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money



*Changes to your current Business Letter of Offer*

# **GENERAL TERMS & SPECIFIC CONDITIONS**

Changes Effective 16 October 2017

# **GENERAL CONDITIONS**

## **1. FACILITY LIMITS AND OTHER LIMITS**

- (a) You must ensure that the Facility Limit and any other limit applicable to the Facility (such as any Component Limit) is not exceeded at any time, without NAB's prior approval. Any excess may attract default interest and fees and charges, even where the excess is temporarily permitted by NAB.
- (b) If a Facility Limit or any other limit applicable to the Facility is scheduled to change on a day that is not a Business Day, that change will not take effect until the following Business Day unless otherwise stated in the Specific Conditions for that Facility or unless otherwise agreed, and interest, fees and charges will be payable accordingly.

## **2. CONDITIONS ON DRAWINGS (conditions precedent)**

Any obligation on NAB to provide you with anything under a Facility is conditional on:

- (a) you having accepted this Agreement in a manner satisfactory to NAB;
- (b) NAB receiving any valuation it requires (which must be to NAB's satisfaction);
- (c) the results of NAB's inquiries and searches being to NAB's satisfaction;
- (d) NAB receiving each Security, related acknowledgment or acceptance and title documents (all of which must be to NAB's satisfaction);
- (e) you having any insurance NAB requires, that insurance being with an insurer, for an amount, and on terms acceptable to NAB, NAB's interest being noted on the policy and you providing such evidence of that insurance as NAB requires;
- (f) NAB receiving any other document it reasonably requires from you or a Security Provider and those documents being to NAB's satisfaction;
- (g) there being no Event of Default or **Potential Adverse** ~~Event of Default~~;
- (h) any other conditions precedent applicable to the Facility being met.

## **3. REVIEW**

- (a) NAB may review compliance with the Transaction Documents, your financial position and that of each Security Provider:
  - (i) periodically (at least annually); and

- (ii) at any time, if the person or persons who Control you at the date of this Agreement cease to Control you;
- (iii) at any time if NAB reasonably believes there is an Event of Default or **Potential Adverse** ~~Event of Default~~; and
- (iv) where in NAB's reasonable opinion it believes that an event has occurred that may have a material adverse effect on your or a Security Provider's ability to meet its obligations to NAB under this Agreement, a guarantee and/or indemnity or a Security or the value of a Security.

A review fee may apply. If so, the review fee will be set out in the Details.

- (b) You must provide NAB, and must ensure that each Security Provider provides NAB, with all information, documents, consents and assistance that NAB requires in connection with a review within the time requested.
- (c) Following a review, NAB may continue to provide the Facilities on the same terms, or take any action permitted under this Agreement including in accordance with clause 16 (Changes to this agreement) of these General Conditions

## **4. YOUR GENERAL PAYMENT OBLIGATIONS**

### **4.1 What you must pay**

You must pay to NAB:

- (a) the regular repayments, if any, required in accordance with this Agreement;
- (b) interest, fees, charges and premiums in accordance with this Agreement;
- (c) immediately, any amount by which the Facility Amount Owing is in excess of the Facility Limit;
- (d) the Facility Amount Owing on the Final Repayment Date; and
- (e) any other amounts due and owing to NAB under this Agreement as set out in this Agreement.

### **4.2 Payments generally to be made in Australian Dollars**

- (a) You must make each payment in the currency in which it is due. Unless otherwise stated, this is Australian Dollars.
- (b) If NAB receives an amount in a currency other than that in which it is due:
  - (i) NAB may convert the amount received into the due currency (and if necessary convert through a third currency) on such day and at such rates as NAB reasonably considers appropriate. NAB may deduct NAB's usual reasonable Costs in connection with the conversion; and

- (ii) the relevant payment obligation is satisfied only to the extent of the amount of the due currency obtained from the conversion after deducting conversion Costs.
- (c) If NAB is debiting an amount to an account of yours, and that amount is in a currency other than that of the account, NAB may:
  - (i) convert the amount to be debited into the currency of the relevant account (and if necessary convert through a third currency) on such day and at such rates as NAB considers appropriate; and
  - (ii) debit to that account the amount so converted, plus the costs of conversion.

#### 4.3 Payments to be made in cleared funds

You must pay all amounts payable by you under this Agreement in immediately available cleared funds.

#### 4.4 No set off or deduction

- (a) Except to the extent you have a right of set-off granted by law which cannot be excluded by agreement, you must pay to NAB the amount owing in full without set-off, counterclaim or deduction.
- (b) If you or NAB are, at any time, compelled by law to deduct or withhold any amount (including Taxes), you must indemnify NAB against that amount and pay concurrently to NAB such additional amounts as will result in payment to NAB of the full amount which would have been received if no deduction had been made.

#### 4.5 Payments due on a non-business day

Subject to the Specific Conditions, if a payment is due on a day that is not a Business Day, that payment may be made on the next Business Day

#### 4.6 Time for payment

- (a) If this Agreement does not otherwise state when an amount is payable by you, ~~it is payable when NAB demands payment~~NAB will provide you with a reasonable time for you to pay.
- (b) For the purposes of making payments under this Agreement, a day ends at 4 pm in the state or territory where the office issuing this Letter of Offer is located.

### 5. FEES AND OTHER COSTS

- (a) You must pay NAB all fees, charges and premiums set out, or provided for, in this Agreement (including the Fees Guide).
- (b) You must pay NAB for an amount equal to any Taxes or reasonable Costs paid or payable by NAB in connection with:
  - (i) the Transaction Documents, the Facilities or any transactions under or in relation to them;

- (ii) preparing, registering and maintaining any financing statement or financing change statement (each as defined in the PPSA) in relation to a Security, or taking any other action that in NAB's reasonable opinion is necessary under clause 14 of this Agreement;
- (iii) NAB exercising, enforcing or preserving rights, powers or remedies (or reasonably considering or attempting to do so) in connection with any Transaction Document, Facility or any transactions under or in relation to them; and
- (iv) the costs and remuneration of any Receiver or Administrator appointed by NAB.

~~(c) (e) — You must indemnify pay or reimburse NAB reasonable Costs (and if you are a Medium-Sized Business, indemnify NAB) in relation to any liability NAB incurs for the costs and remuneration of any Receiver or Administrator appointed by NAB, except, in the case of an indemnity for costs, to the extent NAB's fraud, negligence or misconduct (or of NAB's officers, employees, contractors, agents or any Receiver or Administrator NAB appoints) contributed to the relevant costs being incurred.~~

If you are a Medium Sized Business, then you also indemnify, and must pay to NAB on demand, amounts equal to any loss, damage or costs arising as a result of or in connection with an Administrator or Receiver appointed by NAB, including fraud, negligence or misconduct of any Receiver or Administrator appointed by NAB. NAB need not have incurred an expense or made a payment before enforcing a payment obligation, reimbursement obligation or indemnity.

Unless you are a Medium Sized Business, then you don't have to pay, reimburse or indemnify NAB to the extent any fraud, negligence or misconduct of any Receiver or Administrator appointed by NAB contributed to the relevant loss, damage or costs being incurred.

- (d) To the extent the following fees are payable in relation to a Facility, they are payable and (where relevant) calculated as set out below:
  - (i) Periodic fees (including Service Fees or Annual Facility Fees) – payable for each period set out in the Details (or if no such period is set out, monthly) and again on the Final Repayment Date. If there are separate Loan Accounts or Bank Guarantees under the Facility, these fees are payable separately for each such Loan Account or Bank Guarantee.

- (ii) Extension Fees - payable whenever NAB agrees to extend the time within which the Fixed Rate Period for a Facility must start after you accept a quoted fixed Interest Rate and whether or not the quoted rate becomes the actual rate applying to the Facility.
- (iii) Progressive Drawdown Fees - payable whenever NAB agrees to your request to drawdown part of a Facility Limit (other than the first part) to which Building Conditions apply.
- (iv) Facility Fee – in respect of a Bill Facility, payable at the intervals set out in the Details and calculated as follows:

Facility Fee annual percentage rate as set out in the Details x Facility Limit / n

where n is the frequency of Facility Fee payments per annum (eg. if the Facility Fee is payable monthly, n = 12). For any part period, n is equal to 365 divided by the number of days in the part period.

- (e) Fees that are payable when an event occurs may be debited when, or after, that event occurs. Periodic fees may be debited at any time during, or after, the period to which they relate.
- (f) Unless otherwise agreed, fees are not charged on a pro-rata basis and, once incurred, charged or paid (as the case may be), are not refundable in whole or in part.
- (g) Anything which you must do under this Agreement must be done at your cost.

## 6. YOUR OBLIGATION TO PAY INTEREST

- (a) Unless otherwise stated in the Specific Conditions, interest charges are payable for each day and are calculated by applying the Daily Interest Rate to the Balance Owing at the end of that day (excluding any amount to which a Default Interest Rate applies).
- (b) The Specific Conditions for a Facility set out when interest charges (if any) are payable.
- (c) Where interest charges are debited to a Loan Account, they will be deemed to be part of the Facility Amount Owing from the date they are debited.

## 7. INTEREST RATES

### 7.1 Variable interest rates

NAB generally publishes information on changes to indicator rates on nab.com.au and/or in the local or national press.

To the extent that a Facility has a variable Interest Rate or Default Interest Rate, you acknowledge that:

- (a) those interest rates include an indicator rate and may include one or more margins;

- (b) the name of the indicator rate(s) applicable to the Facility are set out in the Details (for example, the Base Indicator Rate);
- (c) the amount of an indicator rate on any day will be that last published or otherwise advised by NAB; and
- (d) where the indicator rate is less than zero, it will be deemed to be zero.

### 7.2 Fixed interest rates

During a Fixed Rate Period or Pricing Period, the relevant Interest Rate is fixed. If your Facility has a fixed Interest Rate, your initial Fixed Rate Period or Pricing Period is set out in the Details. The Specific Conditions set out any applicable rules about the quotation, setting and acceptance of Fixed Rates.

### 7.3 Indicative Rates

If the Details quote the amount of an indicator rate, Interest Rate, Yield Rate or Default Interest Rate, and:

- (a) state that the rate is “indicative”; or
- (b) indicates that the rate is the current rate,

then the amount quoted is a guide only and may not be the rate that actually applies to the Facility.

## 8. ECONOMIC COSTS

**Warning:** Economic Costs can be high and may increase the amount you owe. You can ask NAB at any time for an estimate of Economic Costs.

### 8.1 When economic costs are payable

(a) There are no early termination fees for your Facilities.

~~(a)~~(b) However, Economic Costs are potentially payable by you whenever an Economic Event occurs in relation to a Facility.

- (b) NAB will determine the amount of any Economic Costs payable by you in respect of the occurrence of an Economic Event and will notify you of the amount (if any) that is payable by you in accordance with NAB's calculation under clause 8.3. You must pay NAB the amount of the Economic Costs notified to you by NAB as payable by you under this clause 8. You must pay those notified Economic Costs immediately following your receipt of the notification of the Economic Costs payable.

### 8.2 Economic events

An Economic Event is taken to have occurred if, at any time while a Yield Rate or an Interest Rate (other than a variable Interest Rate) applies to a Facility, a Facility Component, a Loan Account or a Drawing:

- (a) all or part of that Facility, Facility Component, Loan Account or Drawing is repaid early (even if NAB agrees to the early repayment being made);

- (b) that Facility, Facility Component, Loan Account or Drawing, is re-priced by agreement from one fixed rate to another fixed rate or to another type of rate (such as a variable rate);
- (c) that Facility, Facility Limit or Component Limit is cancelled, reduced or not fully drawn for any reason at any time before the Expiry Date;
- (d) NAB is for any reason no longer obliged to accept, discount or endorse Bills under the Facility or a Bill is cancelled before its Maturity Date; or
- (e) if the Facility Amount Owing becomes immediately due and payable following an Event of Default, or the Facility Amount Owing otherwise becomes repayable, and NAB elects to treat it as an Economic Event;

except to the extent that this occurs:

- (f) for a Facility other than a Bill Facility or NAB Business Markets Facility - on the Repricing Date applicable to the Facility or Loan Account (as the case may be), or if that day is not a Business Day, on the next Business Day;
- (g) for a Bill Facility or a NAB Business Markets Facility, in relation to the Floating Amount or a Floating Rate Facility;
- (h) on the Expiry Date; or
- (i) in order to comply with the Amortisation Schedule (if any).

### 8.3 How NAB calculates economic costs

NAB will determine Economic Costs by calculating a reasonable estimate of the Costs and losses incurred, or expected to be incurred, by NAB (including fees, charges and premiums) in connection with an Economic Event. The calculation of Economic Costs may incorporate the following:

- (a) in relation to a Facility other than a Bill Facility, NAB Corporate Markets Loan Facility or a NAB Business Markets Facility, Costs and losses representing the difference between NAB's cost of funds at the start of the relevant Fixed Rate Period or Pricing Period and NAB's cost of funds at the date of the Economic Event over the remainder of that period. This is then discounted back to the net present value at the rate equivalent to NAB's cost of funds at that date;

- (b) in relation to a Bill Facility, NAB Corporate Markets Loan Facility or a NAB Business Markets Facility, Costs and losses calculated by reference to the difference between:

- (i) the interest rate used or applied by NAB when setting the Yield Rate or interest rate for the Facility or the relevant facility component; and
- (ii) the most applicable interest rate available to NAB at the date of the Economic Event, after having regard to the remaining term to the maturity of the Facility.

The calculated Costs and losses are then discounted back to the net present value at the rate determined by NAB at that date; or

- (c) the liquidation of deposits or other funds, or the termination or reversing of any swap or option agreement or other agreement or arrangement entered into by NAB (either generally in the course of NAB's business or specifically in connection with this Agreement) to fund or maintain the Facility or to hedge, fix or limit NAB's effective cost of funding in relation to the Facility.

## 9. ACCOUNTING FOR TRANSACTIONS

- (a) You authorise NAB to open such accounts as NAB reasonably determines as necessary in connection with a Facility.
- (b) Unless otherwise stated or agreed, you authorise NAB to debit the Nominated Account (or if there is more than one Nominated Account, the relevant Nominated Account) or the Loan Account (if any) for any amounts payable by you in relation to a Facility, a Loan Account or a Drawing, including fees, charges and premiums, taxes, enforcement expenses and any amount payable under an indemnity.
- (c) If you authorise NAB to debit an amount to an account, NAB can debit that amount to that account even if it causes the account to become overdrawn. Alternatively, if there are insufficient funds in that account, or that account has been stopped or closed, you authorise NAB to debit that amount to any account of yours it decides, including an account NAB opens in your name.
- (d) If you authorise NAB to debit an amount to one of two or more accounts, NAB may choose which of those accounts to debit at its discretion.
- (e) If this Agreement does not state to which account an amount may be debited or credited, NAB may debit or credit that amount to any account of yours it decides, including an account NAB opens in your name.

- (f) Where NAB debits an account in your name opened by:
  - (i) you must pay NAB interest (including default interest if applicable) on the amount debited in accordance with the terms of that account.
  - (ii) NAB, you must pay NAB interest charges on the overdrawn balance of that account at the Default Interest Rate.
  - (iii) either you or NAB, and the amount debited is not otherwise payable in accordance with this Agreement, the overdrawn balance of the account (taking into account any limit applicable to that account), is immediately payable by you when NAB asks It is to your benefit to pay this amount as soon as possible to minimise fees and interest (including default interest).
- (g) NAB may assign any date it reasonably considers appropriate to a debit or credit to an account. In the case of a debit, the date must not be earlier than the date on which the transaction occurs. In the case of a credit, the date must be as soon as practicable after the transaction occurs: this is not necessarily the same day that the transaction occurs.
- (h) NAB may subsequently adjust debits and credits to an account or any Balance Owing, so as to accurately reflect the legal obligations of NAB and you (for example, because of an error, or because a cheque is dishonoured). If NAB does this, it may make consequential changes (including to interest charges) and details will be contained in your next account statement.
- (i) Unless otherwise provided, NAB may apply any payment in connection with this Agreement towards satisfying obligations under this Agreement as NAB reasonably sees fit.
- (j) Where NAB is authorised to debit an amount to an account under this Agreement, it can do so without prior notice.
- (d) neither you nor any of your assets are immune from the jurisdiction of a court or from legal process;
- (e) the Transaction Documents to which you are expressed to be a party constitute your legal, valid and binding obligations and, subject to any necessary stamping and registration, are enforceable in accordance with their terms (subject to any law generally affecting creditors' rights and to principles of equity);
- (f) the most recent financial accounts, reports and factual information provided to NAB by you (or on your behalf) at any time:
  - (i) are true and accurate and not misleading in any material respect;
  - (ii) are prepared in accordance with applicable law and accounting standards generally applicable in Australia at the time of preparation;
  - (iii) give a true and fair view of your state of affairs and the result of your operations at the date, and for the period ending on the date, to which those statements are prepared, and
  - (iv) no material change has taken place in respect to any of them since the date they were presented to NAB;
- (g) you have not withheld any material information in connection with this Agreement or the Facility which may have caused NAB not to provide this Facility or not to provide it on these terms;
- (h) you are not in breach of any law or any agreement, deed, Security Interest or instrument binding on you or your assets, and you are not in default in respect of any material monetary obligation contracted by or imposed upon you;
  - (i) no material litigation, arbitration or administrative proceedings are current or pending or, to your knowledge, threatened against you before any court or government agency;
  - (j) the Transaction Documents to which you are expressed to be a party are for your commercial benefit and are in your commercial interests;
  - (k) you are not Insolvent;
  - (l) no Event of Default or ~~Potential~~Adverse Event of Default has occurred under or in respect of any Transaction Document that is unremedied;
  - (m) except as disclosed to, and agreed to by NAB in writing, you are not a trustee of any Trust or a partner in a partnership;
  - (n) you have obtained and maintained in full force and effect all material authorisations, consents, filings, registrations and permits applicable to you or your business;

## 10. REPRESENTATIONS AND WARRANTIES

### 10.1 General representations and warranties

You represent and warrant to NAB that, at the date of this Letter of Offer, and at times thereafter:

- (a) if you are a company, you are duly incorporated and validly existing under the laws of your place of incorporation;
- (b) you have full capacity and power to enter into and comply with, and have taken all necessary action to authorise you to enter into and comply with each Facility, the Transaction Documents, and to make a Drawing under, or otherwise utilise, a Facility;
- (c) you have full power and authority and legal right to own your assets and to carry on your business as presently conducted;

- (o) the execution, delivery and performance of the Transaction Documents to which you are expressed to be a party, will not:
  - (i) breach or contravene any Law or a judgment, order, ruling or decree of a governmental agency;
  - (ii) conflict with your constituent documents or any agreement binding on you or any obligation to any person;
  - (iii) create, impose or crystallise any Security Interest on any of your assets (other than contemplated under any Transaction Document); or
  - (iv) cause or result in the acceleration of the date of payment of any obligation under any agreement binding on you; and
- (p) the Security is in full force and effect and has the priority contemplated in it.

### 10.2 Additional representations and warranties from a trustee

When you enter into this Agreement as trustee of a Trust, you are liable personally and as trustee of the trust and you declare or undertake that:

- (a) you are the sole trustee of the trust and no steps have been taken to remove you as trustee;
- (b) you have power and authority to enter into this agreement and are doing so in good faith and for a proper purpose;
- (c) you have the right to be fully indemnified out of the trust assets for obligations incurred as trustee under this agreement before the claims of beneficiaries;
- (d) you are not in default (however described) under the terms of the trust;
- (e) you will not without our prior written consent:
  - (i) amend or alter the trust deed;
  - (ii) relinquish your position as trustee;
  - (iii) transfer trust assets to any other person;
  - (iv) exercise any power as trustee requiring the consent of any other person, without having obtained the written consent of that person; or
  - (v) take any action or propose to take any action to terminate the trust;
- (f) the trust has not vested; and
- (g) true copies of the trust deed and other documents relating to the trust have, if requested by us, been provided by you and they disclose all the terms of the trust.

### 10.3 Additional representations and warranties from a partnership

If you are a Partnership, each Partner makes the following representations and warranties to NAB:

- (a) **(existence)** the Partnership has been duly established and is existing;
- (b) **(only partners)** the Partners are the only partners in the Partnership;
- (c) **(disclosure of terms)** if requested by NAB, certified copies of the Partnership Agreement and other documents relating to the Partnership (including any amending document) have been provided to NAB and disclose all the terms of the Partnership;
- (d) **(power)** it has full power and authority under the Partnership Agreement to enter into and to comply with its obligations under each Transaction Document to which it is expressed to be a party as a partner of a Partnership and is doing so for a proper purpose relating to the business of the Partnership;
- (e) **(no conflict)**:
  - (i) the Partnership Agreement complies with all applicable laws; and
  - (ii) the Transaction Documents to which it is expressed to be a party and the transactions contemplated by those Transaction Documents do not contravene the terms or the operation of the Partnership;
- (f) **(authorisations)** all procedures have been duly completed, and it has in full force and effect all authorisations, that are necessary to enter into each Transaction Document to which it is expressed to be a party as a partner of the Partnership, perform obligations under them and allow them to be enforced (including any authorisation required under the Partnership Agreement);
- (g) **(no termination)** no action has been taken or proposed to terminate, dissolve, wind up or otherwise bring the Partnership to an end;
- (h) **(Transaction Documents)** all Partners have executed the Transaction Documents;
- (i) **(capacity)** unless otherwise disclosed to, and agreed to by, NAB in writing, each Partner acknowledges that it enters into each Transaction Document to which it is expressed to be a party in both its capacity as a partner of the Partnership and in its personal capacity and is liable both personally and in its capacity as a partner; and
- (j) **(Secured Property)** to the extent that a Partner holds any part of the Secured Property as Partnership Property, the Security Interest is granted by it over that Secured Property as partner of the Partnership and over the balance of its Secured Property as beneficial owner.

#### 10.4 Representations and warranties are repeated

The representations made and warranties given by you under this clause or otherwise under this Agreement, unless otherwise stated, are deemed to be repeated with reference to the facts and circumstances then existing when you request, and when you are given, any Financial Accommodation under a Facility, and on the last day of each Interest Period.

### 11. UNDERTAKINGS AND COVENANTS

#### 11.1 General undertakings

You undertake to NAB that you will:

- (a) conduct your business and financial affairs in a proper, orderly and efficient manner and keep proper financial, accounting and other records in respect of the same;
- (b) not, without NAB's consent, cease conducting your business, and not significantly change the general character of any business you conduct;
- (c) immediately notify NAB if you change your address;
- (d) take out and keep in full force and effect insurance over all of your physical assets and premises for such amounts and against such risks as a reasonably prudent person in your position would take out;
- (e) promptly comply with any request by NAB to take out such further insurance cover as NAB may reasonably require;
- (f) ensure that your capital is not reduced or made capable of being called up only in certain circumstances; and
- (g) immediately advise NAB of any Event of Default, ~~Potential Adverse~~ Event ~~of Default~~ or other default (however defined) under any Transaction Document.

#### 11.2 Additional undertakings from a trustee

- (a) Where you enter into a Transaction Document as the trustee of a Trust, you undertake:
  - (i) to provide to NAB, on request, certified copies of the Trust Documents;
  - (ii) to ensure that you have a right to be indemnified out of Trust Fund for all liabilities incurred by you under the Transaction Documents;
  - (iii) to ensure that there is no restriction or limitation on or derogation from your right of subrogation or indemnity, other than on the grounds of fraud or gross negligence (whether or not arising under the Trust Documents); and
  - (iv) to ensure your lien over the Trust Fund at all times for liabilities incurred has priority over the rights of the beneficiaries of the Trust.

- (b) Where you enter into a Transaction Document as the trustee of a Trust, you undertake that, except with NAB's prior written consent, none of the following will occur:
  - (i) re-settlement, vesting or distribution of capital of the Trust;
  - (ii) retirement or replacement of the trustee, or the appointment of a new trustee;
  - (iii) amendment, or revocation of any terms, of the Trust Deed;
  - (iv) a Security Interest arises over any asset of the Trust;
  - (v) if a unit trust, not issue any further units in the Trust to any person other than a unitholder as at the date of this Letter of Offer; or
  - (vi) breach of any provision of the Trust Deed.

#### 11.3 Partnerships

If you are a partnership, the following provisions apply:

- (a) each Partner agrees to comply with its obligations as a partner of the Partnership;
- (b) each Partner agrees to maintain complete, correct and accurate records in relation to the Partnership; and
- (c) without the consent of NAB, each Partner may not, and may not agree, attempt or take any step to, do anything which:
  - (i) **(retirement, removal, replacement)** effects or facilitates its retirement, removal or replacement as a partner of the Partnership;
  - (ii) **(new partners)** results in the appointment, or admission of, any person who is not currently a partner of the Partnership as partner of the Partnership;
  - (iii) **(restrict or impair compliance)** could restrict or impair its ability as a partner of the Partnership to comply with its obligations under the Transaction Documents;
  - (iv) **(termination, revocation or variation of trust)** effects or facilitates the termination of the Partnership or a revocation or variation of the terms of the Partnership;
  - (v) **(termination, revocation or variation of partnership)** effects or facilitates the distribution of the Partnership Property; or
  - (vi) **(mixing partnership property)** could result in the Partnership Property being mixed with other property.



#### 11.4 Co-operation

You must:

- (a) promptly give NAB any information, documents or consents that NAB reasonably asks for, in the form specified, in connection with you, the Facilities or the Transaction Documents to which you are expressed to be a party; and
- (b) do anything (such as producing and signing documents) NAB reasonably requires to give full effect to the Transaction Documents.

#### 11.5 Lender's Mortgage Insurance

NAB may take out lender's mortgage insurance, for its own benefit, in relation to the Facilities. If NAB does this, it will be at your cost. The premiums and any stamp duty are payable by you when NAB asks. NAB may debit to any account of yours it decides the amount of the premiums.

Please note that lenders mortgage insurance protects NAB (and not you). If you are in Default and NAB enforces the Security but the Total Amount Owed is not paid in full, NAB may recover the remaining amount under the lenders mortgage insurance policy. However, you then become legally responsible to pay that amount to the insurer.

#### 11.6 Appointment of Consultants

- (a) If we think that an Adverse Event or a Default exists or, based on what we know or suspect, is likely to exist in the future, and we ask you to, you will:
  - (i) pay our Costs to appoint a consultant; or
  - (ii) appoint a consultant we nominate or approve on terms acceptable to us,

to investigate and report to us on your or a Security Provider's business and on compliance of any party with the Bank Documents.

You will help us and the consultant as soon as you are asked to. We can charge all related Costs to any of your accounts.

We will give you a copy of our instructions to the consultant and a copy of their final report in accordance with the industry guidelines published by the Australian Bankers Association Inc.

~~If NAB reasonably believes you are or may be in Default or that circumstances exist which could lead to you being in Default, NAB may appoint, and at NAB's request you must appoint, a person or separate persons to investigate the financial and trading condition, and to undertake an environmental audit, of you or any Security Provider and whether you and the Security Providers have complied with the Transaction Documents. You must co-operate with and comply with every reasonable request made by this person. You must pay to NAB all Costs in connection with the investigation or audit and NAB may debit those costs to any of your accounts.~~

- (b) Investigated parties are not required to adopt any recommendation, but if they do we are not responsible for it.

~~Neither you nor any Security Provider is obliged to accept the recommendations of any consultant, and NAB will assume no liability with respect to any actions you or a Security Provider takes, or does not take, as a result of those recommendations.~~

## 11.7 Undertakings given

Any undertakings given under this Agreement are given for the term of the Facility and for any further period while you have any outstanding obligations to NAB in relation to the Facility.

### 11.8 What if you don't comply with your undertakings?

Even if you are not in Default at the time, if you or a Security Provider do not comply with any undertakings or other obligations in a Transaction Document, NAB may contact you and invite you to discuss your situation and the options available to assist you to meet your obligations.

If NAB determines a failure to comply is continuing, and is reasonably likely to have a significant negative impact on:

- (a) you or a Security Provider being able to make any payment due under a Transaction Document; or
- (b) NAB's ability to recover any Total Amount Owing (including from the value of any property or assets secured under a Security) or
- (c) the credit risk associated with NAB providing the Facilities to you,

we may review your Facilities. Any outcome of a review does not affect our rights if later you are in Default. Clause 12 sets out when you are in Default and the consequences.

You must give NAB all requested information, documents, consents and assistance in connection with a review. Following a review, NAB may continue to provide the Facilities on the same terms, or NAB may notify changes under clause 16 or ask you and any Security Provider to vary Transaction Documents or to enter new documents with NAB.

Also, if you are a Medium-Sized Business, as a result of a review we may notify you that:

- (a) NAB no longer wishes to continue the Facilities, in which case you will need to pay NAB the Total Amount Owing within 90 days (or such later date NAB advises you); or
- (b) a failure to vary Transaction Documents or to enter new documents with us by a certain date will require you to pay NAB the Total Amount Owing within a further 90 days (or such later date NAB advises you), failing which you will need to make that payment.

## 12. DEFAULT

### 12.1 When you are in ~~d~~Default

You are in Default if any of the following occurs:

- (a) a Conduct Default;
- (b) a Payment Failure; or
- (c) an Adverse Event which is not remedied such that you are determined to be in Default as set out in clause 12.

### 12.2 Conduct Defaults and consequences

A Conduct Default occurs if:

- (a) you or a Security Provider are Insolvent; or
- (b) NAB believes on reasonable grounds that:
  - (i) there has been fraud on your or a Security Provider's part; or
  - (ii) without NAB's consent you or a Security Provider remove, sell or dispose of, or grant or permit the creation of, any interest (including a Security Interest) in any property or assets secured under a Security (or try to do so); or
  - (iii) if you are a Medium Sized Business, urgent action is necessary to protect or take control of any property or assets secured under a Security, including from seizure or sale.

If a Conduct Default occurs, you are in Default and NAB can immediately take any or all of the actions specified in clause 12.6. NAB is not required to give you notice before taking any action after a Conduct Default occurs. NAB will give you appropriate notice after taking enforcement action.

### 12.3 Payment Failures and consequences

A Payment Failure occurs if you or a Security Provider do not pay on time any amount due under a Transaction Document.

If a Payment Failure occurs you are in Default, but NAB will give you a notice that a Payment Failure has occurred allowing at least 7 days (or a longer period required by law) to remedy the Payment Failure. If not remedied within that period NAB can immediately take any or all of the actions specified in clause 12.6.

### 12.4 Adverse Events and consequences

An Adverse Event occurs if any of the following occurs (whether or not within your control):

-in relation to a Transaction Document, or any other agreement you or a Security Provider has with NAB (each an "Arrangement"):

- (a) you or any Security Provider breaches any law; you or the Security Provider do not pay on time any amount due;

- (b) ~~you or any Security Provider that is an individual, no longer has legal capacity or becomes a person protected by the state; any actual or contingent indebtedness becomes due and payable, before its stated maturity or expiry;~~
  - (c) ~~it becomes unlawful for you or any Security Provider to perform your respective obligations under a Transaction Document; you or the Security Provider fail to comply with any provision of that Arrangement;~~
  - (d) ~~any Security Interest becomes capable of enforcement over your or a Security Provider's assets you are, or any Security Provider or other person is in default under any Arrangement or an event of default occurs under an Arrangement;~~
  - (e) ~~a court order for payment is made, or a judgment is entered or signed, against you or any Security Provider and after 5 Business Days the order or judgement remains unsatisfied and able to be enforced where the Arrangement is with you, an event occurs which would allow NAB to terminate that Arrangement, or a transaction under it, and NAB elects to terminate the Arrangement or transaction;~~
  - (f) ~~you, a Security Provider or another person on your behalf gives NAB information which NAB reasonably believes to be materially incorrect or misleading (including by omission or by not complying with an obligation in a Transaction Document) where the Arrangement is with a Security Provider, an event occurs which would allow NAB to terminate that Arrangement, or a transaction under it, and NAB elects to terminate the Arrangement or transaction;~~
  - (g) ~~a Facility (or any other product or service NAB provides to you) is used for a purpose not disclosed to and approved by NAB you or any Security Provider breaches any law or obligation by entering transactions or performing obligations under that Arrangement;~~
  - (h) ~~without our consent you or a Security Provider remove, sell or dispose of, or grant or permit the creation of, any interest (including a Security Interest) in any property or assets secured under a Security (or try to do so);~~
  - (i) ~~unless you are an individual, here is a change in the person or persons who control you or a Security Provider as compared to immediately before your first use of a Facility. Here, "control" refers to owning or controlling (directly or indirectly) more than 50% of shares (if a company), units (if a unit trust) or partnership interests, or of the membership or voting of a board of directors, partnership or other governing body a change in your or a Security Provider's financial circumstances occurs which, in NAB's reasonable opinion, is likely to have a material adverse effect on that person's ability to meet its obligations to NAB.~~
  - (j) ~~any licence, permit or other authorisation required for you to conduct your business is not held or renewed, or is suspended, revoked, cancelled or terminated; any present, future, actual, prospective or contingent indebtedness of you or a Security Provider, in respect of any Financial Accommodation (other than under a Transaction Document or an Arrangement) including, but not limited to any moneys payable under a guarantee and/or indemnity:
 
    - (i) ~~is or becomes due and payable or is or becomes capable of being declared due and payable before the due date for payment or~~
    - (ii) ~~is not paid when due or upon the expiration of any grace period which may apply,~~~~and the indebtedness, in NAB's reasonable opinion, is likely to have a material adverse effect on that person's ability to meet its obligations to NAB.~~~~
- You are also in Default if:
- (k) ~~you fail to provide proper accounts in accordance with the Transaction Documents you or another person gives NAB information which NAB reasonably believes to be materially incorrect or misleading (including by omission, and including through your representations and warranties under clause 10) in connection with a Transaction Document or any other agreement you or a Security Provider has with NAB;~~
  - (l) ~~any material insurance which we have taken out in relation to a Facility cannot be continued or renewed any Security Interest is enforced, or becomes capable of being enforced, or the value of any Security, as reasonably assessed by NAB, materially decreases;~~
  - (m) ~~any insurance you are required to have under the Transaction Documents is not held, or is cancelled or not renewed, or is changed by you so that it is less able to be relied on for the purposes of the relevant Transaction Documents, or becomes unenforceable because of any action or inaction by you you or a Security Provider are Insolvent;~~

- (n) ~~if you have a Specialised Facility and/or you are a Medium Sized Business, any 'Financial Covenant' specified in your Business Letter of Offer is not complied with you or any Security Provider that is an individual, no longer has legal capacity or becomes a person protected by the state;~~
- (o) ~~if you are a Medium Sized Business, an event or circumstance specified in your Business Letter of Offer as an 'Adverse Event' occurs, an order for payment is made, or a judgement is entered or signed, against you or any Security Provider, and it is not satisfied within 5 Business Days after that event (unless the order or judgement is the subject of an appeal by you or the Security Provider within that period and NAB is satisfied that there is reasonable likelihood of success);~~

You must promptly give us any information NAB asks for concerning an Adverse Event.

- (a) If an Adverse Event occurs which NAB determines is:
  - (i) reasonably likely to have a significant negative impact on either you or a Security Provider being able to make any payment due under a Transaction Document; or
  - (ii) reasonably likely to have a significant negative impact on our ability to recover any Facility Amount Owning (including from the value of any property or assets secured under a Security),

then NAB may give you a notice (**Adverse Event Notice**). ~~If an Adverse Event is not reasonably likely to have either of the above impacts, then NAB may ask for further information, but NAB will not take any further action.~~

- ~~(a)(b) An Adverse Event Notice will allow you at least 30 days to remedy the Adverse Event (if it can be remedied) or to submit to us a plan to resolve the Adverse Event to our satisfaction~~

If, after the period specified in the Adverse Event Notice:

- the Adverse Event has not been remedied to NAB's satisfaction; or
- your plan to resolve the Adverse Event was not satisfactory to NAB,

then NAB may give you a further notice that the Adverse Event has not been remedied and allowing at least 7 days (or a longer period required by law) to remedy the Adverse Event. If not remedied within that period you are in Default and NAB can immediately take any or all of the actions specified in clause 12.6.

If an Adverse Event is not reasonably likely to have either of the above impacts, then NAB may ask for further information, but NAB will not take any further action.

- ~~(o) Any material insurance which NAB has taken out in relation to a Facility cannot be continued or renewed, or any insurance which you are required to have under the Transaction Documents is cancelled or not renewed by you, or is materially altered or changed by you in a manner that makes it less able to be relied on for the purposes of the relevant Transaction Documents or becomes void or unenforceable in a material way because of any action or inaction by you or NAB;~~
- ~~(p) any other event occurs that this Letter of Offer states is an Event of Default;~~

## 12.5 What if a Payment Failure or an Adverse Event is remedied but another similar one occurs?

A Payment Failure or an Adverse Event will not be treated as remedied if, at the end of the applicable remedy period, it continues to exist or another Payment Failure or Adverse Event of the same type exists.

- ~~(q) you or any Security Provider is a trustee of a Trust and:
 
  - (i) ~~without NAB's prior written consent, a new trustee is appointed, the Trust vests or terminates or any part of the Trust Fund is resettled or set aside; or~~
  - (ii) ~~the trustee's right to be indemnified out of the Trust Fund is restricted in any way; or~~~~
- ~~(r) you or any Security Provider are a partnership and:
 
  - (i) ~~the Partnership is held or is conceded by any Partner not to have been constituted or to have been imperfectly constituted;~~
  - (ii) ~~any Partner ceases to be a partner in the Partnership or any step is taken to remove any Partner as a partner of the Partnership, in any case without NAB's prior written consent;~~
  - (iii) ~~the Partners cease to hold the Partnership Property;~~
  - (iv) ~~an application or order is sought or made in any court for any part of the Partnership Property to be brought into court or administered by the court or under its control; or~~
  - (v) ~~the Partners resolve to wind up the Partnership, any order is made by any Regulatory Authority for the winding up of the Partnership or the Partnership is otherwise terminated, revoked or varied.~~~~

## 12.26 What can happen then? (Consequences of Default)

- (a) If an Event of Default occurs, NAB can do any or all of the following:
- (i) ~~by notice to you, make the Total Amount Owing immediately due and payable without the need to give any further notice other than as required by law where it is the Event of Default in clause 12.1(e) (where the Arrangement is with you an event occurs which would allow NAB to terminate that Arrangement, or a transaction under it, and NAB elects to terminate the Arrangement or transaction), clause 12.1 (l) (you or a Security Provider are Insolvent), or if you are not capable of remedying the Event of Default, then the Total Amount Owing is due and payable immediately without the need to give any prior notice other than that required by law; or~~
  - (ii) ~~where it is any other Event of Default, NAB will give you notice stating that an Event of Default has occurred and a reasonable grace period of up to 7 days (or such longer period as required by law or that NAB elects to allow) to remedy the Event of Default. If you or the Security Provider do not remedy the Event of Default within that period, the Total Amount Owing is due and payable immediately at the end of that period without the need to give any further prior notice. An Event of Default will not be remedied, if at the end of that period, the Event of Default in the notice or an Event of Default of the same type continues to exist.~~
  - (bii) ~~Upon the Total Amount Owing being due and payable under clause 12.2(a)(i) or (ii), subject to any applicable law and in addition to any other rights, powers and remedies NAB may have (including under a Security), NAB may without the need to give any prior notice, immediately or at any later time: (i) by notice to you, cancel or reduce all or any part of the Facility Limit (or if applicable, a component limit) for all or any Facilities with immediate effect;~~

- (iii) by notice to you, cancel and terminate the Facilities with immediate effect;
- (iv) close out any treasury transactions you have with NAB (such as hedging, money market or currency transactions) and set-off any resulting amounts NAB owes you against any Total Amount Owing
- (v) continue to charge interest at the applicable Default Interest Rate on any overdue amounts (including interest);
- (vi) at NAB's discretion, apply amounts NAB receives in respect of any Total Amount Owing to any part of the Total Amount Owing which you are then obliged to pay. NAB may do so even if you ask or direct us otherwise, but NAB will act reasonably in the circumstances and in accordance with the law;
- (vii) sue you for the Total Amount Owing; and/or
- (viii) enforce any Security.

- (c) If NAB terminates a Facility following the occurrence of an Event of Default, and at that time there are any treasury related transactions in existence between you and NAB (such as Financial Accommodation, foreign exchange, money market and derivative transactions or general banking facilities) ("Open Positions") then:
- (i) NAB may close out the Open Positions, by entering into opposite positions for the balance of the unexpired term, or by such other means as may be usual in the relevant market and any such close out will be at the then current market rates;
  - (ii) any Costs incurred by NAB in closing out Open Positions under paragraph (i) above will be paid by you on demand, and any gain derived from the closing out of the Open Positions will be credited to you and set off against the Total Amount Owing; and
  - (iii) NAB will give you reasonable particulars of the manner of close out of the Open Positions, and the basis of calculation of any amounts payable by or to you arising from that close out.

## 12.37 Default Interest

- (a) Unless otherwise stated in the Specific Conditions, you must pay NAB default interest charges on any part of the Balance Owing which is overdue (including amounts which are drawn in excess of the Facility Limit). Interest charges payable under this paragraph are calculated daily by applying the Daily Default Interest Rate to the overdue amount.

- (b) Default interest charges payable under this clause are:
- (i) for Facilities where interest charges are ordinarily debited to a Loan Account, added to the relevant Balance Owing for the Facility on each date on which interest is next debited for that Facility; or
  - (ii) for other Facilities, at NAB's discretion, added to the overdue amount monthly and when the overdue amount is paid, or debited to the Nominated Account for that Facility (or, if permitted by this Agreement, any other account held by you) on each date on which interest is next debited for that Facility, unless NAB specifies otherwise.

You will then be liable for interest under this clause on that increased amount.

### **12.48 Fees**

If you do not pay on time any amount due under this Agreement, or if you exceed a Facility Limit, a fee may apply as detailed in the relevant Fees Guide.

### **12.59 Obligations not affected**

Your obligation to pay on time is not cancelled by this clause.

## **13. CHANGE OF CIRCUMSTANCES**

### **13.1 Illegality**

If as a result of a Change in Law, NAB reasonably determines that it is, or is apparent that it will become, contrary to that Law for:

- (a) NAB to fund, provide or maintain a Facility or otherwise observe or give effect to its obligations under a Facility; or
- (b) a person from whom NAB has raised or proposes to raise money in connection with a Facility to fund, provide or maintain that money, then:
- (c) NAB is no longer obliged to provide any Drawing under the Facility;
- (d) all amounts payable under the Facility, including an amount equal to the total face value of all Bills accepted, discounted or endorsed by NAB which remain outstanding, and any letters of credit issued by NAB at your request, are due and payable by you on demand .

### **13.2 Increased Costs**

- (a) Clause 13.2(b) applies if NAB reasonably determines that in its opinion, after the date of this Letter of Offer, any order of any court or Change in Law will:
- (i) subject NAB to any taxes or duties with respect to any Facility or any part thereof or change the basis of taxation of NAB for payments under any Transaction Document (except for taxes or a change in the rate of tax on NAB's overall net income imposed by any taxing authority having the power to levy taxes on NAB);
  - (ii) impose, modify or deem applicable any reserve, capital adequacy and/or liquidity adequacy requirements against any of NAB's assets, deposits with NAB or for NAB's account, or loans by NAB; or
  - (iii) impose on NAB any other condition with respect to this Agreement or the obligations assumed by NAB under it, and as a result there is:
    - (iv) an increase in the cost to NAB of making available or maintaining the Facility; or
    - (v) a reduction in the amounts receivable or permitted to be received in respect of any Facility or any other payment due to NAB in connection with any Facility,
- by an amount which NAB considers to be material.
- (b) If this clause applies:
- (i) NAB will use its best efforts to promptly notify you in writing of the happening of such an event;
  - (ii) NAB will use reasonable endeavours to eliminate or at least mitigate the foregoing adverse consequences in a manner which does not give rise to Costs or other adverse consequences for you or NAB; and
  - (iii) you must pay NAB on demand such amount as NAB reasonably determines to be necessary to compensate NAB in respect of any increase in Cost or reduction in the amounts received or permitted to be received by NAB.

## 14. PROTECTING NAB'S SECURITY POSITION

### 14.1 Protecting NAB's security position

- (a) If:
- (i) a PPS Law applies, or will at a future date apply, to any of the Transaction Documents or any of the transactions contemplated by them, or NAB determines that a PPS Law applies, or will at a future date apply, to any of the Transaction Documents or any of the transactions contemplated by them; and
  - (ii) in the reasonable opinion of NAB, the PPS Law adversely affects or would or may adversely affect NAB's security position or the rights or obligations of NAB under or in connection with the Transaction Documents.

NAB may at any time it considers necessary give notice to you requiring you to do anything, including

- (iii) promptly providing all necessary information (including serial numbers) and taking all necessary action (including obtaining any consent or agreement or giving any notice) to enable NAB to register fully valid and effective Financing Statements or Financing Change Statements with respect to any Security Interest held or intended to be held by NAB under the Transaction Documents at any time;
- (iv) amending any Transaction Document or executing any new Transaction Document; and
- (v) to continuously perfect any security interest in respect of which you are or may become the secured party in such manner and by such time as NAB may direct so as to achieve the priority over competing security interests and other claims and protection against loss, extinguishment and diminution of the security interest,

that in NAB's opinion is necessary to ensure that, to the maximum possible extent, NAB's security position, and rights and obligations, are not adversely affected as contemplated by paragraph (ii) (or that any such adverse effect is overcome to the maximum extent possible). You must comply with the requirements of that notice within the time stipulated in the notice.

- (b) In this clause 14, **PPS Law** means:
- (i) the PPSA;
  - (ii) any regulations made at any time under the PPSA;
  - (iii) any provision of the PPSA or regulations referred to in paragraph (i) or (ii);

- (iv) any amendment to any of the above, made at any time; or
- (v) any amendment made at any time to the Corporations Act or any other legislation as a consequence of the PPSA.

### 14.2 PPSA policies and steps

You will promptly take all reasonable steps which are prudent for your business under or in relation to the PPSA including doing anything reasonably requested by NAB for that purpose. For example, you will:

- (a) create and implement appropriate policies and systems; and
- (b) where appropriate, take reasonable steps to identify security interests in your favour and to perfect and protect them, with the highest priority reasonably available.

### 14.3 Change of details

You agree to notify NAB at least 14 days before:

- (a) you or any Security Provider (or if you are, or any Security Provider is the trustee of a trust or a partner of a partnership, the trust or the partnership) changes its name;
- (b) any ABN, ARBN or ARSN allocated to you or any Security Provider (or if you are, or any Security Provider is a trustee of a trust or a partner of a partnership, the trust or the partnership) changes, is cancelled or otherwise ceases to apply to it (or if it does not have an ABN, ARBN or ARSN, one is allocated, or otherwise starts to apply, to it); and
- (c) you or any Security Provider becomes trustee of a trust, or a partner of a partnership, not stated in this Agreement.

### 14.4 PPSA Waiver

You waive, to the extent permitted under the PPS Law, your right to receive any notices NAB is required to give under the PPS Law (including a notice of a verification statement).

## 15. LIABILITY FOR REGULATORY EVENTS

- (a) From time to time, the Services may be interrupted, prevented, delayed or otherwise adversely affected by a Regulatory Event.
- (b) To the extent permitted by law:
  - (i) NAB is not liable for any loss incurred by you or any other person if an event described in clause 15(a) occurs, irrespective of the nature or cause of that loss, and NAB has no obligation to contest any Regulatory Event or to mitigate its impact on you or NAB. You release NAB from all liability accordingly; and

(ii) to the extent that NAB's liability cannot be excluded, its liability is limited to the cost of having the Service supplied again.

(c) You agree that NAB may use and disclose to an Other Financial Institution or Regulatory Authority, any information about you, the Services or any person connected with you or the Services, for any purpose which NAB or an Other Financial Institution considers appropriate or necessary in connection with any Regulatory Event or the Services. This may result in information being transmitted overseas. You agree to provide information to NAB about yourself, the Services or any person connected with you or the Services on request, and to promptly procure any consents NAB requires to give effect to this clause.

## 16. CHANGES TO THIS AGREEMENT

### 16.1 What NAB can change

Acting reasonably, NAB can, at any time by providing notice under 16.2:

~~(a) reduce any limit, including any facility limit, and/or component limit described in the Details;~~

~~(ab)~~ introduce a new fee, charge or premium, vary the amount of a fee, charge or premium, the way in which it is calculated or when it is charged;

~~(be)~~ vary the Interest Rate (other than a fixed Interest Rate) or the Default Interest Rate, including by changing the relevant indicator rate or substituting a different indicator rate for the relevant indicator rate, and by changing, adding or removing a margin (including by making a margin positive or negative);

~~(d) vary any conditions relating to the application of an Interest Rate (other than a fixed Interest Rate) or the Default Interest Rate, or introduce, suspend, withdraw or re-introduce such conditions;~~

~~(e) change the way in which interest, or default interest, is calculated and when it is debited;~~

~~(fcd)~~ change your repayment obligations, including the amount of any repayment, or your repayment type to reflect a change to the Interest Rate (other than a fixed Interest Rate) or the Default Interest Rate; and

~~(g) make any change which NAB is permitted to make under the Specific Conditions;~~

~~(hde)~~ change any of the other provisions of this Agreement as a result of a change to any law or prudential requirement affecting this Agreement, or as required by the Code of Banking Practice; and

~~(i) change any other provision of this Agreement.~~

### 16.2 How NAB will notify you of changes

NAB will notify you of any changes it makes under clause 16.1 as follows:

(a) NAB will notify you of any change that relates to a change in an Interest Rate or your repayment obligations by writing to you or by advertisement in the national or local media, no later than the date the change takes effect.

(b) NAB will give you at least 30 days' notice of any other change it makes under clause 16.1, by writing to you or by advertisement in the national or local media.

(c) Despite paragraphs (a) and (b), NAB will give you at least 90 days' notice of the change if NAB reasonably considers that the change will be materially adverse to you, and the same change is not being made to similar facilities of our other small business customers.

~~(a) NAB will give you:~~

~~at least 30 days' prior written notice if NAB introduces a fee, charge (other than a government charge) or premium, varies the method by which interest is calculated or varies the frequency with which interest is debited of any change except as specified otherwise below in clause 16.2 or clause 16.3, unless NAB cannot reasonably locate you;~~

~~at least 10 Business Days' 90 days' prior written notice if NAB makes any other variation to this Agreement and NAB reasonably considers the variation will be materially adverse to you, unless NAB considers a shorter period (of no less than 30 days) is necessary for it to avoid or reduce an increase in its credit risk, or the variation is also made to facilities of other small business customers;~~

~~(b) NAB will notify you of the introduction of, or any change to, a government charge payable by writing to you or by advertisement in the national or local media, unless the government has publicised the introduction or change;~~

~~(c) NAB will notify you of any change that relates to a change in an Interest Rate that is not set by NAB (such as a money market rate or some other external reference rate) by writing to you or by advertisement in the national or local media within a reasonable period of the change being made, unless another entity has publicised the change; and~~

~~(d) NAB will notify you of any other change, by writing to you or by advertisement in the national or local media no later than the date the change takes effect.~~



### 16.3 Changes that happen automatically under this Agreement

Where a change occurs automatically under this Agreement (such as a change to the Interest Rate that arises because of a change to an indicator rate or the repricing of a Loan Account under a Market Rate Facility on a Repricing Date), NAB will tell you about that change in accordance with the notification rules for that change as set out in this Agreement. NAB does not have to give you notice in accordance with clause 16.2 for changes that occur automatically under this Agreement.

### 16.4 Variation

Unless otherwise provided, the terms of this Agreement may only be varied by the written agreement of the parties.

### 16.5 If you do not approve of a change NAB makes

If you do not approve of a change NAB makes to a Facility under clause 16.1, you may terminate the Facility by repaying it. Economic eCosts under clause 8 may be payable ~~clause 8~~ if you terminate the Facility.

## 17. BUILDING CONDITIONS

This clause 17 applies to a Facility only if the Details indicate that Building Conditions apply.

### 17.1 How NAB provides drawings

NAB will provide you with the Facility in a series of Drawings as the building work progresses. The Facility may be used only for the building work. NAB is not obliged to provide you with any Drawings under the Facility after the Completion Date. If the building work is completed for less than the Anticipated Total Cost on Completion, NAB need not provide you with that part of the Facility Limit being the difference between the Anticipated Total Cost on Completion and the actual cost.

### 17.2 Additional conditions on drawings

In addition to any other conditions on drawings applicable to the Facility, any obligation on NAB to provide you with anything under a Facility is conditional on:

- (a) you contributing any money towards the cost of building that you have agreed to contribute;
- (b) NAB receiving any document or certificate NAB requires (including a request from you for the Drawing and a certificate from your architect or builder showing the cost of works covered by the certificate);
- (c) any inspection that NAB may carry out or require being satisfactory to NAB; and
- (d) for the final Drawing, NAB has received a certificate of occupancy (or equivalent).

### 17.3 General requirements for building facilities

- (a) If the building is the subject of a Security, you must ensure that the value of the building is fully insured as that value increases,
- (b) The building must be completed within the Anticipated Total Cost on Completion;
- (c) You must not make any changes to the building contract (if any) or plans or specifications without NAB's prior written consent.
- (d) NAB is not responsible for the supervision of the building or any aspect of the building work, even though NAB may approve an alteration or inspect the building.

## 18. NAB'S RIGHT OF SET-OFF

- (a) NAB may at any time without notice to you:
  - (i) debit and charge an account held by you (or an account conducted by NAB in your name) with any amounts you owe NAB or which NAB is contingently or prospectively liable to pay in respect of a Facility;
  - (ii) combine and amalgamate any two or more accounts of yours held with NAB;
  - (iii) set off or transfer any credit balance on any account of yours held with NAB in or towards satisfaction of any amounts due and owing by you to NAB (whether alone or with any other person); and
  - (iv) make any currency conversion NAB considers necessary or desirable to enable a set-off using the spot rate of exchange quoted by it on the day of conversion.
- (b) NAB's rights under paragraph (a) above exist and are exercisable whether or not NAB has agreed to permit any set-off for the purpose of calculation of interest between any two or more accounts and even though:
  - (i) the amounts you owe NAB may be or may be expressed to be advanced on any specified account or on two or more accounts; or
  - (ii) the accounts are with any other person as well as with you or are conducted by NAB in your name or are with different places of business of NAB; or
  - (iii) any one or more accounts stand in credit.

## 19. HOLDING OVER

If NAB continues to make a Facility available to you after its Final Repayment Date, and this Agreement has not been extended, amended or replaced, then the terms of this Agreement will continue to apply to the Facility unless otherwise advised by NAB. The continuation of a Facility under this clause shall not be construed as a waiver of any Event of Default, nor as a waiver of any of NAB's rights under any Transaction Document, nor as any agreement or undertaking (implied or otherwise) to grant any extension.

Warning: The continuation of a Facility under this clause may result in increased fees, charges and interest (including default interest). It is in your interest to pay the Facility Amount Owing as soon as possible to avoid further fees and charges and default interest.

## 20. TELEPHONE RECORDING

You consent to NAB recording any telephone conversations between you and NAB in relation to the Facilities that are customarily recorded in the finance industry or where you are notified prior to the commencement of the telephone conversation and to such recordings being used in any arbitral or legal proceedings.

## 21. CODE OF BANKING PRACTICE

NAB has adopted the Code of Banking Practice and relevant provisions of that Code apply to these Facilities if you are an individual or a small business customer (as defined by that Code). You can obtain from NAB, on request:

- (a) information on NAB's current Interest Rates and standard fees and charges relating to the Facilities if any;
- (b) general descriptive information concerning NAB's banking services (including information about cheques, account opening procedures, bank cheques, NAB's obligations regarding the confidentiality of your information, complaint handling procedures, the advisability of you informing NAB promptly when you are in financial difficulty, and the advisability of you reading the terms and conditions applying to each banking service NAB provides to you;
- (c) general descriptive information about the identification requirements of the Anti-Money Laundering & Counter Terrorism Financing Act 2006 and the options available to you under the tax file number legislation.
- (d) a copy of the Code of Banking Practice.

## 22. NOTICES AND OTHER COMMUNICATIONS

### 22.1 Service

- (a) A notice, certificate or other communication given in connection with this Agreement must be in writing, or such other form permitted by this Agreement. Written communications from you must be signed (including signed electronically) by a director or another person approved by NAB.

(b) They may be:

- (i) given personally (if they are for you, to you, one of your Partners or one of your directors; if they are for NAB, to one of NAB's employees at the office where you arranged this Agreement or any other office NAB tells you);
  - (ii) left at the address last notified;
  - (iii) sent by prepaid post to the address last notified;
  - (iv) sent by facsimile to the fax number last notified or by another form of electronic communication to address last notified, or by making it available on a NAB service;
  - (v) where expressly allowed by this Agreement, by NAB publishing the notice on the internet or in the press;
  - (vi) given in any other way permitted by law.
- (c) They take effect from the time they are received unless a later time specified in them.
  - (d) If they are sent by post, they are taken to be received five days after the date of posting.
  - (e) If they are sent by fax machine that produces a transmission report, they are taken to be received at the time shown in a transmission report that indicates that the whole fax was sent.
  - (f) If they are sent by some other form of electronic communication using a system that generates a delivery receipt, they are taken to be received at the time shown in a delivery receipt that indicates that the whole of the message was sent.
  - (g) If they are given by publishing them, they are taken to be received at the time they are first published.
  - (h) NAB may notify you that information is available electronically (including SMS or electronic mail). You must check electronic communications regularly. You may change your nominated electronic address or withdraw your agreement to receive notices by electronic mail means by giving NAB notice.

### 22.2 NAB's right to rely on notices from you

You agree that NAB may rely on any communications from you, or that NAB believes in good faith are from you. You agree to pay or reimburse NAB for its reasonable Costs (and if you are a Medium-Sized Business, indemnify NAB against Costs) NAB incurs as a result of it acting in accordance with this clause, except, in the case of an indemnity, to the extent NAB's fraud, negligence or misconduct (or of NAB's officers, employees, contractors, agents or any Receiver or Administrator NAB appoints) contributed to the relevant Costs being incurred.

## 23. GENERAL

### 23.1 Statements of Account

NAB will generally give you statements:

- (a) for any Overdraft Facility or Foreign Currency Overdraft Facility at least every three months; and
- (b) for any Term Loan Facility, NAB Business Markets Facility, NAB Invoice Finance Facility or NAB Market Rate Facility at least every six months.

If NAB is not required by law or under the Code of Banking Practice to give a statement (for example, where the Interest Rate for the Facility is fixed for the full Facility Term), it may choose not to.

### 23.2 Certificates

- (a) A written statement or certificate by NAB about a matter or about an amount payable in connection with this Agreement is able to be relied on by you or by NAB as evidence of the matter or the amount payable unless, and until, it is established to be incorrect.
- (b) NAB may rely on certificates provided by any other person with a Security Interest as to the amount owed to them.

### 23.3 How NAB may exercise its rights

- (a) NAB will act reasonably and fairly towards you, taking into account your and our respective business interests. This includes where NAB may exercise a right or remedy, or give or refuse its consent or agreement to any request you make, ~~in any way NAB considers appropriate~~ including ~~by imposing when setting~~ conditions ~~for doing any of those things.~~
- (b) NAB may defer or waive any right or remedy (including the implementation of any fee or charge) without varying this Agreement or creating a new contract.
- (c) If NAB does not exercise a right or remedy fully or at a given time, it can still exercise it later.
- (d) NAB's rights and remedies under this Agreement are in addition to other rights and remedies provided by law independently of it.
- (e) NAB's rights and remedies may be exercised by any of its employees or any other person it authorises.
- (f) NAB is not liable for loss or damage caused by our permitted exercise or attempted exercise of, failure to exercise, or delay in exercising, a right or remedy where:
  - (i) there is no breach of a legal duty of care owed to you by NAB or by any of NAB's employees or agents; or
  - (ii) such loss or damage is not a reasonably foreseeable result of any such breach.

### 23.4 Preservation of liabilities and rights

Your liabilities and NAB's rights under or in relation to a Transaction Document, a Facility or a transaction under them are not affected by anything which might otherwise have that effect at law or in equity including, without limitation, one or more of the following (whether occurring with or without the consent of a person):

- (a) any inaccuracy, insufficiency or forgery in any certificate or other instrument which purports to be made, issued or delivered under a Transaction Document, a Facility or a transaction under them, except to the extent caused by NAB's own negligence; or
- (b) NAB or another person granting time or other indulgence (with or without the imposition of an additional burden) to, compounding or compromising with or wholly or partially releasing you or another person in any way; or
- (c) delay in enforcing its rights on the part of NAB or another person; or
- (d) any variation or novation of a right of NAB or another person, or alteration of a document, in respect of you or another person including, without limitation, an increase in the maximum liability of or other variation in connection with a Drawing; or
- (e) the invalidity or unenforceability of an obligation or liability of a person other than you; or
- (f) invalidity or irregularity in the execution of a Transaction Document by you or any deficiency in your powers to enter into or observe your obligations under a Transaction Document, a Facility or a transaction under them.

### 23.5 Consents and Conditions

You must comply with all conditions and requirements in any consent NAB gives, or in any agreement NAB provides to any request you make. NAB will act reasonably in all the circumstances and in its legitimate business interests in determining such conditions and requirements.

### 23.6 GST

Unless otherwise specified, all amounts referred to in this Agreement are exclusive of GST. If GST is imposed on any supply made by one party ("Supplier") under or in connection with this Agreement to the other party ("Recipient"), where any amount or consideration ("Consideration") payable or to be provided by the Recipient under this Agreement in relation to that supply is exclusive of GST ("GST-Exclusive Consideration"), the Supplier may, in addition to and at the same time as that GST-Exclusive Consideration is due, recover from the Recipient an additional amount on account of GST. This additional amount is to be calculated by multiplying the GST-Exclusive Consideration for the relevant taxable supply by the GST rate prevailing at the time of the taxable supply.

### 23.7 Valuations

- (a) NAB can at any time when acting reasonably, require any Security and any property that is the subject of any Security to be valued by a valuer appointed by NAB and under instruction from NAB.

If NAB does this you must:

- (i) co-operate with the valuer NAB appoints to conduct any such valuation;
- (ii) pay when asked any fees, charges and premiums applicable to any such valuation; and
- (iii) ~~comply with every reasonable request to provide assistance to that valuer including providing authorisations, relevant information, records, access to individuals, premises and business equipment used in the conduct of your business.~~

- (b) Any valuation obtained by or for NAB is for NAB's use only and you are not entitled to rely on it. NAB accepts no responsibility for the contents of the valuation or for any reliance on a valuation by you or any other person.

- (c) If you ask, and are not in Default, NAB will give you a copy of the following for a non-residential property valuation report that you have paid for:

- (i) NAB's instructions to the valuer; and
- (ii) a full copy of the valuation report.

### 23.8 Indemnities

The indemnities in this Agreement are continuing obligations, independent of your other obligations under this Agreement. They continue even after this Agreement has ended. It is not necessary for NAB to incur expense or make payment before enforcing a right of indemnity conferred by this Agreement.

### 23.9 Inconsistent and applicable law

~~(a) — You may have statutory rights and protections available to you under Australian laws, including laws to protect small businesses from unfair contract terms. However, to the extent permitted by law, this Agreement prevails to the extent it is inconsistent with any law.~~

- (ba) This Agreement is governed by the laws of the state or territory where the office issuing this Letter of Offer is located. You and NAB submit to the non-exclusive jurisdiction of the courts of that place.
- (eb) NAB may serve any document on you in a court action by delivering it to, or leaving it at, your last known address or such other address as you and NAB agree at any time. This clause does not prevent any other method of service.

### 23.10 Reading Down and Severance

- (a) If any law applies to make part of a Transaction Document inoperative then the intention is for it to be interpreted in a way which preserves as much of the Transaction Document and its operative effect as the law allows. ~~making unfair contract terms void could apply to a term in this Agreement, the following rules apply to interpreting that term.~~

~~(i) — If the law would make the term void because the term permits us to exercise a right or discretion in a way or to an extent that would cause detriment to you contrary to that law, the term shall be read down and construed so as not to permit us to exercise the right or discretion in such a way or to such an extent but otherwise the term shall be construed as permitting us to exercise the right or discretion in all ways and to any extent consistent with the term.~~

~~(ii) — If the law would make the term void because the term imposed a particular amount for a fee or charge, the term shall be read down and construed as authorising the maximum amount for that fee or charge which would not cause the term to be void.~~

~~(iii) — If the law would make the term void because it authorised us to recover costs or losses or damages to be calculated by us in a specified way or in a way we choose, the term shall be read down and construed as authorising us to recover the maximum reasonable costs, losses and damages to be calculated in a reasonable way that did not cause the term to be void.~~

~~(iv) — If, despite the application of rules (i), (ii) and (iii) to the term, the law would make the term void, the term is to be read down and construed as if it were varied, to the minimum extent necessary, so that the term is not void.~~

These reading down rules apply before the following additional reading down and severance provision:

~~(b) — If a provision of this Agreement is void or voidable or unenforceable by NAB, but would not be void or voidable or unenforceable if it were read down, it shall be read down accordingly.~~

~~(c) — If, despite paragraph (b), a provision of this Agreement is still void or voidable or unenforceable by NAB:~~

~~(i) — if the provision would not be void or voidable or unenforceable if a word or words were omitted there from, that word or those words (as the case may be) are severed; and~~

~~(ii) — in any other case, the whole provision is severed, and the remainder of this Agreement has full force and effect.~~

### 23.11 Assignment

- (a) NAB may assign or otherwise deal with our rights under this Agreement in any way NAB considers appropriate. NAB may disclose any information or document it considers desirable to help NAB exercise this right at any time to a person to whom NAB assigns or proposes to assign its rights. Where NAB assigns any right under this Agreement, you will not claim against the assignee any right of set off or other rights you have against NAB. You cannot assign your rights under this Agreement without NAB's prior written agreement.
- (b) You agree, on request, to sign any documents or give any consents that NAB considers desirable to help it exercise its rights under paragraph (a).
- (c) Your rights are specific to you and may not be assigned without NAB's prior written consent.

### 23.12 Confidentiality

- (a) You agree and NAB agrees that neither party will disclose to an Interested Person, or any other person at the request of an Interested Person, any information of the kind described in section 275(1) of the PPSA unless allowed or required by law.
- (b) You will not authorise the disclosure of any information of the kind described in section 275(1) of the PPSA.
- (c) Each party agrees not to disclose information provided by the other party (including the existence or contents of this Agreement) except:
  - (i) to officers, employees, legal and other advisers and auditors of you, NAB or a Receiver;
  - (ii) with the consent of the other party (who must not unreasonably withhold their consent);
  - (iii) if required by any stock exchange or if allowed or required by law;
  - (iv) by NAB under clause 15(c) or 23.11(b);
  - (v) by NAB to any Related Entity of NAB or you;
  - (vi) by NAB to any assignee of NAB's rights under this Agreement or any other arrangement (including a request, bill of exchange, agreement guarantee or a Security Interest) by or with you under which obligations are or could in the future be owed to NAB;

- (vii) by NAB to any person in connection with NAB exercising rights or dealing with rights or obligations (including preparatory steps such as negotiating with any potential assignee of NAB's rights or other person who is considering contracting with NAB or a Receiver in connection with this Agreement;
  - (viii) by NAB for the purpose of registering and maintaining any financing statement or financing change statement (each as defined in the PPSA) relating to NAB's Security; or
  - (ix) by NAB to any Debtor/Guarantor or person NAB believes may become a Debtor/Guarantor, provided that the prohibition under clause 23.12(a) or 23.12(b) is absolute and therefore none of the exceptions in this clause 23.12(c)(i) – (ix) apply to a disclosure under clause 23.12(a) or 23.12(b).
- (d) NAB agrees that you are providing your signed copy of this Agreement on condition that NAB complies with its obligations of confidentiality under clauses 23.12(a) and 23.12(c) above.

## 24. DISCRETIONS

Where this Agreement confers on NAB a right or discretion, NAB will exercise that right or discretion reasonably after having regard to its legitimate business requirements.

## 25. DEFINITIONS

### 25.1 Terms used in the Details

Where a term is defined or otherwise described in relation to a Facility in the Details for that Facility (for example, Expiry Date, Customer Margin or Facility Limit) a reference in this Agreement to that term is a reference to that term as so defined or described (as amended from time to time in accordance with this Agreement).

### 25.2 Meaning of other terms

- (a) These meanings apply to this Agreement, unless otherwise stated:

**Adjusted Facility Limit** means the Facility Limit less the Facility Limit Deduction.

**Administrator** has the same meaning as defined in the Corporations Act.

**Adverse Event** has the meaning given in [clause 12](#).

**Agreement** means the agreement between you and NAB in relation to the Facilities, as set out in the documents listed at the start of the Letter of Offer.

**Amortisation Schedule** means, for a Facility, the Amortisation Schedule in the Details or any amortisation schedule provided to you by NAB as a replacement, in accordance with this Agreement.

**Balance Owing** means:

- (i) in relation to a Loan Account or a Facility Component, any debit balance resulting from all amounts debited and all amounts credited to it;
- (ii) in relation to a Drawing, the amount of the Drawing less any amounts of principal repaid in relation to the Drawing (up to the amount of the Drawing);
- (iii) in relation to a Facility with multiple Loan Accounts, Drawings, or Facility Components the sum of the Balance Owing for each such Loan Account or Drawing.

Where such an amount is to be calculated for the end of a day, it includes all debits and credits assigned to that day.

**Bank Guarantee** means a bank guarantee to be provided, or already provided, by NAB to a Beneficiary on the Date Issued.

**Beneficiary** means, in relation to a Bank Guarantee or a Letter of Credit, the person to whom the Bank Guarantee or Letter of Credit is to be, or has already been, issued.

**Bill** means a bill of exchange, including any bill accepted or drawn by means of facsimile signature or by electronic or other means and any equivalent obligation which is a dematerialised security (as defined in the Austraclear System Regulations from time to time) or anything NAB deems to be a "bill" for the purposes of this Agreement.

**Bill Facility** means any Facility to which the Bill Facility Specific Conditions are stated to apply.

**Business Day** means a day other than a Saturday or Sunday, or a day gazetted as a public holiday in every state and territory of Australia.

**Capital Adequacy** means Tangible Net Worth divided by Total Tangible Assets.

**Change in Law** means any change in any Law (including the introduction of a new Law), or any change in the interpretation or administration of any Law.

**Component Limit** means, in relation to a Bill Facility, a 'bill facility component limit' and in relation to a NAB Business Markets Facility, a 'business markets facility component limit' as those terms as defined in the Specific Conditions for that Facility.

**Conduct Default** has the meaning given in [clause 12](#).

**Controller** has the meaning given to the term in the Corporations Act.

**Corporations Act** means the Corporations Act 2001 (Cth).

**Costs** includes costs, charges, fees, expenses and other outgoings, including those in connection with advisers or professional consultants (in the case of legal advisers on a full indemnity basis or solicitor and own clients basis, whichever is higher) and reasonable expenses incurred by the use of the staff (including in house legal advisers) and facilities of NAB and, in the case of Securities, where applicable, in preserving and maintaining the assets and property the subject of the Security (such as by paying insurance, rates and Taxes for the property) interest, penalties, and fines.

**Current Ratio** means Current Assets divided by Current Liabilities.

**Daily Default Interest Rate** means, for any day, the Default Interest Rate applying to the Facility for that day divided by 365.

**Daily Interest Rate** means, for any day:

- (i) in relation to a Facility involving a foreign currency, the Interest Rate applying to the Facility or Drawing (as the case may be) for that day divided by 365 where the currency is Australian Dollars (AUD), Fiji Dollars (FJD), Pounds Sterling (GBP) or Hong Kong Dollars (HKD) and 360 in all other cases;
- (ii) in relation to any other Facility (or any part of such a Facility), the annual Interest Rate applying to the Facility (or that part of the Facility) for that day divided by 365.

**Date Issued** means, in relation to a Bank Guarantee, the date specified in the Details or otherwise agreed as the date on or before which a Bank Guarantee is to be, or has been, issued by NAB to the Beneficiary.

**Debt Service Cover** means Earnings Before Interest and Tax divided by interest (including leasing and subordinated debt interest) plus current portion of long term debt.

**Debtor/Guarantor** means:

- (i) any person who guarantees or has provided a Security Interest to secure the payment of any part of the Balance Owing;
- (ii) if any part of the Balance Owing includes obligations you owe under a guarantee, the person whose obligations you guarantee and any other person who guarantees that other person's obligations; and
- (iii) any other person you and NAB agree is to be a "Debtor/Guarantor" for the purpose of this Agreement.

**Default** has the meaning given in [clause 12.1](#)

**Default Interest Rate** for a Facility is:

- (i) the interest rate so described in the Details for that Facility or,
- (ii) if no such rate is described in the Details for that Facility or if the amount is not referable to a particular Facility, the total of NAB's Base Indicator Rate plus a margin of 4.500% per annum, or such lesser margin as NAB elects to apply.

**Details** means, in relation to a Facility, the Facility Details for that Facility.

**Dividend Payout** means the amount of dividend payments plus increased loans to shareholders, expressed as a percentage of Net Profit after Tax.

**Drawdown Date** means:

- (i) for a Facility other than a Bill Facility, each date on which a Facility (or part thereof) is drawn; and
- (ii) for a Bill Facility, the date on which a Bill is accepted, discounted or endorsed under a Facility, as specified in the Details or as otherwise agreed.

**Drawdown Notice** means a notice requesting a Drawing, or otherwise giving instructions in relation to a Drawing, in a form acceptable to NAB.

**Drawdown Schedule** means, in respect of a Facility, the drawdown schedule specified in the Details for that Facility (if any) or any drawdown schedule provided to you by NAB.

**Drawing** means each Financial Accommodation actually provided under a Facility.

**Economic Costs** and **Economic Event** each has the meaning described in clause 8.

an **Event of Default** occurs if you are in Default (see clause 12.1).

**Facility** means any Financial Accommodation provided to you under this Agreement.

**Facility Amount Owing** means all money which you (whether alone or not) are, or at any time may be, liable to pay NAB under this Agreement in relation to a particular Facility, for any reason whatsoever including the aggregate face value of any unmatured bills, the maximum amount payable by NAB under any Bank Guarantees or Letters of Credit and money by way of principal, interest, fees, Costs, indemnity, charges, duties or expenses irrespective of whether the liability is:

- (i) present or future;
- (ii) actual, prospective, contingent or otherwise;
- (iii) ascertained or unascertained;

(iv) in existence before or comes into existence on or after the date of this document; or

(v) a combination of any or all of the above

**Facility Component** means, in relation to a Bill Facility, a 'bill facility component' and in relation to a NAB Business Markets Facility, a 'business markets facility component' as those terms as defined in the Specific Conditions for that Facility.

**Facility Limit** means the facility limit that is applicable to the relevant Facility.

**Facility Limit Deduction** means the Guaranteed Amount of any Bank Guarantee or the total face value of any Letter of Credit or similar instrument issued by NAB under any other agreement with you which has not been cancelled to NAB's satisfaction.

**Facility Term** means:

- (i) for a Bill Facility, the period beginning on the Commencement Date and ending on the Expiry Date;
- (ii) for any other Facility, the period beginning on its Commencement Date (if any) or otherwise on its First Drawdown Date and ending at the expiry of the Facility Term or the Expiry Date (or the Extended Facility Term or the Extended Expiry Date, if applicable).

Where no expiry date or facility term is set out in the Details for a Facility or is otherwise agreed, that Facility is provided on an ongoing basis subject to the terms of this Agreement and does not, for the purposes of this Agreement, have a 'Facility Term'.

**Farm Management Account Overdraft**

**Facility** means any Facility title "Farm Management Account Overdraft Facility" in the Details.

**Fees Guide** means NAB's "A Guide to Fees and Charges (Business)" and/or NAB's "A Guide to Fees and Charges (International Trade Services)" booklet, as amended from time to time, as the case may be.

**Final Repayment Date** means in relation to a Facility the earlier of:

- (i) the last day of the Facility Term (if any);
- (ii) the date the Facility Limit is cancelled; or
- (iii) the date the Facility is terminated or otherwise ends,

or if that day is not a Business Day, the next Business Day unless otherwise stated in the Specific Conditions for that Facility or unless otherwise agreed.

**Financial Accommodation** means any form of funding or fund raising including but not limited to loans of money, the acceptance, discounting and endorsement of Bills or the issue of letters of credit or bank guarantees and the assignment of debts.

**Financial Charges Cover** means Earnings Before Interest and Tax plus finance charges divided by interest plus finance charges.

**First Drawdown Date** means for a Facility, the first date you make or obtain (as relevant) a Drawing and means, for a Loan Account, the first date you make or obtain (as relevant) a Drawing which is to be debited to that Loan Account.

**Fixed Rate Period** means, in relation to a Facility or a particular Drawing, the period during which a specific fixed interest rate or fixed yield rate applies to that Facility or Drawing, as the case may be.

**Floating Amount**, in relation to a Bill Facility or a NAB Business Markets Facility, has the same meaning as set out in the Specific Conditions for that Facility.

**Floating Rate** in relation to a Bill Facility or a NAB Business Markets Facility, has the same meaning as set out in the Specific Conditions for that particular facility.

**Gearing/Leverage Ratio** means Total Liabilities divided by Tangible Net Worth.

**Global Trade Finance Facility** means any Facility to which the Global Trade Finance Specific Conditions are stated to apply.

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

**Guaranteed Amount** means, in relation to a Bank Guarantee, the amount specified as the Guaranteed Amount in the Bank Guarantee.

A person is **Insolvent** if:

- (i) they are (or state they are) an insolvent under administration or insolvent (each as defined in the Corporations Act);
- (ii) they have a Controller appointed, are in liquidation, in provisional liquidation, under administration or wound up or have had a Receiver appointed to any part of their property;
- (iii) execution or distress or any other process is levied or attempted or imposed against or over any of their undertaking, property or assets;

- (iv) a compromise, arrangement, assignment, moratorium or composition is proposed with, or becomes effective in relation to, their creditors or any class of their creditors (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by NAB);
- (v) an application or order has been made (and, in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with them, which is preparatory to or could result in any of the things referred to above;
- (vi) they are taken (under section 459F of the Corporations Act) to have failed to comply with a statutory demand;
- (vii) they are the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or they make a statement from which NAB reasonably deduce they are so subject);
- (viii) they are a natural person, they commit an act of bankruptcy within the meaning of the Bankruptcy Act 1966 (Cwlth);
- (ix) they are otherwise unable to pay their debts when they fall due; or
- (x) something having a substantially similar effect to any of the things referred to above happens in connection with them under any law.

**Intangible Assets** means deferred development expenses, deferred foreign exchange gains, organisational or experimental expenses, research and development expenses, intellectual property, future income tax benefits, goodwill, patents, trademarks, service marks, design rights, franchises, copyrights, licences, underwriting and formation expenses and other items of a like nature which, according to current accounting practice, are regarded as intangible assets.

**Interbank Swap Curve** means the benchmark interest rates used by banks to swap their types of borrowings (ie fixed rate for floating rate) with no exchange of principal amounts for terms greater than twelve months.

**Interest Cover** means Earnings Before Interest and Tax divided by interest (including finance lease, other external debt and subordinated debt interest).

**Interest Debit Date** means, in relation to a Facility, the date on which interest charges are to be debited as set out in the Specific Conditions for that Facility.



**Interest Period** means the frequency with which, or the period for which, interest is calculated and charged, as the context requires, as stated in this Letter of Offer or as otherwise agreed.

**Interest Rate** means the per annum rate of interest applicable to a Facility or part of a Facility, as described in the Details or otherwise agreed, and subject to this Agreement.

**Interested Person** has the meaning given to that term for the purposes of section 275 of the PPSA, and includes:

- (i) any person granting a Security;
- (ii) a person with another Security Interest in the same property in which NAB has a Security;
- (iii) if a person granting a Security is a body corporate, an auditor of that person;
- (iv) an execution creditor with an interest in the property in which NAB has a Security;
- (v) an authorised representative of any of the above.

**Inventory and Debtors to Working Capital Debt Ratio** means inventory and debtors divided by Working Capital Debt.

**Law** means any law, regulation or an official policy, directive, standard or guideline, which has the force of law, or compliance with which is in accordance with normal banking practice in the jurisdiction concerned.

**Letter of Credit** means a documentary letter of credit or a standby letter of credit issued by NAB pursuant to a Global Trade Finance Facility.

**Letter of Offer** means this document.

**Loan Account** means an account NAB establishes, or have already established, in your name or otherwise in relation to you or your Facility for recording transactions in connection with a Facility and includes, in relation to an overdraft (including a Foreign Currency Overdraft), the linked transaction account.

**Maturity Date** means:

- (i) for a NAB Business Markets Facility, the date on which a Fixed Rate Period is due to expire; and
- (ii) for any other Facility (as applicable), the date on which a Bill is due to mature or a lease is due to expire.

You are a **Medium-Sized Business** if the total of NAB's business finance credit exposures to you and your related entities is at least \$3,000,000. This includes the total of all your Facility Limits. Your 'related entities' are those who NAB reasonably determines are under common ownership control or management control with you or by you. NAB makes any such determinations under NAB's aggregate risk exposure policies.

**NAB** means National Australia Bank Limited ABN 12 004 044 937 and its successors and assigns, and Our, **We** and **Us** has a corresponding meaning.

**Nominated Account** means, in relation to a Facility, the nominated account specified in the Details or any other account you advise NAB in a Drawdown Notice is to be the nominated account or any other account which NAB agrees is to be the nominated account.

**Occupancy (Accommodation)** means actual level of rooms occupied of the motel/hotel divided by the total number of rooms.

**Occupancy (Commercial)** means total occupied space, at any given time, divided by the total lettable space as determined by NAB at NAB's discretion.

**Other Financial Institution** means such other financial institutions, or other offices of NAB, locally and overseas, that are involved in providing a service to you under or in relation to a Facility (whether appointed by NAB or not, and whether their involvement is known to you or not).

**Overdraft** means any overdraft Facility, other than a Foreign Currency Overdraft Facility.

**Payment Failure** has the meaning given in clause 12.

**Potential Event of Default** means an event which, with the giving of notice, lapse of time or fulfilment of any condition, would be likely to become an Event of Default.

**PPSA** means the Personal Property Securities Act 2009 (Cwlth).

**Presales/Debt Cover** means net acceptable presales (pre GST and selling and legal Costs), as determined by NAB at its discretion, divided by total level of property finance debt limits.

**Pricing Period** in relation to a Facility has the meaning given to it in the Specific Conditions for that Facility.

**Property Finance Interest Cover** means net rental (total passing rental income stream (exclusive of GST) after deduction of all outgoings and other property related non recoverable Costs, as determined by NAB at its discretion) divided by interest expense as assessed against the tenancy schedule provided by you to NAB. NAB reserves the right to verify, amend and/or test the tenancy information provided.

**Property Finance Loan to Value Ratio** means total property finance debt limits divided by the current value NAB ascribes at its discretion of the freehold Security.

**Receiver** includes receiver, or receiver and manager or controller as defined in the Corporations Act.

**Regulatory Authority** means any local or foreign government or their instrumentalities.

**Regulatory Event** means any:

- (i) law or other form of regulation;
- (ii) practices or policies of a Regulatory Authority;
- (iii) investigation into you or any Related Entity of you by a Regulatory Authority;
- (iv) application for or grant of an injunction or order in respect of any Security, Facility or account held with NAB made by a Regulatory Authority, or
- (v) code of practice or custom relating to the provision of those services which a reasonable and prudent banker would comply with.

whether in Australia or elsewhere, that, in NAB's good faith opinion, or that of another Financial Institution, applies in any way to you or a Security Provider, or the Service.

**Related Entity** means any entity which is related to the first within the meaning of section 50 of the Corporations Act or any economic entity (as defined in any approved accounting standard) which describes the first.

**Repricing Date** means:

- (i) for a Market Rate Facility or a NAB Business Markets Facility, the first day of any Pricing Period (including the first Pricing Period) under that Facility; and
- (ii) for a Term Loan Facility, the first day after the end of a Fixed Rate Period; and
- (iii) in relation to a drawing under a Global Trade Finance Facility, the last day of the term of that Drawing.

**Security** means each Security Interest described in the Details or Other Details under "Security" and any substitute or additional Security Interest applicable to this Agreement. Security also includes any priority agreement relating to any security.

**Security Interest:**

- (i) in relation to any personal property (as defined in the PPSA), has the same meaning as in the PPSA;
- (ii) in relation to any other property, means any security for the payment of money or performance of obligations including a lien, pledge, trust or power.

Security Interest also includes a guarantee or an indemnity.

**Security Provider** means each person (other than you) who gives a Security.

**Service** means any service NAB provides to you under or in relation to a Facility including making or processing any payment or issuing any document.

**Specialised Facility** means a Facility:

- (i) used to fund construction or other property development;
- (ii) used to buy securities on margin;
- (iii) used by the trustee of a self-managed superannuation fund to acquire an asset under a limited recourse borrowing arrangement;
- (iv) used to fund bailment arrangements;
- (v) used to fund unfinished goods pending their sale;
- (vi) used to provide funding against the value of invoices;
- (vii) denominated in a foreign currency; or
- (viii) which NAB agrees with you is a Specialised Facility.

**Tangible Net Worth** is defined as Total Tangible Assets minus Total Liabilities.

**Taxes** means taxes, levies, imposts, charges and duties (including stamp and transaction duties) imposed by any authority together with any related interest, penalties, fines and expenses in connection with them, except if imposed on, or calculated having regard to, NAB's net income.

**Term Loan Facility** means any Facility to which the Term Loan Facility Specific Conditions are stated to apply.

**Transaction Documents** means this Agreement, the Security, any other documents that include (by variation, novation or otherwise) the terms of any Facility or transaction under them, any document created or entered into in accordance with a Transaction Document and any other document that NAB and you agree is a Transaction Document.

**Total Amount Owing** means, at any time, the total of every Facility Amount Owing and any other amounts which are then due for payment, or which will or may become due for payment, in connection with this Agreement.

**Total Tangible Assets** means all assets other than Intangible Assets.

**Trust** means a trust or settlement.

**Trust Deed** means, in relation to a Trust, the trust deed creating or constituting the Trust.

**Trust Document** means, in relation to a Trust, the Trust Deed and all other documents relating to the Trust.

**Trust Fund** means, in relation to a Trust, the assets of the Trust.

**Working Capital Debt** means current finance facilities including an Overdraft, a Global Trade Finance Facility, a NAB TradeAssist Facility, a NAB Invoice Finance Facility or a Bill Facility.

**Yield Rate** has the same meaning as in the Bill Facility Specific Conditions.

**You** means the person or persons identified as “you” in the Agreement. If there are more than one, You means each of them separately and every two or more of them jointly. **You** includes your successors. If You are a partnership, You includes the partnership as reconstituted from time to time including by admission, retirement, death or incapacity of partners.

- (b) Terms used in this Agreement have the meaning given to them in generally accepted accounting principles and standards in Australia unless otherwise expressly defined.

- (c) A reference to:
- (i) a month means a calendar month unless otherwise stated;
  - (ii) any thing includes the whole and each part of it;
  - (iii) a document includes any variation or replacement of it
  - (iv) law means common law, principles of equity, and laws made by parliament (and laws made by parliament include regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of them). For example, a reference to a section or other provision of a law made by parliament includes any amendment or replacement of that section or provision, including an amendment to the number of that section or provision;
  - (v) the word Person includes an individual, a partnership, a body corporate, an unincorporated association or an authority; and
  - (vi) the words **including, such as** or **for example** when introducing an example do not limit the meaning of the words to which the example relates to that example or examples of a similar kind.
- (d) If something must be “satisfactory to NAB”, it must be satisfactory in form and substance.
- (e) The singular includes the plural and vice versa.
- (f) To the extent permitted by law, any authority given by you under this Agreement is irrevocable unless otherwise stated.
- (g) Headings are for convenience only and do not affect the interpretation of this Agreement, except that where a clause heading includes the name of a *facility* that clause applies only to a Facility with that name.

# SPECIFIC CONDITIONS

## COMMERCIAL BILL FACILITY

### 14. YOU INDEMNIFY NAB

- (a) ~~Subject to clause 14(c), you agree to pay or reimburse~~ You indemnify NAB against for reasonable amounts of (and if you are a Medium-Sized Business, indemnify NAB against) any liability, loss ~~(including consequential or economic loss)~~ or Costs NAB may incur or suffer in connection with:
- (i) you being in Default;
  - (ii) NAB exercising, enforcing or preserving rights (or considering or attempting to do so) in connection with the Facility or a Bill or any liability NAB incurs as acceptor or endorser of a Bill.
- (b) ~~Subject to clause 14(c), you agree to pay or reimburse NAB for reasonable amounts of (and if you are a Medium-sized Business, You~~ indemnify NAB and its officers against) any liability, loss ~~(including consequential or economic loss)~~ or Costs NAB may incur or suffer in connection with the exercise of the power of attorney granted to it pursuant to clause 15 (Power of Attorney).
- (c) ~~You don't have to indemnify NAB to the extent NAB's fraud, negligence or misconduct (or of NAB's officers, employees, contractors, agents or any Receiver or Administrator NAB appoints) contributed to the relevant liability, loss or Costs being incurred.~~
- (d) You agree to pay NAB the amounts referred to in clause 14(a) and 14(b) immediately on demand by NAB.

This indemnity is in addition to any other indemnity or obligation in NAB's favour in this Agreement or given by law.

## MARKET RATE FACILITY

### 5.2 Interest rate

The Interest Rate in respect of a Pricing Period is NAB's Business Lending Rate for the tenor of the Drawing, determined by NAB in its absolute discretion on the first day of that Pricing Period, plus the Customer Margin. NAB's Business Lending Rate is linked to:

- (a) the rate determined by NAB which is equal to the Australian Bank Bill

Swap Reference Rate (Bid) administered by ASX Benchmarks Pty Ltd (or any other person which takes over the administration of that rate) displayed on page BBSY of the Thomson Reuters Screen (or any replacement Thomson Reuters page which displays that rate)"bid rate" quoted on the "BBSY" page of the Reuters Monitor System at the time at which that screen rate is normally published or about 10.15am Sydney time on the first day of that Pricing Period for bank accepted bills with a tenor which is equal to that Pricing Period (or where the Pricing Period is either 7 or 14 days, a tenor of 1 month) and which starts on that day;

(b) if the rate for a Pricing Period cannot be determined in accordance with the paragraph above or if, in NAB's reasonable opinion, the rate becomes inappropriate, the rate reasonably determined by NAB to be the appropriate equivalent rate having regard to the prevailing market; and

(c) the minimum return margin NAB requires from time to time.

NAB will periodically publish one or more indicative NAB Business Lending Rates on nab.com.au and you can contact NAB for information about current rates.

## BANK GUARANTEE FACILITY

### 4. Indemnity

- (a) You agree to indemnify NAB in respect of:
- (i) any amounts NAB pays to a Beneficiary under a Bank Guarantee;
  - (ii) an amount equal to any loss ~~(including consequential or economic loss)~~, damage and Costs which NAB incurs or suffers or for which NAB becomes liable, directly or indirectly as a result of or in connection with:
    - (i) the issue or variation of a Bank Guarantee;
    - (ii) any payment or claim for payment under a Bank Guarantee; or
    - (iii) anything done by a beneficiary or any other person in relation to or in reliance on a Bank Guarantee.

except to the extent the relevant loss, damage or Costs was contributed to by NAB's fraud, negligence or misconduct (or of NAB's officers, employees, contractors, agents or any Receiver or Administrator NAB appoints).

(b) Any amount you must pay NAB under this clause 4 (indemnity) is payable in Australian Dollars (even if the payment made by NAB is in a different currency) unless otherwise specified by us and becomes due and payable upon the earlier of:

- (i) NAB making payment under a Bank Guarantee; or
- (ii) NAB incurring an obligation to make payment under a Bank Guarantee; or

an Event of Default occurring.

### 12.3 Currency Indemnity

(a) Clause 12.3(b) applies if a judgment or order is given by any court or tribunal for the payment of any amount owing by you under the Facility, or for the payment of damages by you in respect of any breach of the terms of the Facility, where that judgment or order is expressed in a currency (the Judgment Currency) which is different from the currency expressed to be payable in this Agreement in relation to the Facility (the Relevant Foreign Currency).

(b) You indemnify NAB against any deficiency in the amounts received by NAB arising or resulting from any variation between:

- (i) the rate of exchange at which the Relevant Foreign Currency is converted into the Judgment Currency for the purpose of the judgment or order; and
- (ii) the rate of exchange at which NAB is able to purchase the Relevant Foreign Currency with the Judgment Currency at the time of its receipt by NAB,

except to the extent NAB's fraud, negligence or misconduct (or of NAB's officers, employees, contractors, agents or any Receiver or Administrator NAB appoints) contributed to the relevant deficiency in the amounts received.

## GLOBAL TRADE FINANCE

### 2.6 Your undertaking to pay

(a) You agree to pay to NAB on demand and in the currency in which the Letter of Credit is denominated an amount equal to each amount demanded from or paid by NAB under any Letter of Credit or Bill drawn on and accepted by NAB in connection with a Letter of Credit together with any incidental Costs.

(b) Subject to clause 2.6(c). You indemnify NAB against all actions, proceedings, claims and demands brought or made against NAB and against all losses ~~(including consequential losses and loss of profits)~~, damages and Costs which NAB reasonably incurs or suffers or for which NAB becomes liable, directly or indirectly, in connection with any Letter of Credit requested by you to be issued by NAB or Bill drawn on and accepted by NAB in connection with a Letter of Credit.

(c) You don't have to indemnify NAB to the extent NAB's fraud, negligence or misconduct (or of NAB's officers, employees, contractors, agents or any Receiver or Administrator NAB appoints) contributed to the relevant losses, damages or Costs being incurred.

(d) When NAB makes a payment under a Letter of Credit or Bill drawn on and accepted by NAB in connection with a Letter of Credit and you do not promptly reimburse NAB, you authorise NAB to debit the amount of the payment together with any incidental Costs (less any reimbursements in relation to that payment) to any account of yours that NAB chooses without first having to make demand for payment or otherwise giving you prior notice.

Each of your payment obligations under this clause 2.6 (your undertaking to pay) is independent of each of your other payment obligations under this clause 2.6 (your undertaking to pay).

### 6.3 Currency Indemnity

- (a) Clause 6.3(b) applies if a judgment or order is given by any court or tribunal for the payment of any amount owing by you under the Facility, or for the payment of damages by you in respect of any breach of the terms of the Facility, where that judgment or order is expressed in a currency (the 'Judgment Currency') which is different from the currency expressed to be payable under this Agreement in relation to the Facility (the 'Relevant Foreign Currency').
- (b) You indemnify NAB against any deficiency in the amounts received by NAB arising or resulting from any variation between:
- (i) the rate of exchange at which the Relevant Foreign Currency is converted into the Judgment Currency for the purpose of the judgment or order; and
  - (ii) the rate of exchange at which NAB is able to purchase the Relevant Foreign Currency with the Judgment Currency at the time of its receipt by NAB.

except to the extent NAB's fraud, negligence or misconduct (or of NAB's officers, employees, contractors, agents or any Receiver or Administrator NAB appoints) contributed to the relevant deficiency in the amounts received.

### NAB BUSINESS MARKETS

#### Definitions

**Floating Rate** means, in respect of a Pricing Period. NAB's Business Lending Rate for the tenor of the Drawing, determined by NAB in its absolute discretion on the first day of that Pricing Period, plus the Customer Margin. NAB's Business Lending Rate is linked to:

- (a) the rate determined by NAB which is equal to the Australian Bank Bill Swap Reference Rate (Bid) administered by ASX Benchmarks Pty Ltd (or any other person which takes over the administration of that rate) displayed on page

BBSY of the Thomson Reuters Screen (or any replacement Thomson Reuters page which displays that rate)"bid rate" quoted on the "BBSY" page of the Reuters Monitor System at the time at which that screen rate is normally published or about 10.15am Sydney time on the first day of that Pricing Period for bank accepted bills with a tenor which is equal to that Pricing Period (or where the Pricing Period is either 7 or 14 days, a tenor of 1 month) and which starts on that day;

(b) if the rate for a Pricing Period cannot be determined in accordance with the paragraph above or if, in NAB's reasonable opinion, the rate becomes inappropriate, the rate reasonably determined by NAB to be the appropriate equivalent rate having regard to the prevailing market; and

the minimum return margin NAB requires from time to time

### NAB CORPORATE MARKETS LOAN

#### Definitions

**BBSY** for a Pricing Period means:

- (a) the rate determined by NAB which is equal to Australian Bank Bill Swap Reference Rate (Bid) administered by ASX Benchmarks Pty Ltd (or any other person which takes over the administration of that rate) displayed on page BBSY of the Thomson Reuters Screen (or any replacement Thomson Reuters page which displays that rate)the "bid rate" quoted on the "BBSY" page of the Reuters Monitor System at the time at which that screen rate is normally published or about 10.15am Sydney time on the first day of that Pricing Period for bank accepted bills with a tenor which is equal to that Pricing Period (or where the Pricing Period is either 7 or 14 days, a tenor of 1 month) and which starts on that day; or
- (b) if the rate for a Pricing Period cannot be determined in accordance with the paragraph above or if, in NAB's reasonable opinion, the rate becomes inappropriate, the rate reasonably determined by NAB to be the appropriate equivalent rate having regard to the prevailing market.