

TERMS AND CONDITIONS (INVESTOR PARTICIPATION)

These are the Terms and Conditions applicable to your participation in a Loan and constitute an agreement between Lend Collective Pty Ltd ACN 622 340 667 (**Lend Collective**) the Lender and you in relation to our respective rights and obligations in connection with the Loan.

1. Definitions

Defined terms used in these Terms and Conditions have the following meaning:

AFSL	AFSL means an Australian financial service licence issued under the Corporations Act.
Attorney	means an attorney appointed under any Finance Document.
Authorised Officer	means, in relation to an Investor, a director or company secretary of that Investor or a person whose title includes the word 'Chief', 'Head', 'Manager', 'President', 'Vice President', 'Counsel', 'Executive' or 'Director' or any other person authorised by the Investor to act as its authorised officer for the purposes of the Investor's Participation Interest.
Authorisation	means: (a) any authorisation, consent, registration, filing, agreement, notice of non-objection, notarisation, certificate, licence, approval, permit, authority or exemption from, by or with a Government Agency; or (b) in relation to anything which a Government Agency may prohibit or restrict within a specific period, the expiry of that period without intervention or action or notice of intended intervention or action.
Borrower	means the borrower specified in the Investment Offer.
Business Day	means a day on which banks are open for business in Melbourne excluding a Saturday, Sunday or public holiday.
Controller	has the meaning given to that term by the Corporations Act.
Corporations Act	means the <i>Corporations Act 2001</i> (Cth).
Default	means a default (however described) under the Facility Agreement.
Dollars, A\$ and \$	means the lawful currency of the Commonwealth of Australia.
Effective Date	means the date on which the conditions set out in clause 2(b) have been satisfied in full.
Enforcing Party	means us or a Controller or Attorney appointed by the Lender.
Facility Agreement	means the loan agreement between the Lender, the Borrower and any others (if applicable) in connection with the Loan.
Finally Paid	means in respect of the Loan, satisfaction of the following two conditions:

- (a) payment or satisfaction of it in full; and
- (b) if we reasonably believe at the time of that payment, that during the six (6) month period from and including the day after the payment or satisfaction, that no person, including the Borrower, us, a Guarantor, a liquidator, a provisional liquidator, administrator, trustee in bankruptcy, receiver, receiver and manager, other Controller or similar official, would have a legitimate right to recoup or claim repayment of any part of the amount paid or satisfied, whether under the laws of preferences, fraudulent dispositions or otherwise.

Finance Documents has the meaning given to that term in the Facility Agreement.

Funding Date the date of the first drawdown under the Facility Agreement.

Government Agency means any government or any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity: it includes any self-regulatory organisation established under statute and any stock exchange.

GST means goods and services tax or similar value added tax levied or imposed in Australia pursuant to the GST law or otherwise on a supply.

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

GST law has the same meaning as in the GST Act.

Guarantee means any guarantee, suretyship, letter of credit, letter of comfort or any other obligation:

- (a) to provide funds (whether by the advance or payment of money, the purchase of or subscription for shares or other securities, the purchase of assets or services, or otherwise) for the payment or discharge of;
- (b) to indemnify any person against the consequences of Default in the payment of; or
- (c) to be responsible for,

any debt or monetary liability of another person or the assumption of any responsibility or obligation in respect of the insolvency or the financial condition of any other person.

Guarantor means a 'Guarantor' as defined in the Investment Offer.

Indirect Tax means any GST or other goods and services tax, consumption tax, value added tax or other tax of a similar nature or effect.

Investment Application means your application to acquire a Participation Interest.

Investment Offer means the offer to acquire the Participation Interest as advertised on the Website.

Investor means you and each other person who has acquired a Participating Interest.

Investor Account	means an Investor's account on the Website.
Investor Rate	means the Interest Rate minus the Management Fee.
Interest Rate	means the rate of interest that will accrue on the Loan in accordance with, and as specified in, the Facility Agreement.
Insolvency Event	<p>means any of the following events:</p> <p>(a) in the case of a corporation:</p> <ul style="list-style-type: none"> (i) the corporation is dissolved (whether pursuant to Chapter 5A of the Corporations Act or otherwise); (ii) a Controller, liquidator, provisional liquidator or voluntary administrator is appointed in respect of the corporation or any of its assets; (iii) an application (other than an application which is withdrawn or dismissed within 7 days of it having been made) is made to a court or a meeting is convened, or a resolution is passed (or notice is given of such meeting or resolution) or a notice is issued or any other step is taken by any person for the corporation to be wound up or dissolved or for the appointment of a liquidator, provisional liquidator, voluntary administrator in respect of the corporation or any of its assets; (iv) the corporation: <ul style="list-style-type: none"> (A) resolves to enter into, or enters into, a scheme of arrangement, a deed of company arrangement or a composition with its creditors or an assignment for their benefit; (B) suspends payment of its debts or proposes or is subject to a moratorium of its debts; or (C) takes proceedings or actions similar to those mentioned in this paragraph (a)(iv) as a result of which the corporation's assets are, or are proposed to be, submitted to the control of its creditors; (v) the corporation seeks or obtains protection from its creditors under any statute or any other law; (vi) the corporation is unable to pay all of its debts as and when they become due and payable or is deemed to be insolvent under any provision of the Corporations Act or any statute or any other law binding on it; (vii) any attachment, distress, execution or other process is made or levied against any asset of the corporation and is not satisfied within 7 days; (viii) the corporation ceases to carry on all or a substantial part of its business (or threatens to do so); (ix) the corporation is deregistered under Chapter 5A of the Corporations Act; or (x) an event occurs in relation to the corporation which is analogous to anything referred to above or which has a substantially similar effect; and <p>(b) in the case of a natural person:</p> <ul style="list-style-type: none"> (i) the person is or states that he or she is unable to pay all of his or her debts as and when they become due and payable; (ii) a bankruptcy notice is issued against the person or a receiver or a trustee for creditors or a trustee in bankruptcy is appointed to any of the person's property; (iii) the person enters into, attempts to enter into, or convenes a meeting for the purpose of entering into, an arrangement, assignment or composition with his or her creditors; or (iv) an event occurs in relation to the person which is analogous to anything referred to above or which has a substantially similar effect.

Lender	means a special purpose vehicle established to act as lender or financier in connection with the Investment Offer.
Loan	means the loan to be provided by the Lender to the Borrower as specified in the Investment Offer.
Loss	means any damage, loss, liability, cost, charge, expense, outgoing or payment including under or in respect of any action or claim.
Obligor	means: <ul style="list-style-type: none"> (a) the Borrower; (b) a Guarantor; or (c) any other 'Obligor' as defined in a Finance Document.
Management Fee	means the fee payable to us in accordance with clause 7.
Participation Commitment	means the purchase price you are required to pay to acquire your Participation Interest in accordance with these Terms and Conditions and as indicated on the Website.
Participation Date	means: <ul style="list-style-type: none"> (a) if the Effective Date occurs prior to the Funding Date, the Funding Date; or (b) if the Effective Date occurs on or after the Funding Date, the date specified in the Investment Offer or any other date otherwise notified by us to you in writing.
Participation Interest	means rights, interests, benefits and obligations in respect of a Loan.
Power	means any right, power, authority, discretion or remedy conferred on Lend Collective or the Lender by these Terms and Conditions, the Finance Documents or any applicable law.
PPSA	means the <i>Personal Property Securities Act 2009</i> (Cth).
PPSA Security Interest	means a 'security interest' as defined in PPSA.
Privacy Collection Notice	means the collection notice at www.lendcollective.com/privacynoticeinvestors .
Privacy Policy	means the privacy policy at www.lendcollective.com/privacy .
Protective Advance	has the meaning given to it in clause 6.

Relevant Currency	means the currency in which a payment is required to be made under the Finance Documents and, if not expressly stated to be another currency, is Dollars.
Respective Proportion	means, at any time, the proportion of your Participation Commitment to the Total Commitment, expressed as a percentage.
Same Day Funds	means a bank cheque or other immediately available funds.
Secured Property	means any property the subject of a Security Interest contained in the Finance Documents.
Security Interest	means: <ul style="list-style-type: none"> (a) an interest or power reserved in or created or otherwise arising in or over an interest in any asset whether under a bill of sale, mortgage, charge, lien, pledge, other security interest or preferential arrangement (including retention of title), trust or power or otherwise by way of, or having similar commercial effect to, security for the payment of a debt, any other monetary obligation or the performance of any other obligation; (b) a PPSA Security Interest; or (c) any agreement to grant or create anything referred to in paragraphs (a) or (b) of this definition and any other thing which gives a creditor priority to any other creditor with respect to any asset or an interest in any asset.
Tax	means: <ul style="list-style-type: none"> (a) any tax, levy, charge, impost, duty, fee, deduction, compulsory loan or withholding; or (b) any income, stamp or transaction duty, tax or charge, <p>which is assessed, levied, imposed or collected by any Government Agency and includes any interest, fine, penalty, charge, fee or other amount imposed on or in respect of any of the above.</p>
Third Party Investor	means an Investor other than us.
Total Commitment	means the aggregate amount of all commitments under the Facility Agreement.
Website	means www.lendcollective.com .
we or us	means: <ul style="list-style-type: none"> (a) Lend Collective and the Lender; or (b) to the extent that a relevant provision is capable of applying only to the Lender or Lend Collective, that entity.

2. General

- (a) Where the day on or by which anything is to be done is not a Business Day, that thing must be done on or by the next Business Day.

- (b) These Terms and Conditions will become effective once each of the following has occurred:
- (i) you have submitted your application to acquire a Participation Interest on the Website;
 - (ii) we have accepted your application to purchase a Participation Interest via the Website; and
 - (iii) we have received the Participation Commitment in cleared funds into the account nominated in our acceptance of your application or into such other account as we have nominated to you in writing via your Investor Account or otherwise.
- (c) You are not eligible to apply for or acquire a Participation Interest unless:
- (i) you are an individual resident in Australia who is at least 18 years old (or a duly incorporated company resident in Australian or such other entity or structure acceptable to us) with a bank account at an authorised deposit taking institution; and
 - (ii) you are a wholesale client (as that term is defined in the Corporations Act); and
 - (iii) you have satisfied all of our identification, know your customer and anti-money laundering/counter-terrorism requirements in order to enable us to comply with all laws, regulations, rules and regulatory guidance applicable to us.
- (d) We do not hold an AFSL. We are authorised by, and have entered into an intermediary authorisation arrangement with, Falcon Capital Limited (AFSL No. 302538) (**Falcon**) under section 911A(2) of the Corporations Act to deal in the financial product contemplated by these Terms and Conditions in accordance with the Investment Offer.
- (e) We reserve the right, in our sole discretion, to refuse to accept or approve your Investment Application. If we have received your Participation Commitment and we refuse or reject your Investor Application we will promptly refund your Participation Commitment to you.
- (f) These Terms and Conditions are an arrangement as between us and you only. Nothing in this deed is intended to effect (and does not effect) any amendment to the Facility Agreement or any other Finance Documents.
- (g) You agree that you will not make any contact with any Borrower, other Investor, Falcon, any other intermediary, solicitor or valuer concerning an Investment Offer or a Loan that is published on the Website (other than your own solicitor or professional advisers) without our prior written consent.
- (h) The Investment Offer is only made to Australian resident wholesale clients (as that term is defined in the Corporations Act). This does not constitute an offer, invitation, solicitation or recommendation in relation to the subscription, purchase or sale of securities to retail clients (as defined in the Corporations Act).
- (i) These Terms and Conditions do not constitute a product disclosure statement for the purposes of the Corporations Act and does not contain all of the information a product disclosure statement is required to contain. The Australian Securities and Investments Commission is not required to be, and has not been, notified of the issue of these Terms and Conditions. The Participation Interest is not required to be, and will not be, registered with the Australian Securities and Investments Commission as a managed investment scheme.
- (j) Neither the Website nor these Terms and Conditions constitutes financial product advice to investors or a recommendation to acquire a Participation Interest. Neither the Website nor these Terms and Conditions takes into account the investment objectives, financial situation or particular needs of any Investor.
- (k) Neither the Website nor these Terms and Conditions constitutes an offer, invitation, solicitation or recommendation in relation to the subscription, purchase or sale of Participation Interests or securities in any jurisdiction outside Australia and neither the Website nor these Terms and Conditions shall form the basis of any contract or commitment in any other jurisdiction.
- (l) An Investment Offer may be withdrawn from time to time and at any time prior to the Participation Date. We will refund any Participation Commitments which we have received if an Investment Offer is withdrawn or a Loan does not proceed.
- (m) You should consult with your own legal, tax and financial advisers in relation to the accuracy and completeness of the information presented on the Website and conduct your own due diligence and enquiries prior to acquiring a Participation Interest.

(n) You acknowledge and agree that you have received and agreed to:

- (i) the Privacy Policy; and
- (ii) the Privacy Collection Notice,

and agree that the terms of these documents are incorporated into, govern and relate to these Terms and Conditions as if set out in full.

(o) You acknowledge and agree that you have made your own independent analysis and decision to accept these Terms and Conditions, based on such information as you deem appropriate under the circumstances, and without reliance on us.

(p) We do not make, and you do not rely on, any representation, warranty or condition (express or implied) about, and we shall have no responsibility or liability to you for:

- (i) the effectiveness, validity or enforceability of the Finance Documents;
- (ii) any non-performance by any Obligor; or
- (iii) the financial condition, status or nature of any Obligor.

(q) You acknowledge that we may make any and all decisions under or in connection with a Finance Document (including in relation to the exercise of any Power, any amendments to a Finance Document, or any release or waiver in connection with a Finance Document) in our absolute discretion without consultation with you or any other Investor, with the exception that we are not entitled to amend these Terms and Conditions other than in accordance with clause 20.

(r) You consent to, and will be bound by, any waiver, approval or consent (**Waiver**) given at any time by the Lender or Enforcing Party under any Finance Document and you will not be entitled to object to any such Waiver.

3. Participation in Loans

- (a) On and from the Participation Date, we grant you a Participation Interest.
- (b) The purchase price for your Participation Interest is the Participation Commitment.
- (c) Subject to clause 8 we shall be entitled to receive, recover and retain all principal, interest, fees and other money payable under the Finance Documents in relation to each Loan.
- (d) Subject to compliance by you with your obligations under these Terms and Conditions, we will, with effect from the Participation Date, apply all amounts received by us under the Finance Documents on account of or in respect of a Loan, in accordance with clause 8. We are not otherwise obliged to make any payments to you.
- (e) You will be entitled to all rights and benefits in connection with your Participation Interest on and from the Participation Date.

4. Status of participation

- (a) We do not, by virtue of your Participation Interest, transfer or assign any rights or obligations under the Finance Documents to you and you will have no proprietary interest (whether legal or beneficial) in the benefit of the Finance Documents, any Loan or in any monies received by us under or in relation to the Finance Documents.
- (b) The relationship between us and you is that of debtor and creditor but only with respect to our obligations pursuant to the payment provisions in clause 8.
- (c) You shall not be entitled to be subrogated to or substituted in respect of our rights or claims by virtue of any payment in connection with your Participation Interest and you shall have no direct contractual relationship with or rights against, any Obligor or other party to the Finance Documents (except us).

- (d) Nothing in these Terms and Conditions or in relation to your Participation Interest constitutes us acting as agent, fiduciary, trustee or custodian for you or as a partner or joint venturer with you.
- (e) Nothing in these Terms and Conditions or in relation to your Participation Interest shall place us under an obligation to enquire as to the occurrence or otherwise of a Default.
- (f) Nothing in these Terms and Conditions or in relation to your Participation Interest shall place us under an obligation to exercise any rights of set-off we may have against any Obligor.
- (g) Our obligations in relation to your Participation Interest shall be subject to our obligations under the Finance Documents.

5. Information

We shall, to the extent that we are lawfully able to do so without breaching any duty of confidentiality or other obligation owed to any person, promptly provide you with copies of:

- (a) all communications and documents we receive under the Finance Documents which we consider to be materially relevant to your Participation Interest; and
- (b) any information we receive under the Finance Documents in connection with an Insolvency Event in respect of any Obligor,

including details of deadlines for the submission of claims, the status of any notifications to any Controller and the status of any filings of any proof of debt or other claim against any Obligor relating to the Finance Documents.

Nothing in these Terms and Conditions obliges us to check or enquire as to the accuracy or completeness of any information we receive and forward to you.

6. Protective Advances

We may, at any time and in our absolute discretion, make further loans or advances to the Borrower whether under the Facility Agreement or otherwise, pursuant to the exercise of a Power under another Finance Document (including in relation to enforcing a Security Interest) or otherwise (**Protective Advance**). Unless otherwise agreed with you, any Protective Advance will be entitled to the payment priority specified in clause 8.

7. Management Fee

You agree that Lend Collective will be entitled to a management fee and certain other fees in connection with our role as manager and arranger of the Loan. The amount of these fees will be set out in the Investment Offer and will be deducted from drawdown of the Loan or the interest paid by the Borrower pursuant to the Facility Agreement (as applicable) such that the return on your Participation Commitment will accrue at the Investor Rate.

8. Payment Waterfall

- (a) Notwithstanding anything to the contrary in the Facility Agreement, you agree that all payments (including by set-off) made by an Obligor under a Finance Document and all amounts recovered on enforcement of any rights (including Security Interests) under any Finance Document will be applied by us promptly in the following order:
 - (i) first, towards reimbursement of all fees, costs, expenses, charges, damages and indemnity payments due and payable to the Lender or an Enforcing Party, under the Finance Documents;
 - (ii) second, toward all fees payable to us under the Finance Documents (including the Management Fee), until paid in full;
 - (iii) third, towards payment of interest due and payable in relation to any Protective Advances until paid in full;
 - (iv) fourth, towards payment of outstanding principal amount of any Protective Advances, until paid in full;

- (v) fifth, towards reimbursement of all fees, costs, expenses, charges, damages and indemnity payments due and payable to each Investor in their Respective Proportions under these Terms and Conditions and in accordance with the Investment Offer, until paid in full;
 - (vi) sixth, towards payment of interest due and payable to the each Investor in their Respective Proportions, until paid in full in accordance with the Investment Offer;
 - (vii) seventh, towards payment of the outstanding principal amount of each Third Party Investor in their Respective Proportions, until paid in full in accordance with the Investment Offer;
 - (viii) eighth, to pay any other amounts owing to each Third Party Investor in its Respective Proportion, until paid in full;
 - (ix) ninth, if applicable, toward payment of our outstanding principal amount in our Respective Proportion until paid full in accordance with the Investment Offer; and
 - (x) tenth, if applicable, to pay any other amounts owing to us until paid in full.
- (b) If the amounts recovered on enforcement of any rights (including Security Interests) under any Finance Document are insufficient to enable the payments listed in clauses 8(a)(i) to (viii) (inclusive) to be paid in full, we will pay to the relevant Third Party Investors such amounts as are required to ensure there is no shortfall in such payments and the payments made to the Third Party Investors are made in full.

9. Limit of our obligations

- (a) You acknowledge and agree that you have no recourse to us (or any of our directors, officers, employees, agents or successors) and that no such persons will have any liability to you in connection with:
- (i) the failure of any party to perform or comply with its obligations under a Finance Document;
 - (ii) the value, validity, effectiveness, genuineness, sufficiency, or enforceability of any Finance Documents or any document received in connection with a Finance Document; or
 - (iii) any other matter arising in connection with these Terms and Conditions,
- except to the extent of our (or any of our directors', officers', employees', agents' or successors') fraud, gross negligence or wilful default.
- (b) We are under no obligation to pay or indemnify you in respect of, and will not be liable to reimburse or otherwise be responsible for, any Loss directly or indirectly sustained or incurred by you in connection with your Participation Interest except to the extent that the Loss is caused by our fraud, gross negligence or wilful default.
- (c) We have no duty to monitor compliance with any document or agreement or to do any inspection or provide you with any credit or other information relating to any Obligor or any other person.

10. Cessation of obligations

We have no further obligation or liability to you under or in connection with these Terms and Conditions on and from the date on which all amounts owing by the Obligors under the Finance Documents have been have been Finally Paid.

11. Enforcement of Securities

- (a) Subject to the other provisions of these Terms and Conditions, you acknowledge and agree that you may not instruct us or the Lender to exercise any Powers under or in respect of a Finance Document and that we may elect to exercise any such Power in our absolute discretion.
- (b) When an Enforcing Party enforces a Finance Document, the Enforcing Party:

- (i) must comply with its statutory duties and its common law duties (if any) owed to you and the other Investors; and
- (ii) must use best endeavours to ensure that when selling the Secured Property, the best price reasonably obtainable for the Secured Property as at the time of sale is obtained,

but otherwise no Enforcing Party owes any duties to you or any other Investor.

12. Payments

- (a) All payments under these Terms and Conditions must be made in the Relevant Currency in Same Day Funds.
- (b) If an amount payable under these Terms and Conditions is not expressed to be payable on a specified date, that amount is payable on demand.
- (c) If a payment is due on a day which is not a Business Day, the due date for that payment is the next Business Day in the same calendar month or, if none, the preceding Business Day, and interest must be adjusted accordingly.
- (d) All payments which are required to be made under these Terms and Conditions must be made:
 - (i) without any set-off, counterclaim or condition;
 - (ii) without any deduction or withholding for or on account of any Tax or any other reason, unless the party making the payment is required to make a deduction or withholding by applicable law;
 - (iii) to the account nominated by us or you in your Investor Account or as otherwise notified in writing from us and you or from you to us.
- (e) Where we are obliged to make a payment to you or any other Investor as a result of us having received an amount from the Borrower or another person, we are not obliged to make that payment until we have established that the relevant amount has actually been received by us in cleared funds.
- (f) Any calculation, determination, designation, application, allocation or attribution by us in connection with the Finance Documents will be conclusive in the absence of manifest error.
- (g) If any amount received or recovered by us in connection with a Finance Document is not attributable to a particular obligation, amount, facility or limit, the amount received or recovered may be applied by us towards such obligations of the Obligor as we determine.
- (h) If we apply any amount towards satisfaction of a person's obligations under the Finance Documents and we are, as a result of such application or any payment to us in respect of the application, obliged by any law, rule or regulation to make any payment to any other person, you must immediately upon receipt of a demand from us, repay to us a corresponding amount which was paid to you as a result of such application.
- (i) We are not obliged to make any payment to you or any other Investor in respect of any sum which is paid into a blocked account or is paid in non-transferable or non-convertible currency until that impediment is removed.

13. GST

- (a) In this clause:
 - (i) terms defined in A New Tax System (Goods and Services Tax) Act 1999 (Cth) apply;
 - (ii) reference to a person includes the representative member of any GST group of which the relevant person is a member;
 - (iii) a **Finance Supply** means a supply made or to be made by a party under or in connection with this document where the consideration for the supply is not stated to include an amount in respect of GST on the supply; and
 - (iv) **GST Amount** means the amount of any GST payable on a Finance Supply.

- (b) All Finance Supply amounts have been calculated without regard to GST. If GST is or will be imposed on any Finance Supply, the payment to the supplier for that supply will be increased by the GST Amount. Each recipient of a Finance Supply indemnifies the supplier against, and must pay to the supplier on demand amounts equal to, any Loss arising as a result of or in connection with the supplier failing to receive the increased payment amount.
- (c) If a party (**Payer**) is liable under a Finance Document to reimburse or indemnify the other party for any Loss, the reimbursement or indemnity amount will be increased to the full GST inclusive amount less any input tax credit to which the other party determines it is entitled with respect to that Loss, plus any increase amount for GST payable under this clause 13. To the extent that the other party is not entitled to an input tax credit for the GST payable on any supply acquired by or expenditure incurred by the other party directly or indirectly in connection with this document, the Payer must reimburse the other party for the amount of that GST.
- (d) A recipient of a Finance Supply is not obliged to pay any GST Amount pursuant to this clause 13 until the supplier issues a tax invoice to the recipient.
- (e) If it is determined on reasonable grounds that the amount of GST paid or payable to the Commissioner of Taxation by the supplier in connection with a Finance Supply differs for any reason from the GST amount paid or payable to the supplier by the recipient pursuant to clause 13(b), the amount of the difference must be paid by, refunded to or credited to (as applicable), the recipient promptly, and the supplier must issue an adjustment note to the recipient.

14. Representations and warranties of you

- (a) You represent and warrant to us that:
 - (i) **registration:** (if you are a corporation), you are a corporation registered (or taken to be registered) and validly existing under the Corporations Act or in your jurisdiction of incorporation;
 - (ii) **corporate power:** (if you are a corporation) you have the corporate power to own its assets and to carry on its business as it is now being conducted;
 - (iii) **authority:** you have the power and authority to enter into and perform your obligations under these Terms and Conditions;
 - (iv) **authorisations:** you have taken all necessary action to authorise the acceptance and performance of these Terms and Conditions by you;
 - (v) **binding obligations:** these Terms and Conditions constitute your legal, valid and binding obligations and, subject to any necessary stamping and registration, is enforceable in accordance with its terms subject to laws generally affecting creditors' rights and to principles of equity;
 - (vi) **transaction permitted:** the acceptance and performance by you of these Terms and Conditions does not and will not violate, breach, or result in a contravention of:
 - (A) any law, regulation or Authorisation;
 - (B) (in the case of a corporation) your constitution or other constituent documents; or
 - (C) any Security Interest or document which is binding upon it or any assets of it,and do not and will not result in:
 - (D) the creation or imposition of any Security Interest or restriction of any nature on any of your assets; or
 - (E) the acceleration of the date of payment of any obligation existing under any Security Interest or document which is binding upon you or any of your assets;
 - (vii) **no litigation:** no litigation, arbitration, dispute or administrative proceeding has been commenced, is pending or to its knowledge threatened, by or before any Government Agency, and no judgment or award has been given, made or is

pending, by or before any Government Agency, which in any way questions your power or authority to enter into or perform its obligations under these Terms and Conditions;

(viii) **no immunity:** you do not, nor do your assets, enjoy immunity from any suit or execution; and

(ix) **wholesale:** you are a wholesale client (as defined in the Corporations Act).

(b) The representations and warranties in clause 14(a) survive the acceptance of these Terms and Conditions.

(c) You must notify us in writing immediately upon the occurrence of anything which would cause any of the representations or warranties in clause 14(a) to become incorrect.

15. Costs, expenses and indemnity

(a) You acknowledge and agree that we may withhold from the amount that we are required to pay to you in accordance with clause 8, an amount equal to your Respective Proportion of any costs and expenses incurred by us in connection with the Finance Documents which are not recovered from an Obligor.

(b) You indemnify us, and must pay us on demand, an amount equal to any Loss we suffer, incur or are liable for under or in connection a breach by you of your obligations under these Terms and Conditions except to the extent that the Loss is caused by our fraud, gross negligence or wilful default.

(c) The indemnity in clause 15 (b) is a separate, irrevocable, unconditional and continuing obligation, independent of your other obligations under these Terms and Conditions and survives the termination of these Terms and Conditions.

16. Notices

(a) Any notice or other communication including, any request, demand, consent or approval (**Notice**) in relation to these Terms and Conditions:

(i) must be in legible writing and in English addressed to the party in accordance with the details specified in the Investor Account; and

(ii) must be signed by an Authorised Officer of the sender.

(b) A Notice is regarded as being given by the sender and received by the addressee:

(i) if by delivery in person, when delivered to the addressee;

(ii) if by post, on delivery to the addressee;

(iii) if by email, on receipt by the addressee of a scanned, signed and legible copy of the Notice attached to that email;

(iv) if via the Investor Account, upon the Notice being received in the Investor Account ,

but if the delivery or receipt is on a day which is not a Business Day or is after 4.00 pm (addressee's time) it is regarded as received at 9.00 am on the following Business Day.

(c) Notwithstanding clause 16(b), a Notice delivered to us is only effective if actually received by us.

(d) If a Notice is sent by email, the sender must promptly after request from the addressee give the addressee the original of that Notice and the original of any document accompanying that Notice.

(e) A Notice can be relied on by the addressee and the addressee is not liable to any other person for any consequences of that reliance if the addressee believes it to be genuine, correct and authorised by the sender.

(f) You acknowledge and agree that:

- (i) providing a communication by electronic transmission (including by email) is not a secure means of sending such a notice, request or instruction;
- (ii) you is aware of the security risk involved in sending electronic transmissions, including the risk that an electronic transmission may:
 - (A) be incomplete or inaccurate;
 - (B) be fraudulently or mistakenly given or altered or not otherwise authorised by the sender; or
 - (C) not be received in whole but may be received in part by the addressee,however you confirm and agrees that you can nevertheless accept and rely on such electronic transmission;
- (iii) because of the convenience and other efficiency benefits of an addressee accepting and acting on electronic transmission, you accept the risk of us accepting electronic transmissions that are incomplete, inaccurate, fraudulently or mistakenly given or not otherwise authorised by you, or not received in whole but in part by us; and
- (iv) we may rely on a communication without making any further enquiries or verifying the authenticity, accuracy or completeness of that communication.

17. Confidential information

You must not disclose to any person any information provided by us in connection with these Terms and Conditions, the Offer, the Loan or a Finance Document, except:

- (a) to any professional or other adviser consulted by you in relation to any of your rights or obligations under these Terms and Conditions or the Finance Documents on the basis that they must comply with the terms of this clause 17;
- (b) in connection with the enforcement of your rights under these Terms and Conditions or a Finance Document;
- (c) where the information is already in the public domain, or where the disclosure would not otherwise breach any duty of confidentiality;
- (d) if required by law; or
- (e) otherwise with our prior written consent of the relevant party, as applicable, (such consent not to be unreasonably withheld).

18. Governing law and jurisdiction

- (a) These Terms and Conditions are governed by the laws of Victoria.
- (b) You irrevocably submit to the non-exclusive jurisdiction of the courts of Victoria and waive any right to object to an action being brought in those courts, including on the basis of an inconvenient forum.

19. Prohibition and enforceability

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

20. Variation

- (a) We may amend these Terms and Conditions after giving you prior notice via the Website and your Investor Account in circumstances where we consider that the amendment is reasonably necessary or desirable to:
 - (i) provide clarity as to the intention of these Terms and Conditions where the amendment is not material and is no less favourable to you;
 - (ii) reflect new systems, technology, products or services related to the Website or an Investor Account; or
 - (iii) implement changes required by any law; or
- (b) We will give you reasonable notice of a change (having regard to the nature of the change) except where we consider that the relevant change is necessary or desirable in order for us to comply with any law, regulation or other obligation we have.

21. Cumulative rights

The Powers are cumulative and do not exclude any other right, power, authority, discretion or remedy of which we have.

22. Dealing with your Participation Interest

You must not:

- (a) transfer or otherwise dispose of your Participation Interest; or
 - (b) create or allow to subsist any Security Interest over or in respect of your Participation Interest,
- without our prior written consent.

23. Assignment

- (a) We may assign any or all of our rights arising out of or under these Terms and Conditions or any Finance Document:
 - (i) without the consent of you or any other Investor if, in our reasonable opinion, the assignment is required to reasonably protect our legitimate business interests; or
 - (ii) with your consent if clause 23(a)(i) does not apply.
- (b) You must not assign any of your rights arising out of or under these Terms and Conditions without our prior written consent.

24. Termination

- (a) We may terminate these Terms and Conditions by notice to you upon the occurrence of any of the following events:
 - (i) you have materially breached any term of these Terms and Conditions;
 - (ii) you have suffered an Insolvency Event; or
 - (iii) we suspect that you have used the Website or intend to use the Website in connection with an illegal activity.
- (b) Following termination of these Terms and Conditions in accordance with this clause 24:
 - (i) you are not entitled to prematurely withdraw or receive any prepayments under these Terms and Conditions except as otherwise provided for in these Terms and Conditions; and
 - (ii) we may:

- (A) attempt to assign, novate or otherwise dispose of your Participating Interest to any other Investor; or;
 - (B) acquire your Participating Interest for an amount equal to your Participation Commitment less any principal amounts already paid to you; and
- (iii) you must do all things we consider necessary or desirable in order to give effect to any assignment, novation, disposal or acquisition in accordance with clause 24(b)(ii).

25. Interpretation

- (a) Headings and italicised, highlighted or bold type do not affect the interpretation of these Terms and Conditions.
- (b) In these Terms and Conditions, unless a contrary indication appears or is expressed:
 - (i) the singular includes the plural and the plural includes the singular;
 - (ii) a gender includes the other genders;
 - (iii) other parts of speech and grammatical forms of a word or phrase defined in these Terms and Conditions have a corresponding meaning;
 - (iv) a reference to a person or an entity includes any person, firm, company, partnership, joint venture, association, trust, corporation or other body corporate and any Government Agency (whether or not having a separate legal personality) or two or more of them;
 - (v) a reference to any thing (including any right) includes a part of that thing, but nothing in this clause 25(v) implies that performance of part of an obligation constitutes performance of the obligation;
 - (vi) a reference to a clause, party, annexure, exhibit or schedule is a reference to a clause of, and a party, annexure, exhibit and schedule to, these Terms and Conditions and a reference to these Terms and Conditions includes any annexure, exhibit and schedule;
 - (vii) a reference to a document includes all amendments or supplements to, or replacements or novations of, that document;
 - (viii) a reference to a party to any document includes that party's successors and permitted assigns;
 - (ix) a reference to time is to Melbourne time;
 - (x) a reference to a statute, regulation, proclamation, ordinance or by law includes all statutes, regulations, proclamations, ordinances or by laws amending, consolidating or replacing it and a reference to a statute includes all regulations, proclamations, ordinances and by laws issued under that statute;
 - (xi) a reference to liquidation includes official management, administration compromise, arrangement, merger, amalgamation, reconstruction, winding up, dissolution, deregistration, assignment for the benefit of creditors, scheme, composition or arrangement with creditors, insolvency, bankruptcy, or a similar procedure or, where applicable, changes in the constitution of any partnership or person, or death;
 - (xii) a reference to an agreement other than these Terms and Conditions includes an undertaking, deed, agreement or legally enforceable arrangement or understanding whether or not in writing;
 - (xiii) a reference to an asset includes all property of any nature, including a business, and all rights, revenues and benefits;
 - (xiv) a reference to a document includes any agreement or contract in writing, or any certificate, notice, deed, instrument or other document of any kind; and
 - (xv) a reference to a body, other than a party to these Terms and Conditions (including an institute, association or authority), whether statutory or not, which ceases to exist or whose powers or functions are transferred to another body, is a reference to the body which replaces it or which substantially succeeds to its powers or functions.

- (c) No provision of these Terms and Conditions may be construed adversely to a party solely on the ground that the party was responsible for the preparation of these Terms and Conditions or the preparation or proposal of that provision.
- (d) Specifying anything in these Terms and Conditions after the words 'include' or 'for example' or similar expressions does not limit what else is included unless there is express wording to the contrary.
- (e) A word or phrase (other than one defined in clause 1 used in these Terms and Conditions which is defined in another Finance Document has the same meaning in these Terms and Conditions as is given to it in that other Finance Document.
- (f) A reference in these Terms and Conditions to 'enforce' in relation to a Security includes any action specified in paragraphs (a) to (d) of the definition of 'enforce' in section 9 of the Corporations Act.