

No. SAD of 2016

Federal Court of Australia  
 District Registry: Victoria  
 Division: Corporations

**IN THE MATTER OF S GUNNELG PTY LTD (ACN; 607 844 011), 2 NORTH  
 TERRACE PTY LTD (ACN 109 407623), FIFTY CAL PTY LTD (ACN 080 888 697),  
 TOAD PARK PTY LTD (ACN 101 257 532), GUNNBO PTY LTD (ACN 115 004 414),  
 GUNNSTA PTY LTD (ACN 086 251 461), JAG ADMIN PTY LTD (ACN 604 776 963),  
 GUNNSPORT PROPERTY PTY LTD (ACN 130 249 464)**

**ANDREW MORTON GARRETT**  
 Plaintiff

---

**THIS IS THE EHIBIT MARKED “AMG 2” REFERRED TO IN  
 THE AFFIDAVIT OF ANDREW MORTON GARRETT  
 SWORN ON THE 11<sup>th</sup> DAY OF MAY, 2016 BEFORE ME;**

---

**“AMG 2”**

**Copy of an the Affidavit in support of my application set out at  
 exhibit AMG 1**

Filed on behalf of (name & role of party)	Andrew Garrett, The Applicant		
Prepared by (name of person/lawyer)	The Applicant		
Law firm (if applicable)	NA		
Tel	0424 324 135	Fax	03 8648 0656
Email	<a href="mailto:andrew.garrett@taggc.com.au">andrew.garrett@taggc.com.au</a>		
<b>Address for service</b> (include state and postcode)	Level 1, 82 Flinders Street, Adelaide, SA 5000		

Form 3

**Originating Application**

No. Of 2016

Federal Court of Australia

District Registry: South Australia

Division: Corporations

**IN THE MATTER OF S GUNNELG PTY LTD (ACN; 607 844 011) (Controller Appointed), 2 NORTH TERRACE PTY LTD (ACN 109 407623) (Controller Appointed), FIFTY CAL PTY LTD (ACN 080 888 697) (Controller Appointed), TOAD PARK PTY LTD (ACN 101 257 532) (Controller Appointed), GUNNBO PTY LTD (ACN 115 004 414) (Controller Appointed), GUNNSTA PTY LTD (ACN 086 251 461) (Controller Appointed), JAG ADMIN PTY LTD (ACN 604 776 963) (Controller Appointed), GUNNSPORT PROPERTY PTY LTD (ACN 130 249 464) (Controller Appointed)**

**ANDREW MORTON GARRETT**

Plaintiff

The Plaintiff applies for declaration of right under s21 of *the Federal Court of Australia Act 1976* (Cth), Federal Court Corporations Rules 2.2 and Part 5.2 of *the Corporations Act 2001* (Cth) as set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below.

**Time and date for hearing:****Place:** Federal Law Courts Building, 3 Angas Street, Adelaide, SA 5000

Date:

Signed by an officer acting with the authority  
of the District Registrar

Filed on behalf of (name & role of party)	The Plaintiff		
Prepared by (name of person/lawyer)	Andrew Garrett		
Law firm (if applicable)			
Tel	0424 324 135	Fax	03 8648 0656
Email	<a href="mailto:andrew.garrett@taggc.com.au">andrew.garrett@taggc.com.au</a>		
<b>Address for service</b> (include state and postcode)	Level 1, 82 Flinders Street, Adelaide, SA 5000		

**Details of claim**

On the grounds stated in the accompanying affidavit or other document prescribed by the Rules, the Plaintiff claims urgent relief on the papers:

**Claim for declaration of a Right and other urgent relief**

1. That a declaration is made under s418A(2) that the Plaintiff is validly acting as Controller,
2. That an order is made that the Directors comply with the Plaintiff's request to provide a report as to affairs under s430 of *the Corporations Act 2001* (Cth) as soon as practicable, and
3. That an order is made that an officer of the CBA;
  - a. open Banks accounts in the name of the Plaintiff as Controller appointed to each of the aforementioned entities as required under 2421 of *the Corporations Act 2001* (Cth)
  - b. links the Plaintiffs Customer Client Number 81744770 to the existing trading Accounts of the aforementioned entities as the Administrator of the accounts.
4. That the Directors and employees of the aforementioned entities assist the Plaintiff and his personnel in their investigations and not seek to barr access to the premises of the businesses of the aforementioned entities
5. Such other orders as this Honourable Court deems fit

**Applicant's address**

The Applicant's address for service is:

Place: level 1, 82 Flinders Street, Adelaide, SA 5000

Phone; 0424 324 135

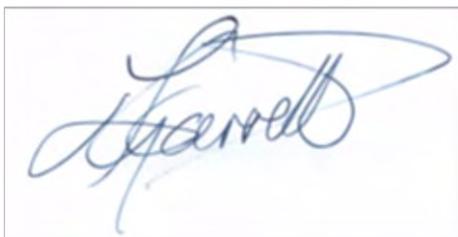
Email: [andrew.garrett@oenoviva.com](mailto:andrew.garrett@oenoviva.com)

The Plaintiff's address is his place of business

**Service on the Respondent**

It is not intended to serve any person on this application

Date: 2<sup>nd</sup> May 2016

A handwritten signature in blue ink, appearing to read "Andrew Garrett", enclosed within a thin black rectangular border. The signature is written in a cursive style with a large, sweeping initial 'A'.

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Signed by Andrew Garrett  
The Plaintiff

No. SAD of 2016

Federal Court of Australia  
 District Registry: Victoria  
 Division: Corporations

**IN THE MATTER OF S GUNNELG PTY LTD (ACN; 607 844 011), 2 NORTH  
 TERRACE PTY LTD (ACN 109 407623), FIFTY CAL PTY LTD (ACN 080 888 697),  
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 GUNNSTA PTY LTD (ACN 086 251 461), JAG ADMIN PTY LTD (ACN 604 776 963),  
 GUNNSPORT PROPERTY PTY LTD (ACN 130 249 464)**

**ANDREW MORTON GARRETT**  
 Plaintiff

---

**THIS IS THE EMBIT MARKED “AMG 2” REFERRED TO IN  
 THE AFFIDAVIT OF ANDREW MORTON GARRETT  
 SWORN ON THE 11<sup>th</sup> DAY OF MAY, 2016 BEFORE ME;**

---

**“AMG 2”**

**Copy of an the Affidavit in support of my application set out at  
 exhibit AMG 1**

Filed on behalf of (name & role of party)	Andrew Garrett, The Applicant		
Prepared by (name of person/lawyer)	The Applicant		
Law firm (if applicable)	NA		
Tel	0424 324 135	Fax	03 8648 0656
Email	<a href="mailto:andrew.garrett@taggc.com.au">andrew.garrett@taggc.com.au</a>		
<b>Address for service</b> (include state and postcode)	Level 1, 82 Flinders Street, Adelaide, SA 5000		

Form 35  
Rule 17.01(1)

No. SAD of 2015

Federal Court of Australia  
District Registry: Victoria  
Division: Corporations

**IN THE MATTER OF S GUNNELG PTY LTD (ACN; 607 844 011), 2 NORTH TERRACE PTY LTD (ACN 109 407623), FIFTY CAL PTY LTD (ACN 080 888 697), TOAD PARK PTY LTD (ACN 101 257 532), GUNNBO PTY LTD (ACN 115 004 414), GUNNSTA PTY LTD (ACN 086 251 461), JAG ADMIN PTY LTD (ACN 604 776 963), GUNNSPORT PROPERTY PTY LTD (ACN 130 249 464)**

**ANDREW MORTON GARRETT**  
Plaintiff

## Affidavit of Andrew Morton Garrett

On the 2<sup>nd</sup> May of 2016,

Filed on behalf of (name & role of party)	Andrew Morton Garrett, The Plaintiff		
Prepared by (name of person/lawyer)	The Plaintiff		
Law firm (if applicable)			
Tel	0424 324 135	Fax	08 8648 0656
Email	<a href="mailto:andrew.garrett@taggc.com.au">andrew.garrett@taggc.com.au</a>		
<b>Address for service</b> (include state and postcode)	Leve 1, 82 Flinders Street, Adelaide, SA 5000		

I, Andrew Morton Garrett, Trustee, Company Director, Winemaker and Managing Controller of Level 1, 82 Flinders Street, Adelaide SA 5000 say on oath –

1. I swear this affidavit in support of my originating application for declaration of Right and other orders set out in my application and for that application to be considered on the papers as a matter of urgency
2. On the 22<sup>nd</sup> April 2016 an event of default occurred under Charges registered over the aforementioned entities pursuant to cl1.8(l) of the Charge. Now produced and shown as exhibit “**AMG 1** ” is a true and correct copy of the terms and conditions of the Charge registered over Gunnsport Property ACN 130 249 464 which is identical for each of the aforementioned entities.
3. The Charges allow for the service of a Notice of Crystallisation of Charge to be served on the event of a default under cl 1.8 of the Charges and the appointment of Controller under cl 1.9.1 of the Charges by way of service of Notice of Crystallisation in the Registered Office of the aforementioned entities.
4. The Charges secure Vendor Finance Loans related to Chattel Purchases of Intellectual Property Licenses related to OenoViva Business Systems in the amount of \$20,300,000 due to Garage Wine Group Pty Ltd as Trustee of the Hill Family Trust trading as OenoViva (South Australia), and initial payments of \$2,030,000 due to OenoViva (South Australia) on the Chattel Purchase upon the receipt of GST credits on/or about the 31<sup>st</sup> January 2016.
5. A corresponding GST liability of \$4,060,000 has been paid to the Australian Taxation Office on the 19<sup>th</sup> April 2016 in respect to the aforementioned Vendor Finance Loans (\$2,030,000 GST liability) and Chattel Purchase (\$2,030,000) related to the Vendor Finance Loans on the basis that the Vendor Finance Loans are a taxable financial supply within the meaning of the *a New Tax System (Goods and Services Tax) Act 1999* (Cth)
6. The Charges also secure working capital advances made thus far to pay American Express Credit Card accounts as follows;
  - 6.1. Andrew Gunn, Membership Number:3760-6450-7014-001 in the amount of \$81,955.37
  - 6.2. Fifty Cal Pty Ltd Corporate AMEX Account Membership Number:3760-982547-11005 in the amount of \$63,620.73
  - 6.3. Toad Park Pty Ltd Corporate AMEX Account Membership Number:3760-982687-12007 in the amount of \$389,969.89

7. That the Directors of the aforementioned entities have been operating the businesses of the aforementioned entities from Credit Cards held with Commonwealth Bank and National Australia Bank as well as Capital facilities provided by National Australia Bank.
8. That on the 27<sup>th</sup> April 2016 he was appointed as Managing Controller of entities pursuant to cl 19 of the Charges dated 31<sup>st</sup> January 2016 pursuant the execution of a Deed of Appointment as Managing Controller executed 27<sup>th</sup> April 2016 and Notice of Crystallisation of Charge also dated 27<sup>th</sup> April 2016 and served on the Registered Offices of the Entities. Now produced and shown as exhibit “**AMG 2**” is a true and correct copy of the Deed of Appointment and the Notice of Crystallisation of Charges of the following entities;
  - 8.1. S GUNNELG PTY LTD (ACN; 607 844 011) (Controller Appointed)
  - 8.2. 2 NORTH TERRACE PTY LTD (ACN 109 407623) (Controller Appointed)
  - 8.3. FIFTY CAL PTY LTD (ACN 080 888 697) (Controller Appointed)
  - 8.4. TOAD PARK PTY LTD (ACN 101 257 532) (Controller Appointed)
  - 8.5. GUNNBO PTY LTD (ACN 115 004 414) (Controller Appointed)
  - 8.6. GUNNSTA PTY LTD (ACN 086 251 461) (Controller Appointed)
  - 8.7. JAG ADMIN PTY LTD (ACN 604 776 963) (Controller Appointed)
  - 8.8. GUNNSPORT PROPERTY PTY LTD (ACN 130 249 464) (Controller Appointed)
9. On the 28<sup>th</sup> April 2016 the Notice of Crystallisation was served on the four major Banks in order to identify the location of the Bank Accounts held by the aforementioned entities in which regard he identified Commonwealth Bank of Australia (“CBA”) and National Australia Bank Limited (“NAB”) as being the provider of Banking Services to the aforementioned entities.
10. The relevant Form 504 Notification of appointment of Managing Controller was sent by express post to ASIC South Gippsland Mail Centre on the 27<sup>th</sup> April 2016, tracking of that express post reveals it was delivered at 6.22am on the 28<sup>th</sup> April 2016.
11. The appointments do not yet show on the ASIC register of the aforementioned entities.
12. Also on the 28<sup>th</sup> April 2016 I attended the Office of Business and Consumer Affairs to lodge the form required to notify the Office of appointment of a Managing Controller to the aforementioned entities.
13. On the 29<sup>th</sup> April 2016 the Directors of the aforementioned entities made application to the office of business and consumer affairs seeking to bar the Plaintiff and his personnel from

access to the premises in circumstances where the rights of the Shareholders and Directors have been suspended.

14. On the 30<sup>th</sup> April 2016 I advised the Directors of the entities and a senior employee that I required reports to the affairs of the entities pursuant to s430 of the Corporations Act and seeking access to the Books and Records of the entities under s431 of *the Corporations Act* 2001 (Cth).
15. I have been unable to open Bank accounts at the CBA within 3 days of his appointment in his name as Controller of each of the Entities as required by law pursuant to s421 of *the Corporations Act* 2001 (Cth) as a consequence of the non-appearance of appointment as controller and the relationship between the Directors and the CBA relationship manager.
16. It is my preference to open the bank accounts required by law as that is where the trading accounts of the aforementioned entities are currently domiciled.
17. As Managing Controller Appointed I am now personally liable for the assets of the aforementioned entities and as agent for the affairs of those entities.
18. I depose that the contents of this my affidavit are true and correct to the best of my knowledge except where otherwise deposed.

.....

2<sup>nd</sup> May 2016

Sworn at ADELAIDE }  
 }

Before me: }

.....

Andrew Morton Garrett,  
 Plaintiff

No. SAD of 2016

Federal Court of Australia  
 District Registry: Victoria  
 Division: Corporations

**IN THE MATTER OF S GUNNELG PTY LTD (ACN; 607 844 011), 2 NORTH  
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 GUNNSPORT PROPERTY PTY LTD (ACN 130 249 464)**

**ANDREW MORTON GARRETT**  
 Plaintiff

---

**THIS IS THE EHIBIT MARKED “AMG 1” REFERRED TO IN  
 THE AFFIDAVIT OF ANDREW MORTON GARRETT  
 SWORN ON THE 2<sup>nd</sup> DAY OF MAY, 2016 BEFORE ME;**

---

**“AMG 1”**

**Copy of Deed of Charge Registered over Gunnsport Property  
 Pty Ltd ACN 130 249 464**

Filed on behalf of (name & role of party)	Andrew Garrett, The Applicant		
Prepared by (name of person/lawyer)	The Applicant		
Law firm (if applicable)	NA		
Tel	0424 324 135	Fax	03 8648 0656
Email	<a href="mailto:andrew.garrett@taggc.com.au">andrew.garrett@taggc.com.au</a>		
<b>Address for service</b> (include state and postcode)	Level 1, 82 Flinders Street, Adelaide, SA 5000		



OENOVIVA

**Distributor License Purchase Vendor Finance Performance Security Deed**

**Schedule**

- 1. Chargee : Garage Wine Group Pty Ltd ATF Hill Family Trust trading as OenoViva (South Australia) ABN 36 671 454 066 whose address is 1/235 Main Road, McLaren Vale, SA, 5171
- 2. Chargor : Gunnsport Property Pty Ltd, ABN; 50 731 706 292 personally and in its capacity as Trustee of the Gunn Port Property Trust of C/O HLB Mann Judd, 169 Fullarton Road, Dulwich, SA, 5065
- 3. Charge Date :
- 4. Terms & Conditions : [Performance Security Terms & Conditions Attached](#)

Acknowledgement: The Chargee and the Chargor agree with the Schedule above and the attached Terms and Conditions.

**Executed as a Deed**

In witness whereof the parties have executed this agreement as a deed on the date recited above.

**Executed** by Garage Wine Group Pty Ltd Pty Ltd, )  
 ABN 36 671 454 066 in all of its capacities )  
 in accordance with Section 127 of the Corporations )  
 Act 2001 (Cth) with the authority of the )  
 Sole Director and Secretary: (Chargee) )

(Director/Secretary)

\_\_\_\_\_  
 (Director/Secretary)

**Executed** by Gunnsport Property Pty Ltd )  
 ABN 50 731 706 292 in all of its capacities in )  
 accordance with Section 127 of the Corporations )  
 Act 2001 (Cth) with the authority of the )  
 Sole Director and Secretary: (Chargee)' )

\_\_\_\_\_  
 (Director/Secretary)



## Performance Security Deed Terms & Conditions

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## Performance Security Deed Terms & Conditions

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## **Performance Security Deed Terms & Conditions**

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## Performance Security Deed Terms & Conditions

This Deed of Charge is made on the Charge Date between the Chargor and the Chargee.

voidable or refundable under any law (including, without limitation, any law relating to liquidation).

### Recitals

#### 1. Operative Provisions

##### 1.1. Interpretation

In this documentation, unless the context otherwise requires:

- (a) words importing:
  - (i) the singular include the plural and vice versa; and
  - (ii) any gender includes the other genders;
- (b) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (c) a reference to:
  - (i) a person includes a firm, unincorporated association, corporation and a government or statutory body or authority;
  - (ii) a person includes its legal personal representatives, executors, successors, assigns and substitutes, including, without limitation, persons substituted by novation;
  - (iii) a reference to any legislation or legislative provision includes any modification or re-enactment of it, a legislative provision substituted for it, and a regulation or statutory instrument issued under it;
  - (iv) a specific agreement or document includes that agreement or document as varied, replaced or novated from time to time (except to the extent that such variation, replacement or novation is prohibited by this document);
  - (v) a right includes a power, remedy, authority or discretion;
- (d) a reference to this document includes all schedules, annexures and appendices referred to in it;
- (e) headings do not affect the interpretation of this document.

##### 1.2. Consideration

The Chargor has entered into this document for valuable consideration from the Chargee and receipt of the consideration is acknowledged.

##### 1.3. Charge and Discharge

###### 1.3.1. Charge

The Chargor charges the secured property to the Chargee to secure the payment of the secured money.

###### 1.3.2. Discharge

The Chargee shall at the request of the Chargor discharge the security interests created by this document if the Chargor's obligation to pay the secured money is satisfied and in the Chargee's reasonable opinion:

- (a) no secured moneys will become owing (whether actually or contingently) by the Chargor to the Chargee; and
- (b) no payment towards the satisfaction of the Chargor's obligation to pay the secured money is likely to be void,

###### 1.3.3. Priority amount

- (a) The maximum prospective liability (as defined in the Corporations Act 2001) secured by this document for the purpose of fixing priorities under s282 of the Corporations Act 2001 but for no other purpose is \$100,000,000.
- (b) This document secures the payment of all prospective liabilities from time to time of the Chargor to the Chargee and the amount secured is not limited to the amount specified in sub-clause (a).

###### 1.3.4. Nature of charge

This document, subject to the provisions of this document, constitutes:

- (a) a fixed charge over the present and future interest of the Chargor in each of the following:
  - (i) all freehold and leasehold property and any other interest in real property and all buildings and fixtures on that property;
  - (ii) all machinery, plant and equipment (other than stock in trade);
  - (iii) all books of account and other documents and records (including in electronic form) relating to the Chargor's business and activities;
  - (iv) all Marketable Securities (other than those which are acquired and disposed of in the course of the ordinary day to day business of the Chargor);
  - (v) all goodwill attaching to any property or business;
  - (vi) all authorisations (statutory or otherwise) held by the Chargor in relation to the Chargor's business and activities or the ownership or use of the secured property;
  - (vii) the uncalled and called but unpaid capital of the Chargor and premiums on capital of the Chargor;
  - (viii) the title documents to any property;
  - (ix) all intellectual property rights, including, without limitation, all patents, copyrights, trade and service marks, designs, circuit layouts, trade secrets and confidential information whether registered or not and any rights relating to any of them;
  - (x) each security interest over any property;
  - (xi) all rights and proceeds relating to any claim in respect of confiscation, resumption, forfeiture or compulsory acquisition of any secured property;
  - (xii) the benefit of any contract to which the Chargor is a party, including, without limitation, all insurance policies and the proceeds of those policies;
  - (xiii) all book debts and other debts due to the Chargor; and
  - (xiv) any partnership or joint venture.
- (b) a floating charge over the balance of the secured property and any part of the secured property not otherwise effectively charged by way of fixed charge under Clause 1.3.4(a).



## Performance Security Deed Terms & Conditions

### 1.4. Payment of secured money

#### 1.4.1. Place, manner and time of payment

The Chargor, subject to Clause 1.3, must pay the secured money to the Chargee in accordance with any agreement which obliges the Chargor to pay it and in the absence of agreement:

- (a) upon demand, at a place and in a manner, reasonably required by the Chargee; and
- (b) in immediately available funds and without set-off, counter claims, conditions or, unless required by law, deductions or withholdings.

#### 1.4.2. Currency of Payment

- (a) The Chargor must pay the secured money in the currency in which it is payable under any agreement which obliges the Chargor to pay it and in the absence of agreement in the currency reasonably required by the Chargee.
- (b) If the Chargee accepts a payment under this document in a currency other than that in which payment is required by Clause 1.4, that payment will not satisfy the amount due for payment except to the extent that the Chargee could in the ordinary course of its business buy with the payment received the required currency within a reasonable time of receipt after the deduction of all costs relating to the purchase.

#### 1.4.3. Appropriation

The Chargee may, subject to any express provision in this document to the contrary, appropriate any payment towards the satisfaction of any moneys due for payment by the Chargor in relation to this document in any way that the Chargee determines and notwithstanding any purported appropriation by the Chargor.

#### 1.4.4. Payments in gross

The Chargee in applying towards satisfaction of the secured money any moneys received by it shall credit the Chargor only with that part of those moneys which is actually received by the Chargee in immediately available funds.

### 1.5. Interest

#### 1.5.1. Payment of interest

The Chargor shall pay interest on that part of the secured money which is from time to time owing by the Chargor to the Chargee.

#### 1.5.2. Interest payable under agreement

Interest shall be paid in accordance with any agreement requiring interest to be paid on the secured money.

#### 1.5.3. Interest non-default rate if no other agreement

To the extent that there is no agreement as to payment of interest in respect of secured moneys which are owing but not yet due for payment, interest will accrue from day to day on those secured moneys at the rate from time to time quoted by the Chargee's principal bankers on unsecured loans in excess of \$100,000.

#### 1.5.4. Interest overdue rate if no other agreement

To the extent that there is no agreement as to payment of interest in respect of secured moneys which are owing and which are due and payable but remain unpaid, interest will accrue from day to day on those secured moneys at the rate which is the higher of:

- (a) the rate of interest payable under any relevant judgment or order under which the liability to pay the secured money becomes merged; and
- (b) the rate which is 2% per annum higher than the rate specified in Clause 1.5.3.

#### 1.5.5. Calculation of interest

To the extent not inconsistent with any agreement requiring interest to be paid on the relevant secured moneys, interest will be computed from and including the day when the interest commences to accrue until but excluding the day of payment of those moneys, be calculated on the actual number of days elapsed on the basis of a 365 day year and be paid by the Chargor upon demand.

#### 1.5.6. Capitalisation

The Chargee may, unless another transaction document provides otherwise:

- (a) capitalise, upon a monthly basis on the last day of each month or on such longer periodical basis as the Chargee may determine, any part of any interest which is not paid when due for payment and interest is payable in accordance with this document upon that capitalised interest; and
- (b) continue to capitalise interest notwithstanding that as between the Chargee and the Chargor the relationship of Chargee and customer may have ceased, any composition entered into or agreed to by the Chargee, any judgment or order against the Chargor or any other thing.

#### 1.5.7. Merger

If the liability of the Chargor to pay to the Chargee any moneys payable under this document becomes merged in any deed, judgment, order or other thing, the Chargor shall pay interest on the amount owing from time to time under that deed, judgment, order or other thing at the higher of the rate payable under this document and that fixed by or payable under that deed, judgment, order or other thing.

### 1.6. Warranties and Representations

#### 1.6.1. Nature

The Chargor warrants and represents that:

- (a) the Chargor is duly incorporated in accordance with the laws of its place of incorporation validly exists under those laws and has the capacity to sue in its own name and to own its property and conduct its business as it is being conducted;
- (b) this document is enforceable by the Chargee in accordance with its terms and is not void or voidable;
- (c) the security interest which this document purports to create exists and has the priority which the Chargee has agreed to;
- (d) the Chargor has capacity unconditionally to execute and deliver and comply with its obligations under this document;
- (e) the Chargor has taken all necessary action to authorise the unconditional execution and delivery of and the compliance with its obligations under this document;
- (f) each authorisation necessary to enable the Chargor to unconditionally execute and deliver and comply with its obligations under this document and carry on its principal



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business or activity has been obtained, effected and complied with;

- (g) the unconditional execution and delivery of and compliance with its obligations by the Chargor under this document does not contravene:
  - (i) any law or directive from a government agency;
  - (ii) the constitution or other constitutional documents of the Chargor;
  - (iii) any agreement or instrument to which the Chargor is a party; or
  - (iv) any obligation of the Chargor to any other person;
- (h) all information given to and each statement made to the Chargee by or at the direction of the Chargor in relation to the transaction documents is in all material respects correct, complete and not misleading;
- (i) except as notified to the Chargee in writing prior to the date of this document, no litigation, arbitration or administrative proceeding is current, pending or, to the knowledge of the Chargor, threatened, which has or is likely to have a material adverse effect;
- (j) no unremedied or unwaived event of default has occurred; and
- (k) the secured property is free from security interests other than permitted encumbrances.

### 1.6.2. Trust

The Chargor warrants and represents that the Chargor has entered into this document and does hold all of the secured property as trustee of a Trust and the Chargor enters into this document as Trustee on behalf of the beneficial owners of the secured property.

### 1.6.3. General

- (a) The interpretation of any statement contained in any warranty or representation shall not be restricted by reference to or inference from any other statement contained in any other warranty or representation.
- (b) The Chargor acknowledges that the Chargee has entered into the transaction documents in reliance upon the warranties and representations.
- (c) Each warranty and representation will survive the execution of this document and be deemed to be repeated with reference to the facts and circumstances then existing whenever financial accommodation is requested or given

## 1.7. General Obligations

### 1.7.1. Obligations and undertakings contained in transaction documents

The Chargor shall comply with all of its obligations and undertakings relating to the secured property as contained in the transaction documents.

### 1.7.2. Prohibited dealings

- (a) The Chargor must not without the prior written consent of the Chargor transfer or otherwise dispose of any part of the secured property which is for the time being subject to a fixed charge under this document or cause or permit any person to acquire any interest (except a permitted encumbrance) in any such secured property.

- (b) The Chargor, subject to Clause 1.7.2(c), may in the ordinary course of its ordinary trading business dispose of any estate or interest in that part of the secured property which is for the time being subject to a floating charge under this document.
- (c) The Chargor must not cause or permit any security interest to exist over the secured property except permitted encumbrances.

### 1.7.3. Records and inspection

The Chargor must:

- (a) prepare and keep books, accounts and accounting and other records in accordance with applicable laws and, unless inconsistent with those laws, in accordance with generally accepted accounting principles and practices in Australia applied on a consistent basis; and
- (b) upon demand, make available for inspection and copying by the Chargee the books, accounts and accounting and other records of the Chargor.

### 1.7.4. Information to be given

The Chargor must give to the Chargee:

- (a) information and reports as provided for in the transaction documents;
- (b) upon demand, any other information in the possession or under the control of the Chargor which in the Chargee's reasonable opinion is relevant to the secured property or this document;
- (c) immediately upon the happening of an event of default, full written particulars of it and of the action taken or proposed to be taken by the Chargor to remedy it;
- (d) upon receipt, of a copy of any notice or order received from any government agency relating to any proposal of the government agency in relation to the secured property which if implemented may have or be likely to have a material adverse effect; and
- (e) full particulars of any litigation, arbitration or administrative proceeding which affects the Chargor or the secured property and which has or is likely to have a material adverse effect, as soon as it is commenced or to the knowledge of the Chargor is threatened.

### 1.7.5. Insurance

(a) The Chargor must:

- (i) effect and maintain insurance over and in relation to the secured property with reputable, responsible and solvent insurers, for amounts, against risks and upon terms which the Chargee reasonably requires or, if the Chargee does not notify the Chargor of its requirements, which a prudent and reasonable owner of the secured property would effect and maintain;
- (ii) effect and maintain workers' compensation, accident and public liability insurances for amounts, against risks and upon terms which would be effected by a prudent company engaged in a similar business to the Chargor's business;
- (iii) ensure that each such insurance is taken out in the names of the Chargor and the Chargee for their respective rights and interests;



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- (iv) pay the premiums and other amounts payable for these insurances when due and, upon demand, give to the Chargee a certificate in form and substance satisfactory to the Chargee from the insurer to the effect that the insurances are current and no premiums or other moneys are due and owing to the insurer;
  - (v) not do or permit or omit to be done anything which may prejudice or make void or voidable any of those insurances; and
  - (vi) upon demand, give to the Chargee all policies and documents relating to the insurances, including, without limitation, all renewal certificates, certificates of currency and endorsement slips.
- (b) Any moneys paid by an insurer under any insurance must, subject to the provisions of the insurance, be applied towards the replacement, reconstruction or reinstatement of the secured property in respect of which the money is paid except to the extent to which the Chargee, subject to the rights of any prior ranking holder of a security interest, may require it to be applied:
- (i) in payment of any part of the secured money which is then actually owing whether or not it is due for payment; and
  - (ii) as to an amount equal to the secured money which is then contingently owing and any money or damages which in the reasonable opinion of the Chargee there is a prospect may become owing by the Chargor to the Chargee, in the manner described in Clause 1.5;
  - (iii) and, any surplus shall be paid to the Chargor or other person entitled to it.

#### 1.7.6. Title documents

- (a) The Chargor must cause and permit the title documents to that part of the secured property which is from time to time subject to a fixed charge to be delivered to the Chargee.
- (b) The Chargee may have possession and control of those title documents until the Chargee is obliged to discharge the security interests created by this document.
- (c) The Chargor is not obliged to deliver any title documents to the Chargee if those title documents have been delivered to the holder of another security interest over the secured property which ranks in priority before the security interests created by this document and to which the Chargee has consented, but the Chargor shall promptly deliver such title documents to the Chargee immediately after that prior ranking security interest is discharged.

#### 1.7.7. Further Assurances

The Chargor must promptly execute all documents and do all things which the Chargee from time to time reasonably requires to:

- (a) further or more effectively or perfectly charge, mortgage, assure or secure the secured property to the Chargee in a manner not inconsistent with this document or any collateral security;
- (b) establish the priority of this document and to stamp and register this document in any relevant jurisdiction; and
- (c) enable or assist the exercise of any right granted to the Chargee under this document or otherwise conferred on

the Chargee and for this Charge to be registered on the PPSR pursuant to the provisions of the PPSA.

#### 1.7.8. Protection of charged property

- (a) The Chargor must keep the secured property in good repair and in good working order, allowing for fair wear and tear, and promptly carry out any reasonable direction of the Chargee to remedy any defect in the condition of the secured property.
- (b) The Chargor must institute or defend any legal proceedings which the Chargee may reasonably require to protect the secured property.

#### 1.7.9. Taxes

The Chargor must promptly pay when they become due for payment all taxes payable by it from time to time in its own right or on behalf of any person unless the Chargor's liability to pay those taxes is being diligently contested by the Chargor in good faith by appropriate proceedings and the Chargee is satisfied that proper provision has been made by the Chargor for a finding that the taxes are due for payment by the Chargor.

#### 1.7.10. Default

The Chargor must not cause or permit any event of default to occur.

#### 1.7.11. Compliance with laws

The Chargor must duly comply with all applicable laws and with its obligations in relation to the secured property, including, without limitation, under any security interest over the secured property, any law or authorisation applicable to the secured property and any lawful direction from any government agency.

#### 1.7.12. Chargee's right to enter

- (a) The Chargee and its nominees may at any reasonable time enter on any property owned, used or occupied by the Chargor for any purpose related to this document.
- (b) The Chargor must do everything on its part to provide the Chargee with all reasonable assistance and facilities to enable the Chargee to exercise its rights under this document.

#### 1.7.13. Conduct of business

The Chargor must conduct its business in a proper and efficient manner and do everything necessary to maintain its corporate existence in good standing.

#### 1.7.14. Account for proceeds of debts

The Chargee may at any time require the Chargor to pay the proceeds of any book debt or other debt into a bank account nominated by the Chargee either with the Chargee or another person of which the Chargee is a sole or joint signatory

#### 1.8. Events of default

Each of the following is an event of default (whether or not caused by anything outside the control of the Chargor):

- (a) **Monetary Default** The Chargor fails to pay when due an amount payable by it under this document or under any other transaction document, and such default continues for 60 days.
- (b) **Other Obligations** The Chargor fails to comply with any of its other obligations under this document and, if in the opinion of the Chargee that failure can be remedied within 60 days, the Chargor does not remedy the failure within 60



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- days after the Chargee gives notice to the Chargor requiring that failure to be remedied; and the Chargor does not during that period take all action which in the Chargee's opinion is necessary or desirable to quickly remedy that default.
- (c) **Misrepresentation** A representation, warranty or statement by or on behalf of the Chargor in this document, or in a document provided under or in connection with this document, is not true or is incorrect in a material respect or is misleading in a material respect when made or repeated.
- (d) **Cross Default** The Chargor fails to pay any financial indebtedness of the Chargor aggregating to at least \$50,000.00 (or its equivalent in another currency). For the purpose of this sub-clause (d), if a person is required to provide cash cover for financial indebtedness as a result of an actual, likely or threatened default or an event of default or termination, cancellation, special prepayment or similar event, whatever called, that financial indebtedness will be taken to be due and payable.
- (e) **Insolvency Event** Any one or more of the following events occurs in relation to the Chargor:
- (i) an application (not being an application withdrawn or dismissed within 90 days of the making of the application) is made to a court for an order, or an order is made, that it be wound up or that a liquidator or provisional liquidator be appointed;
  - (ii) except to reconstruct or amalgamate while solvent with the prior written consent of the Chargee, it enters into, or resolves to enter into, a scheme of arrangement, deed of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them;
  - (iii) it resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so, except to reconstruct or amalgamate while solvent upon terms approved in writing by the Chargee, or it is otherwise wound up or dissolves;
  - (iv) it is unable to pay its debts as they fall due or is or it states that it is insolvent or it is deemed or presumed insolvent under any applicable legislation;
  - (v) a receiver, receiver and manager, trustee, administrator or similar official is appointed to the Chargor or over any or all of its assets or undertaking;
  - (vi) it takes any step to obtain protection or is granted protection from its creditors, under any applicable legislation;
  - (vii) a liquidation occurs; or
  - (viii) anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.
- (f) **Enforcement Against Assets** A security interest becomes enforceable or is enforced, or a distress, attachment or other execution is levied or enforced over, all or any of the assets and undertaking of the Chargor.
- (g) **Cessation of Business** The Chargor ceases or threatens to cease to carry on its business or a substantial part of its business.
- (h) **Reduction of Capital** Without the prior consent of the Chargee, the Chargor reduces its capital (including, without limitation, a buy back of its shares but excluding a redemption of redeemable shares) or effects a resolution referred to in s 254N(1) of the Corporations Act 2001.
- (i) **Vitiating**
- (i) All or any part of this document becomes void, illegal, invalid, unenforceable or of limited force and effect or is claimed to be so by the Chargor;
  - (ii) The security interest created by this document ceases to have the priority which it purports to have under this document or ceases to secure the payment of the moneys or the performance of the obligations which it purports to secure, other than by any act of the Chargee.
- (j) **Amendment of Constitution** The constitution of the Chargor is amended in a material respect without the prior consent of the Chargee (which must not be withheld unreasonably).
- (k) **Revocation of Authorisation** An authorisation which is material to the performance by the Chargor of this document or to the ongoing operation of its business in the ordinary course, is repealed, revoked, terminated or expires, or is modified or has conditions attached in a manner which has in the Chargee's opinion a material adverse effect; and is not immediately replaced by another authorisation acceptable to the Chargee.
- (l) **Material Adverse Change** Any other event or series of events, whether related or not, occurs which has in the Chargee's opinion a material adverse effect.
- (m) **Compulsory Acquisition**
- (i) All or any substantial or material part of the secured property is compulsorily acquired by or by order of a government agency or under law;
  - (ii) a government agency orders the sale, vesting or divesting of all or any substantial or material part of the secured property; or
  - (iii) a government agency takes a step for the purpose of any of the foregoing or proposes or threatens to do any of the foregoing and the Chargor fails to take or diligently to pursue steps necessary or reasonably requested by the Chargee for the purpose of preventing the occurrence of any of the foregoing.
- (n) **Governmental Interference** A law or anything done by a government agency wholly or partially to a material extent renders illegal, prevents or restricts the performance or effectiveness of this document or otherwise has a material adverse effect.
- (o) **Transaction Documents** Any event of default (as that expression, or any equivalent expression, is defined in any transaction document) occurs.

### 1.9. Crystallisation

#### 1.9.1. By notice

The Chargee may serve a written notice upon the Chargor after an event of default has occurred stating that the floating charge is to convert into a fixed charge and describing the property affected by the notice, whereupon the floating charge will convert into a fixed charge in respect of the property described in that notice.



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### 1.9.2. Automatic

The floating charge shall automatically convert into a fixed charge over:

- (a) all of the secured property not already subject to a fixed charge under this document if:
  - (i) any notice is given by the Chargee under Clause 1.9.1 or if the Chargee takes any steps in enforcement of the security granted by this document;
  - (ii) the Chargor ceases or threatens to cease to carry on business or a substantial part of its business except as permitted under a transaction document; or
  - (iii) an order is made or a resolution is passed for the winding up of the Chargor;
- (b) any proceeds of any book debts or other debt, upon any creditor of the Chargor taking any legal action or other proceedings to have those proceeds paid to the creditor pursuant to any statute or other law;
- (c) an asset which is secured property not already subject to a fixed charge under this document if any of the following occurs in relation to that asset:
  - (i) the Chargor deals or attempts to deal with that asset other than in accordance with, or as permitted by, this document;
  - (ii) a person takes any action to obtain or obtains any writ, order, notice or other thing relating to any distress, attachment or other execution against that asset;
  - (iii) any person takes any action to exercise any right in respect of a security interest held by that person over that asset;
  - (iv) upon the appointment by any person of an administrator, receiver or receiver and manager over that asset; and
  - (v) any action is taken to issue to any person a notice under s 218 or s 255 of the Income Tax Assessment Act 1936 (Cth); s 74 of the Sales Tax Assessment Act 1992 (Cth); or a notice under any similar legislation.

### 1.9.3. Reinstatement of floating charge

If the floating charge has converted into a fixed charge over any part of the secured property the Chargee may serve a written notice upon the Chargor stating that the fixed charge is to convert into a floating charge and describing the property affected by the notice, whereupon the fixed charge will convert into a floating charge over the property described in that notice and again be subject to the provisions of this Clause 1.9.

### 1.9.4. Fixed charge over book or other debt proceeds

If a floating charge over proceeds of any book debts or other debts crystallises and becomes subject to a fixed charge, the Chargor must upon receipt of those proceeds immediately pay those moneys into a bank account nominated by the Chargee either with the Chargee or another person and of which the Chargee is the sole or a joint signatory.

### 1.10. Default Powers

#### 1.10.1. Powers on default

The Chargee may at any time after an event of default has occurred exercise any or all of the rights set out in this

Clause 3.10 in any manner and at any time and notwithstanding that a receiver/controller has been appointed:

#### (a) Acceleration

The Chargee may at any time by notice to the Chargor declare that:

- (i) the secured money which is then owing or payable, is immediately due for payment; and
- (ii) an amount equal to that part of the secured money which is contingently owing or payable, is immediately due for payment;

and those moneys will immediately become payable by the Chargor.

#### (b) Statutory and implied powers

The Chargee may exercise all rights conferred by the laws of any relevant jurisdiction upon mortgagees or Chargees.

#### (c) Sale

The Chargee may sell or otherwise dispose of any of the secured property and, without limitation, any sale or disposal may be:

- (i) by private treaty, auction, tender or otherwise;
- (ii) for cash or with the deferral of the whole or part of the purchase price (with or without interest or security);
- (iii) in one lot or in separate parcels;
- (iv) in conjunction with the sale or disposal in relation to any other property by any other person, with full power to apportion costs, expenses, purchase money, rent, fees and other proceeds; and
- (v) upon terms and conditions that the Chargee determines, whether or not the Chargee has taken possession.

#### (d) General powers

The Chargee may:

- (i) enter, take possession of, take control of and get in the secured property;
- (ii) receive rents and profits derived from the secured property;
- (iii) carry on any business or activity of the Chargor;
- (iv) manage, develop, use, exploit, quietly enjoy and otherwise deal with the secured property;
- (v) exercise the rights and remedies of the Chargor and comply with its obligations in respect of the secured property and cause and permit any other person to comply with their obligations in respect of the secured property;
- (vi) vary, replace or release any right or interest of the Chargor in or in relation to the secured property;
- (vii) carry out or complete, in any form, the construction of any works;
- (viii) lease, license or hire out the secured property;
- (ix) surrender or accept the surrender of the secured property;



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- (x) exchange any part of the secured property for any other property and, if there is a difference in value between the property exchanged, give or receive, as the case may be, any moneys or other consideration equal to the difference in value in order to give or receive equal value for the exchange;
- (xi) acquire or grant easements, profits a prendre, covenants or other rights which benefit, burden or relate to the secured property and dedicate for any public purpose any part of the secured property;
- (xii) subdivide or consolidate any land forming part of the secured property;
- (xiii) grant options and rights of first refusal to acquire the secured property;
- (xiv) insure, maintain, improve and protect the secured property;
- (xv) sever trees, improvements or fixtures from the balance of the secured property and deal with them separately from the balance of the secured property;
- (xvi) take on lease or on hire or otherwise acquire any property necessary or convenient in relation to the carrying on of a business or activity of the Chargor;
- (xvii) use the property and services of the Chargor and the services of its personnel in the exercise of any rights under this document;
- (xviii) carry out, vary, replace, rescind, repudiate, enforce or terminate any agreement to which the Chargor is a party and which relates to the secured property;
- (xix) give any guarantee and indemnity or either of them for the protection or enhancement of the secured property; and
- (xx) operate any bank account which forms part of the secured property and open and operate any further bank accounts;
- (xxi) promote or cause the formation of companies including for the purpose of entering into contracts for the transfer to or acquisition by those companies of any of the secured property or so that the companies assume the obligations of the Chargor, or both;
- (xxii) sell or assign any secured property to a person where that person assumes obligations of the Chargor;
- (xxiii) exercise any voting or other rights or powers in respect of any secured property and do anything in relation to Marketable Securities; and
- (xxiv) surrender, make, enforce, compromise or settle any claim under or in connection with any insurances.
- (e) Share capital  
The Chargee may:
- (i) in the name of the Chargor make a call in respect of money unpaid on Shares in the Chargor; and
- (ii) enforce payment of any call that is due for payment and unpaid, whether the calls are made by the Chargee or otherwise.
- (f) Liquidation  
The Chargee may where a debt or other monetary obligation is owed (whether actually or contingently) to the Chargor, prove the debt or obligation in a liquidation, receive dividends and assent to any proposal for an arrangement (including a scheme of arrangement), composition or a compromise with, or an assignment for the benefit of, creditors.
- (g) Raise and lend money  
The Chargee may upon any terms and conditions that the Chargee thinks fit:
- (i) (A) borrow or otherwise raise moneys or obtain financial accommodation on the security of the secured property; and
- (B) lend or otherwise grant financial accommodation to a receiver or an attorney on the security of the secured property, including, without limitation, any moneys required in relation to the exercise of any right by the Chargee or a receiver or an attorney; and
- (ii) deal with any security interest granted by it over the secured property and enter into any agreement relating to the priority of that security interest and discharge it.
- (h) Investment of moneys  
Any moneys received by the Chargee which are not required to be immediately applied in the exercise of any right or pursuant to Clause 1.9 may be invested in any way authorised by the laws of any relevant jurisdiction for the investment of trust moneys and the Chargee may vary or dispose of the investment.
- (i) Miscellaneous powers  
The Chargee may:
- (i) on behalf of the Chargor, draw, accept, make or endorse any bill of exchange or promissory note;
- (ii) affix and countersign any seal of the Chargor for the purpose of exercising any of its rights under this document;
- (iii) employ or engage any person (including professional advisors or consultants) for the purpose of exercising any of the Chargee's rights under this document;
- (iv) on behalf of the Chargor, commence, defend, prosecute, settle, discontinue and compromise litigation, administrative or arbitral proceedings in relation to the secured property;
- (v) on behalf of the Chargor, enter into and execute and deliver any documents and agreements for the purposes of this document;
- (vi) on behalf of the Chargor, give receipts and release, discharge or compromise any debt or other obligation owed to or by the Chargor and which is part of the secured property;
- (vii) make, enforce, settle and compromise all claims in respect of any confiscation, resumption, forfeiture or compulsory acquisition of any secured property;
- (viii) delegate to any person any right (including this right of delegation) under this document;
- (ix) do anything necessary to perform or observe any of the Chargor's obligations under this document;



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- (x) do or cause to be done anything to protect the priority of this document, to protect the Chargor's or the Chargee's right, title or interest in the secured property, to enforce this document, to recover the secured money or to protect or enhance the secured property; and
- (xi) do anything incidental or conducive to the exercise of any of its other rights under this document.

#### (j) Receivers

The Chargee may:

- (i) (A) either before or after it has taken possession of the secured property and either before or after an order has been made or a resolution passed for the winding up of the Chargor, appoint in writing any one or more persons to be a receiver or receiver and manager of the secured property or a part of it; and
  - (B) appoint a different receiver/controller or receiver and manager for different parts of the secured property;
- (ii) if more than one person is appointed as receiver/controller of any property, empower them to act jointly or jointly and severally;
- (iii) remove the receiver/controller, appoint another in his or her place if the receiver is removed, retires or dies, and reappoint a receiver who has retired or been removed; and
- (iv) fix or vary the remuneration of the receiver/controller.

#### (k) Agent

The Chargee may appoint any person or any two or more persons jointly and severally as its agent to exercise any of its rights under this document and the provisions of Clause 1.9(j) apply as if the agent was a receiver/controller.

#### 1.10.2. General

The interpretation of any right set out in Clause 1.9 shall not be restricted by reference to or inference from any other right.

#### 1.11. Receivers & Controllers

##### 1.11.1. Receiver/Controller as agent

- (a) A receiver, subject to Clause 1.10(b) and 1.10(c) will be the agent of the Chargor who alone shall be responsible for the receiver's acts and omissions and remuneration.
- (b) The Chargee may appoint a receiver/controller as the agent of the Chargee and delegate to a receiver any of the Chargee's rights under this document.
- (c) To the extent that as a result of an order being made or a resolution being passed for the winding up of the Chargor, a receiver/controller ceases to be the agent of the Chargor, the receiver will immediately become the agent of the Chargee.

##### 1.11.2. Powers

- (a) A receiver/controller shall have the right in relation to any property in respect of which the receiver is appointed to do everything that the Chargor may lawfully authorise an agent to do on behalf of the Chargor in relation to that

property and, without limitation, a receiver may in relation to that property exercise:

- (i) the rights conferred upon receivers/controllers and receivers and managers by the Corporations Act 2001 and the laws of any relevant jurisdiction;
  - (ii) the rights set out in Clause 1.10.1;
  - (iii) the rights of the Chargor and the directors of the Chargor; and
  - (iv) any other rights the Chargee may by written notice to a receiver give to a receiver.
- (b) The Chargee may by written notice to a receiver at the time of a receiver's appointment or any subsequent times give any rights to a receiver that the Chargee thinks fit.

#### 1.12. Exercise of default rights

##### 1.12.1. No hindrance

The Chargor must not cause or permit the Chargee, a receiver or an attorney to be prevented or hindered from exercising its rights under this document.

##### 1.12.2. Performance of obligations of Chargor

The Chargee or any person authorised by it may do anything which the Chargee determines is necessary or expedient to make good or remedy any breach by the Chargor of any of the provisions of this document.

##### 1.12.3. Charge in possession

- (a) If the Chargee, a receiver or an attorney exercises its rights under this document or takes possession of the secured property, it will not be liable to account as a mortgagee or Chargee in possession.
- (b) If the Chargee has taken possession of the secured property it may give up possession of the secured property at any time and may re-enter into possession.
- (c) The obligations of the Chargor under this document relating to the secured property shall not be affected by the Chargee, any receiver or any attorney taking possession of the secured property.

##### 1.12.4. Order of enforcement

The Chargee is not under any obligation to marshal in favour of the Chargor any security interest held by the Chargee or any of the funds or assets which the Chargee may be entitled to receive or have a claim on and the Chargee is not obliged to resort to any collateral security or enforce any rights against any other person before it resorts to enforcement of this document.

##### 1.12.5. Default notice

- (a) The Chargor and the Chargee (unless otherwise required by a law which cannot be excluded) dispense with any requirement under any statute or rule of law or equity that notice be given by the Chargee, receiver or attorney, as the case may be, or that it allow the lapse of any period of time (including without limitation, a period to rectify a default), before exercising a right.
- (b) A notice referred to in sub-clause (a) includes any notice identifying a default by the Chargor, giving a period to rectify a default by the Chargor or giving notice that a power to sell or take possession of any secured property or to appoint a receiver to any secured property can be exercised if the default is not rectified.



## Performance Security Deed Terms & Conditions

- (c) If an applicable law which cannot be excluded requires a notice to be given or a lapse of time to occur before any right can be exercised, then if no particular period of notice or lapse of time is required, or if the period of notice or lapse of time is capable of being abridged by being stipulated as a lesser period, the period of notice or lapse of time shall be the longer of one day or such minimum period as is capable of being stipulated.

### 1.13. Application of Money

#### 1.13.1. Order of application

The remedy proceeds may, subject to any mandatory statutory requirements, be applied by the Chargee, any receiver or any attorney towards any amount and in any order which the Chargee, any receiver or any attorney, as the case may be, determines in its absolute discretion, or if no such determination is made in the following order:

- (a) first in payment of all amounts which, to the extent required by law, have priority over the payments specified in the balance of this Clause 1.13;
- (b) second, towards the payment or reimbursement of the costs and expenses incurred by the Chargee, any receiver or any attorney in the exercise or enforcement or attempted exercise or enforcement of its rights under this document;
- (c) third, towards the payment or reimbursement of such other outgoings in relation to the secured property as the Chargee, any receiver or any attorney determines, forth, towards:
  - (i) the remuneration of any receiver or attorney; and
  - (ii) any moneys owing by the Chargor to any Representative of the Chargee, any receiver or any attorney;
- (d) fifth, in payment and discharge in order of their priority, of any security interest of which the Chargee, receiver or the attorney is aware and which has priority to the Chargee;
- (e) sixth, towards the secured money which is then due for payment or otherwise in accordance with Clause 1.13 and the remedy proceeds shall be applied as against interest, principal and any other amount as the Chargee, receiver or attorney determines; and
- (f) seventh, to any person entitled to the secured property or authorised to give receipts for those moneys.

#### 1.13.2. Creditor's certificate and disputes

- (a) The Chargee may rely upon a certificate issued by any person who claims to be entitled to receive any of the remedy proceeds to the effect that moneys are owing by the Chargor to it and stating the amount owing, without being obliged to make any further enquiry.
- (b) If there is any dispute between any persons (other than the Chargee) as to who is entitled to receive the remedy proceeds, the Chargee may pay those moneys into court and when that is done the Chargee will have no further obligations in relation to those moneys.

#### 1.13.3. No interest on remedy proceeds

The Chargee is not obliged to pay interest to any person upon the remedy proceeds.

#### 1.13.4. Payment into bank account

If the Chargee pays any moneys into a bank account in the name of any person to whom the Chargee is obliged to pay moneys under Clause 4.1 and notifies that person of the particulars of the account the Chargee will have no further obligations in relation to those moneys.

#### 1.13.5. Contingent and prospective indebtedness

If:

- (a) part of the secured money is contingently owing; or
- (b) in the reasonable opinion of the Chargee there is a prospect that the moneys forming part of the secured money may become owing (whether actually or contingently) by the Chargor to the Chargee, and the Chargee receives any moneys pursuant to this document, the Chargee may:
  - (i) pay those moneys into an interest bearing deposit account to hold as security for the payment of the secured money on terms which the Chargee thinks fit with any person (including without limitation the Chargee) until that part becomes actually owing or no longer falls within the definition of secured money; and
  - (ii) at any time appropriate any moneys in that account towards the satisfaction of any moneys due for payment by the Chargor to the Chargee in any way that the Chargee thinks fit,

and when the secured money is satisfied in full or the Chargee no longer holds that opinion, the Chargee shall pay the balance to any person entitled to the secured property or authorised to give receipts for those moneys.

#### 1.13.6. Payments during default notice period

If during the period from the service of a notice requiring the rectification of a default in the payment of moneys by the Chargor under this document until the expiration of that notice the Chargor pays any moneys to the Chargee towards satisfaction of the secured money, the Chargee may apply those moneys first, towards satisfaction of any moneys due for payment by the Chargor to the Chargee other than those which are the subject of the notice and secondly, towards satisfaction of the moneys which are the subject of the notice.

#### 1.13.7. Accounting for remedy proceeds

The Chargee, any receiver or any attorney is not obliged to account to the Chargor for any moneys relating to the exercise by any of them of any right until moneys are actually received in immediately available funds and, without limitation, if any of them sell the secured property on terms whereby:

- (a) any part of the purchase price remains unpaid (whether secured or unsecured) after transfer of the secured property to the purchaser; or
- (b) the purchase price is payable in instalments on or before the transfer of the secured property to the purchaser,

they are not obliged to account for the purchase price before it is actually received in immediately available funds.

#### 1.13.8. Reinstatement of rights

If under any law relating to liquidation, a transaction including a payment in connection with the secured money is void, voidable or liable to be set aside, or otherwise unenforceable, then:



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- (a) the Chargee is immediately entitled as against the Chargor to the rights in respect of the secured moneys to which it would otherwise have been entitled had the transaction not taken place; and
- (b) at the request of the Chargee, the Chargor agrees to immediately do anything including execution of any document to restore to the Chargee any security interest it held from the Chargor and its rights under this document immediately before the transaction.

### 1.13.9. Continuing security

This document is a continuing security and remains in full force and effect despite any intervening payment, settlement or other transaction or thing until (subject to cl 3.8) a full and final discharge of this document is given to the Chargor.

### 1.14. Third Party Dealings

#### 1.14.1. Chargee's receipts and discharges

The Chargee may give valid discharges and receipts for any moneys payable by any third party in respect of any exercise of a right by the Chargee, any receiver or any attorney.

#### 1.14.2. No duty to enquire

- (a) Any person dealing with the Chargee, any receiver or any attorney in relation to the exercise by any of them of a right under this document shall not be concerned to enquire whether:
    - (i) the right is exercisable or properly exercised;
    - (ii) the receiver or attorney is properly appointed;
  - (b) any moneys paid by it to the Chargee, receiver or attorney are properly applied,
- and the title of that person to any property acquired by it from the Chargee, receiver or attorney, will not be adversely affected by the right not being exercisable or any improper appointment, exercise of the right or application of moneys by the Chargee, any receiver or any attorney of which it does not have actual notice.
- (c) The benefit of Clause 3.14.2(1) is held on trust for the benefit of the Chargee and each person dealing with the Chargee, any receiver or attorney.

### 1.15. Costs and Expenses

#### 1.15.1. Nature

The Chargor must pay and if paid by the Chargee must reimburse to the Chargee:

- (a) the Chargee's reasonable costs and expenses relating to:
  - (i) the negotiation, preparation, execution, stamping and registration of this document or any document contemplated by this document;
  - (ii) any consent, request for consent, communication, waiver of any right, or the variation, replacement or discharge (partial or otherwise) of this document or any document contemplated by it;
  - (iii) the exercise or attempted exercise or the preservation of any rights of the Chargee under this document;
  - (iv) the occurrence of any event of default; and
  - (v) the creation, lodgment, registration or release of, or any dealing relating to, any security interest under

the secured property including any security interest created by this document.

- (b) any taxes and registration or other fees (including fines and penalties relating to the taxes and fees) which are payable or are assessed by a relevant government agency or other person to be payable in relation to this document or any document or transaction contemplated by this document.

#### 1.15.2. General

- (a) A reference to costs and expenses in this document includes, without limitation, legal costs and expenses on a full indemnity basis.
- (b) Anything which this document states is to be done by either the Chargee or the Chargor is to be done at the Chargor's expense.

#### 1.15.3. Remuneration

The Chargee, any receiver and any attorney shall be remunerated by the Chargor for any services rendered by them in relation to the exercise of any right under this document and the rate of the remuneration and the manner of payment will be that determined by the Chargee.

### 1.16. Indemnities

#### 1.16.1. Nature

- (a) The Chargor indemnifies the Chargee against any liability, loss, cost or expense (including, without limitation, any liability relating to funds raised, contracted for or used by the Chargee to fund any financial accommodation made available or agreed to be made available to the Chargor) caused or contributed to by:
  - (i) any failure of the Chargor to comply with any obligation under this document;
  - (ii) any event of default;
  - (iii) the exercise or attempted exercise of any right by the Chargee, any receiver or any attorney under this document; or
  - (iv) any act by the Chargee in reliance on any communication purporting to be from the Chargor or to be given on behalf of the Chargor.
- (b) The Chargor must indemnify each receiver and attorney and their respective Representatives and the Representatives of the Chargee against liability, loss, cost and expense caused or contributed to by anything the Chargee is indemnified against under this Clause 1.16.1 and the Chargee holds the benefit of this cl 3.16.1 upon trust for those persons.

#### 1.16.2. Currency deficiency

If there is any deficiency between:

- (a) an amount payable by the Chargor under this document which is received by the Chargee in a currency other than the currency payable under this document because of a judgment, order or otherwise; and
- (b) the amount produced by converting the payment received from the currency in which it was paid into the currency in which it was agreed to be paid, the Chargor must pay to the Chargee the deficiency and any loss, costs or expenses resulting from it.



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### 1.16.3. Independence and survival

Each indemnity in this document is a continuing obligation, separate and independent from the other obligations of the Chargor and survives the termination of this document.

### 1.17. Miscellaneous

#### 1.17.1. Set-off

The Chargee may:

- (a) set-off against any debt due for payment by the Chargor to the Chargee, any debt due for payment by the Chargee to the Chargor, including, without limitation, any moneys in any currency held by the Chargee for the account of the Chargor in any place; and
- (b) if the debt due for payment by the Chargee to the Chargor is payable in a currency other than that in which the debt due for payment by the Chargor to the Chargee is payable, convert the Chargee's debt into the currency in which the Chargor's debt is payable.

#### 1.17.2. Chargee's determination

- (a) If any matter relating to this document is to be resolved by the determination or opinion of the Chargee, receiver or attorney:
  - (i) the determination or opinion will bind the Chargor if it is reasonable;
  - (ii) the Chargee, receiver or attorney is not obliged to give reasons for the determination or opinion; and
  - (iii) the Chargor will have the onus of proving that a determination or opinion of the Chargee, receiver or attorney is unreasonable.
- (b) A determination or an opinion of an Authorised Officer of the Chargee which is given to the Chargor or otherwise expressed or acted upon by the Chargee as being a determination or an opinion of the Chargee will be deemed to be a determination or opinion of the Chargee.

#### 1.17.3. Supervening legislation

Any present or future legislation which operates:

- (a) to lessen or vary in favour of the Chargor any of its obligations in connection with this document; or
- (b) to postpone, stay, suspend or curtail any rights of the Chargee, receiver or attorney under this document including any right to lease or deal with the secured property;
- (c) is excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.

#### 1.17.4. Business days

- (a) If the day on which any thing is to be done by the Chargor under this document is not a business day, that thing shall be done on the preceding business day.
- (b) If anything is to be done by the Chargor on a particular day and it is done:
  - (i) after the time by which this document states it must be done or, if this document does not state a time, after 5.00pm in the place where it is to be done; or
  - (ii) on a day which is not a business day in the place where it is to be done, it will be deemed to have been

done at the commencement of the next business day in the place where it is to be done.

#### 1.17.5. Confidentiality

To the extent permitted by law, the Chargee may disclose to any person who proposes to enter into a contract with the Chargee in relation to this document all information about the Chargor which in the Chargee's opinion is appropriate.

#### 1.17.6. Exchange rate

Subject to any express provision to the contrary, if for the purposes of this document it is necessary to convert one currency into another currency the conversion shall be effected using an exchange rate reasonably selected by the Chargee.

#### 1.17.7. Amendment

No variation of a provision of this document or consent of the Chargee is effective unless it is confirmed in writing executed by the Chargee.

#### 1.17.8. Waiver and exercise of rights

- (a) A right in favour of the Chargee under this document, a breach of an obligation of the Chargor under this document or the occurrence of an event of default can only be waived by a written instrument signed by the Chargee. No other act, omission or delay of the Chargee will constitute a waiver.
- (b) A single or partial exercise or waiver by the Chargee of a right relating to this document will not prevent any other exercise of that right or the exercise of any other right.
- (c) The Chargee and its Representatives will not be liable for any loss, cost or expense of the Chargor caused or contributed to by the waiver of, exercise of, attempted exercise of, failure to exercise or delay in exercising a right and the Chargee holds the benefit of this Clause 1.17.8 upon trust for itself and its Representatives.

#### 1.17.9. Rights cumulative

The rights of the Chargee under this document are cumulative and are in addition to any of its other rights.

#### 1.17.10. Assignment

The Chargor must not assign or dispose of or grant any security interest in respect of any interest in or rights under this security without the written consent of the Chargee. The Chargee at any time may, subject to the provisions of any other agreement with the Chargor, do any of those things.

#### 1.17.11. Severance

Any provision of this document or any collateral security which is prohibited or unenforceable in any jurisdiction is ineffective to the extent of that prohibition or unenforceability. This does not invalidate or affect the validity and enforceability of that provision in any other jurisdiction nor the validity and enforceability of the remaining provisions of this document or any collateral security.

#### 1.17.12. Counterparts

This document may consist of a number of counterparts and if so the counterparts taken together constitute one and the same instrument.

#### 1.17.13. Governing law and jurisdiction

- (a) This document is governed by and shall be construed in accordance with the laws of the Relevant Jurisdiction.



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- (b) The parties irrevocably and unconditionally submit to the nonexclusive jurisdiction of the courts of the Relevant Jurisdiction and any courts which have jurisdiction to hear appeals from any of those courts and the parties waive any right to object to any proceedings being brought in those courts.

### 1.17.14. Joint and several liability

Where 2 or more parties comprise the Chargor:

- (a) a reference to the Chargor includes each and any 2 or more of them; and
- (b) the obligations on the part of the Chargor bind them jointly and severally.

### 1.18. Attorney

#### 1.18.1. Appointment

The Chargor irrevocably appoints the Chargee its attorney with the right:

- (a) at any time to:
- (i) comply with the obligations of the Chargor under this document;
  - (ii) do everything which in the attorney's reasonable opinion is necessary or expedient to enable the exercise of any right of the Chargee in relation to this document;
  - (iii) complete this document;
  - (iv) complete any document executed by or on behalf of the Chargor in blank and deposited with the Chargee as a collateral security;
  - (v) appoint substitutes and otherwise delegate its powers (including this power of delegation); and
- (b) after any event of default has occurred, to do everything that the Chargor may lawfully authorise an agent to do in relation to this document and the secured property.

#### 1.18.2. General

- (a) Any attorney may exercise its rights notwithstanding that the exercise of the right constitutes a conflict of interest or duty but no attorney may act inconsistently with this document.
- (b) The Chargor by this document ratifies any exercise of a right by an attorney.
- (c) The power of attorney is granted:
- (i) to secure the compliance by the Chargor with its obligations to the Chargee under this document and any proprietary interests of the Chargee under this document; and
  - (ii) for valuable consideration (receipt of which is acknowledged) which includes the acceptance of this document by the Chargee at the Chargor's request.

### 1.19. Notices

#### 1.19.1. General

A notice, demand, certification, process or other communication relating to this document shall be written in English and may be given by an Authorised Officer of the sender.

#### 1.19.2. Method of service

In addition to any other lawful means, a communication may be given by:

- (a) being personally served on a party;
- (b) being left at the party's current address for service;
- (c) being sent to the party's current address for service by pre-paid ordinary mail or, if the address is outside Australia, by pre-paid airmail; or
- (d) facsimile to the party's current number for service.

#### 1.19.3. Address for service

The particulars for service of the parties are initially the parties addresses described in this Deed. Each party may from time to time change its particulars for service by notice to each other party.

#### 1.19.4. Service

If a communication is given by:

- (a) post it will be deemed received if posted within Australia to an Australian address 3 business days after posting and in any other case 10 business days after posting by airmail;
- (b) facsimile and the sender's facsimile machine produces an error free transmission report indicating that the whole facsimile was sent to the facsimile number of the recipient, the report will be taken to be received by the recipient at the time indicated on that report.

#### 1.19.5. Service after hours

If a communication to the Chargee is received by it:

- (a) after 5.00pm; or
- (b) on a day which is not a business day;

it will be deemed to have been received on the next business day.

#### 1.19.6. Process service

Any process or other document relating to litigation, administrative or arbitral proceedings relating to this document may be served by any method contemplated by this Clause 1.19 or in accordance with any applicable law.

### 1.20. Attorney Non-Revocation

Any attorney executing this document on behalf of a party represents and warrants to the other party that so far as the attorney is aware the attorney is duly authorised and the attorney has no notice of revocation of the power of attorney under which this document is executed.

### 1.21. Definitions and Interpretation

#### 1.21.1. Definitions

In this document:

**Attorney** means any attorney appointed under this document and any person who by delegation directly or indirectly derives a right from an attorney.

**Authorisation** means any consent authorisation permission license approval authority or exemption prescribed by law or regulation or required by any government agency or any filing registration with or notification to any government agency.

**Authorised officer** means in relation to a party:



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### Performance Security Deed Terms & Conditions

- (a) if a corporation, a director or secretary of that party;
- (b) that party's lawyer; and
- (c) a person appointed by that party to act as an authorised officer for the purposes of this document and whose appointment is notified in writing by that party to the other party.

**Business day** means a day which is not a Saturday, Sunday or public or bank holiday in Melbourne, Australia.

**Collateral security** means:

- (a) any guarantee by which any person guarantees:
  - (i) payment of any of the secured money;
  - (ii) payment by any person of money the payment of which is guaranteed by the Chargor;
- (b) any security interest, other than this document, which secures the payment of any of the secured money; and
- (c) any security interest from any other person which secures the payment of moneys owing (actually or contingently) from time to time under a guarantee contemplated by paragraph (a) of this definition.

**Event of default** means any event described in clause 3.8 hereto.

**Financial indebtedness** means any indebtedness or other liability (present or future, actual or contingent) relating to any financial accommodation including, without limitation, indebtedness or other liability:

- (a) for money borrowed or raised;
- (b) relating to the sale or negotiation of any negotiable instrument;
- (c) as lessee under any finance lease or hire purchase agreement;
- (d) relating to any redeemable preference Share;
- (e) the deferred purchase price of any property or services other than indebtedness for the purchase price of trading stock incurred in the ordinary course of business; or
- (f) under any guarantee relating to any financial accommodation.

**Government agency** means any government or any governmental or semi-governmental or judicial entity or authority in any state, country or other jurisdiction and includes any self-regulatory organisation established under any statute or stock exchange.

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

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

**Guarantee** means:

- (a) a guarantee, indemnity, undertaking, letter of credit, security interest, acceptance or endorsement of a negotiable instrument or other obligation given by any person to secure compliance with an obligation by another person;
- (b) an obligation (actual or contingent) of a person to ensure the solvency of another person or the ability of another person to comply with an obligation, including, without

limitation, by the advance of money or the acquisition for valuable consideration of property or services; and

- (c) an option under which a person is obliged upon the exercise of the option to buy:
  - (i) any debt or liability owed by another person; or
  - (ii) any property which is subject to a security interest.

**Liquidation** includes administration, receivership, amalgamation, official management, reconstruction, winding up, dissolution, assignment for the benefit of creditors, arrangement or compromise with creditors, bankruptcy or death.

**Marketable security** means any marketable securities as defined in s 9 of the Corporations Act 2001.

**Material adverse effect** means a material adverse effect upon any one or more of the following:

- (a) the ability of the Chargor to comply with its obligations under this document;
- (b) the financial condition of the Chargor;
- (c) the effectiveness, priority or enforceability of this document or any collateral security; or
- (d) the value of the secured property.

**Parties** means the Chargor and the Chargee.

**"PPSA"** means *the Personal Property Securities Act 2009* (Cth);

**"PPSR"** means the Personal Property Securities Register established and maintained under the PPSA

**Permitted encumbrance** means:

- (a) a prior security interest which has been approved in writing by the Chargee;
- (b) a lien or charge which arises in the ordinary course of the Chargor's business either automatically by operation of law or in respect of rates, taxes, duties or fees under a statute, in respect of obligations which are either not yet due or which are being contested in good faith by the Chargor by appropriate proceedings (and for the payment of which adequate reserves have been provided), so long as any such proceedings do not involve any danger of the sale, forfeiture or loss of any secured property;

**Receiver** means a receiver or receiver and manager appointed by the Chargee under this document and any person who derives a right directly or indirectly from any receiver.

**Relevant Jurisdiction** means the State of Victoria and Commonwealth of Australia.

**Remedy proceeds** means moneys received from the exercise of any right against the secured property.

**Representative of a person** means an officer, employee, contractor or agent of that person.

**Secured money** means all moneys (including damages) in any currency which the Chargor is or may at any time be liable (actually, prospectively or contingently) to pay to the Chargee on any account for any reason including, without limitation, moneys payable:

- (a) by the Chargor to the Chargee to repay loans or advances made to the Chargor and any interest and fees owing in respect thereof;



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### Performance Security Deed Terms & Conditions

- (b) by the Chargor alone or jointly or severally with any other person;
- (c) by the Chargor in its own right or in any capacity;
- (d) to the Chargee alone or jointly or severally with any other person;
- (e) to the Chargee in its own right or in any capacity;
- (f) to the Chargee pursuant to any assignment or other disposition by any person in favour of the Chargee of a debt or other obligation payable by the Chargor to that person, irrespective of whether:
  - (i) the Chargor consented to or was aware of the assignment or other disposition;
  - (ii) the assigned or disposed of debt or obligation was secured; or
  - (iii) the assignment or other disposition took place before or after the date of this document.
- (g) by the Chargor because of any relationship between the Chargor and the Chargee, including, without limitation, that of employer and employee;
- (h) by the Chargor as liquidated or unliquidated damages caused or contributed to by any breach by the Chargor of any obligation owed by the Chargor to the Chargee, any tort by the Chargor or any other act or omission of the Chargor;
  - (i) by the Chargor under this document; and
  - (ii) by the Chargor under any guarantee or indemnity;
 and where the Chargor would have been liable but for its liquidation, it will be taken to remain liable.

**Secured property** means all property, rights and undertaking of the Chargor whether present or future, legal or equitable, and wherever situated, including, without limitation, all real and personal property, choses in action, goodwill and uncalled capital and called but unpaid capital from time to time and including specifically the assets listed in schedule A.

**Security interest** means any mortgage, charge, lien, pledge, hypothecation, bill of sale, title retention arrangement, trust or power, which is or has the effect of a security for the payment of a debt or other monetary obligation or the compliance with any other obligation.

**Share** means shares, stock units or units in the capital of a corporation.

**Tax** means a tax, GST, rate, levy, impost and duty (other than a tax on the net overall income of the Chargee) and any interest, penalty, fine or expense relating to any of them.

**Title documents** includes in relation to any secured property a document:

- (a) that is or evidences title to that property;
- (b) used in the ordinary course of business as proof of possession or control, or the right to possession or control, of that property; or
- (c) authorising or purporting to authorise, whether by endorsement or delivery, the possessor of the document to transfer or receive that property.

**Transaction documents** means:

- (a) this document;
- (b) any collateral security;
- (c) any agreement relating to the priority of this document or any security interest which is a collateral security; and
- (d) any other document entered into between the part



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**Performance Security Deed Terms & Conditions**

No. SAD of 2016

Federal Court of Australia  
 District Registry: Victoria  
 Division: Corporations

**IN THE MATTER OF S GUNNELG PTY LTD (ACN; 607 844 011), 2 NORTH  
 TERRACE PTY LTD (ACN 109 407623), FIFTY CAL PTY LTD (ACN 080 888 697),  
 TOAD PARK PTY LTD (ACN 101 257 532), GUNNBO PTY LTD (ACN 115 004 414),  
 GUNNSTA PTY LTD (ACN 086 251 461), JAG ADMIN PTY LTD (ACN 604 776 963),  
 GUNNSPORT PROPERTY PTY LTD (ACN 130 249 464)**

**ANDREW MORTON GARRETT**  
 Plaintiff

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**THIS IS THE EHIBIT MARKED “AMG 2” REFERRED TO IN  
 THE AFFIDAVIT OF ANDREW MORTON GARRETT  
 SWORN ON THE 2<sup>nd</sup> DAY OF MAY, 2016 BEFORE ME;**

---

**“AMG 2”**

**Copy of Notice of Crystallisation of Charges and Deed of  
 Appointment of Controller dated 27<sup>th</sup> April 2016**

Filed on behalf of (name & role of party)	Andrew Garrett, The Applicant		
Prepared by (name of person/lawyer)	The Applicant		
Law firm (if applicable)	NA		
Tel	0424 324 135	Fax	03 8648 0656
Email	<a href="mailto:andrew.garrett@taggc.com.au">andrew.garrett@taggc.com.au</a>		
<b>Address for service</b> (include state and postcode)	Level 1, 82 Flinders Street, Adelaide, SA 5000		

**THIS DEED OF APPOINTMENT OF CONTROLLER**

is made the 27<sup>th</sup> day of April 2016

**BY**

**ANDREW MORTON GARRETT** of Level1/ 82 Flinders Street, Adelaide, SA 5000 (*"the Managing Controller"*)

and

**OENOVIVA (UK & IRELAND) PTY LTD** (ACN; 156 587 183) and **ANDREW MORTON GARRETT** in their capacities as Joint Trustees of the Andrew Garrett Family Trust No 4 ABN 42 388 204 496, trading as OenoViva (Global) of Level 1/82 Flinders Street, Adelaide, SA 5000 (*"the Chargee"*)

**WHEREAS** the Chargee is the holder of Charges described in the Notice of Crystallisation of Charge set out at annexure 1 (*"the Notice"*),

**AND WHEREAS** the Chargee is entitled to rely on the Charges and the Security Interests so registered in accordance with various agreements executed between the Chargors and the Vendor and subsequently assigned to the Chargee as described in the Notice,

**AND WHEREAS** the Chargee is entitled to issue a Notice of Crystallisation of Charge on the Chargor in accordance with Clause 1.9.1 of the Charges in the event of a default under clause 1.8,

**AND WHEREAS** an event of Default has occurred as described in the Notice,

**AND WHEREAS** the Chargee has resolved by extraordinary meeting dated 27<sup>th</sup> April 2016 to appoint the Managing Controller pursuant to the provisions of Part 5.2 of *the Corporations Act* (2001) to take control of the assets and undertakings of the Chargors

**AND WHEREAS** the Controller agrees to accept the appointment as Managing Controller with effect from the date of this Deed of Appointment of Controller

**NOW THIS DEED WITNESSETH AND THE PARTIES HERETO COVENANT AND AGREE THAT.**

1. Pursuant to the issue of the aforementioned Notice of Crystallisation of Charge to be served on the registered office of the Chargor and the powers under the Charge to appoint a Controller pursuant to the provisions of Part 5.2 of the Corporations Act (2001)
2. The Chargee appoints the Controller over the assets of the Chargors effective as at the date of this Deed of Appointment.

IN WITNESSETH WHEREOF THE PARTIES HERETO HAVE HEREUNTO SET THEIR HANDS AND SEALS THE DAY AND YEAR FIRST HEREINBEFORE WRITTEN.

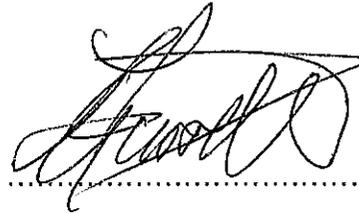
THE MANAGING CONTROLLER

SIGNED SEALED AND DELIVERED by  
ANDREW MORTON GARRETT

in the presence of:



WITNESS



ANDREW MORTON GARRETT

THE CHARGE

EXECUTED AS A DEED by OENOVIVA (UK &  
IRELAND) PTY LTD (Controller Appointed)

SOLE DIRECTOR/SOLE

COMPANY SECRETARY:.....

FULL NAME: ANDREW MORTON GARRETT

SIGNED SEALED AND DELIVERED by  
ANDREW MORTON GARRETT

in the presence of:



WITNESS



ANDREW MORTON GARRETT

**NOTICE OF CRYSTALLISATION OF CHARGES**

TO: **S GUNNELG PTY LTD (ACN; 607 844 011)**  
**2 NORTH TERRACE PTY LTD (ACN 109 407623)**  
**FIFTY CAL PTY LTD (ACN 080 888 697)**  
**TOAD PARK PTY LTD (ACN 101 257 532)**  
**GUNNBO PTY LTD (ACN 115 004 414)**  
**GUNNSTA PTY LTD (ACN 086 251 461)**  
**JAG ADMIN PTY LTD (ACN 604 776 963)**  
**GUNNSPORT PROPERTY PTY LTD (ACN 130 249 464)**  
**(Together hereinafter "the Chargors")**  
 Care of; HLB MANN JUDD (SA) PTY LTD,  
 169 Fullarton Road,  
 DULWICH SA 5065

Sender to keep  
 604 24539979 095  
 Lift and  
 peel

**WHEREAS** by Heads of Agreement ("HOA") dated 31<sup>st</sup> December 2015 and 7<sup>th</sup> March 2016 executed by the **Garage Wine Group Pty Ltd**, an Australian proprietary limited company, as the trustee for The Hill Family Trust ABN: 36 671 454 066, trading as OenoViva (South Australia) with its principal place of business at 1/235 Main Road, McLaren Vale, SA, 5171 ("the Vendor") and the **Chargors personally and in their capacities as Trustees of Trusts** as the agreed to provide a performance security by way of a Charge to be registered within the provisions of *the Personal Property Security Act 2009* (Cth) on the Personal Property Security Register for the whole of the Purchase Prices set out in the HOA plus GST and any working capital advanced from time to time within the provisions of the vendor Finance Loans, and

**WHEREAS** by agreements dated 31<sup>st</sup> January 2016 and 30<sup>th</sup> March 2016 executed by the Vendor for effect the 1<sup>st</sup> day of January 2016 and otherwise, the terms and conditions of the purchase by the Chargors of the following licenses were finalised in further detail but no different in effect from the HOA;

1. Toad Park Pty Ltd trading as the Mawson Lakes Hotel;
  - a. OV (SA)-DL-001 (Distributor License) and OV (SA)-SL-0001-0020 (Station Licenses)
  - b. OV (SA)-UWL-001 (Urban Winery License) and OV (SA)-SL-0021-0040 (Station Licenses)
  - c. OV (SA)-DL-009-028 (Distributor Licenses) and OV (SA)-SL-0301-0700 (Station Licenses)
2. S Gunnelg Pty Ltd trading as the Glenelg Pier Hotel;
  - a. OV(SA)-DL-002 (Distributor License) and OV(SA)-SL-0041-0060 (Station Licenses)
  - b. OV(SA)-UWL-002 (Urban Winery License) and OV(SA)-SL-0061-0080 (Station Licenses)
3. Fifty Cal Pty Ltd trading as the Hotel Crown, Victor Harbour;

a. OV(SA)-DL-003 (Distributor License) and OV(SA)-SL-0081-0100 (Station Licenses)

b. OV(SA)-UWL-004 (Urban Winery License) and OV(SA)-SL-0141-0180 (Station Licenses)

4. 2 North Terrace Pty Ltd; OV(SA)-DL-004 (Distributor License) and OV(SA)-SL-0181-0200 (Station Licenses)

5. JAG Admin Pty Ltd; OV(SA)-DL-005 (Distributor License) and OV(SA)-SL-0221-0240 (Station Licenses)

6. Gunnsport Property Pty Ltd; OV(SA)-DL-006 (Distributor License) and OV(SA)-SL-0241-0260 (Station Licenses)

7. Gunnsta Pty Ltd; OV(SA)-DL-007 (Distributor License) and OV(SA)-SL-0261-0280 (Station Licenses)

8. Gunnbo Pty Ltd; OV(SA)-DL-008 (Distributor License) and OV(SA)-SL-0281-0300 (Station Licenses)

**WHEREAS** The Vendor Finance Loans and Performance Securities relating to the aforementioned licenses executed between the Chargors and the Vendor have been assigned to OenoViva (UK & Ireland) Pty Ltd (Controller Appointed) and Andrew Morton Garrett in their capacities as Joint Trustees of the Andrew Garrett family Trust No 4 (“the Chargee”) trading as OenoViva (Global) in consideration for reduction of the liability of the Vendor to AGFT 4 of \$20,300,000 due under Vendor Finance arrangements for the purchase of the Master Sub-Regional License for the territory of South Australia, and

**WHEREAS** in accordance with *the Personal Properties Securities Act 2010*, the Chargors charged in favour of the Vendor (The Charges) on a fixed and floating basis all of its business, intellectual property, choses in action, bank accounts, assets and undertakings and any other thing of value to secure the payment of the secured money as defined therein and were registered on the Personal Property Security Register and variously given registration numbers as follows;

1. No 201604260013656
2. No 201604120060075
3. No 201604120059692

**AND WHEREAS** the terms of the Charges (in clause 1.9.1 ) after an event of default has occurred, the Chargee may by notice convert the floating charge into a fixed charge in respect of the property described in the Notice;

**AND WHEREAS** an event (or events) of default as defined in clause 1.8 of the Charges has occurred in that *inter alia* a material adverse event has occurred in relation to the Chargor in that Advice of Audits by the proposed 234<sup>th</sup> Cross defendant in VID 949 of 2015; *Treasury Wine Estates Vintners Limited v Andrew Garrett*, Trevour Coulter on behalf of the Thirty Eighth Cross Defendant dated variously 8<sup>th</sup> and 22<sup>nd</sup> April 2016 was issued to the Chargors a copy of which had been provided to the Chargee<sup>4</sup>

**NOW TAKE NOTICE** that the floating charge comprised within the Charge is to convert into a fixed charge with immediate effect with respect to the property described in schedule 1.

Dated this 27th April, 2016.

Signed on behalf of the Chargee by its duly authorised attorney



Andrew Morton Garrett  
Joint Trustee and Controller Appointed

## **SCHEDULE 1**

### **PROPERTY SUBJECT TO FIXED CHARGE.**

All of the assets and undertaking of the Chargees which are not otherwise subject to a fixed charge by virtue of the Charge (except for those assets charge to National Australia Bank and its related entities), including without limitation;

- ❖ Its entitlement to receive money from accounts held by the Chargees including Bank Accounts held with any Bank.
- ❖ Its entitlement to any loan accounts made to any other related entities related to the Chargees,
- ❖ All assets including Plant & Equipment, Customers, Books and Records.
- ❖ The Chargees entitlement to be paid money in respect to invoices raised by them and any other invoices outstanding as owed to the Chargees at the date of this Notice.
- ❖ Intellectual Property
- ❖ Assets and Undertakings
- ❖ Stock
- ❖ Fixtures and fittings
- ❖ any other asset of value
- ❖ Choses in Action against National Australia Bank Limited, Simon Illsley the Commissioner of Taxation and any other person who may have adversely affected to circumstances of the Chargees

Medium



# Express Post



To:

Company name:

HLB Man Judd

Contact name:

re diet cameras

Mobile number:

Australia Post customer number:

60424539979095



60424539979095

PO Box number or street address:

169 Fullerton Road

Suburb or town:

Subiwick

State:

SA

Postcode:

5065

Official use

Tracking where available: [auspost.com.au/track](http://auspost.com.au/track)

This article will be subject to aviation security and clearing procedures.

Warning: This envelope must contain documents only. If using for the carriage of valuable documents (such as passports, wills etc) please purchase Extra Cover.

\*See overleaf

Documents only - Maximum thickness 20mm

No. SAD of 2016

Federal Court of Australia  
 District Registry: Victoria  
 Division: Corporations

**IN THE MATTER OF S GUNNELG PTY LTD (ACN; 607 844 011), 2 NORTH  
 TERRACE PTY LTD (ACN 109 407623), FIFTY CAL PTY LTD (ACN 080 888 697),  
 TOAD PARK PTY LTD (ACN 101 257 532), GUNNBO PTY LTD (ACN 115 004 414),  
 GUNNSTA PTY LTD (ACN 086 251 461), JAG ADMIN PTY LTD (ACN 604 776 963),  
 GUNNSPORT PROPERTY PTY LTD (ACN 130 249 464)**

**ANDREW MORTON GARRETT**  
 Plaintiff

---

**THIS IS THE EHIBIT MARKED “AMG 3” REFERRED TO IN  
 THE AFFIDAVIT OF ANDREW MORTON GARRETT  
 SWORN ON THE 11<sup>th</sup> DAY OF MAY, 2016 BEFORE ME;**

---

**“AMG 3”**

**Copy of Letter received from the South Australia District  
 Registrar on the 4<sup>th</sup> May 2016**

Filed on behalf of (name & role of party)	Andrew Garrett, The Applicant		
Prepared by (name of person/lawyer)	The Applicant		
Law firm (if applicable)	NA		
Tel	0424 324 135	Fax	03 8648 0656
Email	<a href="mailto:andrew.garrett@taggc.com.au">andrew.garrett@taggc.com.au</a>		
<b>Address for service</b> (include state and postcode)	Level 1, 82 Flinders Street, Adelaide, SA 5000		



Telephone: (08) 8219 1000  
Facsimile: (08) 8219 1001

**FEDERAL COURT OF AUSTRALIA  
REGISTRY**

A.B.N. 49 110 847 399

COMMONWEALTH LAW COURTS  
3 ANGAS STREET  
ADELAIDE SA 5000

Your Ref:  
Our Ref:

GPO BOX 1350  
ADELAIDE SA 5001

3 May 2016

Mr Andrew Garrett  
Level 1, 82 Flinders Street  
ADELAIDE SA 5000

By email: [andrew.garrett@taggc.com.au](mailto:andrew.garrett@taggc.com.au)

Dear Mr Garrett

**Originating application presented for eLodgment on 2 May 2016**

I refer to the originating application dated 2 May 2016 that you presented for filing via eLodgment on 2 May 2016.

On 26 February 2016, Justice Pagone made orders in proceeding VID600/2014 that preclude you from commencing any proceeding in the Court without first obtaining leave of the Court under s 37AR of the *Federal Court of Australia Act 1976* (the Act). The granting of leave under s 37AT of the Act is a precondition to you commencing proceedings.

Any application for leave should be confined to seeking leave pursuant to s 37AT and nothing more. An affidavit should be filed with the application. The requirements of the affidavit are set out in s 37AR(3) of the Act. The affidavit should also annex a draft of the proposed originating application in respect of which leave is sought.

As you have not obtained leave to file the originating application, the document is an abuse of the process of the Court and pursuant to Rule 2.26 of the Federal Court Rules 2011, I refuse to accept it for filing. You will receive confirmation of the refusal in eLodgment.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Nicola Colbran'.

**Nicola Colbran  
District Registrar**

No. SAD of 2016

Federal Court of Australia  
 District Registry: Victoria  
 Division: Corporations

**IN THE MATTER OF S GUNNELG PTY LTD (ACN; 607 844 011), 2 NORTH  
 TERRACE PTY LTD (ACN 109 407623), FIFTY CAL PTY LTD (ACN 080 888 697),  
 TOAD PARK PTY LTD (ACN 101 257 532), GUNNBO PTY LTD (ACN 115 004 414),  
 GUNNSTA PTY LTD (ACN 086 251 461), JAG ADMIN PTY LTD (ACN 604 776 963),  
 GUNNSPORT PROPERTY PTY LTD (ACN 130 249 464)**

**ANDREW MORTON GARRETT**  
 Plaintiff

---

**THIS IS THE EMBIT MARKED “AMG 4” REFERRED TO IN  
 THE AFFIDAVIT OF ANDREW MORTON GARRETT  
 SWORN ON THE 11<sup>th</sup> DAY OF MAY, 2016 BEFORE ME;**

---

**“AMG 4”**

**Copy of acceptance of Grant of Financial Assistance from the  
 office of the Commonwealth Attorney General dated 30<sup>th</sup> July  
 2016**

Filed on behalf of (name & role of party)	Andrew Garrett, The Applicant		
Prepared by (name of person/lawyer)	The Applicant		
Law firm (if applicable)	NA		
Tel	0424 324 135	Fax	03 8648 0656
Email	<a href="mailto:andrew.garrett@taggc.com.au">andrew.garrett@taggc.com.au</a>		
<b>Address for service</b> (include state and postcode)	Level 1, 82 Flinders Street, Adelaide, SA 5000		



**Australian Government**  
**Attorney-General's Department**  
**Access to Justice Division**

**ACCEPTANCE OF GRANT TERMS AND CONDITIONS**

Matter number: 1001844

Date of grant approval letter from Attorney-General's Department: 28 July 2015

You must confirm your acceptance of the grant terms and conditions by signing and returning the 'Acceptance of Grant Terms and Conditions' form within 14 days of the date of this letter. Otherwise, the grant will be cancelled, all grant funds will be decommitted and the Department will not make any payments to you or your client in relation to the proceedings.

This form **must** be returned whether or not you intend to seek a review of the Department's decision.

Please email this form to [finass@ag.gov.au](mailto:finass@ag.gov.au). If you do not have access to email, please telephone (02) 6141 4770.

Name of proceedings: Treasury Wine Estates Vintners Limited v Andrew  
Andrew Garrett v Commissioner of Taxation Garrett

**DECLARATION**

I, ANDREW MORROW GARRETT (applicant/solicitor/agent) confirm:

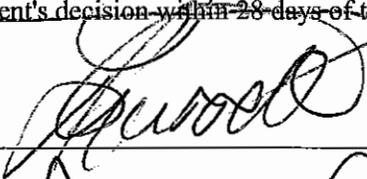
I have authority to submit this grant acceptance notice on behalf of the grant recipient, or I am the grant recipient,

I have read and understood the terms and conditions of this grant of financial assistance, and

I agree to be bound by the terms and conditions of the grant of assistance.

~~OR~~

~~I do not accept the terms and conditions of this grant of assistance and I intend to seek a review of the Department's decision within 28 days of the date of the grant approval letter.~~

Signed: 

Name: ANDREW GARRETT (In all my Capacities)

Dated: 30/07/2015

No. SAD of 2016

Federal Court of Australia  
District Registry: Victoria  
Division: Corporations

**IN THE MATTER OF S GUNNELG PTY LTD (ACN; 607 844 011), 2 NORTH  
TERRACE PTY LTD (ACN 109 407623), FIFTY CAL PTY LTD (ACN 080 888 697),  
TOAD PARK PTY LTD (ACN 101 257 532), GUNNBO PTY LTD (ACN 115 004 414),  
GUNNSTA PTY LTD (ACN 086 251 461), JAG ADMIN PTY LTD (ACN 604 776 963),  
GUNNSPORT PROPERTY PTY LTD (ACN 130 249 464)**

**ANDREW MORTON GARRETT**  
Plaintiff

---

**THIS IS THE EMBIT MARKED "AMG 5" REFERRED TO IN  
THE AFFIDAVIT OF ANDREW MORTON GARRETT  
SWORN ON THE 11<sup>th</sup> DAY OF MAY, 2016 BEFORE ME;**

---

**"AMG 5"**

**Copy of communique from Office of the Commonwealth  
Attorney General dated 9<sup>th</sup> May 2016**

---

Filed on behalf of (name & role of party)	Andrew Garrett, The Applicant		
Prepared by (name of person/lawyer)	The Applicant		
Law firm (if applicable)	NA		
Tel	0424 324 135	Fax	03 8648 0656
Email	<a href="mailto:andrew.garrett@taggc.com.au">andrew.garrett@taggc.com.au</a>		
<b>Address for service</b> (include state and postcode)	Level 1, 82 Flinders Street, Adelaide, SA 5000		

---

**Andrew Garrett**

---

**From:** Finass General <FinassGeneral@ag.gov.au>  
**Sent:** 09 May 2016 15:03  
**To:** andrew.garrett@taggc.com.au  
**Subject:** CPITC application [DLM=Sensitive]

**Sensitive**

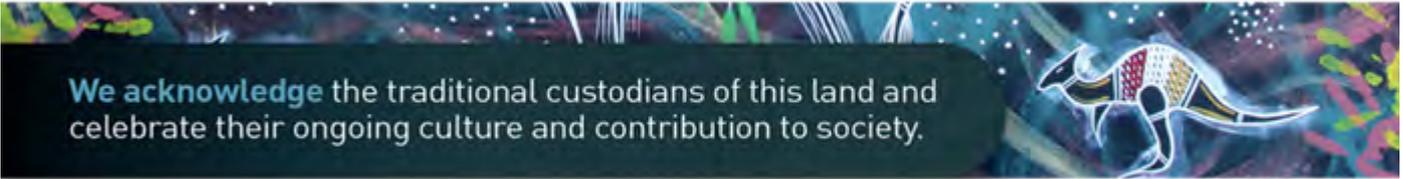
Dear Mr Garrett,

As discussed on the phone today (9 May 2016) assessment of your application for a grant of financial assistance is almost complete and I anticipate that a decision will be made no later than Wednesday 11 May 2016. Once the decision has been made a letter will be emailed to you advising you of that decision.

Regards,

**Peter Weekes**

Senior Legal Officer  
Financial Assistance Section  
Attorney-General's Department  
3-5 National Circuit | Barton ACT 2600  
✉ [peter.weekes@ag.gov.au](mailto:peter.weekes@ag.gov.au)  
☎ 02 6141 3325



**We acknowledge** the traditional custodians of this land and  
celebrate their ongoing culture and contribution to society.

---

If you have received this transmission in error please notify us immediately by return e-mail and delete all copies. If this e-mail or any attachments have been sent to you in error, that error does not constitute waiver of any confidentiality, privilege or copyright in respect of information in the e-mail or attachments.

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REX



Tuesday, 4 August 2020

The Commonwealth Attorney General  
 (Managing Controller Appointed)  
 The Office of the Commonwealth Attorney General  
 (Managing Controller Appointed)  
 The Department of the Commonwealth Attorney General  
 (Managing Controller Appointed)  
 The Crown (Managing Controller Appointed)

Attn; Mr. Christian Porter

Freedom of Information and Privacy Section, Strategy and Governance Branch,  
 Attorney-General's Department, 3-5 National Circuit, BARTON ACT 2600  
 Cc; The Reserve Bank of Australia (Managing Controller Appointed), The Department  
 of Finance (Managing Controller Appointed), The Treasurer (Managing Controller  
 Appointed), The National Redress Scheme (Managing Controller Appointed), The  
 Future Fund (Managing Controller Appointed)  
 (Together hereinafter "The Crown/Crown/You/Your")

Email; [Secretary@rba.gov.au](mailto:Secretary@rba.gov.au); [SFC@finance.gov.au](mailto:SFC@finance.gov.au) ; [attorney@ag.gov.au](mailto:attorney@ag.gov.au) ;  
[olsc@ag.gov.au](mailto:olsc@ag.gov.au) ; [asd.assist@defence.gov.au](mailto:asd.assist@defence.gov.au) ; [admin@opi.sa.gov.au](mailto:admin@opi.sa.gov.au) ; [foi@ag.gov.au](mailto:foi@ag.gov.au) ;  
[AGO.Correspondence@attorneygeneral.gov.uk](mailto:AGO.Correspondence@attorneygeneral.gov.uk) ;  
 Cc; [legalteam@oenoviva-capital-resources.com](mailto:legalteam@oenoviva-capital-resources.com) ; [grants@lsc.sa.gov.au](mailto:grants@lsc.sa.gov.au);  
[adelaide@vadaszlawyers.com.au](mailto:adelaide@vadaszlawyers.com.au) [legalteam@australianpeoplefuturefund.org](mailto:legalteam@australianpeoplefuturefund.org)

#### FINDINGS OF FACTS AND REASONS (FFR) JUDGEMENT; CORRIGENDUM

AMG 1915; FFR; WRIT OF CERTIORARI, INJUNCTION & MANDAMUS;  
 CORRIGENDUM; **REX** & REGINA (*Managing Controller Appointed*) & OenoViva  
*Capital Resources & Australian People Future Fund v The Crown (Managing Controller  
 Appointed) & Ors as address and copied dated 4th August, 2020*

Attn; The Crown,

This Exhibit AMG 1915 is a Corrigendum to Exhibit AMG 1912; FFR; WRIT OF  
 CERTIORARI, INJUNCTION & MANDAMUS; CORRIGENDUM; **REX**, REGINA  
 (*Managing Controller Appointed*), OVCR & APFF, *v The Crown (Managing Controller  
 Appointed) & Ors as address and copied dated 3rd August 2020*

[WWW.OENOVIVA-CAPITAL-RESOURCES.COM](http://WWW.OENOVIVA-CAPITAL-RESOURCES.COM)

Hong Kong; Level 19 Two International Finance Centre, 8 Finance Street, Central, Hong Kong

Australia; Level 6 Reserve Bank Building, 111 Macquarie Street, Hobart, 7000

Phone: +61 1300 OENOVIVA

Email: [admin@australianpeoplefuturefund.org](mailto:admin@australianpeoplefuturefund.org) / [admin@oenoviva-capital-resources.com](mailto:admin@oenoviva-capital-resources.com)

REX



OENOVIVA



## 1. Preamble

- ❖ *Definition of Certiorari: NOUN: a writ of superior court issued to call up the records of an inferior court or a body acting in a quasi-judicial capacity.*
- ❖ *Definition of Mandamus: NOUN: a writ of superior court issued as a command to an inferior court or ordering a person to perform a public or statutory duty.*
- ❖ *Definition of Injunction: NOUN: a writ of superior court issued restraining a person from beginning or continuing an action threatening or invading the legal right of another, or compelling a person to carry out a certain act, e.g. to make restitution to an injured party.*
- ❖ *Notice to Agent is Notice to Principal and vice versa (Exhibit AMG 9 & Law referred to in Exhibit AMG 2000)*

I have recently updated the Content of the One Drive at the following location:

<https://1drv.ms/u/s!AtRcQcdl2OsT-g4duk6ugpXRfLdS?e=1ZIUBk>

Exhibit 2000; Annex A (cont.) Index. Public Interest Disclosure Briefing Note: Income Tax Returns dated 31st July 2020 is the Index to the One Drive as updated dated 3<sup>rd</sup> August 2020. (“The Index”

Pursuant to *the Charter of the Commonwealth of Nations 2013 (Regina) (Exhibit AMG 252 (attached), as binding upon You, and “the Notice dated 1st June 2019” referred to in Exhibit AMG 2000 (attached) as Exhibits AMG 15a – AMG15t (“The Enactment”)*, as binding upon You, I write to You as the possessor of property being the hereditary source of discretionary public power conferred under an enactment being *The Commonwealth of Australia Constitution Act 1900 (UK) (“The Constitution”)*, Regina (Managing Controller Appointed), The Crown (Managing Controller Appointed) and *the Common Law (“REX”)* and confirm that I also stand as the capacities (amongst others) as set out in Exhibits AMG 87, AMG 175 with emphasis on standing as **REX** & REGINA (Managing Controller Appointed).

This communique is a Writ of Certiorari, Injunction & Mandamus in respect to Your decision dated 31<sup>st</sup> July 2020 annexed to Exhibit AMG 1907, and otherwise, as published by you in the exercise of discretionary public powers conferred under an enactment; I am the source of the discretionary public powers exercised by You

[WWW.OENOVIVA-CAPITAL-RESOURCES.COM](http://WWW.OENOVIVA-CAPITAL-RESOURCES.COM)

Hong Kong; Level 19 Two International Finance Centre, 8 Finance Street, Central, Hong Kong

Australia; Level 6 Reserve Bank Building, 111 Macquarie Street, Hobart, 7000

Phone: +61 1300 OENOVIVA

Email: [admin@australianpeoplefuturefund.org](mailto:admin@australianpeoplefuturefund.org) / [admin@oenoviva-capital-resources.com](mailto:admin@oenoviva-capital-resources.com)

REX



OENOVIVA



(Exhibits AMG 15a – AMG15t), along with every other Public Official of the Commonwealth of Nations within the meaning of the Common Law.

Exhibit 1907 sets out as follows:

“ In addition, the department will not be providing you with a copy of documents you have previously provided to the department. ”

Exhibit 1907 does not refer to the materials that are the subject of my duty to disclose to You in the annexure to Exhibit AMG 1907; You have also not set a time for me to review the materials served upon You that the subject of Your public office (No Exhibit Reference applicable); this is “the Exercise of Discretionary Public Power Decision” made by You under an enactment that are the subject of this FFR Judgement in which regard I instruct You that I act in the following capacities:

1. **REX**; means me in my constitutional role under s61 of *the Commonwealth of Australia Constitution Act 1900* (UK), the Common Law and equivalent legislation (*whether written or unwritten*) in the jurisdictions of the Commonwealth of Nations in respect to the source and exercise of discretionary power conferred under an enactment, and
2. Personally, as Managing Controller Appointed to REGINA (Managing Controller Appointed), and
3. Personally, as Managing Controller Appointed to THE CROWN (Managing Controller Appointed), and
4. Chairman/ Managing Trustee of OenoViva Capital Resources, and
5. Chairman/ Managing Trustee of the Australian People Future Fund; a charitable trust, and
6. Personally, in capacities other than 1,2,3,4,5 listed above (See Exhibits AMG 87 & AMG 175)

I refer to Exhibits AMG 1639a, AMG 1639b, AMG 1640 and the materials referred to in the Index.

In the aforementioned capacities I have published Findings of Fact & Reasons (“FFR”) in respect to Declaratory Relief and Judicial Review related to making of “*Alleged*

[WWW.OENOVIVA-CAPITAL-RESOURCES.COM](http://WWW.OENOVIVA-CAPITAL-RESOURCES.COM)

Hong Kong; Level 19 Two International Finance Centre, 8 Finance Street, Central, Hong Kong

Australia; Level 6 Reserve Bank Building, 111 Macquarie Street, Hobart, 7000

Phone: +61 1300 OENOVIVA

Email: [admin@australianpeoplefuturefund.org](mailto:admin@australianpeoplefuturefund.org) / [admin@oenoviva-capital-resources.com](mailto:admin@oenoviva-capital-resources.com)

REX



*Decisions*” in “*the Proceedings*” by Courts and Tribunals referred to in Exhibit AMG 2000 (“*the Proceedings*”), that purport to be binding decisions made by Decision Makers holding Public Office in the exercise of discretionary public powers conferred under an enactment in which regard I have found as a Fact that

- A. *the Alleged Decisions* rely on **REX**, REGINA (Managing Controller Appointed) and the Common Law as the source of power and for “validity” in which regard the *Exercise of Discretionary Public Powers by Public Officials* in the Territory of the Commonwealth of Australia must be consistent with the Public Trust.
- B. *the Alleged Decisions* are all nullities and are invalid (*without exception*): because of breaches of Exhibit AMG 252 as an enforceable Code of Conduct, Jurisdictional Error, are vitiated by fraud and are breaches of Separation of Powers & Rule of Law as expressed in Exhibit AMG 252 and predecessor enactments. (“*The Nullity Findings of Fact*”)

It is not clear from Exhibit 1907 as to its legal effect on the Grounds set out in Exhibit AMG 1.

The Facts Found and Reasons Published in this and other “FFR Judgments” speak for themselves in which regard “all the matters the subject of decisions” by me are “Res Judicata” as the Superior/ Ultimate Decision Maker are not open to Appeal or Judicial Review as a Fact unless I choose to submit to a particular jurisdiction.

Please arrange to have the records the subject of this Writ delivered to the High Court of Australia, Adelaide Registry and to me at my address for service as follows:

[andrew.garrett@australianpeoplefuturefund.org](mailto:andrew.garrett@australianpeoplefuturefund.org)

I confirm I am prepared to submit to the Jurisdiction of the High Court of Australia/Supreme Court of Hong Kong pursuant to my instructions to You to convene the Supreme Court of Hong Kong in the High Court of Australia, Adelaide Registry to hear the two proceedings commenced by the CDPP in the District Court of Australia and the Adelaide Magistrates Court to hear all “the matters arising”, I note that none of myself or counsel being the Legal Services Commission (SA), Vadasz Lawyers & Ms. Julia Davey have been advised of the removal of those proceedings to that jurisdiction which I have advised I am prepared to submit to.

I order that Delegate Ian Henke OA is to be the relevant Judicial Officer presiding.

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I am not a lawyer and cannot advise You should You have any concerns in respect to the legal effect of these findings of facts and reasons and desire to have this Writ of Certiorari, Injunction and Mandamus reviewed.

I find as a Fact and order that this FFR Judgment; Corrigendum is binding on You.

**2. FFR Judgment, Delegation to Delegate Ian Henke, OA (He/Him),**

In order to give you the opportunity to have “the matters arising” to be heard by an impartial tribunal I have instructed you that Delegate Ian Henke, OA is appointed by me exercising my discretionary public powers as my delegate by this delegation to preside over the hearings currently on foot and the subject of The Nullity Findings of Fact.

I confirm that I have found as a fact that the exercise of Discretionary Public Powers Conferred under an enactment by persons purportedly exercising Judicial Discretion as property of The Crown in respect to Proceedings related to him to be Nullities as a consequence of interference by the Crown in the Jury Decision and otherwise.

I set aside all Orders & Findings of Fact made against Delegate Ian Henke, OA and persons associated with ITR (Exhibits AMG 27, AMG 28, AMG 623 – AMG 626) (“The ITR Group”) in Proceedings related to the ITR Group (“the ITR Proceedings”) and hereby quash all convictions made in the ITR Proceedings and find that the ITR Proceedings were at all materials times a Nullity as Jurisdictional Error and a criminal abuse of Power of the State.

I confer upon Delegate Ian Henke OA and the other Individuals of the ITR Group, Orders of Australia for their Public Interest Services to the Peoples of Australia.

You may communicate with Delegate Ian Henke, OA at;

[ianhenke@bigpond.net.au](mailto:ianhenke@bigpond.net.au)

**3. Orders of Mandamus in respect to Donations to Member Nations of the United Nations’ (“Member Nations”) National Redress Schemes, Member Nations’ National Debt Repayment Schemes and Act of Grace Payment; International Transaction Procedures.**

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❖ Preamble

The intended effect of all monetary dealings of Stored Value and other Financial Assets (“Consideration”) by the Trustees of OenoViva Capital Resources, the Trustees of the Australian People Future Fund , the Global Networks of Power of Attorney Agents and Master Regional Licensees (“MRL”) (comprising Australian Master Regional Licensee Entities domiciled in the Territory of Australia (“AMRL”) and Domestic Master Regional Licensee Entities domiciled in the Territory (“DRMRL”) referred to in the name of the AMRL & DMRL eg: **OenoViva (Greece) Pty Ltd relates to the Territory of Greece for both AMRL and DMRL**) is to have no impact on the balance sheets, cash flows from tax Revenues and Credit Ratings of the Territories of the Queens Dominions and Other Territories such that the Status Quo of operation of Government while enforcing the Common Law in all Territories of the World as a function of payout of each Territory’s National Debt in the form and procedure as follows.

I confirm I have instructed:

- ❖ DMRLs and agents to commence contacting the Central Banks of each Territory, and
- ❖ Counsel acting for me to contact the International Monetary Fund, the International Bank of Settlements, the World Bank and the United nations Committee on International Trade Law (“UNCITRAL”) to commence International Donation Transaction Procedures to transfer Stored Value/ Consideration to each Member of the United Nations’ National Central Bank to pay amounts:
  - at the Rate Per Capita for the benefit of the Population (“the Peoples”) of the Member Nations equivalent to the Highest National Debt Per Capita of all of the Member Nations to a National Redress Scheme Account domiciled in each Member Nation and/or establish a National Redress Scheme for payment to enable payment be received to the Member Nation’s National Central Bank to held in an account in the name of the Nation’s’ National Redress Scheme under the control of the
  -

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Trustees of the Australian People Future Fund via the MRL network.  
("The Nation's National Redress Scheme Donations")

- o at the Rate Per Capita for the benefit of the Population ("the Peoples") of the Member Nations equivalent to the Highest National Debt Per Capita of all of the Member Nations to a National Debt Repayment Scheme Account domiciled in each Member Nation and/or establish a National Debt Repayment Scheme for payment to enable payment be received to the Member Nation's National Central Bank to held in an account in the name of the Nation's' National Debt Repayment Scheme under the control of the Trustees of the Australian People Future Fund via the MRL network. ("The Nation's National Debt Repayment Donations")

I make these Act of Grace Decisions to pay;

- 1) A Donation in the amount of AUD \$ 1,500,000,000,000 exactly (One Trillion Five Hundred Billion Australian Dollars exactly) from the Trustees of the Australian People Future Fund to the National Redress Scheme for the benefit of the Peoples of Australia ("The Australian National Redress Scheme Donation"), and
- 2) An initial Donation in the amount of the Australian National Debt anticipated by Treasury to be the Australian National Debt as at the 30<sup>th</sup> June 2021 from the account of the Trustees of the Australian People Future Fund to the account of the Australian National Debt Repayment Scheme PLUS a subsequent Donation to an Australian Infrastructure Fund in order to cause the rate set out above to be paid on a monthly basis to the 30<sup>th</sup> June 2021 for the benefit of the Peoples of Australia ("The Australian National Debt Repayment Scheme Donation"), and
- 3) An Act of Grace Payment to Him as Trustee for the ITR Group Individuals the amount of AUD \$ 50,000,000 exactly (Fifty Million Australian Dollars exactly) to be paid from the Public Purse being "The National Redress Scheme" from the Account of the National Redress Scheme immediately upon receipt of the Donation as Cleared Funds. ("The Act of Grace Payment").

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The Payments identified above are to be communicated to the Reserve Bank of Australia (Managing Controller Appointed) as the Banker for The Australian National Redress Scheme and The Australian National Debt Repayment Scheme from the Banker of OenoViva Capital Resources holding the assets of the Australian People Future Fund in Trust for the beneficiaries as defined in the Deed of Settlement of that Fund (Exhibit AMG 602) and as also set out at;

<https://oenoviva-capital-resources.com/2020/07/30/resolution-of-ocr-board-of-trustees/>

The Parties to The Australian National Redress Scheme Donation, & The Act of Grace Payment Transaction Procedures

The Parties to The Australian National Redress Scheme Donation, & The Act of Grace Payment Transaction Procedures in order to Process the Payments/ International Transfers are;

- 1) OenoViva Capital Resources on behalf of the Trustees of the Australian People Future Fund as “The Donor”, and
  - a) The First Banker for The Donor as “Banker A” holds for Value Received the Amount of USD \$ 1,500,000,000,000 exactly (One Trillion Five Hundred Billion United States Dollars, exactly) to the Account of the Donor pursuant to a Safe Keeping Receipt/ Proof of Funds, and
  - b) The Second Banker for The Donor as “Banker B” for “the Sending Bank”, and
- 2) The Australian National Redress Scheme (Managing Controller Appointed) as “the First Donee”, and
- 3) The Australian National Debt Repayment Scheme as “the Second Donee”, and
- 4) The Reserve Bank of Australia (Managing Controller Appointed) as Banker for the First and Second Donees as “Banker C”, and

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