



## Deed of Loan

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**The parties named in Schedule 1 as the Lenders**

**Newbale Clothing Pty Limited**  
ACN 136 405 091

**Newbale Clothing Nominee Pty Limited**  
ACN 138 591 401  
in its personal capacity and as trustee of the  
Newbale Clothing Unit Trust

**The parties named in item 1 of Schedule 5 as the Previous Lenders**

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## Dated

## Parties

**The Parties named in Schedule 1 as the Lenders**  
(each a **Lender** and together, the **Lenders**)

**The Parties named in item 1 of Schedule 5 as the Previous Lenders**  
(each a **Previous Lender** and together, the **Previous Lenders**)

**Newbale Clothing Pty Limited** ACN 136 405 091  
**Address:** 106 Queen Street, Woollahra, NSW, 2025  
**Facsimile:** N/A  
**Email:** matt@mjbale.com  
**Attention:** Matt Jensen  
(**Borrower**)

**Newbale Clothing Nominees Pty Limited** ACN 138 591 401 in its personal capacity and as trustee of the Newbale Clothing Unit Trust  
**Address:** 106 Queen Street, Woollahra, NSW, 2025  
**Facsimile:** N/A  
**Email:** matt@mjbale.com  
**Attention:** Matt Jensen  
(**Guarantor**)

## Background

- A The Borrower and the Guarantor have requested the Lenders provide a secured \$750,000 loan facility to the Borrower.
- B The Lenders have agreed to provide the loan facility requested by the Borrower on the terms of this deed.
- C The Previous Lenders direct the Borrower to apply the principal sum outstanding under the Previous Facility towards the Facility on the terms of this deed.

## Operative provisions

It is agreed as follows.

### 1. Definition and Interpretation

#### 1.1 Definitions

In this deed, unless the contrary intention appears, the following words have the following meanings:

<b>Term:</b>	<b>Definition:</b>
<b>Amount Outstanding</b>	at any time and from time to time: <ul style="list-style-type: none"><li>(a) the outstanding principal amount of all drawdowns made under this deed; plus</li><li>(b) any amounts added to the outstanding principal amount</li></ul>

under clause 4.2.

<b>Business Day</b>	(a) for receiving a notice under clause 12.2, a day that is not a Saturday, Sunday, public holiday or bank holiday in the place where the notice is received; and  (b) for all other purposes, a day that is not a Saturday, Sunday, public holiday or bank holiday in Sydney, NSW.
<b>Collection Account</b>	a bank account in the name of the Borrower, details of which are notified by the Borrower to the Lenders prior to the date of drawdown, and which is operated in accordance with the terms of the General Security Deed.
<b>Cambooya</b>	Cambooya Pty Limited ACN 008 435 050.
<b>Cambooya Advance</b>	the amount of \$100,000, comprising part of the Amount Outstanding, as that term was defined in the Previous Facility.
<b>Controller</b>	has the meaning given to that term under the Corporations Act.
<b>Corporations Act</b>	<i>Corporations Act 2001</i> (Cth).
<b>Costs</b>	includes costs, charges and expenses, including those incurred in connection with legal and other advisers on a fully indemnity basis.
<b>Discounted Interest Rate</b>	10% per annum.
<b>Drawdown Date</b>	the Business Day on which a drawdown is, or, if the context requires, is to be, made under this deed.
<b>Encumbrance</b>	a mortgage, charge, lien, restriction against transfer, encumbrance or any other third party interest.
<b>Event of Default</b>	any of the events, omissions or occurrences specified in clause 9.1.
<b>Facility</b>	the loan facility made available under this deed.
<b>Facility Fee</b>	\$75,000.
<b>Facility Limit</b>	\$750,000.
<b>General Security Deed</b>	the deed of that name to be dated on or about the date of this deed between the Borrower and the Lenders pursuant to which the Borrower grants the Lenders a security interest over all present and after acquired property of the Borrower, in a form reasonably acceptable to the Lenders.
<b>Governmental Agency</b>	any governmental, semi-governmental, administrative, fiscal, judicial or quasi-judicial body, department, commission, authority, tribunal, agency or entity.
<b>Guarantee</b>	the deed of guarantee and indemnity to be dated on or about the date of this deed between the Lenders and the Guarantor pursuant to which the Guarantor guarantees the Borrower's



	obligations under this deed, in a form reasonable acceptable to the Lenders.
<b>Immediately Available Funds</b>	cash, bank cheque or electronic transfer of cleared funds into the bank account nominated in advance by the payee.
<b>Insolvency Event</b>	<p>the occurrence of any of the following events in relation to any person:</p> <ul style="list-style-type: none"> <li>(a) it becomes (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act);</li> <li>(b) it has a Controller appointed to its property or it is in liquidation, in provisional liquidation, under administration or wound up;</li> <li>(c) it becomes subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the Lenders);</li> <li>(d) an application or order is 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 that person, which is preparatory to or could result in any of (a), (b) or (c) above; or</li> <li>(e) it is otherwise unable to pay its debts when they fall due.</li> </ul>
<b>Interest Payment Date</b>	the last day of a calendar month, but if that is not a Business Day, then the preceding Business Day.
<b>Interest Period</b>	<ul style="list-style-type: none"> <li>(a) initially, the period commencing on (and including) the first Drawdown Date and ending on (and including) the first occurring Interest Payment Date; and</li> <li>(b) otherwise, each period commencing on (and including) the day immediately following the previous Interest Payment Date and ending on (and including) the next occurring Interest Payment Date.</li> </ul>
<b>Interest Rate</b>	the Discounted Interest Rate plus 5% per annum.
<b>Lenders' Representatives</b>	Neil Livingstone and Matthew Rogers, acting jointly.
<b>Nominated Bank Account</b>	the bank account nominated by the Lenders' representatives jointly in writing as the bank account for receiving all payments made by the Borrower to the Lenders in accordance with this deed.
<b>Previous Facility</b>	the deed of loan between the Previous Lenders, the Borrower and the Guarantor dated on or about 19 June 2012, as amended by deed of amendment dated on or about 15 January 2013, in relation to the provision of financial accommodation of \$400,000,

which was increased to \$500,000 on 1 December 2012.

<b>Previous Lenders</b>	the parties named in item 1 of Schedule 5.
<b>PPSA</b>	<i>Personal Property Securities Act 2009</i> (Cth).
<b>Repayment Date</b>	31 January 2014, or such later date that the Lenders' Representatives may in their absolute discretion approve in writing.
<b>Respective Proportion</b>	the respective proportions in which the Lenders agree to make available the financial accommodation requested by the Borrower under this deed, as set out opposite each Lender's name in Schedule 3.
<b>Tax</b>	any tax, levy, impost, charge and duty (including stamp and transaction duties) imposed by any Governmental Agency together with any related interest, penalties, fines and expenses in connection with them, except if imposed on, or calculated having regard to, the net income of the Lenders.
<b>Transaction Document</b>	(a) this deed; (b) the General Security Deed; (c) the Guarantee; and (d) the general security deed dated on or about the date of this deed between the Lenders and the Guarantor pursuant to which the Guarantor grants the Lenders a security interest over all present and after acquired property of the Guarantor, in a form reasonably acceptable to the Lenders.

## 1.2 Interpretation

In this deed, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph or schedule is to a clause or paragraph of or schedule to this deed and a reference to this deed includes any schedule or annexure;
- (d) a reference to a document or instrument, includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to A\$, \$A, dollar or \$ is to Australian currency;
- (f) subject to clause 12.2(b), a reference to time is to New South Wales time;
- (g) a reference to a party to this deed, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;



- (h) a reference to a person includes a natural person, partnership, body corporate, association, Governmental Agency or other entity;
- (i) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (j) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;
- (k) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this deed or any part of it;
- (l) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day; and
- (m) headings are for ease of reference only and do not affect interpretation.

### **1.3 Exercise of rights by the Lenders**

A promise, representation, warranty or indemnity given by or in favour of the Lenders under this deed is given by them or for their benefit severally and not jointly and severally. However, the powers, rights and remedies of the Lenders under this deed must be performed or exercised by them jointly.

## **2. The Loan**

### **2.1 Provision of the Loan**

The Lenders agree to make available in their Respective Proportions the financial accommodation requested by the Borrower under this deed.

### **2.2 Facility Limit**

The maximum total amount of financial accommodation available to the Borrower under this deed is the Facility Limit.

### **2.3 Facility Fee**

- (a) In consideration of the Lenders agreeing to make available the financial accommodation requested by the Borrower under this deed, the Borrower must pay the Facility Fee to the Lenders.
- (b) The Facility Fee must be paid by the Borrower in seven equal instalments, with the first instalment to be paid on the Drawdown Date and each subsequent instalment to be paid on the successive six Interest Payment Dates.

## **3. Drawdown**

### **3.1 Discharge of Previous Facility**

- (a) The parties agree that immediately upon this deed becoming effective the Previous Facility is taken to be repaid and discharged in full, and that each "Transaction Document" (as that term was defined in the Previous Facility) is terminated and of no further force or effect (except with respect to any antecedent breaches), and that \$500,000, being the total amount outstanding

under the Previous Facility as at the date of this deed, is taken for the purpose of the Facility to have been immediately drawn down on the date of this deed and applied in the amounts set out opposite each Previous Lender's name (except Cambooya) in item 2 of Schedule 5 and in respect of Badja, in the manner set out in clause 3.1(b).

- (b) Cambooya represents and warrants to the other parties that in respect of this deed and the Previous Facility:
  - (i) it and Badja are and have each been acting as bare trustees for Nick Fairfax;
  - (ii) on the date of this deed it has, on the instructions of Nick Fairfax, directed the Borrower to apply the whole of the Cambooya Advance under the Previous Facility in payment of part of Badja's Respective Proportion under the Facility; and
  - (iii) once so applied, the Borrower will have no further liabilities to Cambooya under the Previous Facility.
- (c) The parties will do all things and sign all documents as are reasonably necessary or prudent to discharge the Previous Facility and any security interest created under the "Transaction Documents" (as that term was defined in the Previous Facility).

### **3.2 Purpose**

Subject to clause 3.1, the Borrower may only use the Facility and subject to clause 5.3, amounts standing to the credit of the Collection Account from time to time, to fund the purchase of stock:

- (a) required to satisfy purchase orders received from David Jones, wholesalers and corporate customers; and
- (b) for its retail stores.

### **3.3 Facility Limit to be paid into Collection Account**

- (a) Subject to clauses 3.2 and 3.4, the Borrower may request a single drawdown of the Facility by providing notice in writing to the Lenders' Representatives in the form of Schedule 2 at least one Business Day prior to the nominated Drawdown Date.
- (b) A request made in accordance clause 3.3(a) will be satisfied by the Lenders paying in their Respective Proportions the amount of the drawdown into the Collection Account.

### **3.4 Conditions precedent to drawdown**

The Borrower must not request drawdown of the Facility until the Lenders' Representatives have received in form and substance satisfactory to the Lenders' Representatives:

- (a) each Transaction Document;
- (b) evidence that the Collection Account has been opened;



- (c) evidence that the General Security Deed and the general security deed dated on or about the date of this deed between the Lenders and the Guarantor have been registered on the Personal Properties Securities Register; and
- (d) all documents and other information they reasonably request.

### **3.5 Conditions subsequent to drawdown**

The Borrower agrees to provide the Lenders as soon as practicable after the Drawdown Date and in any event within 5 Business Days of that date, in form and substance satisfactory to the Lenders, evidence the Transaction Documents have been stamped.

## **4. Interest**

### **4.1 Interest**

The Borrower must pay interest on the Amount Outstanding for each Interest Period at the applicable rate referred to in clause 4.3. Interest:

- (a) accrues daily; and
- (b) is payable on each Interest Payment Date; and
- (c) is calculated on actual days elapsed and a year of 365 days.

For the avoidance of doubt, Schedule 4 specifies the amount of interest payable by the Borrower on each Interest Payment Date on and after 31 July 2013.

### **4.2 Compounding**

Interest payable under clause 4.1 which is not paid when due for payment will be added to the Amount Outstanding as at each Interest Payment Date.

### **4.3 Interest Rate**

- (a) Provided that no Event of Default has occurred, the Lenders agree that the Borrower will pay interest on the Amount Outstanding for each Interest Period at the Discounted Interest Rate.
- (b) Notwithstanding clause 4.3(a), if an Event of Default occurs, the Borrower must pay interest on the Amount Outstanding for each Interest Period at the Interest Rate. Interest will accrue at the Interest Rate on and from the date the Event of Default occurs.

## **5. Repayment**

### **5.1 Final repayment**

The Borrower must repay the Loan to the Lenders on or prior to the Repayment Date.

### **5.2 No readvance**

Once the Amount Outstanding, or part of the Amount Outstanding, is repaid the Amount Outstanding or that part of the Amount Outstanding (as the case may be) cannot be readvanced.

### 5.3 Cash waterfall

The Borrower agrees that, on the Repayment Date, all amounts standing to the credit of the Collection Account will be applied as follows:

- (a) first, towards meeting any unpaid interest due from prior Interest Payment Dates (including any such interest that has been compounded pursuant to clause 4.2); and
- (b) second, towards reducing the Amount Outstanding.

### 5.4 Method of payment

- (a) A payment made pursuant to this deed (including by way of reimbursement) must be made:
  - (i) on the due date (or, if that is not a Business Day, on the next Business Day unless that day falls in the following calendar month or after the Repayment Date, in which case, on the previous Business Day);
  - (ii) not later than 10am in the place for payment;
  - (iii) in Australian dollars in Immediately Available Funds;
  - (iv) in full without set-off or counterclaim and without any deduction in respect of Taxes unless prohibited by law; and
  - (v) to the Lenders by payment into the Nominated Bank Account, or by payment as the Lenders' Representatives otherwise direct.
- (b) The Borrower satisfies a payment obligation only when the Lenders or the person to whom the Lenders' Representatives have directed payment receives the amount.

## 6. Guarantee

The Guarantor acknowledges that the Lenders have entered into this deed at the request of the Guarantor in reliance, amongst other things, on the Guarantor agreeing to execute the Guarantee.

## 7. Representations and Warranties

### 7.1 Representations and warranties

The Borrower represents and warrants to the Lenders, except in relation to matters disclosed to the Lenders' Representatives by the Borrower and accepted by the Lenders' Representatives in writing, that:

- (a) **due incorporation:** it is duly incorporated and has the corporate power to own its property and to carry on its business as it is now being conducted;
- (b) **constitution:** the execution delivery and performance of the Transaction Documents does not violate its constitution;
- (c) **corporate power:** it has the power and has taken all corporate and other action required to enter into the Transaction Documents and to authorise the execution



and delivery of this deed and the Transaction Documents and the performance of its obligations under the Transaction Documents;

- (d) **no breach:** its execution, delivery and performance of the Transaction Documents does not violate any existing law or regulation or any document to which it is a party;
- (e) **validity of obligations:** its obligations under the Transaction Documents are valid and binding and are enforceable against it in accordance with their terms subject to any stamping and any necessary registration;
- (f) **benefit:** it benefits by entering into the Transaction Documents;
- (g) **filings:** all corporate notices and all registrations with the Australian Securities and Investments Commission and Personal Properties Securities Register are current, complete and accurate;
- (h) **solvency:** there are no reasonable grounds to suspect that it is unable to pay its debts as and when they become due and payable;
- (i) **authorisation:** all consents, licences, approvals and authorisations of every Governmental Agency required to be obtained by it in connection with the execution, delivery and performance of the Transaction Documents in its personal capacity have been obtained and are valid and subsisting;
- (j) **Event of Default:** no Event of Default continues unremedied;
- (k) **no existing default:** it is not in breach or default of any document or obligation to which they are a party or by which they are bound, or in respect of any financial commitment or obligation, which breach or default is reasonably likely to adversely affect the ability of it to comply with its obligations under the Transaction Documents;
- (l) **no trust:** it is entering into this deed in its personal capacity and not as the trustee of any trust; and
- (m) **no litigation:** no litigation, administrative or other proceedings before a Governmental Agency have been initiated or threatened against it or any of its assets which would or might have a material adverse effect upon its business, assets or financial condition.

## 7.2 Repetition of representations and warranties

The representations and warranties in this clause 7 are taken to be also made (by reference to the then current circumstances) on the date on which each drawdown is made and on each Interest Payment Date.

## 7.3 Reliance

The Borrower acknowledges that the Lenders have entered into the Transaction Documents to which it is a party in reliance on the representations and warranties in this clause 7.

# 8. Undertakings

## 8.1 Undertakings

The Borrower undertakes with the Lenders:



- (a) **comply with obligations:** to comply with its obligations under the Transaction Documents and the requirements of all laws and requirements of any Government Agency affecting it;
- (b) **information:**
  - (i) to provide to the Lenders all purchase orders received from David Jones, wholesalers and corporate customers within 2 Business Days of receipt of such purchase orders; and
  - (ii) if the Lenders' Representatives request, to give them any document or other information relating to the Borrower's dealings with David Jones, wholesalers and corporate customers in its possession or control that the Lenders' Representatives reasonably require;
- (c) **maintain authorisations:** to obtain, renew on time and comply with the terms of each authorisation necessary for it to:
  - (i) enter into the Transaction Documents to which it is a party, comply with its obligations under them and allow them to be enforced; and
  - (ii) perform its obligations under the Transaction Documents;
- (d) **notify defaults:** if it becomes aware that an Event of Default has occurred, to notify the Lenders' Representatives, giving full details of the event and any steps taken or proposed to remedy it;
- (e) **status certificates:** on request from the Lenders' Representatives, to give the Lenders' Representatives a certificate signed by two directors of the Borrower which states whether an Event of Default has occurred or is subsisting;
- (f) **priority:** not do anything to create any Encumbrances (other than as expressly contemplated by or created under the Transaction Documents) over its assets;
- (g) **no amendments of Transaction Documents:** without the Lenders' consent, not to amend any Transaction Document;
- (h) **Collection Account:** to ensure that all payments received by it from David Jones, wholesalers and corporate customers are paid directly into the Collection Account;
- (i) **not give financial accommodation:** not, without the Lenders' consent, to:
  - (i) provide financial accommodation to any person; or
  - (ii) permit financial accommodation to remain owing to it by any person; or
  - (iii) satisfy any financial accommodation the Borrower now or in the future owes to any person;
- (j) **PPSA:** to take all steps which the Lenders' Representatives may reasonably request it to take to procure that the relevant parties to the Transaction Documents do all things reasonably necessary to ensure that any security interest (for the purposes of the PPSA) contained in or constituted by the Transaction Documents (or a transaction in connection with the Transaction Documents) is enforceable, perfected (including, where possible, by control in addition to registration) and otherwise effective (including without limitation re-

registration of any charge contained in or constituted by the Transaction Documents); and

- (k) **insurance:** to keep its assets and undertaking insured against such risks and in such amounts as a prudent insurer in the same or similar industry or line of business with it would and to deliver to the Lenders' Representatives upon request a copy of appropriate evidence that all such insurances are in full force and effect and that all relevant premiums have been paid.

## 8.2 Negative undertakings

The Borrower undertakes that it will not, without the prior written consent of the Lenders' Representatives:

- (a) **new personnel:** hire or offer to hire any new person as an employee or contractor;
- (b) **compensation:** grant any increase in the aggregate compensation (whether by way of bonus, benefit or other direct or indirect compensation) of any employee or contractor;
- (c) **marketing expenses:** incur any marketing or other expenditure that is not in accordance with the budget approved by the Lenders' Representatives from time to time;
- (d) **other expenses:** incur any expenditure exceeding \$5,000;
- (e) **lease:** enter into or agree to enter into any lease for real property; and
- (f) **purchase of stock:** purchase any stock that is not in accordance with the budget approved by the Lenders' Representatives from time to time.

## 9. Default

### 9.1 Events of Default

Each of the following events is an Event of Default:

- (a) **non-payment:** the Borrower does not pay on time any amount payable by it under this deed in the manner required under it;
- (b) **insolvency:** suffers an Insolvency Event occurs in relation to the Borrower or Guarantor;
- (c) **non-compliance with other obligations:** the Borrower or Guarantor does not comply with any other obligation under any Transaction Document and, if the non-compliance can be remedied, does not remedy the non-compliance within five Business Days;
- (d) **enforcement against assets:** distress is levied or a judgment, order or encumbrance is enforced, or becomes enforceable, against any property of the Borrower or Guarantor;
- (e) **incorrect representation or warranty:** a representation or warranty made, or taken to be made, by or for the Borrower or Guarantor in connection with a Transaction Document is found to have been incorrect or misleading when made or taken to be made;



- (f) **breach of undertaking:** the Borrower breaches an undertaking in clause 8 and such breach, if capable of remedy, is not remedied within five Business Days;
- (g) **conditions subsequent:** the Borrower fails to satisfy the conditions subsequent specified in clause 3.5 to the reasonable satisfaction of the Lenders' Representatives within the time periods specified in that clause;
- (h) **loss of capacity:** if the authority or power of the Borrower or Guarantor to perform their obligations under this deed is revoked or amended so that the Borrower or Guarantor (as the case may be) is unable to fully and duly perform and observe those obligations;
- (i) **illegality:** the continued performance of the obligations of the Borrower or Guarantor under the Transaction Documents contravenes, or might in the Lenders' opinion contravene, any applicable statute, ordinance, proclamation, rule, order, regulation, moratorium or decree of any Governmental Agency; or
- (j) **voidable Transaction Document:** any Transaction Document or a transaction in connection with any of them is or becomes (or is claimed to be) wholly or partly void, voidable or unenforceable or does not have (or is claimed not to have) the priority the Lenders intended it to have.

## 9.2 Consequences of Default

If an Event of Default occurs, then the Lenders may declare at any time by notice to the Borrower that:

- (a) the Amount Outstanding and all other amounts which are then due for payment or which will or may become due for payment under this deed is either payable on demand or immediately due and payable; and/or
- (b) the Lenders' obligations specified in the notice are terminated.

## 9.3 Acceptance of Money

The Lenders may exercise its rights under 9.2:

- (a) notwithstanding acceptance of any part of any of the amounts payable under this deed after the occurrence of any Event of Default;
- (b) notwithstanding the occurrence of any previous or other Event of Default; and
- (c) without the necessity for any notice to, or of any consent or concurrence on the part of, any other person.

# 10. Costs and indemnities

## 10.1 Costs

The Borrower must pay or reimburse the Lenders on demand for:

- (a) the Lenders' Costs in negotiating, preparing and settling the Transaction Documents;
- (b) the Lenders' Costs in, enforcing and doing anything in connection with the Transaction Documents; and



- (c) all Taxes which are payable in connection with the Transaction Documents or a payment or receipt or other transaction contemplated by them.

## 10.2 Indemnity

- (a) The Borrower indemnifies the Lenders against any liability or loss arising from, and any Costs incurred in connection with:
  - (i) an Event of Default; or
  - (ii) the Lenders exercising or attempting to exercise a right or remedy in connection with a Transaction Document after an Event of Default; or
  - (iii) any Transaction Document; or
  - (iv) any indemnity the Lenders give a Controller, receiver or administrator of the Borrower.
- (b) The Borrower agrees to pay amounts due under the indemnity in clause 10.2(a) on demand from the Lenders.

## 10.3 Payment of third party losses

The Borrower agrees to pay an amount equal to any liability or loss and any Costs of the kind referred to in clause 10.2 suffered or incurred by any employee, officer, agent or contractor of the Lenders.

## 11. Interest following judgment

If a liability becomes merged in a judgment, the Borrower agrees to pay interest on the amount of that liability as an independent obligation. This interest:

- (a) accrues daily from (and including) the date the liability becomes due for payment both before and after the judgment up to (but excluding) the date the liability is paid; and
- (b) is calculated at the judgment rate or the Interest Rate (whichever is higher).

## 12. Notices

### 12.1 Service and notices

- (a) A notice, demand, consent, approval or communication under this deed (**Notice**) must be:
  - (i) in writing, in English and signed by a person duly authorised by the sender; and
  - (ii) marked for the attention of the person, and hand delivered or sent by prepaid post, facsimile or email to the recipient's address, fax number or email (as the case may be), specified in the Parties section of this deed, as varied by any Notice given by the recipient to the sender.
- (b) Communications by email need not be marked for the attention in the way required by clause 12.1(a)(ii). However, the email must state the first and last name of the sender. Communications sent by email are taken to be signed by the named sender.

## **12.2 Effective on receipt**

- (a) A Notice given in accordance with clause 12.1 takes effect when taken to be received (or at a later time specified in it), and is taken to be received:
  - (i) if hand delivered, on delivery;
  - (ii) if sent by prepaid post, three days after the date of posting (or seven days after the date of posting if posted to or from a place outside Australia);
  - (iii) if sent by fax, at the time shown in the transmission report as the time that the whole fax was sent; or
  - (iv) if sent by email, at the time the email was sent unless the sender receives an automated message that the email has not been delivered,but if receipt is not on a Business Day or is after 5.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.
- (b) References to time in clause 12.2(a) are to local time in the country of the addressee.

## **13. PPSA**

Each of the Borrower and the Guarantor acknowledges that the Transaction Documents (or a transaction in connection with them) are or contain a security interest for the purposes of the PPSA. In respect of such security interest, the Borrower and the Guarantor each agrees to do anything (such as obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which the Lenders ask and consider necessary for the purposes of:

- (a) ensuring that the security interest is enforceable, perfected (including, where possible, by control in addition to registration) and otherwise effective;
- (b) enabling the party to apply for any registration, or give any notification, in connection with the security interest so that the security interest has the priority required by Lenders; or
- (c) enabling the beneficiary of that security interest to exercise rights in connection with the security interest.

## **14. General**

### **14.1 Entire agreement**

This deed constitutes the entire agreement between the parties in relation to its subject matter. All prior discussions, undertakings, agreements, representations, warranties and indemnities in relation to that subject matter are replaced by this deed and have no further effect.

### **14.2 Certificates**

The Lenders may give the Borrower a certificate about an amount payable or other matter in connection with this deed. The certificate is sufficient evidence of the amount or matter, unless it is proved to be incorrect.



### **14.3 Discretion in exercising rights**

The Lenders may exercise a right or remedy or give or refuse its consent under this deed in any way it considers appropriate (including by imposing conditions).

### **14.4 Amendment**

This deed may not be amended or varied unless the amendment or variation is in writing signed by all parties.

### **14.5 Set-off**

(a) The Borrower does not have, and will not during the currency of this deed have, any right of set-off or counterclaim or any right to rescind or any other claim with respect to this deed by way of cross action against the Lenders.

(b) At any time after an Event of Default, the Lenders may set off any amount due for payment by the Lenders to the Borrower against any amount due for payment by the Borrower to the Lenders under this deed.

### **14.6 Assignment**

Neither party may assign, transfer or otherwise deal with this deed or any right under this deed without the prior written consent of each other party.

### **14.7 Successors**

This deed binds a party's executors, administrators, legal personal representatives, successors, permitted assigns and substitutes.

### **14.8 Severability**

Part or all of any provision of this deed that is illegal or unenforceable will be severed from this deed and will not affect the continued operation of the remaining provisions of this deed.

### **14.9 Waiver**

Waiver of any power or right under this deed must be in writing signed by the party entitled to the benefit of that power or right and is effective only to the extent set out in that written waiver.

### **14.10 Time of essence**

Time is of the essence in this deed in respect of an obligation of the Borrower to pay money.

### **14.11 Rights, remedies additional**

The Lenders' rights and remedies under this deed are in addition to and do not replace or limit any other rights or remedies that they may have independently of this deed.

### **14.12 Indemnities**

The indemnities in this deed are continuing obligations, independent of the Borrower's other obligations under this deed and continue after this deed ends. It is not necessary for the Lenders to incur expense or make payment before enforcing a right of indemnity under this deed.



**14.13 Further assurances**

Each party must do or cause to be done all things necessary or reasonably desirable to give full effect to this deed and the transactions contemplated by it (including, but not limited to, the execution of documents).

**14.14 Counterparts**

This deed may be executed in any number of counterparts and all counterparts taken together will constitute one document.

**14.15 Legal Advice**

Each party acknowledges that it has received legal advice about the terms and effect of this deed or has had the opportunity of receiving such legal advice.

**14.16 Governing law and jurisdiction**

This deed will be governed by and construed in accordance with the laws in force in the State of New South Wales and each party submits to the non-exclusive jurisdiction of the courts of that State.

# Schedule 1

## Lenders

Lender	Details
RLG-MJB Pty Limited ACN 152 228 192 ( <b>RLG</b> )	<b>Address:</b> PO Box 561 Brookvale NSW 2100 <b>Facsimile:</b> N/A <b>Email:</b> simonpaterson@allanhall.com.au <b>Attention:</b> Simon Paterson
Rogere Industries Pty Ltd ACN 081 818 886 in its capacity as trustee for the Rogers Family Trust ( <b>Rogers FT</b> )	<b>Address:</b> 68 Cliff Road Northwood NSW 2066 <b>Facsimile:</b> N/A <b>Email:</b> matt.rogers@rogereindustries.com <b>Attention:</b> Matt Rogers
Neil Livingstone in his capacity as trustee for the Livingstone Family Super Fund ( <b>Livingstone</b> )	<b>Address:</b> 30 Sunshine Street Manly NSW 2093 <b>Facsimile:</b> N/A <b>Email:</b> neil.livingstone@cfoadvisory.com.au <b>Attention:</b> Neil Livingstone
Donald Michael Cheesman and Sarah Marjorie Elsby in their capacity as trustees of the DSCE2009 Trust ( <b>DSCE</b> )	<b>Address:</b> Level 12, Gosling Chapman Tower 51-53 Shortland Street Auckland, New Zealand <b>Facsimile:</b> N/A <b>Email:</b> donald.cheesman@gepartnerships.com <b>Attention:</b> Donald Cheesman
Badja Pty Limited ACN 159 401 304 ( <b>Badja</b> )	<b>Address:</b> Level 31, 50 Bridge Street Sydney NSW 2000 <b>Facsimile:</b> N/A <b>Email:</b> rjackson@marinya.com.au <b>Attention:</b> Rob Jackson
Akita Holdings Pty Ltd ACN 138 695 146 in its capacity as trustee of Akita (Investments Trust) ( <b>Akita Trust</b> )	<b>Address:</b> 11A Links Road Bowral NSW 2576 <b>Facsimile:</b> N/A <b>Email:</b> matt@mjbale.com <b>Attention:</b> Matt Jensen
Danielle Jensen ( <b>Danielle</b> )	<b>Address:</b> HSBC Bank Middle East Limited Global Banking and Markets Level, 4, Precinct Building 4 Gate District DIFC PO Box 506553 Dubai, UAE <b>Facsimile:</b> N/A <b>Email:</b> timothyjensen@hsbc.com <b>Attention:</b> Danielle Jensen
Denison Trading	<b>Address:</b> 33 Gardyne Street

in its capacity as trustee of Hough King  
Unit Trust  
(King)

**Email:** s.king68@bigpond.com  
**Attention:** Stuart King

Bronte NSW 2024



# Schedule 2

## Drawdown Notice

---

To: RLG-MJB Pty Limited  
Rogere Industries Pty Ltd in its capacity as trustee for the Rogers Family Trust  
Neil Livingstone in his capacity as trustee for the Livingstone Family Super Fund  
Donald Michael Cheesman and Sarah Marjorie Elsby in their capacity as trustees of the  
DSCE2009 Trust  
Badja Pty Limited  
Akita Holdings Pty Ltd in its capacity as trustee of Akita (Investments) Trust  
Danielle Jensen  
Denison Trading in its capacity as trustee of Hough King Unit Trust  
**(Lenders)**  
c/- Neil Livingstone and Matthew Rogers

### **Drawdown Notice: Deed of Loan between the Lenders and Newbale Clothing Pty Limited ACN 136 405 091 dated [\*] 2013 (Deed of Loan)**

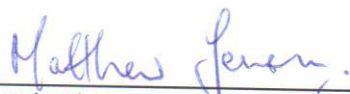
Under clause 3.3(a) of the Deed of Loan, the Borrower gives notice as follows.

The Borrower wants to drawdown an amount under the Facility as follows:

1. The requested drawdown date is **(Drawdown Date)**
2. The amount of the requested drawdown is
3. The amount of the drawdown is to be paid to:

Account number:  
Account name:  
Bank:  
Branch:  
BSB:

The Borrower represents and warrants that the representations and warranties in the Deed of Loan are correct and not misleading on the date of this notice and that each will be correct and not misleading on the Drawdown Date.

  
\_\_\_\_\_  
Authorised representative of  
**Newbale Clothing Pty Limited**

# Schedule 3

## Respective Proportions

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<b>Lender</b>	<b>Respective Proportion</b>
RLG	23.3% (being \$175,000)
Rogers FT	18.7% (being \$140,000)
Livingstone	9.3% (being \$70,000)
DSCE	14.0% (being \$105,000)
Badja	18.7% (being \$140,000)
Akita Trust	8.0% (being \$60,000)
Danielle	3.3% (being \$25,000)
King	4.7% (being \$35,000)

# Schedule 4

## Payment Schedule

<b>Interest Payment Date</b>	<b>Facility Fee</b>	<b>Interest for the relevant Interest Period</b>	<b>Repayment of Loan</b>	<b>Total</b>
31 July 2013	\$10,714	\$6,250	Nil	\$16,964
31 August 2013	\$10,714	\$6,250	Nil	\$16,964
30 September 2013	\$10,714	\$6,250	Nil	\$16,964
31 October 2013	\$10,714	\$6,250	Nil	\$16,964
30 November 2013	\$10,714	\$6,250	Nil	\$16,964
31 December 2013	\$10,714	\$6,250	Nil	\$16,964
31 January 2014	\$10,714	\$6,250	\$750,000	\$766,964
<b>Total</b>	<b>\$75,000</b>	<b>\$43,750</b>	<b>\$750,000</b>	<b>\$868,750</b>



# Schedule 5

## Previous Lenders

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### Item 1 – Previous Lenders

- (a) RLG-MJB Pty Limited ACN 152 228 192
- (b) Rogere Industries Pty Ltd ACN 081 818 886 in its capacity as trustee for the Rogers Family Trust
- (c) Neil Livingstone in his capacity as trustee for the Livingstone Family Super Fund
- (d) Donald Michael Cheesman and Sarah Marjorie Elsby in their capacity as trustees of the DSCE2009 Trust
- (e) Cambooya Pty Limited ACN 008 435 050
- (f) Bazian Pty Limited ACN 143 155 917 in its capacity as trustee for the Pyreiness Super Trust
- (g) Danielle Jensen
- (h) Denison Trading in its capacity as trustee of Hough King Unit Trust

### Item 2 – Previous Lenders' amount (clause 3.1(a))

Previous Lender	Amount
RLG	\$125,000
Rogers FT	\$100,000
Livingstone	\$50,000
Cheesman	\$75,000
Danielle	\$25,000
King	\$25,000

EXECUTED as a deed

**EXECUTED by RLG-MJB PTY LIMITED ACN 152 228 192** in accordance with section 127 of the *Corporations Act 2001*

)  
)  
)  
)  
)

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Name of Director

**EXECUTED by ROGERE INDUSTRIES PTY LTD ACN 081 818 886** in its capacity as trustee for the Rogers Family Trust and in accordance with section 127 of the *Corporations Act 2001*

)  
)  
)  
)  
)

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Name of Director

**SIGNED SEALED and DELIVERED by NEIL LIVINGSTONE** in his capacity as trustee for the Livingstone Family Super Fund in the presence of:

)  
)  
)  
)  
)

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness

  
\_\_\_\_\_  
Signature of Director/Secretary

  
\_\_\_\_\_  
Name of Director/Secretary

\_\_\_\_\_  
Signature of Director/Secretary

\_\_\_\_\_  
Name of Director/Secretary

\_\_\_\_\_  
**NEIL LIVINGSTONE**

EXECUTED as a deed

EXECUTED by RLG-MJB PTY )  
LIMITED ACN 152 228 192 in )  
accordance with section 127 of the )  
Corporations Act 2001 )  
)

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Director/Secretary

\_\_\_\_\_  
Name of Director

\_\_\_\_\_  
Name of Director/Secretary

EXECUTED by ROGERE INDUSTRIES )  
PTY LTD ACN 081 818 886 in its )  
capacity as trustee for the Rogers )  
Family Trust and in accordance with )  
section 127 of the Corporations Act )  
2001 )

  
\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Director/Secretary

DEREK MATTHEW ROGERS  
\_\_\_\_\_  
Name of Director

\_\_\_\_\_  
Name of Director/Secretary

SIGNED SEALED and DELIVERED by )  
NEIL LIVINGSTONE in his capacity as )  
trustee for the Livingstone Family Super )  
Fund in the presence of: )  
)

  
\_\_\_\_\_  
Signature of Witness

  
\_\_\_\_\_  
NEIL LIVINGSTONE

Ronald Staub  
\_\_\_\_\_  
Name of Witness



**SIGNED SEALED and DELIVERED** by )  
**DONALD MICHAEL CHEESMAN and** )  
**SARAH MARJORIE ELSBY** )  
in their capacity as trustees of the )  
DSCE2009 Trust in the presence of: )

  
\_\_\_\_\_  
**DONALD MICHAEL CHEESMAN**

  
\_\_\_\_\_  
Signature of Witness

  
\_\_\_\_\_  
Name of Witness

  
\_\_\_\_\_  
Signature of Witness

  
\_\_\_\_\_  
Name of Witness

  
\_\_\_\_\_  
**SARAH MARJORIE ELSBY**

**EXECUTED by BADJA PTY LIMITED** )  
**ACN 159 401 304** in accordance with )  
section 127 of the Corporations Act )  
2001 )

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Director/Secretary

\_\_\_\_\_  
Name of Director

\_\_\_\_\_  
Name of Director/Secretary

**EXECUTED by AKITA HOLDINGS PTY** )  
**LTD ACN 138 695 146** in its capacity as )  
trustee for the Akita (Investments) Trust )  
in accordance with section 127 of the )  
*Corporations Act 2001* )

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Director/Secretary

\_\_\_\_\_  
Name of Director

\_\_\_\_\_  
Name of Director/Secretary

**SIGNED SEALED and DELIVERED** by )  
**DONALD MICHAEL CHEESMAN and** )  
**SARAH MARJORIE ELSBY** )  
in their capacity as trustees of the )  
DSCE2009 Trust in the presence of: )

\_\_\_\_\_  
**DONALD MICHAEL CHEESMAN**

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness

\_\_\_\_\_  
**SARAH MARJORIE ELSBY**

**EXECUTED by BADJA PTY LIMITED** )  
**ACN 159 401 304** in accordance with )  
section 127 of the Corporations Act )  
2001 )

  
\_\_\_\_\_  
Signature of Director

*NICHOLAS FAIRFAX*  
\_\_\_\_\_  
Name of Director

**EXECUTED by AKITA HOLDINGS PTY** )  
**LTD ACN 138 695 146** in its capacity as )  
trustee for the Akita (Investments) Trust )  
in accordance with section 127 of the )  
*Corporations Act 2001* )

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Name of Director

  
\_\_\_\_\_  
Signature of Director/Secretary

\_\_\_\_\_  
Signature of Director/Secretary

*ROB JACKSON*  
\_\_\_\_\_  
Name of Director/Secretary

\_\_\_\_\_  
Name of Director/Secretary

\_\_\_\_\_  
Signature of Director/Secretary

\_\_\_\_\_  
Name of Director/Secretary

**SIGNED SEALED and DELIVERED** by )  
**DONALD MICHAEL CHEESMAN and** )  
**SARAH MARJORIE ELSBY** )  
in their capacity as trustees of the )  
DSCE2009 Trust in the presence of: )

\_\_\_\_\_  
**DONALD MICHAEL CHEESMAN**

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness

\_\_\_\_\_  
**SARAH MARJORIE ELSBY**

**EXECUTED by BADJA PTY LIMITED** )  
**ACN 159 401 304** in accordance with )  
section 127 of the Corporations Act )  
2001 )

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Director/Secretary

\_\_\_\_\_  
Name of Director

\_\_\_\_\_  
Name of Director/Secretary

**EXECUTED by AKITA HOLDINGS PTY** )  
**LTD ACN 138 695 146** in its capacity as )  
trustee for the Akita (Investments) Trust )  
in accordance with section 127 of the )  
*Corporations Act 2001* )

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Director/Secretary

\_\_\_\_\_  
Name of Director

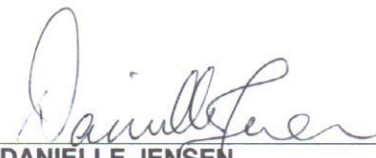
\_\_\_\_\_  
Name of Director/Secretary

*Matthew Jensen*

*Matthew Jensen*



**SIGNED SEALED and DELIVERED** by )  
**DANIELLE JENSEN** in the presence of: )

  
\_\_\_\_\_  
**DANIELLE JENSEN**

  
\_\_\_\_\_  
Signature of Witness

**LUCY PLUNKETT**  
\_\_\_\_\_  
Name of Witness

**EXECUTED** by **DENISON TRADING** )  
in its capacity as trustee of Hough King )  
Unit Trust by its duly authorised )  
representatives )

\_\_\_\_\_  
Signature of Authorised Representative

\_\_\_\_\_  
Signature of Authorised Representative

\_\_\_\_\_  
Name of Authorised Representative

\_\_\_\_\_  
Name of Authorised Representative

**EXECUTED** by **NEWBALE CLOTHING** )  
**PTY LIMITED ACN 136 405 091** in )  
accordance with section 127 of the )  
*Corporations Act 2001* )

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Director/Secretary

\_\_\_\_\_  
Name of Director

\_\_\_\_\_  
Name of Director/Secretary

**EXECUTED** by **NEWBALE CLOTHING** )  
**NOMINEES PTY LIMITED ACN 138** )  
**591 401** in its personal capacity and as )  
trustee of the Newbale Clothing Unit )  
Trust and in accordance with section )  
127 of the *Corporations Act 2001* )

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Director/Secretary

\_\_\_\_\_  
Name of Director

\_\_\_\_\_  
Name of Director/Secretary

**SIGNED SEALED and DELIVERED** by )  
**DANIELLE JENSEN** in the presence of: )  
)  
)  
)

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness

**EXECUTED** by **DENISON TRADING** )  
in its capacity as trustee of Hough King )  
Unit Trust by its duly authorised )  
representatives )  
)

\_\_\_\_\_  
Signature of Authorised Representative

\_\_\_\_\_  
Name of Authorised Representative

**EXECUTED** by **NEWBALE CLOTHING** )  
**PTY LIMITED ACN 136 405 091** in )  
accordance with section 127 of the )  
*Corporations Act 2001* )  
)

\_\_\_\_\_  
Signature of Director

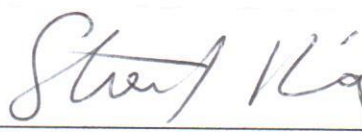
\_\_\_\_\_  
Name of Director

**EXECUTED** by **NEWBALE CLOTHING** )  
**NOMINEES PTY LIMITED ACN 138** )  
**591 401** in its personal capacity and as )  
trustee of the Newbale Clothing Unit )  
Trust and in accordance with section )  
127 of the *Corporations Act 2001* )  
)

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Name of Director

\_\_\_\_\_  
**DANIELLE JENSEN**



\_\_\_\_\_  
Signature of Authorised Representative



\_\_\_\_\_  
Name of Authorised Representative

\_\_\_\_\_  
Signature of Director/Secretary

\_\_\_\_\_  
Name of Director/Secretary

\_\_\_\_\_  
Signature of Director/Secretary

\_\_\_\_\_  
Name of Director/Secretary

**SIGNED SEALED and DELIVERED** by )  
**DANIELLE JENSEN** in the presence of: )  
)  
)  
)

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness

**EXECUTED** by **DENISON TRADING** )  
in its capacity as trustee of Hough King )  
Unit Trust by its duly authorised )  
representatives )  
)

\_\_\_\_\_  
Signature of Authorised Representative

\_\_\_\_\_  
Name of Authorised Representative

**EXECUTED** by **NEWBALE CLOTHING** )  
**PTY LIMITED ACN 136 405 091** in )  
accordance with section 127 of the )  
*Corporations Act 2001* )  
)

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Name of Director

**EXECUTED** by **NEWBALE CLOTHING** )  
**NOMINEES PTY LIMITED ACN 138** )  
**591 401** in its personal capacity and as )  
trustee of the Newbale Clothing Unit )  
Trust and in accordance with section )  
127 of the *Corporations Act 2001* )  
)

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Name of Director

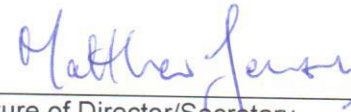
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**DANIELLE JENSEN**

\_\_\_\_\_  
Signature of Authorised Representative

\_\_\_\_\_  
Name of Authorised Representative

  
\_\_\_\_\_  
Signature of Director/Secretary

*Matthew Jensen*  
\_\_\_\_\_  
Name of Director/Secretary

  
\_\_\_\_\_  
Signature of Director/Secretary

*Matthew Jensen*  
\_\_\_\_\_  
Name of Director/Secretary



**EXECUTED** by **BAZIAN PTY LIMITED** )  
**ACN 143 155 917** and in its capacity as )  
trustee for the Pyreness Super Trust in )  
accordance with section 127 of the )  
*Corporations Act 2001* )

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Name of Director

**EXECUTED** by **CAMBOOYA PTY** )  
**LIMITED ACN 008 435 050** in )  
accordance with section 127 of the )  
*Corporations Act 2001* )

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Name of Director

*Matthew Jensen*  
\_\_\_\_\_  
Signature of Director/Secretary

\_\_\_\_\_  
Name of Director/Secretary

\_\_\_\_\_  
Signature of Director/Secretary

\_\_\_\_\_  
Name of Director/Secretary

EXECUTED by **BAZIAN PTY LIMITED** )  
**ACN 143 155 917** and in its capacity as )  
trustee for the Pyreiness Super Trust in )  
accordance with section 127 of the )  
*Corporations Act 2001* )

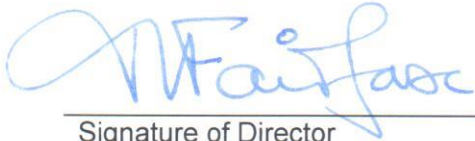
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Signature of Director

\_\_\_\_\_  
Signature of Director/Secretary

\_\_\_\_\_  
Name of Director

\_\_\_\_\_  
Name of Director/Secretary

EXECUTED by **CAMBOOYA PTY** )  
**LIMITED ACN 008 435 050** in )  
accordance with section 127 of the )  
*Corporations Act 2001* )



\_\_\_\_\_  
Signature of Director



\_\_\_\_\_  
Signature of Director/Secretary

**TIM FAIRFAX**  
~~SALLY WHITE~~  
\_\_\_\_\_  
Name of Director

**JENNY WHEATLEY**  
\_\_\_\_\_  
Name of Director/Secretary