

by *you* under this deed;
and

- (b) perform all of *your* obligations under this deed.

If *you* do not pay *us* any amount under this deed when it is due, the *guarantor* must pay that amount to *us* when we ask.

Indemnity

15.5 The *guarantor* unconditionally and irrevocably indemnifies *us* against any loss *we* suffer or incur if:

- (a) *you* do not, are not obliged to or are unable to, pay *you* in accordance with this deed;
- (b) *you* do not comply on time with all *your* obligations under this deed;
- (c) the *guarantor* does not or is not obliged to pay *us* an amount under clause 15.4; or
- (d) *we* are obliged, or *we* agree to pay an amount to a trustee in bankruptcy or liquidator in connection with a payment by *you* or a *guarantor*.

The *guarantor* agrees to pay *us* a sum equal to such loss when we ask.

Enforcement of rights

15.6 *We* may make a claim against the *guarantor* under this deed before *we* enforce any of *our* rights against *you* or any other person or under any other document including any *security interest*. The *guarantor* must pay the expenses *we* incur in enforcing the *guarantee and indemnity*.

Continuance of the *guarantor's liability*

15.7 The *guarantor* agrees that its liability under this deed is not

affected by any act or omission by *us* or by anything which might affect it under law or otherwise including:

- (a) the fact that:
 - (i) the *guarantor* does not see a pro forma or completed schedule;
 - (ii) *we* vary or replace this deed such as by extending the *term*;
 - (iii) *we* enter into this deed as agent or as principal;
 - (iv) *we* either release, lose the benefit of or do not obtain any *security interest* or do not register any *security interest* that could be registered;
 - (v) *we* release *you* or gives *you* a concession, such as more time to pay;
 - (vi) *we* release any person who guarantees *your* obligations under this deed;
 - (vii) the obligations of any person who guarantees *your* obligations under this deed may not be enforceable;
 - (viii) any person who was intended to guarantee *your* obligations under this deed does not do so or does not do so effectively; or
- (b) the death, mental or physical disability or insolvency of any person including *you* or the *guarantor*; or
- (c) changes in the membership, name or

business of a firm,
partnership, committee or
association.

15.8 Under law, a trustee in bankruptcy or liquidator may ask *us* to refund a payment we have received in connection with this deed (including, without limitation, the *guarantee and indemnity*). To the extent we are obliged to, or we agree to, make a refund we may treat the payment as if it had not been made. We are then entitled to *our* rights against the *guarantor* under the *guarantee and indemnity* as if the payment had never been made. This applies despite anything in the *guarantee and indemnity* or the fact that the *guarantor* may have ended it.

15.9 If the *guarantor* becomes liable for any payment under this *guarantee and indemnity*, then unless we otherwise agree, the *guarantor* waives any right of indemnity it may have at law in respect of the *Security Property* as a consequence of the payment.

16 General matters

Consents

16.1 Each *obligor* must comply with all conditions in any *consent* given in connection with a *transaction document*.

Statements

16.2 We give *you* a statement for each *loan account* at least every 6 months, unless the National Credit Code does not require it (or would not require it if the National Credit Code applied to this deed).

How we may exercise our rights

16.3 We may exercise a right or remedy or give or refuse *our consent* under the *transaction documents* in any way we consider appropriate including by imposing conditions.

16.4 If we or a *receiver* does not exercise a right or remedy under the *transaction documents* fully or at a given time, we or a *receiver* can still exercise it later.

16.5 We may enforce a *security* before we enforce other rights or remedies:

- (a) against any other person;
or
- (b) under another document, such as another *security interest*.

16.6 *Our* and any *receiver's* rights and remedies under the *transaction documents*:

- (a) are in addition to other rights and remedies provided by law independently of them; and
- (b) may be exercised even if this involves a conflict of duty or we, or the *receiver*, has a personal interest in their exercise.

16.7 *Our* rights and remedies under the *transaction documents* may be exercised by any of *our* employees or any other person we authorise.

16.8 Neither we nor a *receiver* is liable for loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising, a right or remedy under the *transaction documents*.

16.9 If we or a *receiver* exercises any right under a *security* or at law to enter or take possession of the property secured by any *security*, we or the *receiver*:

- (a) has complete and unfettered discretion as to how the property is managed; and
- (b) is liable to account only for rents and profits actually

received by *us* or the receiver.

Reinstatement of rights

16.10 Under law relating to *insolvency* a person may claim that a transaction (including a payment) in connection with an amount owing or payable by an *obligor* under a *transaction document* is void or voidable. If a claim is made and upheld, conceded or compromised, then:

- (a) *we* are immediately entitled, as against the *obligor*, to the rights in respect of the amount owing or payable to which *we* were entitled immediately before the transaction; and
- (b) on request from *us*, the *obligor* agrees to do anything to restore to *us* any *encumbrance* *we* held from the *obligor* immediately before the transaction.

Assignment

16.11 *We* may assign or otherwise deal with *our* rights under any *transaction document* in any way *we* consider appropriate. If *we* do this, an *obligor* may not claim against any assignee (or any other person who has an interest in the *transaction document*) any right of set-off or other rights an *obligor* has against *us*. At *our* request, the *obligor* must execute and deliver to *us* or any other person *we* specify any document *we* reasonably require for this purpose. The *obligor* agrees that *we* may disclose any information or documents *we* consider desirable to help *us* exercise this right. The *obligor* also agrees that *we* may disclose information or documents at any time to a person to whom *we* assign *our* rights under this deed.

The *obligor's* rights are personal to the *obligor* and may not be

assigned without *our* written consent.

Valuations

16.12 *You* must allow *us* and *our* contractors access, upon reasonable notice, to any property secured by a *security* in order to perform a valuation. *You* must pay for any such valuation provided that when *you* are not in default *you* will not have to pay for more than one valuation per property in any 12 month period.

16.13 *We* may obtain a valuation or report of a property secured by a *security* at any time. *We* may charge *you* the cost of obtaining the valuations or reports.

16.14 Any valuation or report *we* obtain is for *our* benefit, not the *obligor's*. The *obligor* may not rely on it. *We* will not make a copy of the valuation or report available to the *obligor*.

Notices, other communications and serving documents

16.15 Notices, certificates, *consents*, approvals and other communications in connection with the *transaction documents* must be in writing or in any other form permitted by it. Clauses 16.16 – 16.19 apply to each *transaction document*.

16.16 Communications from *us* may be signed by any of *our* employees or any other person *we* authorise. If the *obligor* is a company, communications from the *obligor* must be signed by a director.

16.17 Communications for *us* may be:

- (a) given personally to one of *our* employees or any other *person* *we* authorise at *our* registered office; or
- (b) sent by prepaid post or electronically (*such as* by fax) to that place; or

- (c) given by any other means permitted by law.

16.18 Communications for an *obligor* may be given to the *obligor* or, except for a default notice, to the one nominated to receive notices by:

- (a) delivering it to the *obligor* personally;
- (b) leaving it at:
- (if the *obligor* is an individual) either:
 - an address which the *obligor* nominates to *us* in writing; or
 - if the *obligor* does not make such a nomination, the *obligor's* residential address last known to *us*; or
 - (if the *obligor* is a body corporate) the *obligor's* registered office by leaving it with one of *your* officers; or
- (c) sending it by pre-paid post or electronically (*such as* by fax or electronic mail) to any of these places; or
- (d) any other means permitted by law.

16.19 They take effect from the time they are received unless a later time is specified in them.

If they are sent by post to an *obligor's* last known residential or business address, they are taken to be received on the day they would be received in the ordinary course of post.

If they are sent by a fax machine which produces a transmission report, they are taken to be received on the date the transmitting machine produces a report indicating the

communication was sent to the recipient's fax number.

Variations and waivers

16.20 In addition to other changes we may make to the *transaction documents* which are detailed in this deed, we may vary any of the other provisions of the *transaction documents* (including by changing the method by which interest is calculated, the frequency with which it is charged or the default rate). If we do, we must notify *you* in writing or by a newspaper advertisement unless the change reduces or defers *your* obligations under this deed. The change takes effect from the time we specify in the notice. When we give the notice depends on the type of change we make. If the National Credit Code applies to this deed, we may only vary it in accordance with that Code.

16.21 A provision of any *transaction document*, or a right created under it, may not be waived except in writing signed by the party or parties to be bound.

Certificates

16.22 We may give an *obligor* a certificate about a matter or about an amount payable in connection with the *transaction documents*. The certificate is sufficient evidence of the matter or amount, unless it is proved to be incorrect.

16.23 We may rely on certificates provided by any other person with a *security interest* as to the amount that is owed to them.

Prompt performance

16.24 If a *transaction document* specifies when an *obligor* must perform an obligation, they must perform it by the time specified. An *obligor* must perform all other obligations promptly.

Set-off

16.25 Except to the extent an *obligor* has a right of set-off granted by law which we cannot exclude by agreement (such as under the National Credit Code), an *obligor* must pay all amounts due under the *transaction documents* in full without setting off amounts the *obligor* believes we owe the *obligor* and without counterclaiming amounts from us.

However, we may set off against amounts any *obligor* owes us any money we owe the *obligor*.

National Credit Code

16.26 Clauses 16.27 and 16.28 apply to the extent that the National Credit Code applies to this deed.

16.27 If:

- (a) the National Credit Code would otherwise make a provision of this deed illegal, void or unenforceable; or
- (b) a provision of this deed would otherwise contravene a requirement of the National Credit Code or impose an obligation or liability which is prohibited by the National Credit Code,

this deed is to be read as if that provision were varied to the extent necessary to comply with the National Credit Code or, if necessary, omitted.

16.28 If the National Credit Code is inconsistent with this deed, the National Credit Code

overrides this deed to the extent of the inconsistency.

Indemnities

16.29 The indemnities in the *transaction documents* are continuing obligations, independent of an *obligor's* other obligations under the *transaction documents*. They continue even after we *have* released the property secured by a *security*. It is not necessary for us to incur expense or make payment before enforcing a right of indemnity conferred by a *transaction document*.

Default Protection Arrangement

16.30 We may enter into a default protection arrangement that protects us in the event that you default under this *loan*. The *obligor* acknowledges that any such arrangement protects us and not the *obligor*. However, the *obligor* may become legally responsible for repaying to the counterparty the *total amount owing* under this *deed* or amount payable or owing under a *security* (or both) if, for example, this deed or any *security* is purchased under the terms of the default protection arrangement. You must pay an equalisation fee in relation to the risk we take in entering into the *transaction documents*.

No withholding

16.31 You must pay any amount you are obliged to pay under any *transaction document*, including, when payable, the *total amount owing*, free and clear of any withholding or deduction for taxes, levies, imposts or government charges of any kind unless prohibited by law. If any law requires you to withhold or deduct from any payment any withholding tax, so that we would not actually receive for our own benefit on the due date the full amount provided for under any *transaction document*, then:

- (a) the amount payable by *you* is increased so that, after making that deduction and deductions applicable to additional amounts payable under this clause, *we are* entitled to receive the amount *we* would have received if no deductions had been required;
- (b) *you* must make the deductions; and
- (c) *you* must pay the full amount deducted to the relevant authority in accordance with applicable law and deliver the original receipts to *us*.

Deed unaffected

16.32 To the extent allowed by law and subject to clauses 16.27 and 16.28, this deed prevails to the extent it is inconsistent with any law.

16.33 This deed does not merge with or adversely affect, and is not adversely affected by, any of the following:

- (a) any security or right or remedy to which *we* are entitled; or
- (b) a judgment or order which *we* obtain against *you* in respect of any of the *amount owing*.

(*We* can still exercise *our* rights under this deed as well as under the judgment, order, security, right or remedy.)

Applicable law

16.34 This deed is governed by the law in force in Victoria. *You* and *we* submit to the non-exclusive jurisdiction of the courts of Victoria.

17 Meaning of words

amount of credit is the aggregate amount of credit

stated in the schedule and, as the context requires in relation to each *loan*, the amount of credit specified for that *loan* in the schedule.

annual percentage rate means a per annum rate of interest.

balance owing on your loan accounts means, at any time, the difference between all amounts credited and all amounts debited to *you* under this deed at that time plus any amounts outstanding but not credited or debited to *you* at that time less any amounts credited or debited to *you* but not cleared by the banking system at that time and, for the purposes of clause, less the *rebatable application fee* (if there is one stated in the schedule) when there is no interest payable on that fee as described in the schedule. When this amount is to be calculated for the end of a day, it includes all debits and credits assigned to that day. *Balance owing on the loan account* has a corresponding meaning in relation to a particular *loan*.

bill has the meaning it has in the Bills of Exchange Act 1909 (Cth) and a reference to the drawing, acceptance or endorsement of, or other dealing with, a *bill* is to be interpreted in accordance with that Act.

break costs are those costs payable to *us* under clause 9.

business day means a day other than a Saturday or Sunday, or a public, special or bank holiday in the State of Victoria.

clause 4.8 method means the method of calculating *interest only repayments* set out in clause 4.8.

consent means written consent.

consolidated financial statements means the financial statements required to be prepared under the *Corporations Act* in relation to a *consolidated group*.

consolidated group means, if a person is required to prepare *consolidated financial statements* under the *Corporations Act*, the economic entity constituted by the person and the entities that it controls, in respect of which those financial statements must be prepared.

control of an entity, including a corporation, includes the direct or indirect power to directly or indirectly:

- (a) direct the management or policies of the entity; or
- (b) control the membership of the board of directors,

whether or not the power has statutory, legal or equitable force or is based on statutory, legal or equitable rights and whether or not it arises by means of trusts, agreements, arrangements, understandings, practices, the ownership of any interest in shares or stock of the corporation or otherwise.

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

costs includes any fees, charges and expenses we may charge and fees, charges and expenses in connection with legal and other advisers, service providers, agents or contractors.

default rate means the per annum rate of interest set out in the schedule.

disclosure date is stated in the schedule.

drawdown date means, in relation to each *loan*, the date we first lend to you any of the principal part of the *amount of credit* in relation to that *loan*

(or, if earlier, the date we first debit any of it to the *loan account*, which we will do when we make any of the principal part of the *amount of credit* available to our settlement agent).

encumbrance means any:

- (a) security interest; or
- (b) right, interest or arrangement which has the effect of giving another person a preference, priority or advantage over creditors including any right of set-off; or
- (c) right that a person (other than the owner) has to remove something from land (known as a *profit à prendre*), easement, public right of way, restrictive or positive covenant, lease, or licence to use or occupy; or
- (d) third party right or interest or any right arising as a consequence of the enforcement of a judgment,

or any agreement to create any of them or allow them to exist.

event of default means an event so described in clause 8.

equalisation fee is the fee stated in the schedule.

financial statements means:

- (a) a profit and loss statement; and
- (b) a balance sheet; and
- (c) a statement of cash flows,

together with any notes to those documents and a directors' declaration as required under the *Corporations Act* and any other information necessary to give a true and fair view.

fixed rate period (if any) in relation to a *loan* is stated in the schedule.

guarantee and indemnity means the guarantee and indemnity contained in clause 15 of this deed and each other provision of this deed applying to the *guarantor*.

guarantor means, jointly and severally, the entity(ies) identified as such in the schedule.

including or **such as** when introducing an example, does not limit the meaning of the words to which the example relates to that example or examples of a similar kind.

insolvent means being an insolvent under administration or insolvent or having a controller appointed (each as defined in the *Corporations Act - such as* being bankrupt), in receivership, in receivership and management, in liquidation, in provisional liquidation, under administration, wound up, subject to any arrangement, assignment or composition, protected from creditors under any statute, dissolved (other than to carry out a reconstruction while solvent) or otherwise unable to pay debts when they fall due.

interest only period (if any) in relation to a *loan* is stated in the schedule.

interest only repayment (if any) in relation to a *loan* is a repayment amount calculated in accordance with clauses 4.6-4.8.

loan means each *loan* specified in the schedule.

loan account means in relation to each *loan* an account we establish in *your* name for recording all transactions in connection with this deed and *loan accounts* means all such accounts.

loan term in relation to a *loan* is a period beginning on the *drawdown date*. The length of the *loan term* is specified in the schedule.

loan-to-security percentage is stated in the schedule.

material adverse effect means a material adverse effect on:

- (a) the *obligor's* ability to comply with the *obligor's* obligations under any *transaction document*; or
- (b) the value of the property secured by a *security*; or
- (c) the *obligor's* rights under any *transaction document*; or
- (d) *your* business or financial condition.

monetary obligation means a monetary obligation in connection with:

- (a) money borrowed or raised; or
- (b) any hiring arrangement, redeemable preference share, letter of credit or financial markets transaction (including a swap, option or futures contract), performance bond or guarantee facility; or
- (c) a guarantee or indemnity in connection with anything referred to in paragraphs (a) or (b).

obligor includes *you* and every *security provider*.

person includes an individual, a firm, a body corporate, an unincorporated association or an authority.

potential event of default means an event which, with the giving of notice, lapse of time or fulfilment of any condition,

would be likely to become an *event of default*.

principal and interest repayment is a repayment amount calculated in accordance with clauses 4.3 and 4.4.

property trust means the security trust identified as such in the schedule.

property trustee means the trustee of the *property trust* in its capacity as trustee of the *property trust*.

rebatable application fee (if any) means the fee stated in the schedule.

receiver includes a receiver, or receiver and manager.

related entity has the meaning it has in the *Corporations Act*.

scheduled balance means, on any particular day in relation to a *loan*, that part of the *amount of credit* which would have been outstanding in relation to that *loan* on that day if *you* had made all the repayments set out in the schedule as varied by *us* from time to time on the due date but no other payments had been made to the *loan account*.

security means each *security interest* described in the schedule under "Security" and any substitute or additional *security interest* given in connection with this deed.

The property the subject of any mortgage of real property described in the schedule under "Security" comprises all the mortgagor's estate and interest in the property and rights which may arise in connection with it; and rights to set off any money we owe the mortgagor against the amount secured by that mortgage.

security interest means any mortgage, charge, lien, pledge, trust, power or other rights given as or in effect as *security*

for the payment of money or performance of obligations. *Security interest* also includes a guarantee or an indemnity.

security property means the property identified as such in the schedule.

security provider means each *person* (other than *you*) who gives a *security*.

settlement date means the earliest date which is a *drawdown date*.

SIS Act means the Superannuation Industry (Supervision) Act 1993 (Cth).

subsidiary of an entity means another entity which is a subsidiary of the first within the meaning of part 1.2 division 6 of the *Corporations Act* or is a subsidiary of or otherwise controlled by the first within the meaning of any approved accounting standard.

such as see *including*.

super fund means the superannuation fund of which *you* are the trustee and in respect of which *you* have entered into this deed.

total amount owing means, at any time, the balance owing on your loan accounts at that time, plus all accrued interest charges, default interest charges, costs and other amounts which you must pay under this deed and any other loan agreement between you and us but which have not been debited to your loan account at that time. *Total amount owing on the loan account has a corresponding meaning in relation to a particular loan.*

transaction document means this deed, all *securities* and any other document that we notify to *you* to be a *transaction document*.

variable rate period in relation to a *loan* is stated in the schedule.

we, us and **our** means Secure Funding Pty Ltd ABN 25 081 982 872 and its successors and assigns.

you means the *person* or *persons* named in the schedule as "Customer". If there are more than one, **you** means each of them separately and every two or more of them jointly. **You** includes *your* successors and assigns.

The singular includes the plural and vice versa.

A reference to:

- a document includes any variation or replacement of it; and
- law means common law, principles of equity, and laws made by parliament (and laws made by parliament include regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of them); and
- any thing includes the whole and each part of it;
- any person, including *you*, being in default or defaulting, includes the occurrence or existence of an *event of default*.