning in this document.

- (b) To the extent that any supply under or in connection with this document made or incurred, by the Debenture Trustee constitutes a taxable supply, the consideration payable will automatically be increased to include an additional amount on account of GST. That amount will be the product of the value of the consideration for the supply and the prevailing GST rate. The Debenture Trustee will provide the Mortgagor with a tax invoice complying with the GST Act in respect of any supply made by the Debenture Trustee to the Mortgagor.

## 4. Warranties and undertakings

### 4.1 Representations and warranties

- (a) The Mortgagor represents and warrants to the Debenture Trustee (and for the benefit of the other Secured Parties) that all of its representations and warranties in the Debenture Documents are true and correct (or if not yet made, will be true and correct when made).
- (b) The Mortgagor represents and warrants to the Debenture Trustee (and for the benefit of the other Secured Parties) that as at the date of this Mortgage it has no property other than property located in Victoria for the purposes of any Australian State or Territory stamp duty law.
- (c) The Mortgagor repeats each representation and warranty in this clause 4.1 with reference to the facts and circumstances at the time when representations and warranties are repeated in a Subscription Agreement.
- (d) The Mortgagor acknowledges that:
  - (i) the Debenture Trustee has, and each other Secured Party has, entered into the Debenture Documents in reliance on the representations and warranties in this clause 4.1; and
  - (ii) those representations and warranties survive execution and delivery of the Debenture Documents and the provision of financial accommodation under them.

### 4.2 Mortgagor undertakings

The Mortgagor must:

- (a) **(Secured Money)** pay the Secured Money at the times and in the way specified in the Debenture Documents, or otherwise on demand;
- (b) **(other obligations)** fully and punctually perform all of its obligations under each Debenture Document to which it is a party at the time and in the manner specified in the relevant Debenture Document;
- (c) **(no Event of Default)** ensure that no Event of Default occurs;
- (d) **(no set-off)** not directly or indirectly claim, exercise or attempt to exercise a right of set-off or counterclaim (whether its or any other person's right) against the Debenture Trustee;
- (e) **(compliance with laws)** comply with all laws and requirements of Government Agencies in respect of the Mortgaged Property, and ensure that any person occupying or using the Mortgaged Property does the same;
- (f) **(comply with other interests)** comply with the terms of each Security Interest binding on it in respect of the Mortgaged Property from time to time;
- (g) **(maintain value)** not do, allow or omit anything which is likely to lower the value of the Mortgaged Property.

### 4.3 Dealing with Mortgaged Property

Subject to any other Debenture Document, the Mortgagor may not, without the prior consent of the Debenture Trustee:

- (a) subject to paragraph (b), dispose of, part with possession of, create or permit to exist an interest in or otherwise deal with any of the Mortgaged Property; or
- (b) create or permit to exist a Security Interest, other than a Permitted Security Interest, over any of the Mortgaged Property or if the creation of a Security Interest cannot by law be restricted, create such a Security Interest without the holder of the Security Interest first entering into a deed of priority in form and substance acceptable to the Debenture Trustee (acting on the instructions of the Majority Stockholders).

## 5. Obligations in relation to voting rights and dividends

Subject to the Debenture Documents:

- (a) until an Event of Default occurs, the Debenture Trustee must exercise any voting power it has as holder of the Mortgaged Property in accordance with the instructions of the Mortgagor; and
- (b) after an Event of Default, the Debenture Trustee must abstain from exercising any voting power it has as holder of the Mortgaged Property, unless otherwise instructed by the Majority Stockholders.

## 6. Further assurances

The Mortgagor must, at the Mortgagor's cost, do whatever the Debenture Trustee requires to:

- (a) more satisfactorily secure the Mortgaged Property to the Debenture Trustee for payment of the Secured Money; or
- (b) enable the better exercise of any Power,

or both and must make anyone else who has an interest in the Mortgaged Property or claims under or in trust for the Mortgagor do the same.

## 7. Debenture Trustee's powers after Event of Default

### 7.1 Acceleration of Secured Money

If an Event of Default occurs, the Debenture Trustee may by notice to the Mortgagor declare that the Secured Money is immediately due and payable. On receipt of that notice, the Mortgagor must immediately pay the Secured Money to the Debenture Trustee.

### 7.2 General rights, powers and remedies

After an Event of Default occurs, the Debenture Trustee may, without making demand or giving notice to anyone (unless notice is required as described in clause 7.6), do all things that a mortgagee or an absolute owner of the Mortgaged Property can do, and exercise all rights, powers and remedies:

- (a) of a mortgagee or an absolute owner of the Mortgaged Property;
- (b) given to a Receiver under the Corporations Act; and
- (c) specified in clause 7.3.

### 7.3 Specific powers

After an Event of Default occurs, the Debenture Trustee may do any one or more of the following:

- (a) **(recover, posses and control)** access, recover, manage, take up or give up possession of the Mortgaged Property;
- (b) **(receive)** receive all Proceeds;
- (c) **(sell)** sell or help sell the Mortgaged Property on such terms and in such manner as it thinks fit, whether or not the Debenture Trustee has taken possession;
- (d) **(options)** give an option to purchase the Mortgaged Property on the terms it thinks fit;
- (e) **(give rights)** give rights over the Mortgaged Property in the name of the Mortgagor or otherwise (whether or not the Debenture Trustee has taken possession) on whatever terms the Debenture Trustee thinks fit;
- (f) **(sell together with other property)** sell the Mortgaged Property with or without any other property in any manner that the Debenture Trustee thinks expedient, with full power to apportion costs, expenses, purchase money, rent and other proceeds between the items of properties sold;
- (g) **(hive off assets or obligations)** promote the formation of any company so that the company may purchase or acquire the Mortgaged Property or assume obligations of the Mortgagor or both;
- (h) **(effect hive-off)** sell or assign the Mortgaged Property to a person and have that person assume some or all of the Mortgagor's obligations;
- (i) **(Rights)** subject to compliance with clause 5, exercise Rights (including the right to appoint proxies) in relation to the Mortgaged Property;
- (j) **(effect transfers)** effect transfers of any Securities to any person (including the Debenture Trustee) including the completion of any necessary forms or documents or the giving of instructions;
- (k) **(bank accounts)** open and operate bank accounts in the name of the Mortgagor to the exclusion of the Mortgagor;
- (l) **(rights)**
  - (i) perform the Mortgagor's obligations under;
  - (ii) enforce or exercise or not exercise the Mortgagor's rights and powers under; and
  - (iii) vary, terminate or rescind,

a contract, instrument, arrangement or right forming part of the Mortgaged Property;
- (m) **(perform Mortgagor's obligations)** do everything it thinks necessary to comply with the obligations of the Mortgagor under a Debenture Document;
- (n) **(remedy breach)** do everything it thinks necessary to make good a breach or default inherent in an Event of Default, to its own satisfaction;
- (o) **(deposit money in suspense or other accounts)** invest, deposit or hold the Mortgaged Property in any way that, and for as long as, the Debenture Trustee thinks fit and vary, transpose or reinvest the Mortgaged Property;
- (p) **(pay calls)** pay calls or other money payable in connection with the Mortgaged Property;

- (q) **(recover, protect Mortgaged Property)** do everything the Debenture Trustee thinks necessary to recover or protect the Mortgaged Property;
- (r) **(Insolvency process)** Wind Up any person and participate in any Insolvency of any person (including voting at meetings and appointing proxies);
- (s) **(proceedings generally)** commence, prosecute, defend, discontinue, compromise, accept any arrangement, submit to arbitration and settle proceedings which the Debenture Trustee considers expedient in connection with this document or the Mortgaged Property in or before a Public Authority in the name of the Mortgagor or otherwise;
- (t) **(acquire Securities)** acquire by purchase, subscription or otherwise any Securities;
- (u) **(exchange)** exchange the Mortgaged Property for any other property or rights (with or without giving or receiving any other consideration for the exchange);
- (v) **(surrender Mortgaged Property)** surrender or release any of the Mortgaged Property;
- (w) **(transfer obligations)** effect a novation of or otherwise transfer to any person obligations of the Mortgagor which arise under a Debenture Document or otherwise;
- (x) **(improve Mortgaged Property)** do anything which the Debenture Trustee considers would help improve the value of the Mortgaged Property, obtain income or returns from it or make it saleable or more saleable;
- (y) **(execute documents)** enter into agreements and execute documents itself or on behalf of the Mortgagor for any purpose in connection with a Debenture Document;
- (z) **(raise money, secure)** in the name of the Mortgagor or otherwise:
  - (i) obtain financial accommodation (including from the Debenture Trustee or from a party associated with the Debenture Trustee) or give Guarantees for any purpose which the Debenture Trustee considers expedient in connection with its powers under a Debenture Document; and
  - (ii) secure the payment or repayment of indebtedness relating to any such financial accommodation or Guarantees by a Security Interest over the Mortgaged Property, however it ranks in priority with the Mortgage or any other Collateral Security;
- (aa) **(receipts)** give receipts for money and other property it receives;
- (bb) **(employ and appoint persons)** employ or discharge staff, professional advisers, consultants, contractors, agents or auctioneers for any purpose, and at the remuneration, that the Debenture Trustee thinks fit;
- (cc) **(delegate)** delegate to any person for any time that the Debenture Trustee thinks fit any of the powers of the Debenture Trustee under this document, including this right of delegation;
- (dd) **(Authorisations)** apply for any Authorisation which is necessary or desirable in connection with the exercise of a Power; and
- (ee) **(incidental power)** do anything the Debenture Trustee thinks expedient in its interests and incidental to any of its Powers, without limiting those Powers.

#### 7.4 To discharge or acquire prior Security Interest

- (a) After an Event of Default occurs, the Debenture Trustee may do any one or more of the following:



- (i) purchase a debt secured by a prior Security Interest (including a debt secured by a Permitted Security Interest);
  - (ii) pay the amount required to discharge or satisfy that debt; and
  - (iii) take a transfer or assignment of that Security Interest and any Guarantee, document or right ancillary or collateral to it.
- (b) If the Debenture Trustee exercises its rights under paragraph (a):
- (i) the Mortgagor is indebted to the Debenture Trustee for the same amount paid by the Debenture Trustee or the amount of the debt acquired (whichever is higher) and that debt is immediately payable to the Debenture Trustee and forms part of the Secured Money;
  - (ii) the Debenture Trustee may rely on a written confirmation from the holder of a prior Security Interest, or an ancillary or collateral document, as to the amount and property secured by it;
  - (iii) the person with the benefit of the prior Security Interest need not enquire whether there is any money owing under a Debenture Document; and
  - (iv) the Mortgagor irrevocably directs any person with the benefit of a prior Security Interest to give the Debenture Trustee any information it requires in connection with the prior Security Interest.

## 7.5 To appoint Receivers

After an Event of Default occurs, the Debenture Trustee may do any one or more of the following:

- (a) appoint one or more persons (severally, unless specified otherwise in the instrument of appointment) to be a receiver or receiver and manager of all or any of the Mortgaged Property;
- (b) fix the Receiver's remuneration at an amount agreed between the Debenture Trustee and the Receiver and vary the remuneration;
- (c) terminate a receivership or remove or replace a Receiver; and
- (d) appoint a replacement or additional Receiver.

The power to appoint a Receiver may be exercised even though an order or resolution has been passed for the Liquidation of the Mortgagor, and even though the Receiver may not in all respects act as the Mortgagor's agent.

## 7.6 Notice or lapse of time required before rights exercised

- (a) If notice or lapse of time is required under any statute before the Debenture Trustee can exercise a Power, then that notice or lapse of time is dispensed with.
- (b) Paragraph (a) only applies if the relevant statute allows notice or lapse of time to be dispensed with.
- (c) If the relevant statute does not allow notice or lapse of time to be dispensed with, but allows it to be shortened, then for the purposes of this document, the period of notice or lapse of time is one day.

## 7.7 To give up possession and terminate receivership

The Debenture Trustee may at any time give up possession of the whole or any part of the Mortgaged Property or terminate a receivership, or both.

## 8. Receiver's powers

### 8.1 General

Unless the terms of the Receiver's appointment say otherwise, the Receiver has the following powers over the Mortgaged Property which the Receiver is appointed to deal with:

- (a) all the rights, powers, discretions or remedies given by law to mortgagees in possession, receivers or receivers and managers; and
- (b) all the Powers of the Debenture Trustee under this document and at law (other than the power to appoint Receivers).

The Receiver may exercise these rights and powers in the name of the Mortgagor or otherwise.

### 8.2 Receiver is agent of Mortgagor

To the extent permitted by law, a Receiver is the agent of the Mortgagor and the Mortgagor alone is responsible for the Receiver's acts and defaults. A Receiver may become the agent of the Debenture Trustee if the Debenture Trustee gives a notice to the Receiver in writing to that effect. The Debenture Trustee may appoint a Receiver, even if a resolution or order to Wind Up the Mortgagor has been passed or made and even though the Receiver may not, or may not in some respects, act as the Mortgagor's agent.

## 9. Protection of Debenture Trustee, Receiver and Attorney

To the extent permitted by law, neither the Debenture Trustee nor any Receiver or Attorney is liable in relation to any act or omission on its part in the exercise or non-exercise of any Power nor for any resulting Loss, except where the Debenture Trustee, Receiver or Attorney has committed a breach of trust, is negligent or fraudulent.

## 10. Protection of third parties

### 10.1 Persons dealing not bound to enquire

A person dealing with the Debenture Trustee, a Receiver or an Attorney need not enquire whether:

- (a) there has been a default under a Debenture Document any Secured Money has become due or whether the Receiver or the Attorney has been properly appointed; or
- (b) the Debenture Trustee, Receiver or Attorney has executed or registered an instrument or exercised a Power properly or with authority,

and whenever the Debenture Trustee, a Receiver or an Attorney deals with the Mortgaged Property, that dealing is authorised and valid as far as anyone involved with that dealing is concerned despite any actual or constructive notice to the contrary.

### 10.2 Receipts

The receipt of the Debenture Trustee, a Receiver or an Attorney (or of their Authorised Officer) for any money payable to or asset receivable by it discharges the person paying that money or delivering the asset to the extent of the payment or delivery (as the case may be).

## 11. Power of attorney

### 11.1 Appointment and powers

The Mortgagor for valuable consideration appoints the Debenture Trustee, each Authorised Officer of the Debenture Trustee and each Receiver separately as its attorney to do any one or more of the following on the Mortgagor's behalf and in the name of the Mortgagor or the attorney on the occurrence of an Event of Default:

- (a) prove in the Winding-Up of a Transaction Party;
- (b) anything which the Mortgagor must do under a Debenture Document or under law in connection with a Debenture Document;
- (c) anything which, in the opinion of the attorney, gives effect to a Power or its exercise;
- (d) anything which the attorney considers necessary or expedient for giving effect to or perfecting any Debenture Document; and
- (e) anything which the attorney is expressly empowered to do under this document or another Debenture Document on behalf of the Mortgagor,

including executing any documents, and the Mortgagor agrees to ratify anything done by an attorney under this power of attorney.

### 11.2 Attorney may delegate powers

Subject to the Debenture Trust Deed, an attorney appointed under this document may delegate its powers (including the power to delegate) to any person for any period and may revoke the delegation.

### 11.3 Purpose

The power of attorney created under this clause is irrevocable and is granted to secure the performance by the Mortgagor of the Mortgagor's obligations under each Debenture Document to which it is a party.

## 12. Deposited documents

Any document deposited with the Debenture Trustee by the Mortgagor or on its behalf, including any transfer in blank, may be completed, dealt with and given effect to on enforcement of this document without any further act on the part of the Mortgagor.

## 13. Mortgagor's obligations - performance by Debenture Trustee

The Debenture Trustee may do anything which the Mortgagor must do under this document but does not do or does not do to the Debenture Trustee's satisfaction. This does not limit or exclude the Debenture Trustee's powers in any way.

## 14. Notices and demands

### 14.1 How given

- (a) Subject to paragraph (b), a notice, request, demand, approval, consent or other communication (Notice) given by a party in connection with this document:
  - (i) must be given by the party or an Authorised Officer of the party or, in the case of a Notice given by the Debenture Trustee, may be given by a solicitor or other lawyer acting for the Debenture Trustee;

- (ii) must be in writing and in English;
  - (iii) must be left at the address of the addressee, or sent by prepaid ordinary post (airmail if posted to or from a place outside Australia) to the address of the addressee or sent by facsimile to the facsimile number of the addressee as specified in the notice details for that party in this document or any alternative address notified by the party.
- (b) Paragraph (a) does not limit any method of giving notices or serving demands provided for by statute or in another Debenture Document.

## 14.2 Validity

A Notice is validly given even if:

- (a) the Mortgagor has been Wound Up or the Mortgagor is absent from the place the Notice is left at, or delivered or sent to; or
- (b) the Notice is returned unclaimed.

## 14.3 Effect

Unless a later time is specified in it, a Notice takes effect from the time it is received.

## 14.4 Deemed receipt

A Notice is taken to be received:

- (a) in the case of a posted Notice, on the third Business Day after posting for domestic mail and seventh Business Day after posting for international mail; and
- (b) in the case of facsimile, on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient,

but if the delivery or receipt is on a day which is not a business day in the place of delivery or receipt or is after 4.00pm (addressee's time), it is taken to be received at the commencement of business on the next day which is a business day in that place.

# 15. Preserving the Debenture Trustee's Powers

## 15.1 Preservation

- (a) The fact that the Debenture Trustee or a Receiver exercises, does not exercise, or delays the exercise of, any Power does not affect, or constitute a representation in relation to, the Power or any other Power.
- (b) Without limiting paragraph (a), the fact that the Debenture Trustee or a Receiver exercises a Power does not prevent the Debenture Trustee or Receiver from exercising that Power again.
- (c) Unless expressly provided in a Debenture Document, no Power nor any Debenture Document merges in, adversely affects or is adversely affected by any other Power or Debenture Document or any Security Interest, judgment or remedy which the Debenture Trustee or a Receiver (or anyone claiming through either of them) may have or obtain.

## 15.2 No obligation to exercise rights or give consent

Each of the Debenture Trustee and a Receiver may:

- (a) exercise or not exercise any Power;

- (b) give or not give its consent; and
- (c) make or not make a decision,

under this document in its absolute discretion, unless this document expressly provides otherwise. A consent given by the Debenture Trustee or a Receiver subject to conditions does not take effect until the conditions are complied with to the satisfaction of the Debenture Trustee or Receiver.

### 15.3 Powers

- (a) The Powers provided by the Debenture Documents are cumulative and not exclusive of any other rights, powers, discretions or remedies provided by law.
- (b) Where a Power under the Debenture Documents is inconsistent with a Power at law, the Debenture Documents prevail to the extent permitted by law. A Power at law is not inconsistent with the Debenture Documents merely because it is more extensive than a similar Power in the Debenture Documents or because there is no similar Power in the Debenture Documents.

### 15.4 Choice of securities and Guarantees

The Debenture Trustee need not resort to any Security Interest, Guarantee or any other Power before resorting to any other of them.

### 15.5 Indemnities generally

- (a) Each indemnity in the Debenture Documents:
  - (i) is absolute and unconditional;
  - (ii) is a continuing obligation despite any settlement of account or the occurrence of any other thing;
  - (iii) must be discharged without set-off, deduction, abatement, counterclaim, suspension or deferment;
  - (iv) constitutes a separate and independent obligation of the party giving the indemnity from its other obligations under the Debenture Documents; and
  - (v) survives termination of any Debenture Document.
- (b) It is not necessary for the Debenture Trustee or a Receiver to incur an expense or make a payment before enforcing a right of indemnity conferred by a Debenture Document.

### 15.6 Consent and waivers

A consent or waiver by the Debenture Trustee or a Receiver is effective only if in writing. If given subject to conditions, the consent or waiver only takes effect when the conditions are complied with to the Debenture Trustee or Receiver's satisfaction.

### 15.7 Avoidance of transaction

If any payment or other transaction relating to the Secured Money is void, voidable, unenforceable or defective or is claimed to be so (each an **Avoidance of Payment**) and that claim is upheld or settled then:

- (a) the liability of the Mortgagor under each Debenture Document and each Power will be what it would have been but for the Avoidance of Payment; and
- (b) the Mortgagor must immediately execute all documents and do all other things necessary or required by the Debenture Trustee to restore the Debenture Trustee to the position it

was in immediately before the Avoidance of Payment (including reinstating any Debenture Document),

even if the Debenture Trustee knew or ought to have known that the payment or transaction was void, voidable, unenforceable or defective. This clause survives any termination or full or partial discharge or release of any Debenture Document.

### **15.8 Effect of release**

A full or partial release of this Mortgage by the Debenture Trustee does not release the Mortgagor from personal liability under this document until the Debenture Trustee receives the Secured Money, regardless of any:

- (a) receipt given, payout figure quoted or other form of account stated; or
- (b) error or miscalculation by the Debenture Trustee.

### **15.9 Moratorium legislation**

A moratorium does not apply to a Debenture Document or the recovery of the Secured Money except if:

- (a) the Debenture Trustee agrees in writing that it does; or
- (b) it cannot be excluded by law.

## **16. Other provisions**

### **16.1 Notification from Mortgagor**

If the Mortgagor is required under this document to notify the Debenture Trustee about anything, it must do so in writing.

### **16.2 Debenture Trustee may set off**

Without any demand or notice, the Debenture Trustee may, if an Event of Default is subsisting, set off and apply indebtedness it owes to the Mortgagor (whatever the currency) against any money owing to it by any Transaction Party under any Debenture Document:

- (a) whether the amount owed by the Debenture Trustee or the Transaction Party is owed by it alone or with any other person; and
- (b) whether or not the amount owed by the Debenture Trustee or the Transaction Party is immediately payable.

The Mortgagor irrevocably authorises the Debenture Trustee to do anything necessary (including to sign any document and effect appropriate currency exchanges) for that purpose.

### **16.3 Mortgagor may not set off**

The Mortgagor may not (either directly or indirectly) claim, exercise or attempt to exercise a right of set-off or counterclaim against the Debenture Trustee (whether the right is the Mortgagor's or any other person's) or any other right which might have the effect of reducing the Secured Money.

### **16.4 Notices or demands as evidence**

A notice or certificate from or demand by the Debenture Trustee stating:

- (a) that a specified sum of money is owing or payable under a Debenture Document;
- (b) that an Event of Default has occurred; or

- (c) any other fact or determination relevant to the rights or obligations of the Debenture Trustee or the Mortgagor under a Debenture Document,

is taken to be correct unless the contrary is proved.

### **16.5 Severability**

- (a) A construction of a Debenture Document that results in all provisions being enforceable and effective is to be preferred to a construction that does not.
- (b) If, despite the application of paragraph (a), a provision of a Debenture Document is illegal, unenforceable or ineffective, then the provision will be inoperative, but only to the extent to which, and during such time as, it is illegal, unenforceable or ineffective and the remainder of the Debenture Document will continue in force.
- (c) To the extent permitted by law, the Mortgagor will use its best endeavours (including by obtaining any necessary Authorisation) to include within the scope of clauses 2 and 3 any obligation or property which is within the scope of the definition of Secured Money or Mortgaged Property but with respect to which either clause is deemed inoperative under paragraph (b).

### **16.6 Variation of agreement**

A variation of a Debenture Document must be in writing and signed by or on behalf of each party to it.

### **16.7 Authorised Officers and communications**

The Mortgagor irrevocably authorises the Debenture Trustee to rely on:

- (a) a certificate by any person purporting to be a director or secretary of the Mortgagor as to the identity and signatures of its Authorised Officers. The Mortgagor warrants that its Authorised Officers have been authorised to give notices and communications under or in connection with the Debenture Documents; and
- (b) any notice or other document contemplated by any Debenture Document which bears the purported signature (whether given by facsimile or otherwise) of an Authorised Officer of the Mortgagor.

### **16.8 Receipt of money and application**

The provisions of clause 4 of the Debenture Trust Deed shall apply in relation to money received by the Debenture Trustee under or in connection with this document.

### **16.9 Surplus proceeds**

If surplus money remains in the hands of the Debenture Trustee, Receiver, Attorney or an External Administrator after payment of all the Secured Money (and satisfaction of any obligation ranking in priority to the Secured Money or secured by a Security Interest):

- (a) no trust arises over that surplus money; and
- (b) that surplus money does not carry interest and the Debenture Trustee, Receiver, Attorney or External Administrator must pay it to an account in the name of the Mortgagor (whether or not opened by the Debenture Trustee or External Administrator for that purpose). The Debenture Trustee or External Administrator is then no longer liable for the surplus money.

**16.10 Credit of available funds**

In applying money received by the Debenture Trustee towards the satisfaction of the Secured Money:

- (a) the account of the Mortgagor will be credited with only so much of the money available for the purpose as is actually received by the Debenture Trustee and not credited to a suspense account; and
- (b) the credit will date from the time of receipt (as determined by the Debenture Trustee).

**16.11 Tacking**

For the purpose of applying section 282 of the *Corporations Act 2001* (Cth), if a Stockholder is obliged to make further advances under a Debenture Document, that Debenture Document is taken to be incorporated in this document so that this document imposes on the Stockholder an obligation to advance that money.

**16.12 Payments after notice of subsequent Security Interests**

- (a) Any legal rule to the effect that the earliest payment into an account is deemed to be the first to be withdrawn or that the earliest debit is deemed to be the first to be extinguished will not, to the extent legally possible, apply to reduce the amount of the Secured Money for which the Debenture Trustee may claim priority as against the holder of any other Security Interest.
- (b) To the extent that a legal rule of the type described in paragraph (a) is applicable and will have the effect described in that paragraph, any money forming part of the Secured Money which is received by the Debenture Trustee will be applied (or deemed to have been applied) progressively in reduction of later debits, beginning with the latest debit.

**16.13 Debenture Trustee may assign rights**

- (a) The Debenture Trustee may assign its rights under this document without the consent of the Mortgagor. If it does so, the Secured Money will include all liabilities of the Mortgagor to the assignee which are within the scope of the definition whether or not the liabilities arose or were contemplated before the date of the assignment.
- (b) Subject to the Debenture Documents, the Debenture Trustee may disclose to a potential assignee any information provided to the Debenture Trustee by the Mortgagor which it considers appropriate.

**16.14 Governing law and jurisdiction**

- (a) This document is governed by the laws of Victoria.
- (b) The Mortgagor irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria. The Mortgagor waives any right it has to object to an action being brought in those courts, including by claiming that the action has been brought in an inconvenient forum or that those courts do not have jurisdiction.

**16.15 Debenture Trustee need not execute**

This document is enforceable by the Debenture Trustee even if the Debenture Trustee does not execute it.

**16.16 Attorneys**

Each attorney signing this document under a power of attorney certifies, by the attorney's signature, that the attorney has no notice of the revocation of the power of attorney.



**16.17 Counterparts**

This document may be executed in any number of counterparts. Each counterpart constitutes an original of this document, all of which together constitute one instrument. A party who has executed a counterpart of this document may exchange it with another party by faxing, or by emailing a pdf (portable document format) copy of, the executed counterpart to that other party, and if requested by that other party, will promptly deliver the original by hand or post. Failure to make that delivery will not affect the validity of this document.

# Signing page

**EXECUTED** as a deed

Signed sealed and delivered by  
KATHERINE JUDITH GOVE  
as attorney for **Replay Investments Pty Ltd**  
as trustee for the **Replay Unit Trust** under  
power of attorney dated **18 November 2008**

in the presence of

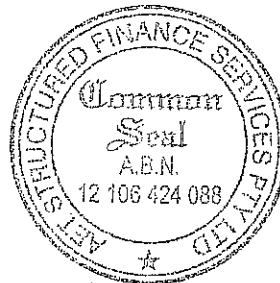
Signature of witness

**JAMES THOMAS CREECH**  
Solicitor of the Supreme Court  
of New South Wales  
Aurora Place  
88 Philip Street  
Sydney

Name of witness (print)

Attorney

The common seal of **AET Structured Finance Services Pty Limited** is duly affixed to this document by authority of its directors in the presence of



Signature of authorised person

**Philip John Walter Joseph**

Name of authorised person and office held (print)

Signature of authorised person

**Glenn David White**

Name of authorised person and office held (print)

**ACN 099 Mortgage of Marketable Securities**

This is **Annexure D** of 29 pages referred to in form 603 (Notice of initial substantial holder) given by Brookfield International Finance Australia Pty Ltd in relation to THG (ACN 054 346 315)

print name

**Neil Olofsson**

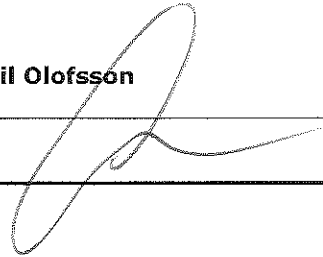
capacity

Company secretary

sign here

date

19 April 2012

A handwritten signature in black ink, appearing to read 'Neil Olofsson', is written over a horizontal line. The signature is stylized with a large loop at the beginning and a long horizontal stroke extending to the right.

Execution Version

# Mortgage of Marketable Securities

ACN 099

---

ACN 101 806 099 Pty Ltd (**Mortgagor**)

AET Structured Finance Services Pty Limited (**Debenture  
Trustee**)

MinterEllison

L A W Y E R S

AURORA PLACE, 88 PHILLIP STREET, SYDNEY NSW 2000, DX 117 SYDNEY  
TEL: +61 2 9921 8888 FAX: +61 2 9921 8123  
[www.minterellison.com](http://www.minterellison.com)

# Mortgage of Marketable Securities

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**Signing page**

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## Details

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Date      1 December      2008

## Parties

Name	<b>ACN 101 806 099 Pty Ltd</b>
ACN	101 806 099
Short form name	<b>Mortgagor</b>
Notice details	Thakral House, Level 12, 301 George Street, Sydney NSW 2000 Facsimile: (02) 9272 8741 Attention: Manjit Singh Gill
	with a copy to:
	Pasricha & Gove, Level 16, 390 St. Kilda Road, Melbourne, Vic 3004
	Facsimile: (03) 9866 5335
	Attention: Katherine Gove

Name	<b>AET Structured Finance Services Pty Limited</b>
ABN	12 106 424 088
Short form name	<b>Debenture Trustee</b>
Notice details	Level 22, 207 Kent Street, Sydney NSW 2000 Facsimile: (02) 9028 5942 Attention: Glenn White

## Background

This document sets out the terms on which the Mortgagor grants a legal mortgage of the Mortgaged Property to the Debenture Trustee as security for the payment of the Secured Money.



# Agreed terms

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## 1. Defined terms & interpretation

### 1.1 Debenture Trust Deed defined terms

Terms defined in the Debenture Trust Deed or incorporated by reference in the Debenture Trust Deed shall, unless otherwise defined herein, bear the same meanings herein.

### 1.2 Defined terms

In this document:

**Attorney** means an attorney appointed under a Collateral Security.

**Authorisation** includes:

- (a) any consent, authorisation, registration, filing, agreement, notarisation, certificate, permission, licence, approval or exemption from, by or with a Public Authority; or
- (b) in relation to anything which is prohibited or restricted by law if a Public Authority takes certain action within a specified period, the expiry of that period without the Public Authority taking that action.

**Authorised Officer** means:

- (a) in respect of the Mortgagor, a person appointed by the Mortgagor and notified to the Debenture Trustee to act as its Authorised Officer for the purposes of the Debenture Documents (the notice must be signed by the secretary or a director of the Mortgagor and be given to the Debenture Trustee with a specimen signature of the person); and
- (b) in respect of the Debenture Trustee, a person holding or acting in the office of director, chief executive or secretary, or whose title includes the word '*Manager*', '*Director*', '*Chief*', '*Head*' or any person notified to each Stockholder and the Mortgagor to act as its Authorised Officer for the purposes of the Debenture Documents.

**Collateral Security** means each present or future Security Interest, Guarantee or other document or agreement created or entered into with the Debenture Trustee (in its capacity as such) as security (directly or indirectly) for the payment of the Secured Money or the performance by the Mortgagor of any of its obligations to a Secured Party under a Debenture Document. It includes each Security.

**Debenture Documents** has the meaning given to it in the Debenture Trust Deed and includes, without limitation:

- (a) this document;
- (b) each Subscription Agreement;
- (c) the Debenture Trust Deed; and
- (d) each Collateral Security.

**Debenture Trust Deed** means the debenture trust deed dated 9 July 2004 between the Mortgagor and the Debenture Trustee.

**Dollars and \$** means Australian dollars.

**Event of Default** means an 'Event of Default' as defined under any Subscription Agreement, any other event so described in a Debenture Document or any event which entitles the Debenture Trustee or any other Secured Party under any Debenture Document to accelerate the time for payment of any Secured Money or to terminate any obligation to provide funding to the Issuer.

**External Administrator** means an administrator, receiver, receiver and manager, trustee, provisional liquidator, liquidator or any other person (however described) holding or appointed to an analogous office or acting or purporting to act in an analogous capacity.

**GST** has the meaning given to it in the GST Act.

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

**Insolvency** of an entity includes:

- (a) the Winding Up of an entity;
- (b) the appointment of an External Administrator to the person; and
- (c) any composition, compromise, arrangement, merger, amalgamation, reconstruction (other than a solvent reconstruction), administration, assignment for the benefit of creditors or insolvency of, by, or adversely affecting the person and any procedure which is equivalent or analogous in any jurisdiction.

**Loss** means a loss, claim, action, damage, liability, cost, charge, expense, penalty, compensation, fine, outgoing or payment suffered, paid or incurred.

**Marketable Security** means:

- (a) a marketable security as defined in the *Corporations Act*;
- (b) a negotiable instrument; and
- (c) a unit or other interest in a trust or partnership.

**Mortgage** means the mortgage created under this document.

**Mortgaged Property** means all present and future Securities, Rights and Proceeds and any certificate or other evidence of ownership of the Mortgaged Property.

**Permitted Security Interest** has the meaning given to it in a Subscription Agreement.

**Potential Event of Default** means any event, thing or circumstance which with the giving of notice or passage of time or both would become an Event of Default.

**Power** means any right, power, discretion or remedy of the Debenture Trustee, a Receiver or an Attorney under any Debenture Document or applicable law.

**Proceeds** means all money (in whatever currency) payable to the Mortgagor or to which the Mortgagor is entitled (whether alone or with any other person) on any account or in any way whatever under or in connection with the Securities and Rights, including distributions, dividends, bonuses, return of capital, interest and all proceeds of sale, redemption or disposal.

**Receiver** means a receiver or receiver and manager appointed under a Collateral Security. When two or more persons are appointed, the expression 'Receiver' refers to each of those persons severally as well as to two or more of them jointly.

**Records** means all the information which relates in any way to a specified person's business or any transaction entered into by the person, whether the information is recorded electronically, magnetically or otherwise.

**Rights** means:

- (a) rights to acquire Marketable Securities arising because the Mortgagor has an interest in the Securities;
- (b) any other rights of the Mortgagor of any kind in connection with the Securities, including:
  - (i) in relation to any payment, repayment, debt, dividend, profit, interest, benefit, privilege, bonus or distribution; and
  - (ii) those resulting from any allotment, offer, substitution, conversion, consolidation, reclassification, redemption, reconstruction, amalgamation, subdivision, reduction of capital, Winding Up or scheme of arrangement.

**Secured Money means:**

- (a) all money that the Mortgagor or a Transaction Party now owes or in the future may come to owe, actually or contingently, for any reason, to one or more of the Stockholders or to any combination of Stockholders in connection with any Stock; and
- (b) all money that the Mortgagor or a Transaction Party now owes or in the future may come to owe, actually or contingently, for any reason, to a Secured Party on any account under or in connection with a Debenture Document,

and includes all or part of the Secured Money. Where the Mortgagor or a Transaction Party would have owed money but for its Winding Up, it will be taken still to owe that money.

**Securities means:**

- (a) stapled securities comprising:
  - (i) fully-paid ordinary shares in the capital of THL; and
  - (ii) fully-paid non-voting units in THT which are stapled to the shares specified in paragraph (i);
- (b) Marketable Securities:
  - (i) that the Mortgagor deposits (or which are deemed to be deposited under s262(6) of the Corporations Act) with the Debenture Trustee;
  - (ii) resulting from any allotment, offer, substitution, conversion, consolidation, reclassification, redemption, reconstruction, amalgamation, subdivision or any scheme of arrangement of or in relation to any Securities;
  - (iii) acquired by the Mortgagor, or to which the Mortgagor becomes entitled, because the Mortgagor holds the Securities; and
  - (iv) that the parties otherwise designate as Mortgaged Property for the purposes of this document.

**Subscription Agreement** has the meaning given to it in the Debenture Trust Deed.

**THG** means Thakral Holdings Group, which is comprised of THL and THT.

**THL** means Thakral Holdings Limited ACN 054 346 315.

**THT** means Thakral Holdings Trust ABSN 092 850 827.

**Transaction Party** means the Mortgagor, the Issuer and any other person providing a Collateral Security.

**Winding Up** includes:

- (a) dissolution, liquidation, provisional liquidation and bankruptcy; and

- (b) any analogous or equivalent procedure in any jurisdiction.

### **1.3 Interpretation**

Clause 1.2 of the Debenture Trust Deed is incorporated into this document with any necessary amendments.

### **1.4 Subsisting Events of Default**

An Event of Default or Potential Event of Default is 'subsisting' if it has not been either remedied or waived in accordance with the relevant Debenture Document.

### **1.5 Certified copies of documents**

The Debenture Trustee may require any copy of a document provided or to be provided to it under this document to be certified as a true and complete copy by a director or secretary of the Mortgagor.

### **1.6 Things required to be done on a Business Day**

If anything (other than the making of a payment) is required by this document to be done on or by a day which is not a Business Day, then it must be done on or by the next following Business Day.

### **1.7 Incorporation of provisions from Debenture Trust Deed**

Clause 3.6 of the Debenture Trust Deed is incorporated in and applies to this document as if set out in full in this document, with any necessary changes.

### **1.8 Debenture Document for the purposes of the Debenture Trust Deed**

This document is a Security and a Collateral Security and also a Debenture Document for the purposes of the Debenture Trust Deed.

## **2. Mortgage**

### **2.1 Creation**

The Mortgagor:

- (a) mortgages the Mortgaged Property in favour of the Debenture Trustee as security for the due and punctual payment of the Secured Money; and
- (b) as legal and beneficial owner absolutely assigns to the Debenture Trustee all its interest and rights in the Mortgaged Property as security for the due and punctual payment of the Secured Money;

The Mortgage is a first legal mortgage and ranks ahead of all other Security Interests.

### **2.2 Continuing security and discharging the Mortgage**

- (a) The Mortgage is a continuing security. It remains in effect until the Debenture Trustee gives a final discharge to the Mortgagor.
- (b) The Mortgagor is only entitled to a final discharge and reassignment if:
  - (i) all of the Secured Money has been irrevocably paid in full and all commitments which might give rise to Secured Money have terminated; and
  - (ii) the Debenture Trustee is satisfied that there are no amounts which will subsequently fall within the description of the Secured Money due to an Avoidance of Payment (as defined in clause 15.7),

at which time the Debenture Trustee will reassign the Mortgaged Property to the Mortgagor at the request and cost of the Mortgagor. In satisfying itself under paragraph (ii), the Debenture Trustee may consider any matters it thinks relevant, including the possibility that a payment to reduce the Secured Money might be repayable, void or voidable under a law relating to insolvency or protection of creditors.

### **2.3 Priority amount - maximum prospective liability**

The nature of the 'prospective liability' (as defined in section 261(1) of the Corporations Act) secured by the Mortgage is advances, interest, fees, costs, indemnities and any other Secured Money. The maximum prospective liability secured by the Mortgage is \$520,000,000 or its equivalent, as may be varied from time to time by the Debenture Trustee lodging, on the Mortgagor's behalf, a notice under section 268(2) of the Corporations Act. Any maximum prospective liability amount and this clause apply only to fix priority under section 282(3) of the Corporations Act and do not in any way fix a limit on the amount which may be secured by or recoverable under this document.

## **3. Payment obligations**

### **3.1 Secured Money**

The Mortgagor must pay the Secured Money (free from any deduction, set-off or counterclaim) to or as directed by the Debenture Trustee:

- (a) at the times and in the way specified in the Debenture Documents; and
- (b) otherwise, immediately on demand,

in the currency in which it is owed.

### **3.2 Payments to be on a Business Day**

Subject to any other Debenture Document, if a payment under this document falls due on a day that is not a Business Day, it must be paid on the next Business Day, unless that Business Day falls in the next calendar month in which case the payment must be made on the preceding Business Day.

### **3.3 Costs and expenses**

Subject to any contrary agreement between the parties, the Mortgagor must immediately pay or reimburse on demand all costs and expenses of:

- (a) each Secured Party, a Receiver or an Attorney (and any of their respective officers, employees and agents) relating to or in connection with:
  - (i) the negotiation, preparation, execution, delivery, registration and completion of, and payment of Taxes on, the Debenture Documents;
  - (ii) any variation or discharge of any Debenture Document;
  - (iii) the exercise, enforcement, protection or waiver, or attempted exercise, enforcement or protection, of any Debenture Document or Power;
  - (iv) obtaining or receiving payment of any of the Secured Money and its distribution;
  - (v) an Event of Default or Potential Event of Default;
  - (vi) any payment required under a Debenture Document not being made on its due date;

- (vii) any Secured Money (or money which would be Secured Money if it were recoverable) not being recoverable from the Mortgagor or a Transaction Party, or a liability or obligation to pay the Secured Money under a Debenture Document not being enforceable against the Mortgagor or Transaction Party;
  - (viii) the giving by it of a consent or approval in connection with a Debenture Document;
  - (ix) any enquiry by a Public Authority concerning a Transaction Party or the involvement of the Debenture Trustee in a Debenture Document;
  - (x) maintaining, preserving or protecting the Mortgaged Property;
  - (xi) surveying, valuing, inspecting or reporting on the Mortgaged Property; and
  - (xii) obtaining advice from a professional person or consultant about any matter of concern to the Debenture Trustee, a Receiver or an Attorney in connection with a Debenture Document;
- (b) the Debenture Trustee relating to fees payable to it in its capacity as Debenture Trustee and custodian as agreed by letter dated 25 November 2008; and
- (c) the Debenture Trustee or the Subscribers relating to fees payable to the Debenture Trustee under the Debenture Documents,

including any legal costs and expenses (on a full indemnity basis), any professional consultant's fees (including professional tax consultants) and the costs (calculated on a time employed basis) of in-house legal counsel;

### **3.4 Mortgagor to pay Taxes**

The Mortgagor must pay, or immediately on demand reimburse the Debenture Trustee, for, all Taxes, fees and charges which may be payable or determined to be payable by the Debenture Trustee in connection with any Debenture Document or a payment, receipt, supply of goods or services or other transaction contemplated by or carried out under or pursuant to any Debenture Document, including Taxes passed onto the Debenture Trustee by another financial institution or supplier of goods and services.

### **3.5 Fines and penalties**

The Mortgagor must pay all fines and penalties for late payment or non-payment of the Taxes referred to in clause 3.4 except where the Mortgagor places the Debenture Trustee in cleared funds to make the payment not less than 10 Business Days prior to the due date and the Debenture Trustee fails to make the payment.

### **3.6 Indemnity**

The Mortgagor must immediately indemnify the Debenture Trustee and each other Secured Party on demand against, and must pay to the Debenture Trustee on demand amounts equal to, any Loss which the Debenture Trustee, each other Secured Party, a Receiver or an Attorney determines will or has been (directly or indirectly) suffered by the Debenture Trustee, each other Secured Party, a Receiver or an Attorney (and, , any of their respective officers, employees and agents) as a result of or in connection with:

- (a) any Tax in respect of this document or a transaction or payment under this document;
- (b) an indemnity given by the Debenture Trustee to a Receiver or administrator of the Mortgagor;
- (c) the occurrence of an Event of Default or Potential Event of Default;

- (d) a Winding-Up in relation to the Mortgagor or another Transaction Party;
- (e) any Environmental Liability;
- (f) any payment required under a Debenture Document not being made on its due date;
- (g) any Secured Money (or money which would be Secured Money if it were recoverable) not being recoverable from the Mortgagor or a Transaction Party, or a liability or obligation to pay the Secured Money under a Debenture Document not being enforceable against the Mortgagor or Transaction Party;
- (h) the Mortgaged Property or the exercise or attempted exercise of any Power;
- (i) the Debenture Trustee acting or relying in good faith on any notice or other communication from, or genuinely believed to be from, the Mortgagor; or
- (j) the Debenture Trustee relying on information supplied by or on behalf of the Mortgagor which proves to be a misrepresentation or to be misleading or deceptive (including by omission of other information),

including any legal costs and expenses (on a full indemnity basis), any professional consultant's fees in connection with the above.

### **3.7 Mortgagor's liabilities not affected**

The Mortgagor's liabilities under this document are not affected by any act, omission or other thing which would reduce or discharge those liabilities, including:

- (a) a Secured Party granting time or any other indulgence or concession to a Transaction Party or any other person;
- (b) a Secured Party increasing the amount of, opening further accounts in connection with or otherwise varying or replacing the type or terms of, financial accommodation provided to a Transaction Party or any other person;
- (c) any transaction or agreement, or variation, novation or assignment of a transaction or agreement (including any Debenture Document), between a Secured Party and a Transaction Party or any other person;
- (d) an Insolvency in relation to a Transaction Party or any other person, or a Secured Party becoming a party to or bound by any Insolvency;
- (e) any judgment, proceedings or order being obtained or made against a Transaction Party or any other person;
- (f) an obligation of a Transaction Party or any other person or any provision of a Debenture Document being void, voidable, unenforceable, defective, released, waived, impaired, novated, enforced or impossible or illegal to perform;
- (g) the whole or partial discharge or release of, or the granting of, a Security;
- (h) any Secured Money not being recoverable or the liability of a Transaction Party or any other person to a Secured Party ceasing (including as a result of giving a release or discharge or by law);
- (i) the failure of a Transaction Party or any other person to execute any Debenture Document, properly or at all;
- (j) the Mortgagor not being a party to a Debenture Document (such as a Debenture Document solely between the Debenture Trustee and a Transaction Party);

- (k) a Secured Party exercising or not exercising its rights (including any right to elect to terminate a contract) under a Debenture Document or at law against a Transaction Party or any other person;
  - (l) any default, misrepresentation, negligence, breach of contract, misconduct, acquiescence, delay, waiver, mistake, failure to give notice or other action or inaction of any kind (whether or not prejudicial to the Mortgagor) by a Secured Party or any other person;
  - (m) any change to, or in the membership of, any partnership, joint venture or association; or
  - (n) any Mortgaged Property being destroyed, forfeited, extinguished, surrendered or resumed,
- whether or not the Mortgagor, a Transaction Party, a Secured Party or any other person is aware of it or consents to it and despite any legal rule to the contrary.

### 3.8 Exclusion of subrogation and other rights

The Mortgagor must not (either directly or indirectly):

- (a) claim, exercise or attempt to exercise a right of set-off or counterclaim or any other right or raise any defence which might reduce or discharge the Mortgagor's liability under this document;
- (b) claim or exercise a right of subrogation, marshalling or contribution or claim the benefit of a Security; or
- (c) unless expressly permitted in a Debenture Document or the Debenture Trustee has given a direction to do so (in which case it must do so in accordance with the direction as trustee for the Debenture Trustee):
  - (i) prove, claim or vote in, or receive the benefit of a distribution, dividend or payment arising out of, the Insolvency of a Transaction Party; or
  - (ii) demand, or accept payment of, any money owed to the Mortgagor by a Transaction Party.

### 3.9 Prove in Liquidation

- (a) The Mortgagor, for valuable consideration, irrevocably appoints each of the Debenture Trustee and its Authorised Representatives separately as its attorney to prove in the Insolvency of a Transaction Party for all money that the Mortgagor can claim against that person on any account whatever. The terms of appointment are that:
  - (i) the attorney must pay to the Mortgagor dividends it receives in excess of the Secured Money, without interest, and any other dividends must be paid to the Debenture Trustee; and
  - (ii) the attorney may delegate its powers (including the power to delegate) to any person for any period and may revoke the delegation.
- (b) The Mortgagor agrees to ratify anything done by an attorney under this clause. The power of attorney created under this clause is granted to secure the Mortgagor's performance of its obligations under each Debenture Document to which it is a party.

### 3.10 Default interest

- (a) The Mortgagor must immediately on demand pay to the Debenture Trustee interest on any of the Secured Money which is due and payable by it and not paid.
- (b) Unless another Debenture Document provides otherwise, interest payable under paragraph (a) is calculated on a daily basis:



- (i) up to (but excluding) the date of actual payment from and including the due date or (in the case of an amount payable by way of reimbursement or indemnity) the date of disbursement or Loss, if earlier (**Calculation Date**); and
- (ii) at the rate (**Default Rate**) determined by the Debenture Trustee as at the Calculation Date, and then at monthly intervals, as the higher of:
  - (A) if the Mortgagor's liability is the subject of a judgment or order, the rate payable under that judgment or order; and
  - (B) the sum of 2% per annum and the Debenture Trustee's cost of funding the overdue amount.
- (c) If the Mortgagor's liability under a Debenture Document is the subject of a judgment or order, the obligation to pay interest under this clause is an obligation separate from the judgment or order and will subsist despite the making of the judgment or order and the interest accrues both before and after judgement at the higher of the rate determined under paragraph (b) and the rate payable under that judgment or order.
- (d) Unless another Debenture Document provides otherwise, interest payable under this clause that has not been paid may be capitalised at intervals of not less than one month as determined by the Debenture Trustee from time to time. Capitalised interest will itself bear interest (calculated on a daily basis) at the Default Rate from and including the date of capitalisation up to the date of actual payment.
- (e) The Mortgagor must pay to the Debenture Trustee accrued interest under this clause 3.10 on the last Business Day of each calendar month on demand.

### 3.11 Deduction or withholding required

If the Mortgagor must deduct or withhold Taxes from a payment to the Debenture Trustee, it must:

- (a) make that deduction and/or withholding, pay to the appropriate Public Authority an amount equal to the full amount deducted and/or withheld as required by law and give the Debenture Trustee a receipt for the payment; and
- (b) increase its payment to the Debenture Trustee to an amount which will result in the Debenture Trustee receiving at the time the payment is due (after deduction or withholding of any Taxes in respect of the increased payment) the full amount which it would have received if no deduction or withholding had been required.

### 3.12 Payments and receipts in foreign currency

If for any reason the Debenture Trustee receives or recovers any amount (**Paid Amount**) under or in relation to a Debenture Document in a currency other than the currency in which it is payable under the Debenture Document (**Agreed Currency**), the amount which the Debenture Trustee will be taken to have received or recovered for the purposes of the Debenture Documents will be the Agreed Currency amount to which the Debenture Trustee could have converted the Paid Amount in accordance with its normal procedures at the time of the receipt or recovery less the costs of the conversion.

### 3.13 GST

- (a) Notwithstanding any other provision in this document, any amount payable to the Debenture Trustee under the Debenture Documents does not include any GST. Terms defined in the GST Act have the same meaning in this document.

- (b) To the extent that any supply under or in connection with this document made or incurred, by the Debenture Trustee constitutes a taxable supply, the consideration payable will automatically be increased to include an additional amount on account of GST. That amount will be the product of the value of the consideration for the supply and the prevailing GST rate. The Debenture Trustee will provide the Mortgagor with a tax invoice complying with the GST Act in respect of any supply made by the Debenture Trustee to the Mortgagor.

## 4. Warranties and undertakings

### 4.1 Representations and warranties

- (a) The Mortgagor represents and warrants to the Debenture Trustee (and for the benefit of the other Secured Parties) that all of its representations and warranties in the Debenture Documents are true and correct (or if not yet made, will be true and correct when made).
- (b) The Mortgagor represents and warrants to the Debenture Trustee (and for the benefit of the other Secured Parties) that as at the date of this Mortgage it has no property other than property located in Victoria for the purposes of any Australian State or Territory stamp duty law.
- (c) The Mortgagor repeats each representation and warranty in this clause 4.1 with reference to the facts and circumstances at the time when representations and warranties are repeated in a Subscription Agreement.
- (d) The Mortgagor acknowledges that:
  - (i) the Debenture Trustee has, and each other Secured Party has, entered into the Debenture Documents in reliance on the representations and warranties in this clause 4.1; and
  - (ii) those representations and warranties survive execution and delivery of the Debenture Documents and the provision of financial accommodation under them.

### 4.2 Mortgagor undertakings

The Mortgagor must:

- (a) **(Secured Money)** pay the Secured Money at the times and in the way specified in the Debenture Documents, or otherwise on demand;
- (b) **(other obligations)** fully and punctually perform all of its obligations under each Debenture Document to which it is a party at the time and in the manner specified in the relevant Debenture Document;
- (c) **(no Event of Default)** ensure that no Event of Default occurs;
- (d) **(no set-off)** not directly or indirectly claim, exercise or attempt to exercise a right of set-off or counterclaim (whether its or any other person's right) against the Debenture Trustee;
- (e) **(compliance with laws)** comply with all laws and requirements of Government Agencies in respect of the Mortgaged Property, and ensure that any person occupying or using the Mortgaged Property does the same;
- (f) **(comply with other interests)** comply with the terms of each Security Interest binding on it in respect of the Mortgaged Property from time to time;
- (g) **(maintain value)** not do, allow or omit anything which is likely to lower the value of the Mortgaged Property.

### 4.3 Dealing with Mortgaged Property

Subject to any other Debenture Document, the Mortgagor may not, without the prior consent of the Debenture Trustee:

- (a) subject to paragraph (b), dispose of, part with possession of, create or permit to exist an interest in or otherwise deal with any of the Mortgaged Property; or
- (b) create or permit to exist a Security Interest, other than a Permitted Security Interest, over any of the Mortgaged Property or if the creation of a Security Interest cannot by law be restricted, create such a Security Interest without the holder of the Security Interest first entering into a deed of priority in form and substance acceptable to the Debenture Trustee (acting on the instructions of the Majority Stockholders).

## 5. Obligations in relation to voting rights and dividends

Subject to the Debenture Documents:

- (a) until an Event of Default occurs, the Debenture Trustee must exercise any voting power it has as holder of the Mortgaged Property in accordance with the instructions of the Mortgagor; and
- (b) after an Event of Default, the Debenture Trustee must abstain from exercising any voting power it has as holder of the Mortgaged Property, unless otherwise instructed by the Majority Stockholders.

## 6. Further assurances

The Mortgagor must, at the Mortgagor's cost, do whatever the Debenture Trustee requires to:

- (a) more satisfactorily secure the Mortgaged Property to the Debenture Trustee for payment of the Secured Money; or
- (b) enable the better exercise of any Power,

or both and must make anyone else who has an interest in the Mortgaged Property or claims under or in trust for the Mortgagor do the same.

## 7. Debenture Trustee's powers after Event of Default

### 7.1 Acceleration of Secured Money

If an Event of Default occurs, the Debenture Trustee may by notice to the Mortgagor declare that the Secured Money is immediately due and payable. On receipt of that notice, the Mortgagor must immediately pay the Secured Money to the Debenture Trustee.

### 7.2 General rights, powers and remedies

After an Event of Default occurs, the Debenture Trustee may, without making demand or giving notice to anyone (unless notice is required as described in clause 7.6), do all things that a mortgagee or an absolute owner of the Mortgaged Property can do, and exercise all rights, powers and remedies:

- (a) of a mortgagee or an absolute owner of the Mortgaged Property;
- (b) given to a Receiver under the Corporations Act; and
- (c) specified in clause 7.3.

### 7.3 Specific powers

After an Event of Default occurs, the Debenture Trustee may do any one or more of the following:

- (a) **(recover, posses and control)** (recover, possess and control) access, recover, manage, take up or give up possession of the Mortgaged Property;
- (b) **(receive)** receive all Proceeds;
- (c) **(sell)** sell or help sell the Mortgaged Property on such terms and in such manner as it thinks fit, whether or not the Debenture Trustee has taken possession;
- (d) **(options)** give an option to purchase the Mortgaged Property on the terms it thinks fit;
- (e) **(give rights)** give rights over the Mortgaged Property in the name of the Mortgagor or otherwise (whether or not the Debenture Trustee has taken possession) on whatever terms the Debenture Trustee thinks fit;
- (f) **(sell together with other property)** sell the Mortgaged Property with or without any other property in any manner that the Debenture Trustee thinks expedient, with full power to apportion costs, expenses, purchase money, rent and other proceeds between the items of properties sold;
- (g) **(hive off assets or obligations)** promote the formation of any company so that the company may purchase or acquire the Mortgaged Property or assume obligations of the Mortgagor or both;
- (h) **(effect hive-off)** sell or assign the Mortgaged Property to a person and have that person assume some or all of the Mortgagor's obligations;
- (i) **(Rights)** subject to compliance with clause 5, exercise Rights (including the right to appoint proxies) in relation to the Mortgaged Property;
- (j) **(effect transfers)** effect transfers of any Securities to any person (including the Debenture Trustee) including the completion of any necessary forms or documents or the giving of instructions;
- (k) **(bank accounts)** open and operate bank accounts in the name of the Mortgagor to the exclusion of the Mortgagor;
- (l) **(rights)**
  - (i) perform the Mortgagor's obligations under;
  - (ii) enforce or exercise or not exercise the Mortgagor's rights and powers under; and
  - (iii) vary, terminate or rescind,

a contract, instrument, arrangement or right forming part of the Mortgaged Property;
- (m) **(perform Mortgagor's obligations)** do everything it thinks necessary to comply with the obligations of the Mortgagor under a Debenture Document;
- (n) **(remedy breach)** do everything it thinks necessary to make good a breach or default inherent in an Event of Default, to its own satisfaction;
- (o) **(deposit money in suspense or other accounts)** invest, deposit or hold the Mortgaged Property in any way that, and for as long as, the Debenture Trustee thinks fit and vary, transpose or reinvest the Mortgaged Property;
- (p) **(pay calls)** pay calls or other money payable in connection with the Mortgaged Property;

- (q) **(recover, protect Mortgaged Property)** do everything the Debenture Trustee thinks necessary to recover or protect the Mortgaged Property;
- (r) **(Insolvency process)** Wind Up any person and participate in any Insolvency of any person (including voting at meetings and appointing proxies);
- (s) **(proceedings generally)** commence, prosecute, defend, discontinue, compromise, accept any arrangement, submit to arbitration and settle proceedings which the Debenture Trustee considers expedient in connection with this document or the Mortgaged Property in or before a Public Authority in the name of the Mortgagor or otherwise;
- (t) **(acquire Securities)** acquire by purchase, subscription or otherwise any Securities;
- (u) **(exchange)** exchange the Mortgaged Property for any other property or rights (with or without giving or receiving any other consideration for the exchange);
- (v) **(surrender Mortgaged Property)** surrender or release any of the Mortgaged Property;
- (w) **(transfer obligations)** effect a novation of or otherwise transfer to any person obligations of the Mortgagor which arise under a Debenture Document or otherwise;
- (x) **(improve Mortgaged Property)** do anything which the Debenture Trustee considers would help improve the value of the Mortgaged Property, obtain income or returns from it or make it saleable or more saleable;
- (y) **(execute documents)** enter into agreements and execute documents itself or on behalf of the Mortgagor for any purpose in connection with a Debenture Document;
- (z) **(raise money, secure)** in the name of the Mortgagor or otherwise:
  - (i) obtain financial accommodation (including from the Debenture Trustee or from a party associated with the Debenture Trustee) or give Guarantees for any purpose which the Debenture Trustee considers expedient in connection with its powers under a Debenture Document; and
  - (ii) secure the payment or repayment of indebtedness relating to any such financial accommodation or Guarantees by a Security Interest over the Mortgaged Property, however it ranks in priority with the Mortgage or any other Collateral Security;
- (aa) **(receipts)** give receipts for money and other property it receives;
- (bb) **(employ and appoint persons)** employ or discharge staff, professional advisers, consultants, contractors, agents or auctioneers for any purpose, and at the remuneration, that the Debenture Trustee thinks fit;
- (cc) **(delegate)** delegate to any person for any time that the Debenture Trustee thinks fit any of the powers of the Debenture Trustee under this document, including this right of delegation;
- (dd) **(Authorisations)** apply for any Authorisation which is necessary or desirable in connection with the exercise of a Power; and
- (ee) **(incidental power)** do anything the Debenture Trustee thinks expedient in its interests and incidental to any of its Powers, without limiting those Powers.

#### 7.4 To discharge or acquire prior Security Interest

- (a) After an Event of Default occurs, the Debenture Trustee may do any one or more of the following:

- (i) purchase a debt secured by a prior Security Interest (including a debt secured by a Permitted Security Interest);
  - (ii) pay the amount required to discharge or satisfy that debt; and
  - (iii) take a transfer or assignment of that Security Interest and any Guarantee, document or right ancillary or collateral to it.
- (b) If the Debenture Trustee exercises its rights under paragraph (a):
- (i) the Mortgagor is indebted to the Debenture Trustee for the same amount paid by the Debenture Trustee or the amount of the debt acquired (whichever is higher) and that debt is immediately payable to the Debenture Trustee and forms part of the Secured Money;
  - (ii) the Debenture Trustee may rely on a written confirmation from the holder of a prior Security Interest, or an ancillary or collateral document, as to the amount and property secured by it;
  - (iii) the person with the benefit of the prior Security Interest need not enquire whether there is any money owing under a Debenture Document; and
  - (iv) the Mortgagor irrevocably directs any person with the benefit of a prior Security Interest to give the Debenture Trustee any information it requires in connection with the prior Security Interest.

## 7.5 To appoint Receivers

After an Event of Default occurs, the Debenture Trustee may do any one or more of the following:

- (a) appoint one or more persons (severally, unless specified otherwise in the instrument of appointment) to be a receiver or receiver and manager of all or any of the Mortgaged Property;
- (b) fix the Receiver's remuneration at an amount agreed between the Debenture Trustee and the Receiver and vary the remuneration;
- (c) terminate a receivership or remove or replace a Receiver; and
- (d) appoint a replacement or additional Receiver.

The power to appoint a Receiver may be exercised even though an order or resolution has been passed for the Liquidation of the Mortgagor, and even though the Receiver may not in all respects act as the Mortgagor's agent.

## 7.6 Notice or lapse of time required before rights exercised

- (a) If notice or lapse of time is required under any statute before the Debenture Trustee can exercise a Power, then that notice or lapse of time is dispensed with.
- (b) Paragraph (a) only applies if the relevant statute allows notice or lapse of time to be dispensed with.
- (c) If the relevant statute does not allow notice or lapse of time to be dispensed with, but allows it to be shortened, then for the purposes of this document, the period of notice or lapse of time is one day.

## 7.7 To give up possession and terminate receivership

The Debenture Trustee may at any time give up possession of the whole or any part of the Mortgaged Property or terminate a receivership, or both.

## 8. Receiver's powers

### 8.1 General

Unless the terms of the Receiver's appointment say otherwise, the Receiver has the following powers over the Mortgaged Property which the Receiver is appointed to deal with:

- (a) all the rights, powers, discretions or remedies given by law to mortgagees in possession, receivers or receivers and managers; and
- (b) all the Powers of the Debenture Trustee under this document and at law (other than the power to appoint Receivers).

The Receiver may exercise these rights and powers in the name of the Mortgagor or otherwise.

### 8.2 Receiver is agent of Mortgagor

To the extent permitted by law, a Receiver is the agent of the Mortgagor and the Mortgagor alone is responsible for the Receiver's acts and defaults. A Receiver may become the agent of the Debenture Trustee if the Debenture Trustee gives a notice to the Receiver in writing to that effect. The Debenture Trustee may appoint a Receiver, even if a resolution or order to Wind Up the Mortgagor has been passed or made and even though the Receiver may not, or may not in some respects, act as the Mortgagor's agent.

## 9. Protection of Debenture Trustee, Receiver and Attorney

To the extent permitted by law, neither the Debenture Trustee nor any Receiver or Attorney is liable in relation to any act or omission on its part in the exercise or non-exercise of any Power nor for any resulting Loss, except where the Debenture Trustee, Receiver or Attorney has committed a breach of trust, is negligent or fraudulent.

## 10. Protection of third parties

### 10.1 Persons dealing not bound to enquire

A person dealing with the Debenture Trustee, a Receiver or an Attorney need not enquire whether:

- (a) there has been a default under a Debenture Document any Secured Money has become due or whether the Receiver or the Attorney has been properly appointed; or
- (b) the Debenture Trustee, Receiver or Attorney has executed or registered an instrument or exercised a Power properly or with authority,

and whenever the Debenture Trustee, a Receiver or an Attorney deals with the Mortgaged Property, that dealing is authorised and valid as far as anyone involved with that dealing is concerned despite any actual or constructive notice to the contrary.

### 10.2 Receipts

The receipt of the Debenture Trustee, a Receiver or an Attorney (or of their Authorised Officer) for any money payable to or asset receivable by it discharges the person paying that money or delivering the asset to the extent of the payment or delivery (as the case may be).

## 11. Power of attorney

### 11.1 Appointment and powers

The Mortgagor for valuable consideration appoints the Debenture Trustee, each Authorised Officer of the Debenture Trustee and each Receiver separately as its attorney to do any one or more of the following on the Mortgagor's behalf and in the name of the Mortgagor or the attorney on the occurrence of an Event of Default:

- (a) prove in the Winding-Up of a Transaction Party;
- (b) anything which the Mortgagor must do under a Debenture Document or under law in connection with a Debenture Document;
- (c) anything which, in the opinion of the attorney, gives effect to a Power or its exercise;
- (d) anything which the attorney considers necessary or expedient for giving effect to or perfecting any Debenture Document; and
- (e) anything which the attorney is expressly empowered to do under this document or another Debenture Document on behalf of the Mortgagor,

including executing any documents, and the Mortgagor agrees to ratify anything done by an attorney under this power of attorney.

### 11.2 Attorney may delegate powers

Subject to the Debenture Trust Deed, an attorney appointed under this document may delegate its powers (including the power to delegate) to any person for any period and may revoke the delegation.

### 11.3 Purpose

The power of attorney created under this clause is irrevocable and is granted to secure the performance by the Mortgagor of the Mortgagor's obligations under each Debenture Document to which it is a party.

## 12. Deposited documents

Any document deposited with the Debenture Trustee by the Mortgagor or on its behalf, including any transfer in blank, may be completed, dealt with and given effect to on enforcement of this document without any further act on the part of the Mortgagor.

## 13. Mortgagor's obligations - performance by Debenture Trustee

The Debenture Trustee may do anything which the Mortgagor must do under this document but does not do or does not do to the Debenture Trustee's satisfaction. This does not limit or exclude the Debenture Trustee's powers in any way.

## 14. Notices and demands

### 14.1 How given

- (a) Subject to paragraph (b), a notice, request, demand, approval, consent or other communication (**Notice**) given by a party in connection with this document:
  - (i) must be given by the party or an Authorised Officer of the party or, in the case of a Notice given by the Debenture Trustee, may be given by a solicitor or other lawyer acting for the Debenture Trustee;



- (ii) must be in writing and in English;
  - (iii) must be left at the address of the addressee, or sent by prepaid ordinary post (airmail if posted to or from a place outside Australia) to the address of the addressee or sent by facsimile to the facsimile number of the addressee as specified in the notice details for that party in this document or any alternative address notified by the party.
- (b) Paragraph (a) does not limit any method of giving notices or serving demands provided for by statute or in another Debenture Document.

## 14.2 Validity

A Notice is validly given even if:

- (a) the Mortgagor has been Wound Up or the Mortgagor is absent from the place the Notice is left at, or delivered or sent to; or
- (b) the Notice is returned unclaimed.

## 14.3 Effect

Unless a later time is specified in it, a Notice takes effect from the time it is received.

## 14.4 Deemed receipt

A Notice is taken to be received:

- (a) in the case of a posted Notice, on the third Business Day after posting for domestic mail and seventh Business Day after posting for international mail; and
- (b) in the case of facsimile, on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient,

but if the delivery or receipt is on a day which is not a business day in the place of delivery or receipt or is after 4.00pm (addressee's time), it is taken to be received at the commencement of business on the next day which is a business day in that place.

# 15. Preserving the Debenture Trustee's Powers

## 15.1 Preservation

- (a) The fact that the Debenture Trustee or a Receiver exercises, does not exercise, or delays the exercise of, any Power does not affect, or constitute a representation in relation to, the Power or any other Power.
- (b) Without limiting paragraph (a), the fact that the Debenture Trustee or a Receiver exercises a Power does not prevent the Debenture Trustee or Receiver from exercising that Power again.
- (c) Unless expressly provided in a Debenture Document, no Power nor any Debenture Document merges in, adversely affects or is adversely affected by any other Power or Debenture Document or any Security Interest, judgment or remedy which the Debenture Trustee or a Receiver (or anyone claiming through either of them) may have or obtain.

## 15.2 No obligation to exercise rights or give consent

Each of the Debenture Trustee and a Receiver may:

- (a) exercise or not exercise any Power;

- (b) give or not give its consent; and
- (c) make or not make a decision,

under this document in its absolute discretion, unless this document expressly provides otherwise. A consent given by the Debenture Trustee or a Receiver subject to conditions does not take effect until the conditions are complied with to the satisfaction of the Debenture Trustee or Receiver.

### 15.3 Powers

- (a) The Powers provided by the Debenture Documents are cumulative and not exclusive of any other rights, powers, discretions or remedies provided by law.
- (b) Where a Power under the Debenture Documents is inconsistent with a Power at law, the Debenture Documents prevail to the extent permitted by law. A Power at law is not inconsistent with the Debenture Documents merely because it is more extensive than a similar Power in the Debenture Documents or because there is no similar Power in the Debenture Documents.

### 15.4 Choice of securities and Guarantees

The Debenture Trustee need not resort to any Security Interest, Guarantee or any other Power before resorting to any other of them.

### 15.5 Indemnities generally

- (a) Each indemnity in the Debenture Documents:
  - (i) is absolute and unconditional;
  - (ii) is a continuing obligation despite any settlement of account or the occurrence of any other thing;
  - (iii) must be discharged without set-off, deduction, abatement, counterclaim, suspension or deferment;
  - (iv) constitutes a separate and independent obligation of the party giving the indemnity from its other obligations under the Debenture Documents; and
  - (v) survives termination of any Debenture Document.
- (b) It is not necessary for the Debenture Trustee or a Receiver to incur an expense or make a payment before enforcing a right of indemnity conferred by a Debenture Document.

### 15.6 Consent and waivers

A consent or waiver by the Debenture Trustee or a Receiver is effective only if in writing. If given subject to conditions, the consent or waiver only takes effect when the conditions are complied with to the Debenture Trustee or Receiver's satisfaction.

### 15.7 Avoidance of transaction

If any payment or other transaction relating to the Secured Money is void, voidable, unenforceable or defective or is claimed to be so (each an **Avoidance of Payment**) and that claim is upheld or settled then:

- (a) the liability of the Mortgagor under each Debenture Document and each Power will be what it would have been but for the Avoidance of Payment; and
- (b) the Mortgagor must immediately execute all documents and do all other things necessary or required by the Debenture Trustee to restore the Debenture Trustee to the position it

was in immediately before the Avoidance of Payment (including reinstating any Debenture Document),

even if the Debenture Trustee knew or ought to have known that the payment or transaction was void, voidable, unenforceable or defective. This clause survives any termination or full or partial discharge or release of any Debenture Document.

### **15.8 Effect of release**

A full or partial release of this Mortgage by the Debenture Trustee does not release the Mortgagor from personal liability under this document until the Debenture Trustee receives the Secured Money, regardless of any:

- (a) receipt given, payout figure quoted or other form of account stated; or
- (b) error or miscalculation by the Debenture Trustee.

### **15.9 Moratorium legislation**

A moratorium does not apply to a Debenture Document or the recovery of the Secured Money except if:

- (a) the Debenture Trustee agrees in writing that it does; or
- (b) it cannot be excluded by law.

## **16. Other provisions**

### **16.1 Notification from Mortgagor**

If the Mortgagor is required under this document to notify the Debenture Trustee about anything, it must do so in writing.

### **16.2 Debenture Trustee may set off**

Without any demand or notice, the Debenture Trustee may, if an Event of Default is subsisting, set off and apply indebtedness it owes to the Mortgagor (whatever the currency) against any money owing to it by any Transaction Party under any Debenture Document:

- (a) whether the amount owed by the Debenture Trustee or the Transaction Party is owed by it alone or with any other person; and
- (b) whether or not the amount owed by the Debenture Trustee or the Transaction Party is immediately payable.

The Mortgagor irrevocably authorises the Debenture Trustee to do anything necessary (including to sign any document and effect appropriate currency exchanges) for that purpose.

### **16.3 Mortgagor may not set off**

The Mortgagor may not (either directly or indirectly) claim, exercise or attempt to exercise a right of set-off or counterclaim against the Debenture Trustee (whether the right is the Mortgagor's or any other person's) or any other right which might have the effect of reducing the Secured Money.

### **16.4 Notices or demands as evidence**

A notice or certificate from or demand by the Debenture Trustee stating:

- (a) that a specified sum of money is owing or payable under a Debenture Document;
- (b) that an Event of Default has occurred; or

- (c) any other fact or determination relevant to the rights or obligations of the Debenture Trustee or the Mortgagor under a Debenture Document,

is taken to be correct unless the contrary is proved.

#### **16.5 Severability**

- (a) A construction of a Debenture Document that results in all provisions being enforceable and effective is to be preferred to a construction that does not.
- (b) If, despite the application of paragraph (a), a provision of a Debenture Document is illegal, unenforceable or ineffective, then the provision will be inoperative, but only to the extent to which, and during such time as, it is illegal, unenforceable or ineffective and the remainder of the Debenture Document will continue in force.
- (c) To the extent permitted by law, the Mortgagor will use its best endeavours (including by obtaining any necessary Authorisation) to include within the scope of clauses 2 and 3 any obligation or property which is within the scope of the definition of Secured Money or Mortgaged Property but with respect to which either clause is deemed inoperative under paragraph (b).

#### **16.6 Variation of agreement**

A variation of a Debenture Document must be in writing and signed by or on behalf of each party to it.

#### **16.7 Authorised Officers and communications**

The Mortgagor irrevocably authorises the Debenture Trustee to rely on:

- (a) a certificate by any person purporting to be a director or secretary of the Mortgagor as to the identity and signatures of its Authorised Officers. The Mortgagor warrants that its Authorised Officers have been authorised to give notices and communications under or in connection with the Debenture Documents; and
- (b) any notice or other document contemplated by any Debenture Document which bears the purported signature (whether given by facsimile or otherwise) of an Authorised Officer of the Mortgagor.

#### **16.8 Receipt of money and application**

The provisions of clause 4 of the Debenture Trust Deed shall apply in relation to money received by the Debenture Trustee under or in connection with this document.

#### **16.9 Surplus proceeds**

If surplus money remains in the hands of the Debenture Trustee, Receiver, Attorney or an External Administrator after payment of all the Secured Money (and satisfaction of any obligation ranking in priority to the Secured Money or secured by a Security Interest):

- (a) no trust arises over that surplus money; and
- (b) that surplus money does not carry interest and the Debenture Trustee, Receiver, Attorney or External Administrator must pay it to an account in the name of the Mortgagor (whether or not opened by the Debenture Trustee or External Administrator for that purpose). The Debenture Trustee or External Administrator is then no longer liable for the surplus money.

**16.10 Credit of available funds**

In applying money received by the Debenture Trustee towards the satisfaction of the Secured Money:

- (a) the account of the Mortgagor will be credited with only so much of the money available for the purpose as is actually received by the Debenture Trustee and not credited to a suspense account; and
- (b) the credit will date from the time of receipt (as determined by the Debenture Trustee).

**16.11 Tacking**

For the purpose of applying section 282 of the *Corporations Act 2001* (Cth), if a Stockholder is obliged to make further advances under a Debenture Document, that Debenture Document is taken to be incorporated in this document so that this document imposes on the Stockholder an obligation to advance that money.

**16.12 Payments after notice of subsequent Security Interests**

- (a) Any legal rule to the effect that the earliest payment into an account is deemed to be the first to be withdrawn or that the earliest debit is deemed to be the first to be extinguished will not, to the extent legally possible, apply to reduce the amount of the Secured Money for which the Debenture Trustee may claim priority as against the holder of any other Security Interest.
- (b) To the extent that a legal rule of the type described in paragraph (a) is applicable and will have the effect described in that paragraph, any money forming part of the Secured Money which is received by the Debenture Trustee will be applied (or deemed to have been applied) progressively in reduction of later debits, beginning with the latest debit.

**16.13 Debenture Trustee may assign rights**

- (a) The Debenture Trustee may assign its rights under this document without the consent of the Mortgagor. If it does so, the Secured Money will include all liabilities of the Mortgagor to the assignee which are within the scope of the definition whether or not the liabilities arose or were contemplated before the date of the assignment.
- (b) Subject to the Debenture Documents, the Debenture Trustee may disclose to a potential assignee any information provided to the Debenture Trustee by the Mortgagor which it considers appropriate.

**16.14 Governing law and jurisdiction**

- (a) This document is governed by the laws of Victoria.
- (b) The Mortgagor irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria. The Mortgagor waives any right it has to object to an action being brought in those courts, including by claiming that the action has been brought in an inconvenient forum or that those courts do not have jurisdiction.

**16.15 Debenture Trustee need not execute**

This document is enforceable by the Debenture Trustee even if the Debenture Trustee does not execute it.

**16.16 Attorneys**

Each attorney signing this document under a power of attorney certifies, by the attorney's signature, that the attorney has no notice of the revocation of the power of attorney.

**16.17 Counterparts**

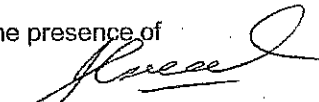
This document may be executed in any number of counterparts. Each counterpart constitutes an original of this document, all of which together constitute one instrument. A party who has executed a counterpart of this document may exchange it with another party by faxing, or by emailing a pdf (portable document format) copy of, the executed counterpart to that other party, and if requested by that other party, will promptly deliver the original by hand or post. Failure to make that delivery will not affect the validity of this document.

# Signing page

**EXECUTED** as a deed

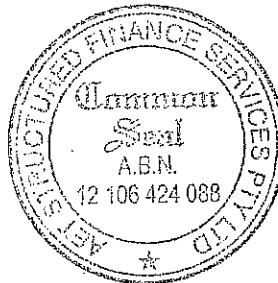
**Signed sealed and delivered by**  
**KATHERINE JUDITH GOVE**  
 as attorney for **ACN 101 806 099 Pty Ltd**  
 under power of attorney dated *13 November 2008*

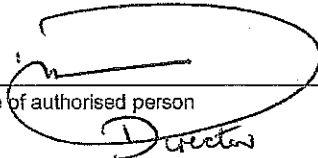
in the presence of

  
 \_\_\_\_\_  
**JAMES THOMAS CREECH**  
 Solicitor of the Supreme Court  
 of New South Wales  
 Aurora Place  
 88 Phillip Street  
 Sydney

←  ←  
 \_\_\_\_\_  
 Attorney

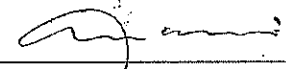
The common seal of **AET Structured Finance  
 Services Pty Limited** is duly affixed to this  
 document by authority of its directors  
 in the presence of



  
 \_\_\_\_\_  
 Signature of authorised person

**Philip John Waiter Joseph**

\_\_\_\_\_  
 Name of authorised person and office held (print)

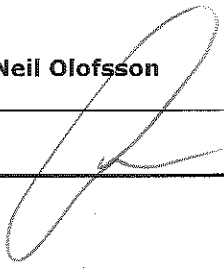
←  ←  
 \_\_\_\_\_  
 Signature of authorised person

← **Glenn David White**

\_\_\_\_\_  
 Name of authorised person and office held (print)

**ACN 366 Mortgage of Marketable Securities**

This is Annexure E of 29 pages referred to in form 603 (Notice of initial substantial holder) given by Brookfield International Finance Australia Pty Ltd in relation to THG (ACN 054 346 315)

print name	<b>Neil Olofsson</b>	capacity	Company secretary
sign here		date	19 April 2012



Execution Version

# Mortgage of Marketable Securities

ACN 306

ACN 101 765 306 Pty Ltd (**Mortgagor**)

AET Structured Finance Services Pty Limited (**Debenture  
Trustee**)

MinterEllison

L A W Y E R S

AURORA PLACE, 88 PHILLIP STREET, SYDNEY NSW 2000, DX 117 SYDNEY  
TEL: +61 2 9921 8888 FAX: +61 2 9921 8123  
[www.minterellison.com](http://www.minterellison.com)

# Mortgage of Marketable Securities

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**Signing page**

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## Details

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Date 1 December 2008

## Parties

Name	<b>ACN 101 765 306 Pty Ltd</b>
ACN	101 765 306
Short form name	<b>Mortgagor</b>
Notice details	Thakral House, Level 12, 301 George Street, Sydney NSW 2000 Facsimile: (02) 9272 8741 Attention: Manjit Singh Gill
	with a copy to: Pasricha & Gove, Level 16, 390 St. Kilda Road, Melbourne, Vic 3004 Facsimile: (03) 9866 5335 Attention: Katherine Gove

Name	<b>AET Structured Finance Services Pty Limited</b>
ABN	12 106 424 088
Short form name	<b>Debenture Trustee</b>
Notice details	Level 22, 207 Kent Street, Sydney NSW 2000 Facsimile: (02) 9028 5942 Attention: Glenn White

## Background

This document sets out the terms on which the Mortgagor grants a legal mortgage of the Mortgaged Property to the Debenture Trustee as security for the payment of the Secured Money.

# Agreed terms

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## 1. Defined terms & interpretation

### 1.1 Debenture Trust Deed defined terms

Terms defined in the Debenture Trust Deed or incorporated by reference in the Debenture Trust Deed shall, unless otherwise defined herein, bear the same meanings herein.

### 1.2 Defined terms

In this document:

**Attorney** means an attorney appointed under a Collateral Security.

**Authorisation** includes:

- (a) any consent, authorisation, registration, filing, agreement, notarisation, certificate, permission, licence, approval or exemption from, by or with a Public Authority; or
- (b) in relation to anything which is prohibited or restricted by law if a Public Authority takes certain action within a specified period, the expiry of that period without the Public Authority taking that action.

**Authorised Officer** means:

- (a) in respect of the Mortgagor, a person appointed by the Mortgagor and notified to the Debenture Trustee to act as its Authorised Officer for the purposes of the Debenture Documents (the notice must be signed by the secretary or a director of the Mortgagor and be given to the Debenture Trustee with a specimen signature of the person); and
- (b) in respect of the Debenture Trustee, a person holding or acting in the office of director, chief executive or secretary, or whose title includes the word '*Manager*', '*Director*', '*Chief*', '*Head*' or any person notified to each Stockholder and the Mortgagor to act as its Authorised Officer for the purposes of the Debenture Documents.

**Collateral Security** means each present or future Security Interest, Guarantee or other document or agreement created or entered into with the Debenture Trustee (in its capacity as such) as security (directly or indirectly) for the payment of the Secured Money or the performance by the Mortgagor of any of its obligations to a Secured Party under a Debenture Document. It includes each Security.

**Debenture Documents** has the meaning given to it in the Debenture Trust Deed and includes, without limitation:

- (a) this document;
- (b) each Subscription Agreement;
- (c) the Debenture Trust Deed; and
- (d) each Collateral Security.

**Debenture Trust Deed** means the debenture trust deed dated 9 July 2004 between the Mortgagor and the Debenture Trustee.

**Dollars and \$** means Australian dollars.

**Event of Default** means an 'Event of Default' as defined under any Subscription Agreement, any other event so described in a Debenture Document or any event which entitles the Debenture Trustee or any other Secured Party under any Debenture Document to accelerate the time for payment of any Secured Money or to terminate any obligation to provide funding to the Issuer.

**External Administrator** means an administrator, receiver, receiver and manager, trustee, provisional liquidator, liquidator or any other person (however described) holding or appointed to an analogous office or acting or purporting to act in an analogous capacity.

**GST** has the meaning given to it in the GST Act.

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

**Insolvency** of an entity includes:

- (a) the Winding Up of an entity;
- (b) the appointment of an External Administrator to the person; and
- (c) any composition, compromise, arrangement, merger, amalgamation, reconstruction (other than a solvent reconstruction), administration, assignment for the benefit of creditors or insolvency of, by, or adversely affecting the person and any procedure which is equivalent or analogous in any jurisdiction.

**Loss** means a loss, claim, action, damage, liability, cost, charge, expense, penalty, compensation, fine, outgoing or payment suffered, paid or incurred.

**Marketable Security** means:

- (a) a marketable security as defined in the *Corporations Act*;
- (b) a negotiable instrument; and
- (c) a unit or other interest in a trust or partnership.

**Mortgage** means the mortgage created under this document.

**Mortgaged Property** means all present and future Securities, Rights and Proceeds and any certificate or other evidence of ownership of the Mortgaged Property.

**Permitted Security Interest** has the meaning given to it in a Subscription Agreement.

**Potential Event of Default** means any event, thing or circumstance which with the giving of notice or passage of time or both would become an Event of Default.

**Power** means any right, power, discretion or remedy of the Debenture Trustee, a Receiver or an Attorney under any Debenture Document or applicable law.

**Proceeds** means all money (in whatever currency) payable to the Mortgagor or to which the Mortgagor is entitled (whether alone or with any other person) on any account or in way whatever under or in connection with the Securities and Rights, including distributions, dividends, bonuses, return of capital, interest and all proceeds of sale, redemption or disposal.

**Receiver** means a receiver or receiver and manager appointed under a Collateral Security. When two or more persons are appointed, the expression 'Receiver' refers to each of those persons severally as well as to two or more of them jointly.

**Records** means all the information which relates in any way to a specified person's business or any transaction entered into by the person, whether the information is recorded electronically, magnetically or otherwise.

**Rights** means:

- (a) rights to acquire Marketable Securities arising because the Mortgagor has an interest in the Securities;
- (b) any other rights of the Mortgagor of any kind in connection with the Securities, including:
  - (i) in relation to any payment, repayment, debt, dividend, profit, interest, benefit, privilege, bonus or distribution; and
  - (ii) those resulting from any allotment, offer, substitution, conversion, consolidation, reclassification, redemption, reconstruction, amalgamation, subdivision, reduction of capital, Winding Up or scheme of arrangement.

**Secured Money means:**

- (a) all money that the Mortgagor or a Transaction Party now owes or in the future may come to owe, actually or contingently, for any reason, to one or more of the Stockholders or to any combination of Stockholders in connection with any Stock; and
- (b) all money that the Mortgagor or a Transaction Party now owes or in the future may come to owe, actually or contingently, for any reason, to a Secured Party on any account under or in connection with a Debenture Document,

and includes all or part of the Secured Money. Where the Mortgagor or a Transaction Party would have owed money but for its Winding Up, it will be taken still to owe that money.

**Securities means:**

- (a) stapled securities comprising:
  - (i) fully-paid ordinary shares in the capital of THL; and
  - (ii) fully-paid non-voting units in THT which are stapled to the shares specified in paragraph (i);
- (b) Marketable Securities:
  - (i) that the Mortgagor deposits (or which are deemed to be deposited under s262(6) of the Corporations Act) with the Debenture Trustee;
  - (ii) resulting from any allotment, offer, substitution, conversion, consolidation, reclassification, redemption, reconstruction, amalgamation, subdivision or any scheme of arrangement of or in relation to any Securities;
  - (iii) acquired by the Mortgagor, or to which the Mortgagor becomes entitled, because the Mortgagor holds the Securities; and
  - (iv) that the parties otherwise designate as Mortgaged Property for the purposes of this document.

**Subscription Agreement** has the meaning given to it in the Debenture Trust Deed.

**THG** means Thakral Holdings Group, which is comprised of THL and THT.

**THL** means Thakral Holdings Limited ACN 054 346 315.

**THT** means Thakral Holdings Trust ABSN 092 850 827.

**Transaction Party** means the Mortgagor, the Issuer and any other person providing a Collateral Security.

**Winding Up** includes:

- (a) dissolution, liquidation, provisional liquidation and bankruptcy; and



- (b) any analogous or equivalent procedure in any jurisdiction.

### **1.3 Interpretation**

Clause 1.2 of the Debenture Trust Deed is incorporated into this document with any necessary amendments.

### **1.4 Subsisting Events of Default**

An Event of Default or Potential Event of Default is 'subsisting' if it has not been either remedied or waived in accordance with the relevant Debenture Document.

### **1.5 Certified copies of documents**

The Debenture Trustee may require any copy of a document provided or to be provided to it under this document to be certified as a true and complete copy by a director or secretary of the Mortgagor.

### **1.6 Things required to be done on a Business Day**

If anything (other than the making of a payment) is required by this document to be done on or by a day which is not a Business Day, then it must be done on or by the next following Business Day.

### **1.7 Incorporation of provisions from Debenture Trust Deed**

Clause 3.6 of the Debenture Trust Deed is incorporated in and applies to this document as if set out in full in this document, with any necessary changes.

### **1.8 Debenture Document for the purposes of the Debenture Trust Deed**

This document is a Security and a Collateral Security and also a Debenture Document for the purposes of the Debenture Trust Deed.

## **2. Mortgage**

### **2.1 Creation**

The Mortgagor:

- (a) mortgages the Mortgaged Property in favour of the Debenture Trustee as security for the due and punctual payment of the Secured Money; and
- (b) as legal and beneficial owner absolutely assigns to the Debenture Trustee all its interest and rights in the Mortgaged Property as security for the due and punctual payment of the Secured Money.

The Mortgage is a first legal mortgage and ranks ahead of all other Security Interests.

### **2.2 Continuing security and discharging the Mortgage**

- (a) The Mortgage is a continuing security. It remains in effect until the Debenture Trustee gives a final discharge to the Mortgagor.
- (b) The Mortgagor is only entitled to a final discharge and reassignment if:
  - (i) all of the Secured Money has been irrevocably paid in full and all commitments which might give rise to Secured Money have terminated; and
  - (ii) the Debenture Trustee is satisfied that there are no amounts which will subsequently fall within the description of the Secured Money due to an Avoidance of Payment (as defined in clause 15.7),

at which time the Debenture Trustee will reassign the Mortgaged Property to the Mortgagor at the request and cost of the Mortgagor. In satisfying itself under paragraph (ii), the Debenture Trustee may consider any matters it thinks relevant, including the possibility that a payment to reduce the Secured Money might be repayable, void or voidable under a law relating to insolvency or protection of creditors.

### **2.3 Priority amount - maximum prospective liability**

The nature of the 'prospective liability' (as defined in section 261(1) of the Corporations Act) secured by the Mortgage is advances, interest, fees, costs, indemnities and any other Secured Money. The maximum prospective liability secured by the Mortgage is \$520,000,000 or its equivalent, as may be varied from time to time by the Debenture Trustee lodging, on the Mortgagor's behalf, a notice under section 268(2) of the Corporations Act. Any maximum prospective liability amount and this clause apply only to fix priority under section 282(3) of the Corporations Act and do not in any way fix a limit on the amount which may be secured by or recoverable under this document.

## **3. Payment obligations**

### **3.1 Secured Money**

The Mortgagor must pay the Secured Money (free from any deduction, set-off or counterclaim) to or as directed by the Debenture Trustee:

- (a) at the times and in the way specified in the Debenture Documents; and
- (b) otherwise, immediately on demand,

in the currency in which it is owed.

### **3.2 Payments to be on a Business Day**

Subject to any other Debenture Document, if a payment under this document falls due on a day that is not a Business Day, it must be paid on the next Business Day, unless that Business Day falls in the next calendar month in which case the payment must be made on the preceding Business Day.

### **3.3 Costs and expenses**

Subject to any contrary agreement between the parties, the Mortgagor must immediately pay or reimburse on demand all costs and expenses of:

- (a) each Secured Party, a Receiver or an Attorney (and any of their respective officers, employees and agents) relating to or in connection with:
  - (i) the negotiation, preparation, execution, delivery, registration and completion of, and payment of Taxes on, the Debenture Documents;
  - (ii) any variation or discharge of any Debenture Document;
  - (iii) the exercise, enforcement, protection or waiver, or attempted exercise, enforcement or protection, of any Debenture Document or Power;
  - (iv) obtaining or receiving payment of any of the Secured Money and its distribution;
  - (v) an Event of Default or Potential Event of Default;
  - (vi) any payment required under a Debenture Document not being made on its due date;

- (vii) any Secured Money (or money which would be Secured Money if it were recoverable) not being recoverable from the Mortgagor or a Transaction Party, or a liability or obligation to pay the Secured Money under a Debenture Document not being enforceable against the Mortgagor or Transaction Party;
  - (viii) the giving by it of a consent or approval in connection with a Debenture Document;
  - (ix) any enquiry by a Public Authority concerning a Transaction Party or the involvement of the Debenture Trustee in a Debenture Document;
  - (x) maintaining, preserving or protecting the Mortgaged Property;
  - (xi) surveying, valuing, inspecting or reporting on the Mortgaged Property; and
  - (xii) obtaining advice from a professional person or consultant about any matter of concern to the Debenture Trustee, a Receiver or an Attorney in connection with a Debenture Document;
- (b) the Debenture Trustee relating to fees payable to it in its capacity as Debenture Trustee and custodian as agreed by letter dated 25 November 2008; and
  - (c) the Debenture Trustee or the Subscribers relating to fees payable to the Debenture Trustee under the Debenture Documents,

including any legal costs and expenses (on a full indemnity basis), any professional consultant's fees (including professional tax consultants) and the costs (calculated on a time employed basis) of in-house legal counsel;

### **3.4 Mortgagor to pay Taxes**

The Mortgagor must pay, or immediately on demand reimburse the Debenture Trustee, for, all Taxes, fees and charges which may be payable or determined to be payable by the Debenture Trustee in connection with any Debenture Document or a payment, receipt, supply of goods or services or other transaction contemplated by or carried out under or pursuant to any Debenture Document, including Taxes passed onto the Debenture Trustee by another financial institution or supplier of goods and services.

### **3.5 Fines and penalties**

The Mortgagor must pay all fines and penalties for late payment or non-payment of the Taxes referred to in clause 3.4 except where the Mortgagor places the Debenture Trustee in cleared funds to make the payment not less than 10 Business Days prior to the due date and the Debenture Trustee fails to make the payment.

### **3.6 Indemnity**

The Mortgagor must immediately indemnify the Debenture Trustee and each other Secured Party on demand against, and must pay to the Debenture Trustee on demand amounts equal to, any Loss which the Debenture Trustee, each other Secured Party, a Receiver or an Attorney determines will or has been (directly or indirectly) suffered by the Debenture Trustee, each other Secured Party, a Receiver or an Attorney (and, any of their respective officers, employees and agents) as a result of or in connection with:

- (a) any Tax in respect of this document or a transaction or payment under this document;
- (b) an indemnity given by the Debenture Trustee to a Receiver or administrator of the Mortgagor;
- (c) the occurrence of an Event of Default or Potential Event of Default;

- (d) a Winding-Up in relation to the Mortgagor or another Transaction Party;
- (e) any payment required under a Debenture Document not being made on its due date;
- (f) any Secured Money (or money which would be Secured Money if it were recoverable) not being recoverable from the Mortgagor or a Transaction Party, or a liability or obligation to pay the Secured Money under a Debenture Document not being enforceable against the Mortgagor or Transaction Party;
- (g) any Environmental Liability;
- (h) the Mortgaged Property or the exercise or attempted exercise of any Power;
- (i) the Debenture Trustee acting or relying in good faith on any notice or other communication from, or genuinely believed to be from, the Mortgagor; or
- (j) the Debenture Trustee relying on information supplied by or on behalf of the Mortgagor which proves to be a misrepresentation or to be misleading or deceptive (including by omission of other information),

including any legal costs and expenses (on a full indemnity basis), any professional consultant's fees in connection with the above.

### **3.7 Mortgagor's liabilities not affected**

The Mortgagor's liabilities under this document are not affected by any act, omission or other thing which would reduce or discharge those liabilities, including:

- (a) a Secured Party granting time or any other indulgence or concession to a Transaction Party or any other person;
- (b) a Secured Party increasing the amount of, opening further accounts in connection with or otherwise varying or replacing the type or terms of, financial accommodation provided to a Transaction Party or any other person;
- (c) any transaction or agreement, or variation, novation or assignment of a transaction or agreement (including any Debenture Document), between a Secured Party and a Transaction Party or any other person;
- (d) an Insolvency in relation to a Transaction Party or any other person, or a Secured Party becoming a party to or bound by any Insolvency;
- (e) any judgment, proceedings or order being obtained or made against a Transaction Party or any other person;
- (f) an obligation of a Transaction Party or any other person or any provision of a Debenture Document being void, voidable, unenforceable, defective, released, waived, impaired, novated, enforced or impossible or illegal to perform;
- (g) the whole or partial discharge or release of, or the granting of, a Security;
- (h) any Secured Money not being recoverable or the liability of a Transaction Party or any other person to a Secured Party ceasing (including as a result of giving a release or discharge or by law);
- (i) the failure of a Transaction Party or any other person to execute any Debenture Document, properly or at all;
- (j) the Mortgagor not being a party to a Debenture Document (such as a Debenture Document solely between the Debenture Trustee and a Transaction Party);

- (k) a Secured Party exercising or not exercising its rights (including any right to elect to terminate a contract) under a Debenture Document or at law against a Transaction Party or any other person;
- (l) any default, misrepresentation, negligence, breach of contract, misconduct, acquiescence, delay, waiver, mistake, failure to give notice or other action or inaction of any kind (whether or not prejudicial to the Mortgagor) by a Secured Party or any other person;
- (m) any change to, or in the membership of, any partnership, joint venture or association; or
- (n) any Mortgaged Property being destroyed, forfeited, extinguished, surrendered or resumed, whether or not the Mortgagor, a Transaction Party, a Secured Party or any other person is aware of it or consents to it and despite any legal rule to the contrary.

### 3.8 Exclusion of subrogation and other rights

The Mortgagor must not (either directly or indirectly):

- (a) claim, exercise or attempt to exercise a right of set-off or counterclaim or any other right or raise any defence which might reduce or discharge the Mortgagor's liability under this document;
- (b) claim or exercise a right of subrogation, marshalling or contribution or claim the benefit of a Security; or
- (c) unless expressly permitted in a Debenture Document or the Debenture Trustee has given a direction to do so (in which case it must do so in accordance with the direction as trustee for the Debenture Trustee):
  - (i) prove, claim or vote in, or receive the benefit of a distribution, dividend or payment arising out of, the Insolvency of a Transaction Party; or
  - (ii) demand, or accept payment of, any money owed to the Mortgagor by a Transaction Party.

### 3.9 Prove in Liquidation

- (a) The Mortgagor, for valuable consideration, irrevocably appoints each of the Debenture Trustee and its Authorised Representatives separately as its attorney to prove in the Insolvency of a Transaction Party for all money that the Mortgagor can claim against that person on any account whatever. The terms of appointment are that:
  - (i) the attorney must pay to the Mortgagor dividends it receives in excess of the Secured Money, without interest, and any other dividends must be paid to the Debenture Trustee; and
  - (ii) the attorney may delegate its powers (including the power to delegate) to any person for any period and may revoke the delegation.
- (b) The Mortgagor agrees to ratify anything done by an attorney under this clause. The power of attorney created under this clause is granted to secure the Mortgagor's performance of its obligations under each Debenture Document to which it is a party.

### 3.10 Default interest

- (a) The Mortgagor must immediately on demand pay to the Debenture Trustee interest on any of the Secured Money which is due and payable by it and not paid.
- (b) Unless another Debenture Document provides otherwise, interest payable under paragraph (a) is calculated on a daily basis:

- (i) up to (but excluding) the date of actual payment from and including the due date or (in the case of an amount payable by way of reimbursement or indemnity) the date of disbursement or Loss, if earlier (**Calculation Date**); and
- (ii) at the rate (**Default Rate**) determined by the Debenture Trustee as at the Calculation Date, and then at monthly intervals, as the higher of:
  - (A) if the Mortgagor's liability is the subject of a judgment or order, the rate payable under that judgment or order; and
  - (B) the sum of 2% per annum and the Debenture Trustee's cost of funding the overdue amount.
- (c) If the Mortgagor's liability under a Debenture Document is the subject of a judgment or order, the obligation to pay interest under this clause is an obligation separate from the judgment or order and will subsist despite the making of the judgment or order and the interest accrues both before and after judgement at the higher of the rate determined under paragraph (b) and the rate payable under that judgment or order.
- (d) Unless another Debenture Document provides otherwise, interest payable under this clause that has not been paid may be capitalised at intervals of not less than one month as determined by the Debenture Trustee from time to time. Capitalised interest will itself bear interest (calculated on a daily basis) at the Default Rate from and including the date of capitalisation up to the date of actual payment.
- (e) The Mortgagor must pay to the Debenture Trustee accrued interest under this clause 3.10 on the last Business Day of each calendar month on demand.

### 3.11 Deduction or withholding required

If the Mortgagor must deduct or withhold Taxes from a payment to the Debenture Trustee, it must:

- (a) make that deduction and/or withholding, pay to the appropriate Public Authority an amount equal to the full amount deducted and/or withheld as required by law and give the Debenture Trustee a receipt for the payment; and
- (b) increase its payment to the Debenture Trustee to an amount which will result in the Debenture Trustee receiving at the time the payment is due (after deduction or withholding of any Taxes in respect of the increased payment) the full amount which it would have received if no deduction or withholding had been required.

### 3.12 Payments and receipts in foreign currency

If for any reason the Debenture Trustee receives or recovers any amount (**Paid Amount**) under or in relation to a Debenture Document in a currency other than the currency in which it is payable under the Debenture Document (**Agreed Currency**), the amount which the Debenture Trustee will be taken to have received or recovered for the purposes of the Debenture Documents will be the Agreed Currency amount to which the Debenture Trustee could have converted the Paid Amount in accordance with its normal procedures at the time of the receipt or recovery less the costs of the conversion.

### 3.13 GST

- (a) Notwithstanding any other provision in this document, any amount payable to the Debenture Trustee under the Debenture Documents does not include any GST. Terms defined in the GST Act have the same meaning in this document.

- (b) To the extent that any supply under or in connection with this document made or incurred, by the Debenture Trustee constitutes a taxable supply, the consideration payable will automatically be increased to include an additional amount on account of GST. That amount will be the product of the value of the consideration for the supply and the prevailing GST rate. The Debenture Trustee will provide the Mortgagor with a tax invoice complying with the GST Act in respect of any supply made by the Debenture Trustee to the Mortgagor.

## 4. Warranties and undertakings

### 4.1 Representations and warranties

- (a) The Mortgagor represents and warrants to the Debenture Trustee (and for the benefit of the other Secured Parties) that all of its representations and warranties in the Debenture Documents are true and correct (or if not yet made, will be true and correct when made).
- (b) The Mortgagor represents and warrants to the Debenture Trustee (and for the benefit of the other Secured Parties) that as at the date of this Mortgage it has no property other than property located in Victoria for the purposes of any Australian State or Territory stamp duty law.
- (c) The Mortgagor repeats each representation and warranty in this clause 4.1 with reference to the facts and circumstances at the time when representations and warranties are repeated in a Subscription Agreement.
- (d) The Mortgagor acknowledges that:
  - (i) the Debenture Trustee has, and each other Secured Party has, entered into the Debenture Documents in reliance on the representations and warranties in this clause 4.1; and
  - (ii) those representations and warranties survive execution and delivery of the Debenture Documents and the provision of financial accommodation under them.

### 4.2 Mortgagor undertakings

The Mortgagor must:

- (a) **(Secured Money)** pay the Secured Money at the times and in the way specified in the Debenture Documents, or otherwise on demand;
- (b) **(other obligations)** fully and punctually perform all of its obligations under each Debenture Document to which it is a party at the time and in the manner specified in the relevant Debenture Document;
- (c) **(no Event of Default)** ensure that no Event of Default occurs;
- (d) **(no set-off)** not directly or indirectly claim, exercise or attempt to exercise a right of set-off or counterclaim (whether its or any other person's right) against the Debenture Trustee;
- (e) **(compliance with laws)** comply with all laws and requirements of Government Agencies in respect of the Mortgaged Property, and ensure that any person occupying or using the Mortgaged Property does the same;
- (f) **(comply with other interests)** comply with the terms of each Security Interest binding on it in respect of the Mortgaged Property from time to time;
- (g) **(maintain value)** not do, allow or omit anything which is likely to lower the value of the Mortgaged Property.

### 4.3 Dealing with Mortgaged Property

Subject to any other Debenture Document, the Mortgagor may not, without the prior consent of the Debenture Trustee:

- (a) subject to paragraph (b), dispose of, part with possession of, create or permit to exist an interest in or otherwise deal with any of the Mortgaged Property; or
- (b) create or permit to exist a Security Interest, other than a Permitted Security Interest, over any of the Mortgaged Property or if the creation of a Security Interest cannot by law be restricted, create such a Security Interest without the holder of the Security Interest first entering into a deed of priority in form and substance acceptable to the Debenture Trustee (acting on the instructions of the Majority Stockholders).

## 5. Obligations in relation to voting rights and dividends

Subject to the Debenture Documents:

- (a) until an Event of Default occurs, the Debenture Trustee must exercise any voting power it has as holder of the Mortgaged Property in accordance with the instructions of the Mortgagor; and
- (b) after an Event of Default, the Debenture Trustee must abstain from exercising any voting power it has as holder of the Mortgaged Property, unless otherwise instructed by the Majority Stockholders.

## 6. Further assurances

The Mortgagor must, at the Mortgagor's cost, do whatever the Debenture Trustee requires to:

- (a) more satisfactorily secure the Mortgaged Property to the Debenture Trustee for payment of the Secured Money; or
- (b) enable the better exercise of any Power,

or both and must make anyone else who has an interest in the Mortgaged Property or claims under or in trust for the Mortgagor do the same.

## 7. Debenture Trustee's powers after Event of Default

### 7.1 Acceleration of Secured Money

If an Event of Default occurs, the Debenture Trustee may by notice to the Mortgagor declare that the Secured Money is immediately due and payable. On receipt of that notice, the Mortgagor must immediately pay the Secured Money to the Debenture Trustee.

### 7.2 General rights, powers and remedies

After an Event of Default occurs, the Debenture Trustee may, without making demand or giving notice to anyone (unless notice is required as described in clause 7.6), do all things that a mortgagee or an absolute owner of the Mortgaged Property can do, and exercise all rights, powers and remedies:

- (a) of a mortgagee or an absolute owner of the Mortgaged Property;
- (b) given to a Receiver under the Corporations Act; and
- (c) specified in clause 7.3.



### 7.3 Specific powers

After an Event of Default occurs, the Debenture Trustee may do any one or more of the following:

- (a) **(recover, posses and control) (recover, possess and control)** access, recover, manage, take up or give up possession of the Mortgaged Property;
- (b) **(receive)** receive all Proceeds;
- (c) **(sell)** sell or help sell the Mortgaged Property on such terms and in such manner as it thinks fit, whether or not the Debenture Trustee has taken possession;
- (d) **(options)** give an option to purchase the Mortgaged Property on the terms it thinks fit;
- (e) **(give rights)** give rights over the Mortgaged Property in the name of the Mortgagor or otherwise (whether or not the Debenture Trustee has taken possession) on whatever terms the Debenture Trustee thinks fit;
- (f) **(sell together with other property)** sell the Mortgaged Property with or without any other property in any manner that the Debenture Trustee thinks expedient, with full power to apportion costs, expenses, purchase money, rent and other proceeds between the items of properties sold;
- (g) **(hive off assets or obligations)** promote the formation of any company so that the company may purchase or acquire the Mortgaged Property or assume obligations of the Mortgagor or both;
- (h) **(effect hive-off)** sell or assign the Mortgaged Property to a person and have that person assume some or all of the Mortgagor's obligations;
- (i) **(Rights)** subject to compliance with clause 5, exercise Rights (including the right to appoint proxies) in relation to the Mortgaged Property;
- (j) **(effect transfers)** effect transfers of any Securities to any person (including the Debenture Trustee) including the completion of any necessary forms or documents or the giving of instructions;
- (k) **(bank accounts)** open and operate bank accounts in the name of the Mortgagor to the exclusion of the Mortgagor;
- (l) **(rights)**
  - (i) perform the Mortgagor's obligations under;
  - (ii) enforce or exercise or not exercise the Mortgagor's rights and powers under; and
  - (iii) vary, terminate or rescind,
a contract, instrument, arrangement or right forming part of the Mortgaged Property;
- (m) **(perform Mortgagor's obligations)** do everything it thinks necessary to comply with the obligations of the Mortgagor under a Debenture Document;
- (n) **(remedy breach)** do everything it thinks necessary to make good a breach or default inherent in an Event of Default, to its own satisfaction;
- (o) **(deposit money in suspense or other accounts)** invest, deposit or hold the Mortgaged Property in any way that, and for as long as, the Debenture Trustee thinks fit and vary, transpose or reinvest the Mortgaged Property;
- (p) **(pay calls)** pay calls or other money payable in connection with the Mortgaged Property;

- (q) **(recover, protect Mortgaged Property)** do everything the Debenture Trustee thinks necessary to recover or protect the Mortgaged Property;
- (r) **(Insolvency process)** Wind Up any person and participate in any Insolvency of any person (including voting at meetings and appointing proxies);
- (s) **(proceedings generally)** commence, prosecute, defend, discontinue, compromise, accept any arrangement, submit to arbitration and settle proceedings which the Debenture Trustee considers expedient in connection with this document or the Mortgaged Property in or before a Public Authority in the name of the Mortgagor or otherwise;
- (t) **(acquire Securities)** acquire by purchase, subscription or otherwise any Securities;
- (u) **(exchange)** exchange the Mortgaged Property for any other property or rights (with or without giving or receiving any other consideration for the exchange);
- (v) **(surrender Mortgaged Property)** surrender or release any of the Mortgaged Property;
- (w) **(transfer obligations)** effect a novation of or otherwise transfer to any person obligations of the Mortgagor which arise under a Debenture Document or otherwise;
- (x) **(improve Mortgaged Property)** do anything which the Debenture Trustee considers would help improve the value of the Mortgaged Property, obtain income or returns from it or make it saleable or more saleable;
- (y) **(execute documents)** enter into agreements and execute documents itself or on behalf of the Mortgagor for any purpose in connection with a Debenture Document;
- (z) **(raise money, secure)** in the name of the Mortgagor or otherwise:
  - (i) obtain financial accommodation (including from the Debenture Trustee or from a party associated with the Debenture Trustee) or give Guarantees for any purpose which the Debenture Trustee considers expedient in connection with its powers under a Debenture Document; and
  - (ii) secure the payment or repayment of indebtedness relating to any such financial accommodation or Guarantees by a Security Interest over the Mortgaged Property, however it ranks in priority with the Mortgage or any other Collateral Security;
- (aa) **(receipts)** give receipts for money and other property it receives;
- (bb) **(employ and appoint persons)** employ or discharge staff, professional advisers, consultants, contractors, agents or auctioneers for any purpose, and at the remuneration, that the Debenture Trustee thinks fit;
- (cc) **(delegate)** delegate to any person for any time that the Debenture Trustee thinks fit any of the powers of the Debenture Trustee under this document, including this right of delegation;
- (dd) **(Authorisations)** apply for any Authorisation which is necessary or desirable in connection with the exercise of a Power; and
- (ee) **(incidental power)** do anything the Debenture Trustee thinks expedient in its interests and incidental to any of its Powers, without limiting those Powers.

#### 7.4 To discharge or acquire prior Security Interest

- (a) After an Event of Default occurs, the Debenture Trustee may do any one or more of the following:

- (i) purchase a debt secured by a prior Security Interest (including a debt secured by a Permitted Security Interest);
  - (ii) pay the amount required to discharge or satisfy that debt; and
  - (iii) take a transfer or assignment of that Security Interest and any Guarantee, document or right ancillary or collateral to it.
- (b) If the Debenture Trustee exercises its rights under paragraph (a):
- (i) the Mortgagor is indebted to the Debenture Trustee for the same amount paid by the Debenture Trustee or the amount of the debt acquired (whichever is higher) and that debt is immediately payable to the Debenture Trustee and forms part of the Secured Money;
  - (ii) the Debenture Trustee may rely on a written confirmation from the holder of a prior Security Interest, or an ancillary or collateral document, as to the amount and property secured by it;
  - (iii) the person with the benefit of the prior Security Interest need not enquire whether there is any money owing under a Debenture Document; and
  - (iv) the Mortgagor irrevocably directs any person with the benefit of a prior Security Interest to give the Debenture Trustee any information it requires in connection with the prior Security Interest.

## 7.5 To appoint Receivers

After an Event of Default occurs, the Debenture Trustee may do any one or more of the following:

- (a) appoint one or more persons (severally, unless specified otherwise in the instrument of appointment) to be a receiver or receiver and manager of all or any of the Mortgaged Property;
- (b) fix the Receiver's remuneration at an amount agreed between the Debenture Trustee and the Receiver and vary the remuneration;
- (c) terminate a receivership or remove or replace a Receiver; and
- (d) appoint a replacement or additional Receiver.

The power to appoint a Receiver may be exercised even though an order or resolution has been passed for the Liquidation of the Mortgagor, and even though the Receiver may not in all respects act as the Mortgagor's agent.

## 7.6 Notice or lapse of time required before rights exercised

- (a) If notice or lapse of time is required under any statute before the Debenture Trustee can exercise a Power, then that notice or lapse of time is dispensed with.
- (b) Paragraph (a) only applies if the relevant statute allows notice or lapse of time to be dispensed with.
- (c) If the relevant statute does not allow notice or lapse of time to be dispensed with, but allows it to be shortened, then for the purposes of this document, the period of notice or lapse of time is one day.

## 7.7 To give up possession and terminate receivership

The Debenture Trustee may at any time give up possession of the whole or any part of the Mortgaged Property or terminate a receivership, or both.

## 8. Receiver's powers

### 8.1 General

Unless the terms of the Receiver's appointment say otherwise, the Receiver has the following powers over the Mortgaged Property which the Receiver is appointed to deal with:

- (a) all the rights, powers, discretions or remedies given by law to mortgagees in possession, receivers or receivers and managers; and
- (b) all the Powers of the Debenture Trustee under this document and at law (other than the power to appoint Receivers).

The Receiver may exercise these rights and powers in the name of the Mortgagor or otherwise.

### 8.2 Receiver is agent of Mortgagor

To the extent permitted by law, a Receiver is the agent of the Mortgagor and the Mortgagor alone is responsible for the Receiver's acts and defaults. A Receiver may become the agent of the Debenture Trustee if the Debenture Trustee gives a notice to the Receiver in writing to that effect. The Debenture Trustee may appoint a Receiver, even if a resolution or order to Wind Up the Mortgagor has been passed or made and even though the Receiver may not, or may not in some respects, act as the Mortgagor's agent.

## 9. Protection of Debenture Trustee, Receiver and Attorney

To the extent permitted by law, neither the Debenture Trustee nor any Receiver or Attorney is liable in relation to any act or omission on its part in the exercise or non-exercise of any Power nor for any resulting Loss, except where the Debenture Trustee, Receiver or Attorney has committed a breach of trust, is negligent or fraudulent.

## 10. Protection of third parties

### 10.1 Persons dealing not bound to enquire

A person dealing with the Debenture Trustee, a Receiver or an Attorney need not enquire whether:

- (a) there has been a default under a Debenture Document any Secured Money has become due or whether the Receiver or the Attorney has been properly appointed; or
- (b) the Debenture Trustee, Receiver or Attorney has executed or registered an instrument or exercised a Power properly or with authority,

and whenever the Debenture Trustee, a Receiver or an Attorney deals with the Mortgaged Property, that dealing is authorised and valid as far as anyone involved with that dealing is concerned despite any actual or constructive notice to the contrary.

### 10.2 Receipts

The receipt of the Debenture Trustee, a Receiver or an Attorney (or of their Authorised Officer) for any money payable to or asset receivable by it discharges the person paying that money or delivering the asset to the extent of the payment or delivery (as the case may be).

## 11. Power of attorney

### 11.1 Appointment and powers

The Mortgagor for valuable consideration appoints the Debenture Trustee, each Authorised Officer of the Debenture Trustee and each Receiver separately as its attorney to do any one or more of the following on the Mortgagor's behalf and in the name of the Mortgagor or the attorney on the occurrence of an Event of Default:

- (a) prove in the Winding-Up of a Transaction Party;
- (b) anything which the Mortgagor must do under a Debenture Document or under law in connection with a Debenture Document;
- (c) anything which, in the opinion of the attorney, gives effect to a Power or its exercise;
- (d) anything which the attorney considers necessary or expedient for giving effect to or perfecting any Debenture Document; and
- (e) anything which the attorney is expressly empowered to do under this document or another Debenture Document on behalf of the Mortgagor,

including executing any documents, and the Mortgagor agrees to ratify anything done by an attorney under this power of attorney.

### 11.2 Attorney may delegate powers

Subject to the Debenture Trust Deed, an attorney appointed under this document may delegate its powers (including the power to delegate) to any person for any period and may revoke the delegation.

### 11.3 Purpose

The power of attorney created under this clause is irrevocable and is granted to secure the performance by the Mortgagor of the Mortgagor's obligations under each Debenture Document to which it is a party.

## 12. Deposited documents

Any document deposited with the Debenture Trustee by the Mortgagor or on its behalf, including any transfer in blank, may be completed, dealt with and given effect to on enforcement of this document without any further act on the part of the Mortgagor.

## 13. Mortgagor's obligations - performance by Debenture Trustee

The Debenture Trustee may do anything which the Mortgagor must do under this document but does not do or does not do to the Debenture Trustee's satisfaction. This does not limit or exclude the Debenture Trustee's powers in any way.

## 14. Notices and demands

### 14.1 How given

- (a) Subject to paragraph (b), a notice, request, demand, approval, consent or other communication (**Notice**) given by a party in connection with this document:
  - (i) must be given by the party or an Authorised Officer of the party or, in the case of a Notice given by the Debenture Trustee, may be given by a solicitor or other lawyer acting for the Debenture Trustee;

- (ii) must be in writing and in English;
  - (iii) must be left at the address of the addressee, or sent by prepaid ordinary post (airmail if posted to or from a place outside Australia) to the address of the addressee or sent by facsimile to the facsimile number of the addressee as specified in the notice details for that party in this document or any alternative address notified by the party.
- (b) Paragraph (a) does not limit any method of giving notices or serving demands provided for by statute or in another Debenture Document.

## 14.2 Validity

A Notice is validly given even if:

- (a) the Mortgagor has been Wound Up or the Mortgagor is absent from the place the Notice is left at, or delivered or sent to; or
- (b) the Notice is returned unclaimed.

## 14.3 Effect

Unless a later time is specified in it, a Notice takes effect from the time it is received.

## 14.4 Deemed receipt

A Notice is taken to be received:

- (a) in the case of a posted Notice, on the third Business Day after posting for domestic mail and seventh Business Day after posting for international mail; and
- (b) in the case of facsimile, on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient,

but if the delivery or receipt is on a day which is not a business day in the place of delivery or receipt or is after 4.00pm (addressee's time), it is taken to be received at the commencement of business on the next day which is a business day in that place.

# 15. Preserving the Debenture Trustee's Powers

## 15.1 Preservation

- (a) The fact that the Debenture Trustee or a Receiver exercises, does not exercise, or delays the exercise of, any Power does not affect, or constitute a representation in relation to, the Power or any other Power.
- (b) Without limiting paragraph (a), the fact that the Debenture Trustee or a Receiver exercises a Power does not prevent the Debenture Trustee or Receiver from exercising that Power again.
- (c) Unless expressly provided in a Debenture Document, no Power nor any Debenture Document merges in, adversely affects or is adversely affected by any other Power or Debenture Document or any Security Interest, judgment or remedy which the Debenture Trustee or a Receiver (or anyone claiming through either of them) may have or obtain.

## 15.2 No obligation to exercise rights or give consent

Each of the Debenture Trustee and a Receiver may:

- (a) exercise or not exercise any Power;

- (b) give or not give its consent; and
- (c) make or not make a decision,

under this document in its absolute discretion, unless this document expressly provides otherwise. A consent given by the Debenture Trustee or a Receiver subject to conditions does not take effect until the conditions are complied with to the satisfaction of the Debenture Trustee or Receiver.

### 15.3 Powers

- (a) The Powers provided by the Debenture Documents are cumulative and not exclusive of any other rights, powers, discretions or remedies provided by law.
- (b) Where a Power under the Debenture Documents is inconsistent with a Power at law, the Debenture Documents prevail to the extent permitted by law. A Power at law is not inconsistent with the Debenture Documents merely because it is more extensive than a similar Power in the Debenture Documents or because there is no similar Power in the Debenture Documents.

### 15.4 Choice of securities and Guarantees

The Debenture Trustee need not resort to any Security Interest, Guarantee or any other Power before resorting to any other of them.

### 15.5 Indemnities generally

- (a) Each indemnity in the Debenture Documents:
  - (i) is absolute and unconditional;
  - (ii) is a continuing obligation despite any settlement of account or the occurrence of any other thing;
  - (iii) must be discharged without set-off, deduction, abatement, counterclaim, suspension or deferment;
  - (iv) constitutes a separate and independent obligation of the party giving the indemnity from its other obligations under the Debenture Documents; and
  - (v) survives termination of any Debenture Document.
- (b) It is not necessary for the Debenture Trustee or a Receiver to incur an expense or make a payment before enforcing a right of indemnity conferred by a Debenture Document.

### 15.6 Consent and waivers

A consent or waiver by the Debenture Trustee or a Receiver is effective only if in writing. If given subject to conditions, the consent or waiver only takes effect when the conditions are complied with to the satisfaction of the Debenture Trustee or Receiver.

### 15.7 Avoidance of transaction

If any payment or other transaction relating to the Secured Money is void, voidable, unenforceable or defective or is claimed to be so (each an **Avoidance of Payment**) and that claim is upheld or settled then:

- (a) the liability of the Mortgagor under each Debenture Document and each Power will be what it would have been but for the Avoidance of Payment; and
- (b) the Mortgagor must immediately execute all documents and do all other things necessary or required by the Debenture Trustee to restore the Debenture Trustee to the position it

was in immediately before the Avoidance of Payment (including reinstating any Debenture Document),

even if the Debenture Trustee knew or ought to have known that the payment or transaction was void, voidable, unenforceable or defective. This clause survives any termination or full or partial discharge or release of any Debenture Document.

### **15.8 Effect of release**

A full or partial release of this Mortgage by the Debenture Trustee does not release the Mortgagor from personal liability under this document until the Debenture Trustee receives the Secured Money, regardless of any:

- (a) receipt given, payout figure quoted or other form of account stated; or
- (b) error or miscalculation by the Debenture Trustee.

### **15.9 Moratorium legislation**

A moratorium does not apply to a Debenture Document or the recovery of the Secured Money except if:

- (a) the Debenture Trustee agrees in writing that it does; or
- (b) it cannot be excluded by law.

## **16. Other provisions**

### **16.1 Notification from Mortgagor**

If the Mortgagor is required under this document to notify the Debenture Trustee about anything, it must do so in writing.

### **16.2 Debenture Trustee may set off**

Without any demand or notice, the Debenture Trustee may, if an Event of Default is subsisting, set off and apply indebtedness it owes to the Mortgagor (whatever the currency) against any money owing to it by any Transaction Party under any Debenture Document:

- (a) whether the amount owed by the Debenture Trustee or the Transaction Party is owed by it alone or with any other person; and
- (b) whether or not the amount owed by the Debenture Trustee or the Transaction Party is immediately payable.

The Mortgagor irrevocably authorises the Debenture Trustee to do anything necessary (including to sign any document and effect appropriate currency exchanges) for that purpose.

### **16.3 Mortgagor may not set off**

The Mortgagor may not (either directly or indirectly) claim, exercise or attempt to exercise a right of set-off or counterclaim against the Debenture Trustee (whether the right is the Mortgagor's or any other person's) or any other right which might have the effect of reducing the Secured Money.

### **16.4 Notices or demands as evidence**

A notice or certificate from or demand by the Debenture Trustee stating:

- (a) that a specified sum of money is owing or payable under a Debenture Document;
- (b) that an Event of Default has occurred; or



- (c) any other fact or determination relevant to the rights or obligations of the Debenture Trustee or the Mortgagor under a Debenture Document,

is taken to be correct unless the contrary is proved.

## 16.5 Severability

- (a) A construction of a Debenture Document that results in all provisions being enforceable and effective is to be preferred to a construction that does not.
- (b) If, despite the application of paragraph (a), a provision of a Debenture Document is illegal, unenforceable or ineffective, then the provision will be inoperative, but only to the extent to which, and during such time as, it is illegal, unenforceable or ineffective and the remainder of the Debenture Document will continue in force.
- (c) To the extent permitted by law, the Mortgagor will use its best endeavours (including by obtaining any necessary Authorisation) to include within the scope of clauses 2 and 3 any obligation or property which is within the scope of the definition of Secured Money or Mortgaged Property but with respect to which either clause is deemed inoperative under paragraph (b).

## 16.6 Variation of agreement

A variation of a Debenture Document must be in writing and signed by or on behalf of each party to it.

## 16.7 Authorised Officers and communications

The Mortgagor irrevocably authorises the Debenture Trustee to rely on:

- (a) a certificate by any person purporting to be a director or secretary of the Mortgagor as to the identity and signatures of its Authorised Officers. The Mortgagor warrants that its Authorised Officers have been authorised to give notices and communications under or in connection with the Debenture Documents; and
- (b) any notice or other document contemplated by any Debenture Document which bears the purported signature (whether given by facsimile or otherwise) of an Authorised Officer of the Mortgagor.

## 16.8 Receipt of money and application

The provisions of clause 4 of the Debenture Trust Deed shall apply in relation to money received by the Debenture Trustee under or in connection with this document.

## 16.9 Surplus proceeds

If surplus money remains in the hands of the Debenture Trustee, Receiver, Attorney or an External Administrator after payment of all the Secured Money (and satisfaction of any obligation ranking in priority to the Secured Money or secured by a Security Interest):

- (a) no trust arises over that surplus money; and
- (b) that surplus money does not carry interest and the Debenture Trustee, Receiver, Attorney or External Administrator must pay it to an account in the name of the Mortgagor (whether or not opened by the Debenture Trustee or External Administrator for that purpose). The Debenture Trustee or External Administrator is then no longer liable for the surplus money.

**16.10 Credit of available funds**

In applying money received by the Debenture Trustee towards the satisfaction of the Secured Money:

- (a) the account of the Mortgagor will be credited with only so much of the money available for the purpose as is actually received by the Debenture Trustee and not credited to a suspense account; and
- (b) the credit will date from the time of receipt (as determined by the Debenture Trustee).

**16.11 Tacking**

For the purpose of applying section 282 of the *Corporations Act 2001* (Cth), if a Stockholder is obliged to make further advances under a Debenture Document, that Debenture Document is taken to be incorporated in this document so that this document imposes on the Stockholder an obligation to advance that money.

**16.12 Payments after notice of subsequent Security Interests**

- (a) Any legal rule to the effect that the earliest payment into an account is deemed to be the first to be withdrawn or that the earliest debit is deemed to be the first to be extinguished will not, to the extent legally possible, apply to reduce the amount of the Secured Money for which the Debenture Trustee may claim priority as against the holder of any other Security Interest.
- (b) To the extent that a legal rule of the type described in paragraph (a) is applicable and will have the effect described in that paragraph, any money forming part of the Secured Money which is received by the Debenture Trustee will be applied (or deemed to have been applied) progressively in reduction of later debits, beginning with the latest debit.

**16.13 Debenture Trustee may assign rights**

- (a) The Debenture Trustee may assign its rights under this document without the consent of the Mortgagor. If it does so, the Secured Money will include all liabilities of the Mortgagor to the assignee which are within the scope of the definition whether or not the liabilities arose or were contemplated before the date of the assignment.
- (b) Subject to the Debenture Documents, the Debenture Trustee may disclose to a potential assignee any information provided to the Debenture Trustee by the Mortgagor which it considers appropriate.

**16.14 Governing law and jurisdiction**

- (a) This document is governed by the laws of Victoria.
- (b) The Mortgagor irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria. The Mortgagor waives any right it has to object to an action being brought in those courts, including by claiming that the action has been brought in an inconvenient forum or that those courts do not have jurisdiction.

**16.15 Debenture Trustee need not execute**

This document is enforceable by the Debenture Trustee even if the Debenture Trustee does not execute it.

**16.16 Attorneys**

Each attorney signing this document under a power of attorney certifies, by the attorney's signature, that the attorney has no notice of the revocation of the power of attorney.

**16.17 Counterparts**

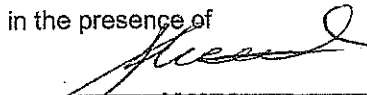
This document may be executed in any number of counterparts. Each counterpart constitutes an original of this document, all of which together constitute one instrument. A party who has executed a counterpart of this document may exchange it with another party by faxing, or by emailing a pdf (portable document format) copy of, the executed counterpart to that other party, and if requested by that other party, will promptly deliver the original by hand or post. Failure to make that delivery will not affect the validity of this document.

# Signing page

**EXECUTED** as a deed

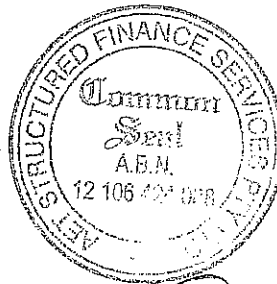
Signed sealed and delivered by  
KATHERINE JUDITH GOVE  
as attorney for **ACN 101 765 306 Pty Ltd**  
under power of attorney dated 13 November 2008

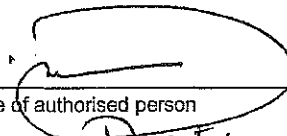
in the presence of

  
Signature of witness **JAMES THOMAS CREECH**  
Solicitor of the Supreme Court  
of New South Wales  
Aurora Place  
88 Phillip Street  
Name of witness (print) **Sydney**

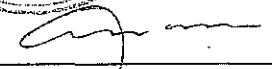
←  ←  
Attorney

The common seal of **AET Structured Finance Services Pty Limited** is duly affixed to this document by authority of its directors in the presence of



  
Signature of authorised person  
Director

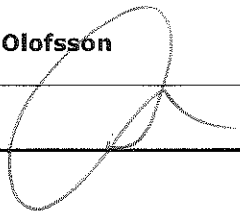
**Philip John Walter Joseph**  
Name of authorised person and office held (print)

←  ←  
Signature of authorised person

← **Glenn David White** ←  
Name of authorised person and office held (print)

**Replay Unit Trust Fixed and Floating Charge**

This is **Annexure F** of 34 pages referred to in form 603 (Notice of initial substantial holder) given by Brookfield International Finance Australia Pty Ltd in relation to THG (ACN 054 346 315)

print name	<b>Neil Olofsson</b>	capacity	Company secretary
sign here		date	19 April 2012

Execution Version

# Fixed and floating charge

## Replay Unit Trust

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Replay Investments Pty Ltd as trustee for the Replay Unit  
Trust (**Chargor**)

AET Structured Finance Services Pty Limited (**Debenture  
Trustee**)

MinterEllison

---

L A W Y E R S

AURORA PLACE, 88 PHILLIP STREET, SYDNEY NSW 2000, DX 117 SYDNEY  
TEL: +61 2 9921 8888 FAX: +61 2 9921 8123  
[www.minterellison.com](http://www.minterellison.com)

# Fixed and floating charge

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## Details

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Date 1 December 2008

## Parties

Name	<b>Replay Investments Pty Ltd</b>
ABN	28 106 160 089
Capacity	as trustee of the Replay Unit Trust
Short form name	<b>Chargor</b>
Notice details	Thakral House, Level 12, 301 George Street, Sydney NSW 2000 Facsimile: (02) 9272 8741 Attention: Manjit Singh Gill
	with a copy to: Pasricha & Gove, Level 16, 390 St. Kilda Road, Melbourne, Vic 3004 Facsimile: (03) 9866 5335 Attention: Katherine Gove

Name	<b>AET Structured Finance Services Pty Limited</b>
ABN	12 106 424 088
Short form name	<b>Debenture Trustee</b>
Notice details	Level 22, 207 Kent Street, Sydney NSW 2000 Facsimile: (02) 9028 5942 Attention: Glenn White

## Background

This document sets out the terms on which the Chargor grants a fixed and floating charge to the Debenture Trustee as security for the payment of the Secured Money.

# Agreed terms

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## 1. Defined terms & interpretation

### 1.1 Debenture Trust Deed defined terms

Terms defined in the Debenture Trust Deed or incorporated by reference in the Debenture Trust Deed shall, unless otherwise defined herein, bear the same meanings herein.

### 1.2 Defined terms

In this document:

**Attachment Notice** means a notice or direction under which a Public Authority requires money, which would otherwise be payable to the Chargor, to be paid or transferred to it or to the Crown. This includes notices under section 218 or 255 of the *Income Tax Assessment Act 1936* (Cth).

**Attorney** means an attorney appointed under a Collateral Security.

**Authorisation** includes:

- (a) any consent, authorisation, registration, filing, agreement, notarisation, certificate, permission, licence, approval or exemption from, by or with a Public Authority; or
- (b) in relation to anything which is prohibited or restricted by law if a Public Authority takes certain action within a specified period, the expiry of that period without the Public Authority taking that action.

**Authorised Officer** means:

- (a) in respect of the Chargor, a person appointed by the Chargor and notified to the Debenture Trustee to act as its Authorised Officer for the purposes of the Debenture Documents (the notice must be signed by the secretary or a director of the Chargor and be given to the Debenture Trustee with a specimen signature of the person); and
- (b) in respect of the Debenture Trustee, a person holding or acting in the office of director, chief executive or secretary, or whose title includes the word '*Manager*', '*Director*', '*Chief*', '*Head*' or any person notified to each Stockholder and the Chargor to act as its Authorised Officer for the purposes of the Debenture Documents.

**Charge** means the charge created under this document.

**Charged Property** means all the present and future property of the Chargor wherever situated, including all Trustee Property.

**Collateral Security** means each present or future Security Interest, Guarantee or other document or agreement created or entered into with the Debenture Trustee (in its capacity as such) as security (directly or indirectly) for the payment of the Secured Money or the performance by the Chargor of any of its obligations to a Secured Party under a Debenture Document. It includes each Security.

**Collection Account** means the account (if any) required to be opened pursuant to clause 5.2

**Crystallisation Event** means the occurrence of one or more of the following:

- (a) a Transaction Party is unable to pay its debts as they fall due or is insolvent within the meaning of section 95A of the Corporations Act, is taken to have failed to have complied

with a statutory demand under section 459F of the Corporations Act or must be presumed by a court to be insolvent under section 459C of the Corporations Act;

- (b) a circumstance specified in section 461 of the Corporations Act occurs with respect to a Transaction Party;
- (c) an order is made for the Winding Up of any Transaction Party, proceedings are commenced or an application is made for the Winding Up of any Transaction Party and not withdrawn or dismissed within 5 Business Days or an effective resolution is passed or a meeting is summoned or convened to consider a resolution for the Winding Up of any Transaction Party, except (in each case) with the consent of the Debenture Trustee;
- (d) an External Administrator is appointed to any Transaction Party or any of its asset or any step is taken to do so or any Transaction Party or Related Entity requests such appointment;
- (e) any Transaction Party stops or suspends payment to creditors generally or enters into an arrangement, assignment or composition with or for the benefit of its creditors generally or any class of them or proposes to do so;
- (f) a step is taken under sections 601AA, 601AB or 601AC of the Corporations Act to cancel the registration of any Transaction Party;
- (g) anything analogous or having a similar effect to an event listed in paragraphs (a)-(f) above occurs;
- (h) a Transaction Party stops or threatens to stop carrying on its business or a material part of it or substantially changes the nature of its business without the consent of the Debenture Trustee (acting on the instructions of the Majority Stockholders); or
- (i) the Debenture Trustee takes any step to enforce this document after an Event of Default has occurred.

**Debenture Documents** has the meaning given to it in the Debenture Trust Deed and includes, without limitation:

- (a) this document; and
- (b) each Subscription Agreement;
- (c) the Debenture Trust Deed; and
- (d) each Collateral Security.

**Debenture Trust Deed** means the debenture trust deed dated 9 July 2004 between the Issuer and the Debenture Trustee.

**Dollars and \$** means Australian dollars.

**Event of Default** means an 'Event of Default' as defined under any Subscription Agreement, any other event so described in a Debenture Document or any event which entitles the Debenture Trustee or any other Secured Party under any Debenture Document to accelerate the time for payment of any Secured Money or to terminate any obligation to provide funding to the Issuer.

**External Administrator** means an administrator, receiver, receiver and manager, trustee, provisional liquidator, liquidator or any other person (however described) holding or appointed to an analogous office or acting or purporting to act in an analogous capacity.

**GST** has the meaning given to it in the GST Act.

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

**Insurance Policy** means each insurance policy relating to the insurance required to be obtained or maintained by the Chargor under this document.

**Intellectual Property** means any intellectual or industrial property of the Chargor including:

- (a) any patent, trade mark (whether registered or common law), trade name, copyright, registered design, trade secret, confidential information, know-how or computer program; and
- (b) any licence or other right to use or to grant the use of or to be the registered owner or user of any of them.

**Insolvency** of an entity includes:

- (a) the Winding Up of an entity;
- (b) the appointment of an External Administrator to the person; and
- (c) any composition, compromise, arrangement, merger, amalgamation, reconstruction (other than a solvent reconstruction), administration, assignment for the benefit of creditors or insolvency of, by, or adversely affecting the person and any procedure which is equivalent or analogous in any jurisdiction.

**Lease** means any arrangement whereby an asset may be used or managed by a person other than the owner. It includes a licence.

**Loss** means a loss, claim, action, damage, liability, cost, charge, expense, penalty, compensation, fine, outgoing or payment suffered, paid or incurred.

**Marketable Security** means:

- (a) a marketable security as defined in the *Corporations Act 2001* (Cth);
- (b) a negotiable instrument; and
- (c) a unit or other interest in a trust or partnership.

**Permitted Security Interest** has the meaning given to it in a Subscription Agreement.

**Potential Event of Default** means any event, thing or circumstance which with the giving of notice or passage of time or both would become an Event of Default.

**Power** means any right, power, discretion or remedy of the Debenture Trustee, a Receiver or an Attorney under any Debenture Document or applicable law.

**Real Property** means all land and real property leased, occupied, used or owned by the Chargor at any time.

**Receiver** means a receiver or receiver and manager appointed under a Collateral Security. When two or more persons are appointed, the expression 'Receiver' refers to each of those persons severally as well as to two or more of them jointly.

**Records** means all the information which relates in any way to a specified person's business or any transaction entered into by the person, whether the information is recorded electronically, magnetically or otherwise.

**Replay Unit Trust** means the trust established by a trust deed dated 14 November 2008.

**Secured Money** means:

- (a) all money that the Chargor or a Transaction Party now owes or in the future may come to owe, actually or contingently, for any reason, to one or more of the Stockholders or to any combination of Stockholders in connection with any Stock; and

- (b) all money that the Chargor or a Transaction Party now owes or in the future may come to owe, actually or contingently, for any reason, to a Secured Party on any account under or in connection with a Debenture Document,

and includes all or part of the Secured Money. Where the Chargor or a Transaction Party would have owed money but for its Winding Up, it will be taken still to owe that money.

**Subscription Agreement** has the meaning given to it in the Debenture Trust Deed.

**Title Documents** means all certificates, confirmations and other documents evidencing title to, or rights to possess or use, any Charged Property.

**Trading Debt** means a debt which arises in the ordinary course of the Chargor's ordinary business.

**Transaction Party** means the Chargor and any other person providing a Collateral Security.

**Trust** means, in respect of the Chargor, each trust of which the Chargor is or becomes trustee. It includes, the Replay Unit Trust.

**Trustee Property** means, in respect of each Trust, the Chargor's rights, property and interests:

- (a) in the property and assets held by it as trustee; and
- (b) under its right of indemnity from the property, assets and beneficiaries of the trust and any equitable lien and other Security Interest held in respect of its administration of the trust and those rights of indemnity.

**Winding Up** includes:

- (a) dissolution, liquidation, provisional liquidation and bankruptcy; and
- (b) any analogous or equivalent procedure in any jurisdiction.

### **1.3 Interpretation**

Clause 1.2 of the Debenture Trust Deed is incorporated into this document with any necessary amendments.

### **1.4 Subsisting Events of Default**

An Event of Default or Potential Event of Default is 'subsisting' if it has not been either remedied or waived in accordance with the relevant Debenture Document.

### **1.5 Certified copies of documents**

The Debenture Trustee may require any copy of a document provided or to be provided to it under this document to be certified as a true and complete copy by a director or secretary of the Chargor.

### **1.6 Things required to be done on a Business Day**

If anything (other than the making of a payment) is required by this document to be done on or by a day which is not a Business Day, then it must be done on or by the next following Business Day.

### **1.7 Incorporation of provisions of Debenture Trust Deed**

Clause 3.6 of the Debenture Trust Deed is incorporated in and applies to this document as if set out in full in this document, with any necessary changes.

### **1.8 Debenture Document for the purposes of the Debenture Trust Deed**

This document is a Security and a Collateral Security and also a Debenture Document for the purposes of the Debenture Trust Deed.

## 2. Charge

### 2.1 Creation

The Chargor charges the Charged Property in favour of the Debenture Trustee (for the benefit of the Secured Parties) as security for the due and punctual payment of the Secured Money. The Charge is a first charge and ranks ahead of all other Security Interests.

### 2.2 Ranking

The Charge ranks in priority ahead of all other Security Interests over the Charged Property, other than a Permitted Security Interest preferred by law or as agreed by the Debenture Trustee in writing.

## 3. Fixed and floating nature

### 3.1 Fixed charge

The Charge is a fixed charge over:

- (a) land and real property leased, occupied, used or owned by the Chargor at any time;
- (b) plant, equipment and machinery other than stock-in-trade and work-in-progress of the Chargor;
- (c) Marketable Securities of the Chargor;
- (d) any document, agreement, Guarantee or Security Interest held by or for the benefit of the Chargor;
- (e) book and other debts of the Chargor and any right of the Chargor to recover money or property by legal proceedings and all proceeds of book and other debts deposited into the Collection Account;
- (f) the Collection Account and each other account opened in the name of the Chargor or for the benefit of the Chargor under any Debenture Document;
- (g) capital of the Chargor, including called, uncalled or unpaid capital;
- (h) Authorisations in relation to the Chargor;
- (i) goodwill of the Chargor;
- (j) Intellectual Property;
- (k) the Chargor's Records and all software and other means used to access the Chargor's Records;
- (l) all certificates of title and other documents evidencing title to the Charged Property;
- (m) insurance policies of the Chargor and proceeds;
- (n) the interest of the Chargor in any partnership or joint venture;
- (o) any other personal property, provided it is not acquired for disposal in the ordinary course of the Chargor's business; and
- (p) the Chargor's interests in or rights in respect of any of the property described in this subclause.

### 3.2 Floating charge

The Charge is a floating charge over the rest of the Charged Property not already subject to a fixed charge under this document.

### 3.3 Crystallisation of floating charge

The floating charge immediately and automatically, without the requirement of any notice becomes fixed:

- (a) over all of the Charged Property not already subject to a fixed charge under this document if a Crystallisation Event occurs; and
- (b) over an asset not already subject to a fixed charge under this document, if any of the following happens in relation to the asset:
  - (i) any Security Interest is enforced or becomes enforceable over the asset;
  - (ii) execution or distress takes place or is attempted, or an order to execute a judgment (howsoever described) is made against the asset;
  - (iii) the Chargor does anything in breach of clauses 5.3 or 5.4 or agrees or attempts to do so or takes any step to do so;
  - (iv) the Chargor receives a notice of resumption or intended resumption of the asset;
  - (v) in the case of Trustee Property, the relevant trust is terminated, a resolution is passed or made for the Winding Up of the trust or any beneficiaries direct the Chargor to distribute assets from Trustee Property;
  - (vi) any amount (including on account of Taxes or money owing by the Chargor to employees) ranks ahead of the floating charge with respect to the asset;
  - (vii) the Commissioner of Taxation or any other competent Public Authority signs or issues an Attachment Notice or takes any step affecting the asset whereby an amount owing to the Public Authority may rank ahead of the Charge;
  - (viii) the Debenture Trustee notifies the Chargor that the Charge is fixed over the asset; or
  - (ix) the Charge becomes fixed over the asset by law.

### 3.4 De-crystallisation

The Debenture Trustee may at any time notify the Chargor that the Charge is no longer fixed on a specified asset or type of asset with effect from the date specified in the notice. From that date, the asset or type of asset (whether acquired before or after that date) is subject to the floating charge until the Charge again becomes fixed on the asset or type of asset under this document.

### 3.5 Continuing security and discharging the Charge

- (a) The Charge is a continuing security. It remains in effect until the Debenture Trustee gives a final discharge to the Chargor.
  - (b) The Chargor is only entitled to a final discharge if:
    - (i) all of the Secured Money has been irrevocably paid in full and all commitments which might give rise to the payment of or a claim for repayment of Secured Money have terminated;
- and



- (ii) the Debenture Trustee is satisfied that there are no amounts which will subsequently fall within the description of the Secured Money due to an Avoidance of Payment (as defined in clause 16.7).

In satisfying itself under paragraph (ii), the Debenture Trustee may consider any matters it thinks relevant, including the possibility that a payment to reduce the Secured Money might be repayable, void or voidable under a law relating to insolvency or protection of creditors.

### **3.6 Priority amount - maximum prospective liability**

The nature of the 'prospective liability' (as defined in section 261(1) of the Corporations Act) secured by the Charge is advances, interest, fees, costs, indemnities and any other Secured Money. The maximum prospective liability secured by the Charge is A\$520,000,000 or its equivalent, as may be varied from time to time by the Debenture Trustee lodging, on the Chargor's behalf, a notice under section 268(2) of the Corporations Act. Any maximum prospective liability amount and this clause applies only to fix priority under section 282(3) of the *Corporations Act 2001* (Cth) and does not in any way fix a limit on the amount which may be secured by or recoverable under this document.

### **3.7 Authority to lodge**

The Chargor irrevocably authorises the Debenture Trustee and its agents, solicitors, officers, employees and service providers to electronically lodge with the Australian Securities and Investments Commission a form annexing a copy of this document for notification of details of the Charge, and to do anything else required to obtain registration of the Charge, including dealing with any requisitions concerning lodgement.

## **4. Payment obligations**

### **4.1 Secured Money**

The Chargor must pay the Secured Money (free from any deduction, set-off or counterclaim) to or as directed by the Debenture Trustee:

- (a) at the times and in the way specified in the Debenture Documents; and
  - (b) otherwise, immediately on demand,
- in the currency in which it is owed.

### **4.2 Payments to be on a Business Day**

Subject to any other Debenture Document, if a payment under this document falls due on a day that is not a Business Day, it must be paid on the next Business Day unless that Business Day falls in the next calendar month in which case the payment must be made on the preceding Business Day.

### **4.3 Costs and expenses**

Subject to any contrary agreement between the parties, the Chargor must immediately pay or reimburse on demand all costs and expenses of:

- (a) each Secured Party, a Receiver or an Attorney (and any of their respective officers, employees and agents) relating to or in connection with:
  - (i) the negotiation, preparation, execution, delivery, registration and completion of, and payment of Taxes on, the Debenture Documents;
  - (ii) any variation or discharge of any Debenture Document;

- (iii) the exercise, enforcement, protection or waiver, or attempted exercise, enforcement or protection, of any Debenture Document or Power;
  - (iv) obtaining or receiving payment of any of the Secured Money and its distribution;
  - (v) an Event of Default or Potential Event of Default;
  - (vi) the giving by it of a consent or approval in connection with a Debenture Document;
  - (vii) any enquiry by a Public Authority concerning a Transaction Party or the involvement of the Debenture Trustee in a Debenture Document;
  - (viii) maintaining, preserving or protecting the Charged Property;
  - (ix) surveying, valuing, inspecting or reporting on the Charged Property; and
  - (x) obtaining advice from a professional person or consultant about any matter of concern to the Debenture Trustee, a Receiver or an Attorney in connection with a Debenture Document;
- (b) the Debenture Trustee relating to fees payable to it in its capacity as Debenture Trustee and custodian as agreed by letter dated 25 November 2008; and
  - (c) the Debenture Trustee or the Subscribers relating to fees payable to the Debenture Trustee under the Debenture Documents,

including any legal costs and expenses (on a full indemnity basis), any professional consultant's fees (including professional tax consultants) and the costs (calculated on a time employed basis) of in-house legal counsel;

#### **4.4 Chargor to pay Taxes**

The Chargor must pay, or immediately on demand reimburse the Debenture Trustee, for, all Taxes, fees and charges which may be payable or determined to be payable by the Debenture Trustee in connection with any Debenture Document or a payment, receipt, supply of goods or services or other transaction contemplated by or carried out under or pursuant to any Debenture Document, including Taxes passed onto the Debenture Trustee by another financial institution or supplier of goods and services.

#### **4.5 Fines and penalties**

The Chargor must pay all fines and penalties for late payment or non-payment of the Taxes referred to in clause 4.4 except where the Chargor places the Debenture Trustee in cleared funds to make the payment not less than 10 Business Days prior to the due date and the Debenture Trustee fails to make the payment.

#### **4.6 Indemnity**

The Chargor must immediately indemnify the Debenture Trustee and each other Secured Party on demand against, and must pay to the Debenture Trustee on demand amounts equal to, any Loss which the Debenture Trustee, each other Secured Party, a Receiver or an Attorney determines will or has been (directly or indirectly) suffered by the Debenture Trustee, each other Secured Party, a Receiver or an Attorney (and any of their respective officers, employees and agents) as a result of or in connection with:

- (a) any Tax in respect of this document or a transaction or payment under this document;
- (b) an indemnity given by the Debenture Trustee to a Receiver or administrator of the Chargor;

- (c) the occurrence of an Event of Default or Potential Event of Default;
- (d) a Winding-Up in relation to the Chargor or another Transaction Party;
- (e) any payment required under a Debenture Document not being made on its due date;
- (f) any Secured Money (or money which would be Secured Money if it were recoverable) not being recoverable from the Chargor or a Transaction Party, or a liability or obligation to pay the Secured Money under a Debenture Document not being enforceable against the Chargor or Transaction Party;
- (g) any Environmental Liability;
- (h) the Charged Property or the exercise or attempted exercise of any Power;
- (i) the Debenture Trustee acting or relying in good faith on any notice or other communication from, or genuinely believed to be from, the Chargor; or
- (j) the Debenture Trustee relying on information supplied by or on behalf of the Chargor which proves to be a misrepresentation or to be misleading or deceptive (including by omission of other information),

including any legal costs and expenses (on a full indemnity basis), any professional consultant's fees in connection with the above.

#### **4.7 Chargor's liabilities not affected**

The Chargor's liabilities under this document are not affected by any act, omission or other thing which would reduce or discharge those liabilities, including:

- (a) a Secured Party granting time or any other indulgence or concession to a Transaction Party or any other person;
- (b) a Secured Party increasing the amount of, opening further accounts in connection with or otherwise varying or replacing the type or terms of, financial accommodation provided to a Transaction Party or any other person;
- (c) any transaction or agreement, or variation, novation or assignment of a transaction or agreement (including any Debenture Document), between a Secured Party and a Transaction Party or any other person;
- (d) an Insolvency in relation to a Transaction Party or any other person, or a Secured Party becoming a party to or bound by any Insolvency;
- (e) any judgment, proceedings or order being obtained or made against a Transaction Party or any other person;
- (f) an obligation of a Transaction Party or any other person or any provision of a Debenture Document being void, voidable, unenforceable, defective, released, waived, impaired, novated, enforced or impossible or illegal to perform;
- (g) the whole or partial discharge or release of, or the granting of, a Security;
- (h) any Secured Money not being recoverable or the liability of a Transaction Party or any other person to a Secured Party ceasing (including as a result of giving a release or discharge or by law);
- (i) the failure of a Transaction Party or any other person to execute any Debenture Document, properly or at all;
- (j) the Chargor not being a party to a Debenture Document (such as a Debenture Document solely between the Debenture Trustee and a Transaction Party);

- (k) a Secured Party exercising or not exercising its rights (including any right to elect to terminate a contract) under a Debenture Document or at law against a Transaction Party or any other person;
- (l) any default, misrepresentation, negligence, breach of contract, misconduct, acquiescence, delay, waiver, mistake, failure to give notice or other action or inaction of any kind (whether or not prejudicial to the Chargor) by a Secured Party or any other person;
- (m) any change to, or in the membership of, any partnership, joint venture or association; or
- (n) any Charged Property being destroyed, forfeited, extinguished, surrendered or resumed, whether or not the Chargor, a Transaction Party, a Secured Party or any other person is aware of it or consents to it and despite any legal rule to the contrary.

#### 4.8 Exclusion of subrogation and other rights

The Chargor must not (either directly or indirectly):

- (a) claim, exercise or attempt to exercise a right of set-off or counterclaim or any other right or raise any defence which might reduce or discharge the Chargor's liability under this document;
- (b) claim or exercise a right of subrogation, marshalling or contribution or claim the benefit of a Security; or
- (c) unless expressly permitted in a Debenture Document or the Debenture Trustee has given a direction to do so (in which case it must do so in accordance with the direction as trustee for the Debenture Trustee):
  - (i) prove, claim or vote in, or receive the benefit of a distribution, dividend or payment arising out of, the Insolvency of a Transaction Party; or
  - (ii) demand, or accept payment of, any money owed to the Chargor by a Transaction Party.

#### 4.9 Prove in Liquidation

- (a) The Chargor, for valuable consideration, irrevocably appoints each of the Debenture Trustee and its Authorised Representatives separately as its attorney to prove in the Insolvency of a Transaction Party for all money that the Chargor can claim against that person on any account whatever. The terms of appointment are that:
  - (i) the attorney must pay to the Chargor dividends it receives in excess of the Secured Money, without interest, and any other dividends must be paid to the Debenture Trustee; and
  - (ii) the attorney may delegate its powers (including the power to delegate) to any person for any period and may revoke the delegation.
- (b) The Chargor agrees to ratify anything done by an attorney under this clause. The power of attorney created under this clause is granted to secure the Chargor's performance of its obligations under each Debenture Document to which it is a party.

#### 4.10 Default interest

- (a) The Chargor must immediately on demand pay to the Debenture Trustee interest on any of the Secured Money which is due and payable by it and not paid.
- (b) Unless another Debenture Document provides otherwise, interest payable under paragraph (a) is calculated on a daily basis:

- (i) up to (but excluding) the date of actual payment from and including the due date or (in the case of an amount payable by way of reimbursement or indemnity) the date of disbursement or Loss, if earlier (**Calculation Date**); and
- (ii) at the rate (**Default Rate**) determined by the Debenture Trustee as at the Calculation Date, and then at monthly intervals, as the higher of:
  - (A) if the Chargor's liability is the subject of a judgment or order, the rate payable under that judgment or order; and
  - (B) the sum of 2% per annum and the Debenture Trustee's cost of funding the overdue amount.
- (c) If the Chargor's liability under a Debenture Document is the subject of a judgment or order, the obligation to pay interest under this clause is an obligation separate from the judgment or order and will subsist despite the making of the judgment or order and the interest accrues both before and after judgement at the higher of the rate determined under paragraph (b) and the rate payable under that judgment or order.
- (d) Unless another Debenture Document provides otherwise, interest payable under this clause that has not been paid may be capitalised at intervals of not less than one month as determined by the Debenture Trustee from time to time. Capitalised interest will itself bear interest (calculated on a daily basis) at the Default Rate from and including the date of capitalisation up to the date of actual payment.
- (e) The Chargor must pay to the Debenture Trustee accrued interest under this clause 4.10 on the last Business Day of each calendar month on demand.

#### 4.11 Deduction or withholding required

If the Chargor must deduct or withhold Taxes from a payment to the Debenture Trustee, it must:

- (a) make that deduction and/or withholding, pay to the appropriate Public Authority an amount equal to the full amount deducted and/or withheld as required by law and give the Debenture Trustee a receipt for the payment; and
- (b) increase its payment to the Debenture Trustee to an amount which will result in the Debenture Trustee receiving at the time the payment is due (after deduction or withholding of any Taxes in respect of the increased payment) the full amount which it would have received if no deduction or withholding had been required.

#### 4.12 Payments and receipts in foreign currency

If for any reason the Debenture Trustee receives or recovers any amount (**Paid Amount**) under or in relation to a Debenture Document in a currency other than the currency in which it is payable under the Debenture Document (**Agreed Currency**), the amount which the Debenture Trustee will be taken to have received or recovered for the purposes of the Debenture Documents will be the Agreed Currency amount to which the Debenture Trustee could have converted the Paid Amount in accordance with its normal procedures at the time of the receipt or recovery less the costs of the conversion.

#### 4.13 GST

- (a) Notwithstanding any other provision in this document, any amount payable to the Debenture Trustee under the Debenture Documents does not include any GST. Terms defined in the GST Act have the same meaning in this document.
- (b) To the extent that any supply under or in connection with this document made or incurred, by the Debenture Trustee constitutes a taxable supply, the consideration payable will

automatically be increased to include an additional amount on account of GST. That amount will be the product of the value of the consideration for the supply and the prevailing GST rate. The Debenture Trustee will provide the Chargor with a tax invoice complying with the GST Act in respect of any supply made by the Debenture Trustee to the Chargor.

## 5. Warranties and undertakings

### 5.1 Representations and warranties

- (a) The Chargor represents and warrants to the Debenture Trustee (and for the benefit of the other Secured Parties) that all of its representations and warranties in the Debenture Documents are true and correct (or if not yet made, will be true and correct when made).
- (b) The Chargor represents and warrants to the Debenture Trustee (and for the benefit of the other Secured Parties) that as at the date of this Charge it has no property other than property located in Victoria for the purposes of any Australian State or Territory stamp duty law.
- (c) The Chargor repeats each representation and warranty in this clause 5.1 with reference to the facts and circumstances at the time when representations and warranties are repeated in a Subscription Agreement.
- (d) The Chargor acknowledges that:
  - (i) the Debenture Trustee has, and each other Secured Party has, entered into the Debenture Documents in reliance on the representations and warranties in this clause 5.1; and
  - (ii) those representations and warranties survive execution and delivery of the Debenture Documents and the provision of financial accommodation under them.

### 5.2 Collection Account and proceeds

On the earlier of a request by the Debenture Trustee, an Event of Default occurring or an event occurring under clause 3.3(a) or 3.3(b) in relation to book debts, the Chargor must:

- (a) establish and maintain an interest-bearing account with an ADI (as defined in the *Banking Act 1959* (Cth)) designated as 'Collection Account' at a branch approved by the Debenture Trustee, and satisfy all associated account opening requirements;
- (b) sign and do everything necessary (including give notice to the ADI and execute all documents required by the ADI and the Debenture Trustee) to make at least one of the Debenture Trustee's Authorised Officers a signatory to the Collection Account, including for the purpose of all withdrawals and transfers from the account;
- (c) ensure that that the following amounts are deposited directly into the Collection Account immediately on receipt of such amounts:
  - (i) all proceeds, money or other consideration in respect of any book or other debt due to it (whether or not received by it) and all insurance proceeds; and
  - (ii) net proceeds from the disposal of any Secured Property.

The Chargor agrees that:

- (d) the Debenture Trustee is not responsible for the Chargor's performance of its obligations in relation to the Collection Account; and

- (e) the Debenture Trustee has no duties in relation to the Collection Account except as specified in a Debenture Document, and will not be liable for any error of judgment or any mistake of fact or law, except to the extent of its own gross negligence or fraud.

### 5.3 Chargor undertakings

The Chargor must:

- (a) **(Secured Money)** pay the Secured Money at the times and in the way specified in the Debenture Documents, or otherwise on demand;
- (b) **(other obligations)** fully and punctually perform all of its obligations under each Debenture Document to which it is a party at the times and in the way specified in the relevant Debenture Document;
- (c) **(no Event of Default)** ensure that no Event of Default occurs;
- (d) **(no set-off)** not directly or indirectly claim, exercise or attempt to exercise a right of set-off or counterclaim (whether its or any other person's right) against the Debenture Trustee;
- (e) **(Title Documents)** deposit with the Debenture Trustee all Title Documents relating to interests in Real Property, Marketable Securities and any other Charged Property over which the Charge is fixed as soon as they are available to the Chargor or its agents;
- (f) **(compliance with laws)** comply with all laws and requirements of Government Agencies in respect of the Charged Property, and ensure that any person occupying or using the Charged Property does the same;
- (g) **(protect title)** protect and enforce its title to, and the Debenture Trustee's title as chargee of, the Charged Property;
- (h) **(income)** if the Debenture Trustee directs, ensure that rent and other income from the Charged Property is paid to the Debenture Trustee (or that the Chargor pays over such amounts to the Debenture Trustee), to be applied in accordance with clause 17.8;
- (i) **(comply with other interests)** comply with the terms of each Security Interest binding on it in respect of the Charged Property from time to time;
- (j) **(rates, Taxes)** pay on time all rates, Taxes and other amounts for which it is liable as owner of the Charged Property;
- (k) **(condition and protection)** keep all Charged Property in good working order and condition and protected from loss, theft, damage; and
- (l) **(maintain value)** not do, allow or omit anything which is likely to lower the value of the Charged Property.

### 5.4 Dealing with Charged Property

Subject to any other Debenture Document, the Chargor may not, without the prior consent of the Debenture Trustee:

- (a) dispose of, part with possession of, create or permit to exist an interest in or otherwise deal with any of the Charged Property:
  - (i) over which the Charge is fixed; or
  - (ii) over which the Charge is floating other than in the ordinary course of its ordinary business; or
- (b) (i) create or permit to exist a Security Interest, other than a Permitted Security Interest, over any of the Charged Property or if the creation of a Security Interest

cannot by law be restricted, create such a Security Interest without the holder of the Security Interest first entering into a deed of priority in form and substance acceptable to the Debenture Trustee (acting on the instructions of the Majority Stockholders); or

- (i) increase the amount secured under a Security Interest held by someone other than the Debenture Trustee in respect of the Charged Property.

## 5.5 Giving access to records and property

The Chargor must:

- (a) ensure that its Records and property are available for inspection at reasonable times by the Debenture Trustee and persons acting on the Debenture Trustee's behalf; and
- (b) allow the Debenture Trustee and persons acting on the Debenture Trustee's behalf to inspect and to take copies of or extracts from its Records and give reasonable assistance to them.

## 5.6 Investigating Accountants

The Debenture Trustee may at any time after the occurrence of an Event of Default or Potential Event of Default appoint accountants (**Investigating Accountants**) to investigate the affairs and financial position of the Chargor. The Chargor:

- (a) unconditionally authorises the Investigating Accountants to take the action which is reasonably necessary or desirable for the investigation. This does not include the power to manage the Chargor's business;
- (b) agrees to give the Investigating Accountants all reasonable assistance for that purpose; and
- (c) unconditionally authorises the Investigating Accountants to disclose to the Debenture Trustee and its advisers all information and documentation in connection with the investigation.

The Chargor must pay the costs and expenses of the investigations immediately on demand by the Debenture Trustee.

# 6. Chargor's insurance obligation

## 6.1 Positive obligations

The Chargor must:

- (a) (**general obligation**) ensure that the following insurances are obtained and maintained in full force and effect:
  - (i) insurance over all Charged Property which is of an insurable nature for its full insurable value on a reinstatement and replacement basis (or such other amount and basis as the Debenture Trustee specifies (acting on the instructions of the Facility Agent)); and
  - (ii) other insurance appropriate to its business, assets and operations (including worker's compensation, public risk, product liability, business interruption, loss of rent or other insurance reasonably required by the Debenture Trustee (acting on the instructions of the Facility Agent));
- (b) (**interest of Debenture Trustee**) ensure that the insurance (except for an insurance policy for professional indemnity, employers' liability or workers' compensation insurance) names the Debenture Trustee (on behalf of the Secured Parties) as an insured and loss



payee on the policy or, if the Debenture Trustee directs, is in both the names of the Chargor and the Debenture Trustee;

- (c) **(policy contents and insurer)** without limiting paragraphs (a) and (b), ensure that, unless the Debenture Trustee otherwise consents, each insurance policy is in a form and on terms and for an amount acceptable to the Debenture Trustee and with insurers approved by the Debenture Trustee (acting on the instructions of the Facility Agent);
- (d) **(deliver copies)** promptly deliver to the Debenture Trustee a copy of each Insurance Policy and each variation made to the Insurance Policy;
- (e) **(certificate of currency)** on request, give the Debenture Trustee a certificate of currency for each Insurance Policy; and
- (f) **(notice to Debenture Trustee)** notify the Debenture Trustee immediately of:
  - (i) anything which might give rise to a claim under an Insurance Policy in an amount in excess of \$50,000 or its equivalent;
  - (ii) any cancellation of or reduction in the amount payable under an Insurance Policy;
  - (iii) an Insurance Policy becoming void, voidable or of limited effect; and
  - (iv) any other material circumstance or correspondence in relation to an Insurance Policy.

## 6.2 Negative obligations

The Chargor must not:

- (a) **(prejudice policy)** do or allow anything to be done or omit to do anything which might cause an Insurance Policy to be prejudiced;
- (b) **(change cover)** without the consent of the Debenture Trustee, materially change the cover under an Insurance Policy; or
- (c) **(claims)** make, enforce, settle or compromise a claim or do anything inconsistent with the powers of the Debenture Trustee under clause 6.4.

## 6.3 Further assurances in relation to insurance

If:

- (a) the Chargor does not comply with its obligations to insure under a Debenture Document;
- (b) in the opinion of the Debenture Trustee, an Insurance Policy becomes of limited effect, void, voidable or able to be cancelled by the insurer; or
- (c) in the Debenture Trustee's opinion, the insurer may not be able to meet a claim,

the Debenture Trustee may, at the Chargor's cost, do anything which in its opinion is reasonably necessary to ensure that the Chargor's insurance obligations in the Debenture Documents are complied with. This may include obtaining a replacement policy.

## 6.4 Insurance claims

- (a) Without limiting the Debenture Trustee's rights on enforcement, the Debenture Trustee alone may:
  - (i) make, enforce, settle and compromise insurance claims in connection with the Charged Property; and

- (ii) sue for, recover, receive and give discharges for any amount payable in connection with an Insurance Policy,

where such claim or amount exceeds \$50,000 or its equivalent.

- (b) The Chargor will do all things necessary, including providing documents and information, to assist the Debenture Trustee in making or enforcing any claim under an Insurance Policy.

## 6.5 Insurance proceeds

Proceeds of each Insurance Policy (other than a claim for professional indemnity, employers' liability or workers' compensation insurance) must be applied as follows, unless the Debenture Trustee otherwise consents:

- (a) if no Event of Default is subsisting:
  - (i) in the case of a policy covering destruction, damage or loss of property, in replacing, rebuilding or repairing the property; and
  - (ii) in any other case, in discharging the liability or making good the loss covered by the policy,with any surplus being applied to reduce the Secured Money whether or not due; and
- (b) if an Event of Default is subsisting, to reduce the Secured Money whether or not due.

## 7. Further assurances

The Chargor must, at the Chargor's cost, do whatever the Debenture Trustee requires to:

- (a) more satisfactorily secure the Charged Property to the Debenture Trustee for payment of the Secured Money; or
- (b) enable the better exercise of any Power,

or both and must make anyone else who has an interest in the Charged Property or claims under or in trust for the Chargor do the same.

This includes any one or more of the following:

- (a) executing, in a form and on terms satisfactory to the Debenture Trustee, and (if applicable) paying any Taxes on and/or registering any Security Interest (including a legal or statutory mortgage over any of the real property or other Charged Property the subject of the fixed Charge) or Guarantee securing the Secured Money;
- (b) paying any Taxes on and registering the Charge with the priority required by the Debenture Trustee; and
- (c) executing and delivering blank transfers in relation to any of the Charged Property.

## 8. Debenture Trustee's powers after Event of Default

### 8.1 Acceleration of Secured Money

If an Event of Default occurs, the Debenture Trustee may by notice to the Chargor declare that the Secured Money is immediately due and payable. On receipt of that notice, the Chargor must immediately pay the Secured Money to the Debenture Trustee.

## 8.2 General rights, powers and remedies

After an Event of Default occurs, the Debenture Trustee may, without making demand or giving notice to anyone (unless notice is required as described in clause 8.7), do all things that a mortgagee or an absolute owner of the Charged Property can do, and exercise all rights, powers and remedies:

- (a) of a mortgagee or an absolute owner of the Charged Property;
- (b) given to a Receiver under the Corporations Act; and
- (c) specified in clause 8.3.

## 8.3 Specific powers

After an Event of Default occurs, the Debenture Trustee may do any one or more of the following (whether in its or the Chargor's name or otherwise and whether or not it has possession of the Charged Property):

- (a) **(recover, possess and control)** access, recover, manage, take up or give up possession of the Charged Property;
- (b) **(receive income and profits)** receive the income and profits of the Charged Property;
- (c) **(carry on business)** carry on or participate in the Chargor's business in the name of the Chargor or the Debenture Trustee or otherwise;
- (d) **(sell)** sell or help sell the Charged Property on such terms and in such manner as it thinks fit, whether or not the Debenture Trustee has taken possession;
- (e) **(options)** give an option to purchase or Lease the Charged Property on the terms it thinks fit;
- (f) **(sever fixtures)** sever fixtures belonging to the Chargor and sell them apart from the Charged Property;
- (g) **(Lease)** Lease the Charged Property or give rights over the Charged Property in the name of the Chargor or otherwise (whether or not the Debenture Trustee has taken possession) for whatever term, at whatever rent or fee and on whatever terms the Debenture Trustee thinks fit;
- (h) **(deal with Leases)** renew, vary, accept the surrender of or terminate a Lease of the Charged Property;
- (i) **(sell or Lease together with other property)** sell or Lease the Charged Property with or without any other property in any manner that the Debenture Trustee thinks expedient, with full power to apportion costs, expenses, purchase money, rent and other proceeds between the properties sold or Leased;
- (j) **(hive off assets or obligations)** promote the formation of any company so that the company may purchase or acquire the Charged Property or assume obligations of the Chargor or both;
- (k) **(effect hive-off)** sell or assign the Charged Property to a person and have that person assume some or all of the Chargor's obligations;
- (l) **(acquire assets)** acquire or take on Lease any asset, after which it will form part of the Charged Property;

- (m) **(bank accounts)** operate bank accounts forming part of the Charged Property and open and operate further bank accounts in the name of the Chargor to the exclusion of the Chargor;
- (n) **(negotiable instruments)** deal with negotiable instruments in the name of the Chargor;
- (o) **(rights)**
  - (i) perform the Chargor's obligations under;
  - (ii) enforce or exercise or not exercise the Chargor's rights and powers under; and
  - (iii) vary, terminate or rescind,

a contract, instrument, arrangement or right forming part of the Charged Property;
- (p) **(perform Chargor's obligations)** do everything it thinks necessary to comply with the obligations of the Chargor under a Debenture Document;
- (q) **(remedy breach)** do everything it thinks necessary to make good a breach or default inherent in an Event of Default, to its own satisfaction;
- (r) **(deposit money in suspense or other accounts)** invest, deposit or hold the Charged Property in any way that, and for as long as, the Debenture Trustee thinks fit and vary, transpose or reinvest the Charged Property;
- (s) **(make calls)** make calls on the members of the Chargor for the uncalled capital or uncalled premiums subject to the Charge and make calls on beneficiaries to pay money owing to the Chargor as trustee in respect of the Trustee Property;
- (t) **(recover, protect Charged Property)** do everything the Debenture Trustee thinks necessary to recover or protect the Charged Property;
- (u) **(Insolvency process)** Wind Up any person and participate in any Insolvency of any person (including voting at meetings and appointing proxies);
- (v) **(proceedings generally)** commence, prosecute, defend, discontinue, compromise, accept any arrangement, submit to arbitration and settle proceedings which the Debenture Trustee considers expedient in connection with this document or the Charged Property in or before a Public Authority in the name of the Chargor or otherwise;
- (w) **(Marketable Securities)** exercise the rights and powers of an absolute owner in connection with Marketable Securities which form part of the Charged Property (including voting at meetings and appointing proxies);
- (x) **(exchange)** exchange the Charged Property for any other property or rights (with or without giving or receiving any other consideration for the exchange);
- (y) **(surrender Charged Property)** surrender or release any of the Charged Property;
- (z) **(transfer obligations)** effect a novation of or otherwise transfer to any person obligations of the Chargor which arise under a Debenture Document or otherwise;
- (aa) **(improve Charged Property)** do anything which the Debenture Trustee considers would help improve the value of the Charged Property, obtain income or returns from it or make it saleable or more saleable. Without limitation, the Debenture Trustee may maintain, improve or alter the Charged Property, reorganise or restructure the Chargor's business or any process or procedure carried on by the Chargor, and undertake any marketing or publicity campaign;
- (bb) **(build, pull down, rebuild or alter)**

- (i) build a new building or improvement; and
- (ii) pull down, rebuild or alter a building or improvement,  
on land which, or an interest in which, is part of the Charged Property;
- (cc) **(execute documents)** enter into agreements and execute documents itself or on behalf of the Chargor for any purpose in connection with a Debenture Document;
- (dd) **(raise money, secure)** in the name of the Chargor or otherwise:
  - (i) obtain financial accommodation (including from the Debenture Trustee or from a party associated with the Debenture Trustee) or give Guarantees for any purpose which the Debenture Trustee considers expedient in connection with its powers under a Debenture Document; and
  - (ii) secure the payment or repayment of indebtedness relating to any such financial accommodation or Guarantees by a Security Interest over the Charged Property, however it ranks in priority with the Charge or any other Collateral Security;
- (ee) **(receipts)** give receipts for money and other property it receives;
- (ff) **(employ and appoint persons)** employ or discharge staff, professional advisers, consultants, contractors, agents or auctioneers for any purpose, and at the remuneration, that the Debenture Trustee thinks fit;
- (gg) **(insurance)** take out and make and settle claims under insurance policies;
- (hh) **(delegate)** delegate to any person for any time that the Debenture Trustee thinks fit any of the powers of the Debenture Trustee under this document, including this right of delegation;
- (ii) **(Authorisations)** apply for any Authorisation which is necessary or desirable in connection with the exercise of a Power; and
- (jj) **(incidental power)** do anything the Debenture Trustee thinks expedient in its interests and incidental to any of its Powers, without limiting those Powers.

#### 8.4 To discharge or acquire prior Security Interest

- (a) After an Event of Default occurs, the Debenture Trustee may do any one or more of the following:
  - (i) purchase a debt secured by a prior Security Interest (including a debt secured by a Permitted Security Interest);
  - (ii) pay the amount required to discharge or satisfy that debt; and
  - (iii) take a transfer or assignment of that Security Interest and any Guarantee, document or right ancillary or collateral to it.
- (b) If the Debenture Trustee exercises its rights under paragraph (a):
  - (i) the Chargor is indebted to the Debenture Trustee for the same amount paid by the Debenture Trustee or the amount of the debt acquired (whichever is higher) and that debt is immediately payable to the Debenture Trustee and forms part of the Secured Money;
  - (ii) the Debenture Trustee may rely on a written confirmation from the holder of a prior Security Interest, or an ancillary or collateral document, as to the amount and property secured by it;

- (iii) the person with the benefit of the prior Security Interest need not enquire whether there is any money owing under a Debenture Document; and
- (iv) the Chargor irrevocably directs any person with the benefit of a prior Security Interest to give the Debenture Trustee any information it requires in connection with the prior Security Interest.

## **8.5 Co-operation in exercise of power of sale**

If the Debenture Trustee or a Receiver wishes to exercise a right to sell any Charged Property, the Chargor must do or cause to be done all things necessary to enable an expeditious sale and transfer to the purchaser for the value as estimated by the Debenture Trustee, in the manner and on terms the Debenture Trustee thinks fit.

## **8.6 To appoint Receivers**

After an Event of Default occurs, the Debenture Trustee may do any one or more of the following:

- (a) appoint one or more persons (severally, unless specified otherwise in the instrument of appointment) to be a receiver or receiver and manager of all or any of the Charged Property;
- (b) fix the Receiver's remuneration at an amount agreed between the Debenture Trustee and the Receiver and vary the remuneration;
- (c) terminate a receivership or remove or replace a Receiver; and
- (d) appoint a replacement or additional Receiver.

## **8.7 Notice or lapse of time required before rights exercised**

- (a) If notice or lapse of time is required under any statute before the Debenture Trustee can exercise a Power, then that notice or lapse of time is dispensed with.
- (b) Paragraph (a) only applies if the relevant statute allows notice or lapse of time to be dispensed with.
- (c) If the relevant statute does not allow notice or lapse of time to be dispensed with, but allows it to be shortened, then for the purposes of this document, the period of notice or lapse of time is one day.

## **8.8 To give up possession and terminate receivership**

The Debenture Trustee may at any time give up possession of the whole or any part of the Charged Property or terminate a receivership, or both.

# **9. Receiver's powers**

## **9.1 General**

Unless the terms of the Receiver's appointment say otherwise, the Receiver has the following powers over the Charged Property which the Receiver is appointed to deal with:

- (a) all the rights, powers, discretions or remedies given by law to mortgagees in possession, receivers or receivers and managers;
- (b) all the Powers of the Debenture Trustee under this document and at law (other than the power to appoint Receivers); and
- (c) power to obtain financial accommodation from a Secured Party and give Guarantees on terms that the Receiver considers expedient in connection with the Charged Property, in

each case whether alone or together with any other person, and with or without granting a Security Interest (regardless of priority ranking) over the Charged Property.

The Receiver may exercise these rights and powers in the name of the Chargor or otherwise.

## **9.2 Receiver is agent of Chargor**

To the extent permitted by law, a Receiver is the agent of the Chargor and the Chargor alone is responsible for the Receiver's acts and defaults. A Receiver may become the agent of the Debenture Trustee if the Debenture Trustee gives a notice to the Receiver in writing to that effect. The Debenture Trustee may appoint a Receiver, even if a resolution or order to Wind Up the Chargor has been passed or made and even though the Receiver may not, or may not in some respects, act as the Chargor's agent.

## **10. Protection of Debenture Trustee, Receiver and Attorney**

To the extent permitted by law, neither the Debenture Trustee nor any Receiver or Attorney is liable in relation to any act or omission on its part in the exercise or non-exercise of any Power nor for any resulting Loss, except where the Debenture Trustee, Receiver or Attorney has committed a breach of trust, is negligent or fraudulent.

## **11. Protection of third parties**

### **11.1 Persons dealing not bound to enquire**

A person dealing with the Debenture Trustee, a Receiver or an Attorney need not enquire whether:

- (a) there has been a default under a Debenture Document, any Secured Money has become due or whether the Receiver or the Attorney has been properly appointed; or
- (b) the Debenture Trustee, Receiver or Attorney has executed or registered an instrument or exercised a Power properly or with authority,

and whenever the Debenture Trustee, a Receiver or an Attorney deals with the Charged Property, that dealing is authorised and valid as far as anyone involved with that dealing is concerned despite any actual or constructive notice to the contrary.

### **11.2 Receipts**

The receipt of the Debenture Trustee, a Receiver or an Attorney (or of their Authorised Officer) for any money payable to or asset receivable by it discharges the person paying that money or delivering the asset to the extent of the payment or delivery (as the case may be).

## **12. Power of attorney**

### **12.1 Appointment and powers**

The Chargor for valuable consideration appoints the Debenture Trustee, each Authorised Officer of the Debenture Trustee and each Receiver separately as its attorney to do any one or more of the following on the Chargor's behalf and in the name of the Chargor or the attorney on the occurrence of an Event of Default:

- (a) prove in the Insolvency of a Transaction Party;
- (b) anything which the Chargor must do under a Debenture Document or under law in connection with a Debenture Document;

- (c) anything which, in the opinion of the attorney, gives effect to a Power or its exercise;
- (d) anything which the attorney considers necessary or expedient for giving effect to or perfecting any Debenture Document; and
- (e) anything which the attorney is expressly empowered to do under this document or another Debenture Document on behalf of the Chargor,

including executing any documents, and the Chargor agrees to ratify anything done by an attorney under this power of attorney.

## 12.2 Attorney may delegate powers

Subject to the Debenture Trust Deed, an attorney appointed under this document may delegate its powers (including the power to delegate) to any person for any period and may revoke the delegation.

## 12.3 Purpose

The power of attorney created under this clause is irrevocable and is granted to secure the performance by the Chargor of the Chargor's obligations under each Debenture Document to which it is a party.

## 13. Deposited documents

Any document deposited with the Debenture Trustee by the Chargor or on its behalf, including any transfer in blank, may be completed, dealt with and given effect to on enforcement of this document without any further act on the part of the Chargor.

## 14. Chargor's obligations - performance by Debenture Trustee

The Debenture Trustee may do anything which the Chargor must do under this document but does not do or does not do to the Debenture Trustee's satisfaction. This does not limit or exclude the Debenture Trustee's powers in any way.

## 15. Notices and demands

### 15.1 How given

- (a) Subject to paragraph (b), a notice, request, demand, approval, consent or other communication (**Notice**) given by a party in connection with this document:
  - (i) must be given by the party or an Authorised Officer of the party or, in the case of a Notice given by the Debenture Trustee, may be given by a solicitor or other lawyer acting for the Debenture Trustee;
  - (ii) must be in writing and in English;
  - (iii) must be left at the address of the addressee, or sent by prepaid ordinary post (airmail if posted to or from a place outside Australia) to the address of the addressee or sent by facsimile to the facsimile number of the addressee as specified in the notice details for that party in this document or any alternative address notified by the party.
- (b) Paragraph (a) does not limit any method of giving notices or serving demands provided for by statute or in another Debenture Document.



## 15.2 Validity

A Notice is validly given even if:

- (a) the Chargor has been Wound Up or the Chargor is absent from the place the Notice is left at, or delivered or sent to; or
- (b) the Notice is returned unclaimed.

## 15.3 Effect

Unless a later time is specified in it, a Notice takes effect from the time it is received.

## 15.4 Deemed receipt

A Notice is taken to be received:

- (a) in the case of a posted Notice, on the third Business Day after posting for domestic mail and seventh Business Day after posting for international mail; and
- (b) in the case of facsimile, on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient,

but if the delivery or receipt is on a day which is not a business day in the place of delivery or receipt or is after 4.00pm (addressee's time), it is taken to be received at the commencement of business on the next day which is a business day in that place.

# 16. Preserving the Debenture Trustee's Powers

## 16.1 Preservation

- (a) The fact that the Debenture Trustee or a Receiver exercises, does not exercise, or delays the exercise of, any Power does not affect, or constitute a representation in relation to, the Power or any other Power.
- (b) Without limiting paragraph (a), the fact that the Debenture Trustee or a Receiver exercises a Power does not prevent the Debenture Trustee or Receiver from exercising that Power again.
- (c) Unless expressly provided in a Debenture Document, no Power nor any Debenture Document merges in, adversely affects or is adversely affected by any other Power or Debenture Document or any Security Interest, judgment or remedy which the Debenture Trustee or a Receiver (or anyone claiming through either of them) may have or obtain.

## 16.2 No obligation to exercise rights or give consent

Each of the Debenture Trustee and a Receiver may:

- (a) exercise or not exercise any Power;
- (b) give or not give its consent; and
- (c) make or not make a decision,

under this document in its absolute discretion, unless this document expressly provides otherwise. A consent given by the Debenture Trustee or a Receiver subject to conditions does not take effect until the conditions are complied with to the satisfaction of the Debenture Trustee or Receiver.

## 16.3 Powers

- (a) The Powers provided by the Debenture Documents are cumulative and not exclusive of any other rights, powers, discretions or remedies provided by law.

- (b) Where a Power under the Debenture Documents is inconsistent with a Power at law, the Debenture Documents prevail to the extent permitted by law. A Power at law is not inconsistent with the Debenture Documents merely because it is more extensive than a similar Power in the Debenture Documents or because there is no similar Power in the Debenture Documents.

#### 16.4 Choice of securities and Guarantees

The Debenture Trustee need not resort to any Security Interest, Guarantee or any other Power before resorting to any other of them.

#### 16.5 Indemnities generally

- (a) Each indemnity in the Debenture Documents:
- (i) is absolute and unconditional;
  - (ii) is a continuing obligation despite any settlement of account or the occurrence of any other thing;
  - (iii) must be discharged without set-off, deduction, abatement, counterclaim, suspension or deferment;
  - (iv) constitutes a separate and independent obligation of the party giving the indemnity from its other obligations under the Debenture Documents; and
  - (v) survives termination of any Debenture Document.
- (b) It is not necessary for the Debenture Trustee or a Receiver to incur an expense or make a payment before enforcing a right of indemnity conferred by a Debenture Document.

#### 16.6 Consent and waivers

A consent or waiver by the Debenture Trustee or a Receiver is effective only if in writing. If given subject to conditions, the consent or waiver only takes effect when the conditions are complied with the Debenture Trustee or Receiver's satisfaction.

#### 16.7 Avoidance of transaction

If any payment or other transaction relating to the Secured Money is void, voidable, unenforceable or defective or is claimed to be so (each an **Avoidance of Payment**) and that claim is upheld or settled then:

- (a) the liability of the Chargor under each Debenture Document and each Power will be what it would have been but for the Avoidance of Payment; and
- (b) the Chargor must immediately execute all documents and do all other things necessary or required by the Debenture Trustee to restore the Debenture Trustee to the position it was in immediately before the Avoidance of Payment (including reinstating any Debenture Document),

even if the Debenture Trustee knew or ought to have known that the payment or transaction was void, voidable, unenforceable or defective. This clause survives any termination or full or partial discharge or release of any Debenture Document.

#### 16.8 Effect of release

A full or partial release of this Charge by the Debenture Trustee does not release the Chargor from personal liability under this document until the Debenture Trustee receives the Secured Money, regardless of any:

- (a) receipt given, payout figure quoted or other form of account stated; or

- (b) error or miscalculation by the Debenture Trustee.

## **16.9 Moratorium legislation**

A moratorium does not apply to a Debenture Document or the recovery of the Secured Money except if:

- (a) the Debenture Trustee agrees in writing that it does; or
- (b) it cannot be excluded by law.

## **17. Other provisions**

### **17.1 Notification from Chargor**

If the Chargor is required under this document to notify the Debenture Trustee about anything, it must do so in writing.

### **17.2 Debenture Trustee may set off**

Without any demand or notice, the Debenture Trustee may, if an Event of Default is subsisting, set off and apply indebtedness it owes to the Chargor (whatever the currency) against any money owing to it by any Transaction Party under any Debenture Document:

- (a) whether the amount owed by the Debenture Trustee or the Transaction Party is owed by it alone or with any other person; and
- (b) whether or not the amount owed by the Debenture Trustee or the Transaction Party is immediately payable.

The Chargor irrevocably authorises the Debenture Trustee to do anything necessary (including to sign any document and effect appropriate currency exchanges) for that purpose.

### **17.3 Chargor may not set off**

The Chargor may not (either directly or indirectly) claim, exercise or attempt to exercise a right of set-off or counterclaim against the Debenture Trustee (whether the right is the Chargor's or any other person's) or any other right which might have the effect of reducing the Secured Money.

### **17.4 Notices or demands as evidence**

A notice or certificate from or demand by the Debenture Trustee stating:

- (a) that a specified sum of money is owing or payable under a Debenture Document;
- (b) that an Event of Default has occurred; or
- (c) any other fact or determination relevant to the rights or obligations of the Debenture Trustee or the Chargor under a Debenture Document,

is taken to be correct unless the contrary is proved.

### **17.5 Severability**

- (a) A construction of a Debenture Document that results in all provisions being enforceable and effective is to be preferred to a construction that does not.
- (b) If, despite the application of paragraph (a), a provision of a Debenture Document is illegal, unenforceable or ineffective, then the provision will be inoperative, but only to the extent to which, and during such time as, it is illegal, unenforceable or ineffective and the remainder of the Debenture Document will continue in force.

- (c) To the extent permitted by law, the Chargor will use its best endeavours (including by obtaining any necessary Authorisation) to include within the scope of clauses 2 and 4 any obligation or property which is within the scope of the definition of Secured Money or Charged Property but with respect to which either clause is deemed inoperative under paragraph (b).

#### **17.6 Variation of agreement**

A variation of a Debenture Document must be in writing and signed by or on behalf of each party to it.

#### **17.7 Authorised Officers and communications**

The Chargor irrevocably authorises the Debenture Trustee to rely on:

- (a) a certificate by any person purporting to be a director or secretary of the Chargor as to the identity and signatures of its Authorised Officers. The Chargor warrants that its Authorised Officers have been authorised to give notices and communications under or in connection with the Debenture Documents; and
- (b) any notice or other document contemplated by any Debenture Document which bears the purported signature (whether given by facsimile or otherwise) of an Authorised Officer of the Chargor.

#### **17.8 Receipt of money and application**

The provisions of clause 4 of the Debenture Trust Deed shall apply in relation to money received by the Debenture Trustee under or in connection with this document.

#### **17.9 Surplus proceeds**

If surplus money remains in the hands of the Debenture Trustee, Receiver, Attorney or an External Administrator after payment of all the Secured Money (and satisfaction of any obligation ranking in priority to the Secured Money or secured by a Security Interest):

- (a) no trust arises over that surplus money; and
- (b) that surplus money does not carry interest and the Debenture Trustee, Receiver, Attorney or External Administrator must pay it to an account in the name of the Chargor (whether or not opened by the Debenture Trustee or External Administrator for that purpose). The Debenture Trustee, Receiver, Attorney or External Administrator is then no longer liable for the surplus money.

#### **17.10 Credit of available funds**

In applying money received by the Debenture Trustee towards the satisfaction of the Secured Money:

- (a) the account of the Chargor will be credited with only so much of the money available for the purpose as is actually received by the Debenture Trustee and not credited to a suspense account; and
- (b) the credit will date from the time of receipt (as determined by the Debenture Trustee).

#### **17.11 Tacking**

For the purpose of applying section 282 of the *Corporations Act 2001* (Cth), if a Stockholder is obliged to make further advances under a Debenture Document, that Debenture Document is taken to be incorporated in this document so that this document imposes on the Stockholder an obligation to advance that money.

**17.12 Payments after notice of subsequent Security Interests**

- (a) Any legal rule to the effect that the earliest payment into an account is deemed to be the first to be withdrawn or that the earliest debit is deemed to be the first to be extinguished will not, to the extent legally possible, apply to reduce the amount of the Secured Money for which the Debenture Trustee may claim priority as against the holder of any other Security Interest.
- (b) To the extent that a legal rule of the type described in paragraph (a) is applicable and will have the effect described in that paragraph, any money forming part of the Secured Money which is received by the Debenture Trustee will be applied (or deemed to have been applied) progressively in reduction of later debits, beginning with the latest debit.

**17.13 Debenture Trustee may assign rights**

- (a) The Debenture Trustee may assign its rights under this document without the consent of the Chargor. If it does so, the Secured Money will include all liabilities of the Chargor to the assignee which are within the scope of the definition whether or not the liabilities arose or were contemplated before the date of the assignment.
- (b) Subject to the Debenture Documents, the Debenture Trustee may disclose to a potential assignee any information provided to the Debenture Trustee by the Chargor which it considers appropriate.

**17.14 Governing law and jurisdiction**

- (a) This document is governed by the laws of Victoria.
- (b) The Chargor irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria. The Chargor waives any right it has to object to an action being brought in those courts, including by claiming that the action has been brought in an inconvenient forum or that those courts do not have jurisdiction.

**17.15 Debenture Trustee need not execute**

This document is enforceable by the Debenture Trustee even if the Debenture Trustee does not execute it.

**17.16 Attorneys**

Each attorney signing this document under a power of attorney certifies, by the attorney's signature, that the attorney has no notice of the revocation of the power of attorney.

**17.17 Counterparts**

This document may be executed in any number of counterparts. Each counterpart constitutes an original of this document, all of which together constitute one instrument. A party who has executed a counterpart of this document may exchange it with another party by faxing, or by emailing a pdf (portable document format) copy of, the executed counterpart to that other party, and if requested by that other party, will promptly deliver the original by hand or post. Failure to make that delivery will not affect the validity of this document.

## Signing page

**EXECUTED** as a deed

Signed sealed and delivered by  
KATHERINE JUDITH GOVE  
as attorney for **Replay Investments Pty Ltd**  
as trustee for the **Replay Unit Trust** under  
power of attorney dated 18 November 2008

In the presence of

Signature of witness

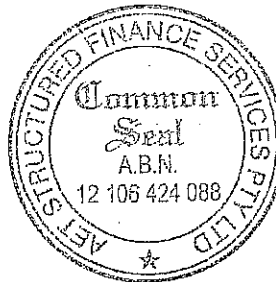
**JAMES THOMAS CREECH**  
Solicitor of the Supreme Court  
of New South Wales

Name of witness (print)

**Aurora Place**  
**88 Phillip Street**  
**Sydney**

←  ←  
Attorney

The common seal of **AET Structured Finance Services Pty Limited** is duly affixed to this document by authority of its directors in the presence of



Signature of authorised person

**Philip John Walter Joseph**

Name of authorised person and office held (print)

←  ←  
Signature of authorised person

**Glenn David White**

←  
Name of authorised person and office held (print)