

## Novated Finance Lease Terms

**IMPORTANT NOTICE: This Agreement consists of multiple documents, including these Novated Finance Lease Terms, the Schedule and any other documents referred to in the Schedule. Execution of the Schedule confirms your agreement to the Agreement.**

Words used in these terms which begin with capital letters have the meaning given in clause 24 or as those words are used in the Schedule.

### 1. Conditions for providing the Lease

- 1.1 By signing or otherwise indicating your acceptance to this Agreement, we offer to lease the Goods to you upon the terms set out in the Schedule and these Novated Finance Lease Terms.
- 1.2 Our acceptance of your offer will only occur when we notify you that we have paid the Supplier to acquire the Goods from the Supplier for the purposes of this Agreement. Your payment to us of any money on account of rent (even if we accept the payment) will not create an agreement to lease the Goods.
- 1.3 If you obtain possession of the Goods before we have acquired them, you will be acquiring them at your own risk and not as our agent and you may be liable to the Supplier if they are lost or damaged. We have no obligation to acquire the Goods until the requirements set out in clause 1.4 have been met.
- 1.4 We will only acquire the Goods after we are satisfied that:
  - (a) the Goods will be acquired by us free of any Security Interest;
  - (b) insurance has been effected in respect of the Goods as required this Agreement; and
  - (c) where required in the Schedule, each guarantee required in respect of your obligations under these terms has been given on terms satisfactory to us.
- 1.5 You authorise us to complete any blank spaces or correct any details in the Schedule which have not been completed when it is executed by you so long as the change is consistent with any information or instructions you have provided.

### 2. Lease Term

- 2.1 The Lease will begin on the Commencement Date and will be for the Lease Term, unless terminated earlier in accordance with this Agreement.

### 3. Delivery of the Goods

- 3.1 You must obtain delivery of the Goods. Before doing so, you must satisfy yourself as to their identity, condition and merchantable quality.
- 3.2 We will not be liable for any delay in delivery of the Goods.

### 4. Payments

- 4.1 You must pay all of the Rent Instalments together with the Account Keeping Fees to us on or before the dates set out in the Schedule or any Payment Schedule within the Schedule.
- 4.2 All payments must be made by direct deposit or in such manner as we may from time to time require. If a payment is dishonoured, or we have not actually received the payment, the payment is taken not to have been made.
- 4.3 Where more than one payment obligation by you is outstanding at any given time, we will apply your payments towards your outstanding obligations on the basis that the oldest obligations are to be paid first having regard to the following order of application:
  - (a) Firstly, in payment of overdue interest under clause 4.6;
  - (b) Secondly, in payment of outstanding fees and charges; and
  - (c) Lastly, towards outstanding Rent Instalments.
- 4.4 Except to the extent otherwise required by law, payments must be made in full, without any deduction, withholding or set-off This is so even if:
  - (a) the Goods leased under this Agreement are lost, stolen, destroyed or in need of repair; or
  - (b) you have a complaint or dispute with the Introducer or Supplier about goods or services supplied by the Introducer or Supplier. Any such complaint or dispute must be addressed directly with the Introducer or Supplier.
- 4.5 If the Payment Date is on the 29<sup>th</sup>, 30<sup>th</sup> or 31<sup>st</sup> of a month, then in any month which does not have that date, you must pay the Rent Instalment and Account Keeping Fee on the last day of the month. Any amount which would be due on a day which is not a Business Day must be made on the next Business Day.
- 4.6 If you do not pay an amount payable under this Agreement when it is due (including enforcement expenses), we may charge you interest on that amount at a rate which is equal to the implicit interest rate used by us to calculate the Rent Instalments,

plus an additional 4% per annum from the due date until the amount is paid, which interest shall accrue on a daily basis.

- 4.7 We may vary the fees and charges, except the Recoverable Amount, or introduce new fees and charges which we charge to customers under agreements of a similar kind to yours and having regard to any of our policies which may be applicable from time to time. We will only do this in relation to additional costs (other than our cost of funds) which we incur for reasons beyond our control or for additional services or functions (such as new payment options) which you can choose to use or not use.
- 4.8 Notice of any change under clause 4.7 will be given before the change is made by advertisement in a newspaper with national circulation or written notice to you. Except for any change which is introduced by any Governmental Agency, we will use our reasonable endeavours to give 30 days' notice of any such change.

## 5. GST

- 5.1 "GST Law" means the *A New Tax System (Goods and Services) Act 1999* and any other law dealing with the imposition or administration of a goods and services tax in Australia. Terms used in this clause which are defined in the GST Law have the meaning given in that law.
- 5.2 If any payment in connection with this Agreement is, in whole or in part, the consideration for a taxable supply for which the payee is liable for GST, and if GST has not been included in the calculation of that payment, the payer must, when requested by the payee, pay to the payee an additional amount equal to the amount referable to GST. The payee will provide a tax invoice to the payer.
- 5.3 Any reference in this Agreement to a cost or expense to be reimbursed by one party to another excludes any amount in respect of GST forming part of that cost or expense for which the party claiming reimbursement can claim an input tax credit.

## 6. Security Interest

- 6.1 You acknowledge that we may register one or more financing statements in relation to any Security Interest we have in relation to the Goods in any manner we choose. If permitted by the PPSA, you waive your rights under section 157 of the PPSA to receive notice of any verification statement relating to the registration of any such financing statement or any related financing change statement.

- 6.2 Unless agreed to by us in writing, you acknowledge that we have not agreed to subordinate any Security Interest provided for by this Agreement in favour of any third party.
- 6.3 You represent and warrant to us that the serial numbers and other identification details set out in the Schedule are complete and accurate.
- 6.4 If we are satisfied that you have met all of your obligations under this Agreement including any obligation you have to return the Goods, we will release the Security Interest and discharge any financing statement that we have registered on the PPSR.
- 6.5 Nothing in this Agreement may be taken as an agreement that any Security Interest provided for by this Agreement attaches later than the time contemplated by section 19(2) of the PPSA.
- 6.6 You and we agree:
- (a) for the purposes of section 275(6) of the PPSA that neither you nor we will disclose information of the kind mentioned in section 275(1) of the PPSA except if disclosure is required by law, or any disclosure is made by us to any person or entity in connection with any funding or securitisation arrangement to be entered into by us or in connection with any enforcement of our Security Interest. Nothing in this clause will prevent any disclosure necessary to comply with the PPSA; and
  - (b) to the extent that it is not inconsistent with clause 6.6(a) constituting a "confidentiality agreement" for the purposes of section 275(6)(a) of the PPSA, you agree that we may disclose information of the kind mentioned in section 275(1) of the PPSA to the extent that we are not doing so in response to a request made by an "interested person" (as defined in section 275(9) of the PPSA) pursuant to section 275(1) of the PPSA.
- 6.7 To the extent that Chapter 4 of the PPSA would otherwise apply to an enforcement by us of any Security Interest provided for by this Agreement, you and we agree with each other that the following provisions of the PPSA do not apply:
- (a) to the extent that section 115(1) of the PPSA allows them to be excluded: sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4), 135, 138B(4), 142 and 143; and
  - (b) in addition, to the extent that section 115(7) of the PPSA allows them to be excluded: sections 127, 129(2) and (3), 132, 134(2), 135, 136(3), 136(4), 136(5) and 137.

6.8 If section 115(1) of the PPSA does not allow section 125 of the PPSA to be excluded, you agree that at any time after any Security Interest provided for by this Agreement has become enforceable, we may delay disposing of, or taking action to retain, the whole or part of the Goods to the extent permitted by law.

## **7. Your warranties and the role of an Introducer**

7.1 You warrant to us that:

- (a) all information which you have given to us is correct and not misleading in any material respect;
- (b) you have not relied on us in deciding to enter into this Agreement;
- (c) you have not relied upon any statement made by us or anyone acting on our behalf concerning your financial affairs or taxation position, the quality of the Goods or their suitability for any purpose;
- (d) you have obtained your own independent taxation, legal, financial and accounting advice in relation to this Agreement; and
- (e) you are authorised to enter into this Agreement and in doing so you are not in breach of any authorisations or regulations affecting or controlling you or your business.

7.2 Without limiting clause 7.1(c), if we have been introduced to each other by an Introducer, you warrant that in all matters relating to this Agreement, the Introducer has at all times acted as an intermediary. You acknowledge that we may pay an Introducer a commission.

7.3 The Introducer is not our agent but may provide copies of documents relating to this Agreement on our behalf. The Introducer is not otherwise authorised to do anything else on our behalf or to make any representation to you concerning us or this Agreement.

7.4 You acknowledge that the taxation treatment of this Lease will vary in accordance with your tax position and the rental and residual structure applicable to this Agreement, and may not be determined by the form or description of this Agreement. No representation is given by us in this regard. You should seek your own taxation advice prior to entering into this Agreement. You represent to us that you do not rely upon any statements made or the form of or description of the Agreement in relation to the taxation treatment of this Lease.

7.5 If You enter this Agreement as a trustee, you:

- (a) agree that this Agreement binds you personally and in your capacity as trustee;
- (b) acknowledge that a reference to you is a reference to you in Your personal capacity and also in your capacity as trustee;
- (c) warrant that you are authorised under the trust deed establishing the trust to enter this Agreement,
- (d) warrant that you have the right to be indemnified fully out of the trust property before the trust's beneficiaries for all liabilities you incur under this Agreement; and
- (e) agree that you will not cease acting as trustee while any liability remains outstanding under this Agreement.

## **8. Use, Maintenance and Repair**

8.1 You must use the Goods only for the purpose for which they were designed and you must at all times maintain the Goods in good condition and repair, and in accordance with the manufacturer's specifications and recommendations.

8.2 You must not, without our prior written consent (which shall not be unreasonably withheld), sell, part with possession or otherwise dispose of, lease or license the Goods or give anyone any Security Interest in or other rights over the Goods. You acknowledge our Security Interest continues in the Goods and any proceeds derived from the Goods despite any disposal of, or dealing in, the Goods in breach of this Agreement.

8.3 You must register the Goods and comply with all laws relating to the Goods or their use, operation, storage, possession or licensing of the Goods and the registration and licensing of the Customer as the proprietor, holder and operator of the Goods. If the Goods are a motor vehicle you must not use them as a taxi or hire car or for any motor sport event.

8.4 You must not make any alteration or addition to the Goods which may adversely affect their value without our prior written consent (which shall not be unreasonably withheld),, nor alter any identifying number or mark on the Goods. We will act reasonably in respect of any request for consent where the alteration or addition does not adversely affect the utility or value of the Goods and is incidental to the proposed use of the Goods. Any addition to the Goods will become part of the Goods which is the subject of our Security Interest. You must not deface or conceal any identifying nameplates, words, markings or numbers, or place, or allow to be placed, on any Goods any plates, words, markings or

- numbers that are inconsistent with our Security Interest and you must upon request affix to the Goods a readily visible plate or sign that identifies our interest in the Goods and states that a disposal of the Goods or the granting of a Security Interest over the Goods will breach our Security Interest.
- 8.5 You must not without our prior written consent (which shall not be unreasonably withheld):
- (a) allow the Goods to become affixed to any other item (including land) in which a person other than us has a Security Interest unless this is required for the ordinary use of the Goods and you obtain an acknowledgement on terms satisfactory to us that any such person does not have an interest in the Goods or if they do that interest is subordinate to our Security Interest; and
  - (b) allow any item which is subject to a Security Interest or other interest in favour of a person other than us to become affixed to the Goods.
- 8.6 You must only engage qualified personnel to undertake any repairs or other services to the Goods and not do anything which may cause any such person to believe that we will be responsible for paying that person's account.
- 8.7 You must pay for repairs to the Goods in accordance with the terms of the repairer to avoid a repairer's lien arising over the Goods. You must ensure that no lien of any nature arises in respect of the Goods.
- 8.8 You must keep the Goods secure from theft and damage and not do or allow anything to be done which is likely to jeopardise their safety, condition or value.
- 8.9 You must notify us immediately if the Goods are lost, stolen or damaged or you part with possession of the Goods.
- 8.10 On request, you must advise us where the Goods are located and where they are ordinarily garaged or housed, and if the Goods are not in your possession, you must provide us with information and reasonable assistance to trace the Goods.
- 8.11 You must retain the Goods in your custody and not enter into any agreement with anyone in relation to the Goods without our written consent, which shall not be unreasonably withheld, (except as required to maintain or repair them) nor do anything to prejudice our rights in the Goods.
- 8.12 You must not remove nor allow anyone else to remove the Goods from Australia without our written consent, which shall not be unreasonably withheld.
- 8.13 You must not remove the Goods from the State or Territory of your address as set out in the Schedule for a period in excess of one month, without our consent in writing, which we will not unreasonably withhold.
- 8.14 You must ensure that the Goods are only used by persons with proper qualifications and experience and must maintain all user logs or other records customarily maintained for similar Goods.
- 8.15 You must give or procure access to the premises at which the Goods are located at any time, in order to exercise any of our rights, including to inspect or test the Goods or otherwise check whether you have complied with your obligations under this Agreement. You authorise us or will procure that we are authorised to enter any premises where the Goods are located for these purposes. We will give you reasonable notice before doing so, unless we consider that we must act quickly in order to protect our interest in the Goods.
- 8.16 For the purposes of registration:
- (a) you must ensure that all Goods which may or must be registered on a register are registered on such register; and
  - (b) you must notify us of any change in the registration of the Goods (including any loss of registration); and
  - (c) you must not change any serial or registration numbers of any Goods without giving us at least 10 Business Days prior notice of the change (except in circumstances in which a licence or registration is renewed and the registration or licence number changes as a consequence. In such circumstances, you must notify us immediately after becoming aware of the new registration or licence numbers).
- 8.17 You must pay and indemnify us upon written demand for any outgoing, Tax or other liability payable in relation to this Agreement or any action, taken in respect of it, or payable in relation to the Goods by you, or by us if we are in possession of the Goods, and promptly upon request deliver to us any notice or payment receipt received by you in relation to that outgoing, Tax or other liability. This indemnity does not extend to loss (including loss of bargain or profit), damage, liabilities, costs, taxes, duties, charges and expenses suffered or incurred by us as a result of the mistake, error, fraud, wilful misconduct or negligent acts or omissions or those of us, our agents or employees. We agree, upon written request by you to provide to you in reasonable detail the calculation of any amount claimed and payable by you under this indemnity.
- 8.18 You must notify us of any governmental requisition or

- document received by you from any Governmental Agency relating to the Goods promptly upon receipt.
- 8.19 Without permitting you to breach any provision of this Agreement, you must deliver to us all chattel paper in relation to the Goods promptly upon such chattel paper coming into effect.

## **9. Ownership of the Goods and our Rights**

- 9.1 The Goods are our property. You are a bailee of the Goods and have the right to use the Goods for the Lease Term only. You have no authority to deal with the Goods, and must not purport to assign or otherwise deal with any interest in them.
- 9.2 We are irrevocably authorised for the term of this Agreement to use your name and act on behalf of you in the exercise of any right and in relation to any legal proceedings to enforce or protect our rights under this Agreement or interest in the Goods.
- 9.3 For as long as any amount remains owing under this Agreement, you appoint us as your attorney to:
- (a) do (at your cost and in your name) anything which you should do under this Agreement; and
  - (b) institute, conduct and settle any disputes concerning the Goods or any insurance in respect of them.
- 9.4 You are not by this Agreement granted an option to purchase the Goods. On expiry of this Agreement, we may, but are not obliged to, consider any offer from you to purchase the Goods.

## **10. Insurance**

- 10.1 You must maintain at all times during the Lease (and at any time the Goods are still in your possession but owned by us):
- (a) comprehensive insurance for injury or damage arising out of your use or possession of the Goods and for loss or damage to the Goods for all risks for their then current market value; and
  - (b) any other insurance policies which we reasonably require.
- 10.2 Both the insurer and the terms of the insurance must be approved by us acting reasonably. You must ensure that each insurance policy notes our interest as the owner and first loss payee.
- 10.3 You must, on request, provide us with evidence of insurance, pay all premiums and permit us to receive all insurance money payable in respect of the Goods (which will be applied to your debt under this Agreement).
- 10.4 If we are not reasonably satisfied that you have adequately insured the Goods, or if you do not give us evidence of this on request, we may take out such insurance as we consider appropriate and you must

reimburse us for our costs of doing this on demand, but we have no duty to you to take out such insurance.

- 10.5 You must not do or fail to do anything which would:
- (a) result in any insurance claim being refused or not met in full; or
  - (b) vary any insurance in any material respect, enforce, conduct, settle or compromise any insurance claim without our written consent (which shall not be unreasonably withheld).
- 10.6 You must notify us immediately of any circumstances which may entitle a claim to be made under any insurance.
- 10.7 You must forward to us any proceeds or any payment of any entitlement sent to you under any insurance, unless we otherwise agree in writing. Any such amount may be applied by us towards the repair or replacement of the Goods or the reduction of your liability to us, at our discretion.
- 10.8 Any amounts received by us under any insurance for loss or damage to the Goods (less any costs incurred by us in obtaining or attempting to obtain any of this money) will be deducted from any money payable by you under clause 12 or, if this has been paid by you, refunded to you up to, but not exceeding, the amount payable under clause 12.

## **11. Default Events**

- 11.1 You must ensure there are no Default Events.
- 11.2 There are two types of Default Event:
- (a) Payment Defaults (see clause 11.3)
  - (b) Non-monetary Default Events, being specific events of non-monetary default (see clause 11.7).

### **What is a Payment Default?**

- 11.3 A Payment Default occurs if you do not pay on time any amount due under this Agreement.

### **What are the consequences of a Payment Default?**

- 11.4 If a Payment Default occurs, we will give you a notice that the Payment Default has occurred allowing you at least 7 days to remedy it.
- 11.5 However, we may give you a shorter notice period, or no notice period, in relation to a Payment Default, if:
- (a) the Payment Default is unable to be remedied;
  - (b) it is reasonable for us to manage a material and immediate risk relating to the nature of the Payment Default, your particular circumstances, or the value of the Goods; or
  - (c) an Insolvency Event occurs in relation to you (in addition to the Payment Default).

11.6 We can immediately take any or all of the Enforcement Actions listed in clause 12 where:

- (a) the Payment Default is not remedied within the required notice period set out in any notice given under this clause; or
- (b) we are not required to give a notice or, if we are, we give you notice but are not required to allow a notice period pursuant to this clause.

#### **What is a Non-monetary Default Event?**

11.7 A Non-monetary Default Event occurs if any of the following occurs (whether or not within your control):

- (a) the Goods are totally or substantially lost or destroyed (or we reasonably conclude it would be uneconomical to repair them) and the loss is not fully covered by your insurance, as required under this Agreement; or the Goods are taken out of your control;
- (b) an Insolvency Event has occurred in relation to you or any guarantor;
- (c) you indicate through your words or conduct that you are no longer ready, willing or able to meet your obligations under this Agreement;
- (d) you no longer have legal capacity;
- (e) enforcement proceedings are taken against you or your assets by another creditor;
- (f) you are in default under a separate financing arrangement that you have with us being a kind of default included in this Agreement;
- (g) we believe, on reasonable grounds, that you have not complied with the law or any requirement of a statutory authority, or it becomes unlawful for you or us to continue with this Agreement;
- (h) you or any Guarantor give us information or make a representation or warranty to us (including any promise made under this Agreement) which is materially incorrect or misleading;
- (i) without our consent, the Goods are dealt with, or attempted to be dealt with in breach of this Agreement;
- (j) you enter into this agreement in a capacity as employer and do not maintain a licence or permit necessary to conduct your business;
- (k) you do not maintain insurance required under this Agreement or your conduct results in any claim under such insurance being denied or invalid;
- (l) without our consent, there is a change in the legal or beneficial ownership, or management control of you, or of your business; or

- (m) without our consent, there is a change in your legal capacity or composition.

#### **What are the Consequences of a Non-monetary Default Event?**

11.8 If a Non-monetary Default Event occurs, then you need to promptly give us any information we ask for concerning the Non-monetary Default Event.

11.9 If a Non-monetary Default Event has occurred which by its nature is material, or we reasonably consider has had, or is likely to have a significant negative impact on:

- (a) you being able to make any payment due under this Agreement;
  - (b) our security risk (or our ability to assess this); or
  - (c) our legal or reputation risk,
- then we may issue a notice ("**Non-monetary Default Event Notice**") which describes the Non-monetary Default Event and allows you at least 30 days to remedy it (if it can be remedied).

11.10 However, we may give you a shorter notice period, or no notice period, in relation to a Non-monetary Default Event, if:

- (a) the Non-monetary Default Event is unable to be remedied;
- (b) we have already given you a period to remedy a Non-monetary Default Event and you have not remedied that event;
- (c) an Insolvency Event occurs in relation to you; or
- (d) it is reasonable for us to act sooner to manage a material and immediate risk relating to the nature of the Non-monetary Default Event, your particular circumstances, or the nature or value of the Goods.

11.11 We can immediately take any or all of the Enforcement Actions listed in clause 12 where:

- (a) we give you a notice of a Non-monetary Default Event and you do not remedy the Non-monetary Default Event within the required notice period set out in the notice; or
- (b) we are not required to give a notice or, if we are, we give you notice but are not required to allow a notice period pursuant to this clause.

#### **What if another Default occurs during the remedy period?**

11.12 Even if you remedy a Default during the applicable remedy period specified in a notice, we may still take Enforcement Action if another Default of the same

type has arisen during that period and remains outstanding.

## 12. Enforcement Action

12.1 After any applicable steps and time periods described above, when a Default Event has occurred and not been remedied, we can do any or all of the following:

- (a) terminate the Lease by written notice to you;
- (b) take possession of the Goods; and
- (c) require payment of the Recoverable Amount described in clause 12.2; and
- (d) sue you if such amount is not paid.

12.2 Upon termination of the Lease under clause 12.1, you are immediately liable to pay to us, without need for any prior demand, by way of liquidated damages arising both from the Default Event and from the early termination of the Lease, the Recoverable Amount, together with any other amounts payable under this Agreement.

12.3 However, if we terminate the Lease under clause 11.7(a) the amount payable under clause 12.2 will be the Recoverable Amount plus the Present Value of the amount by which the Market Value of the Goods (assessed as at the end of the Lease Term if the Goods had not been lost, destroyed or damaged) exceeds the Residual Value (and we will credit you with the proceeds of any insurances received by us where you have paid to us the full amount payable under this clause).

12.4 We agree to provide upon written request by you such information as you reasonably request in relation to the calculation of the Recoverable Amount or any other amount payable by you under this Agreement.

## 13. Costs, Expenses and Indemnities

13.1 You must indemnify us on demand for all costs and expenses, including collection and legal costs (on an indemnity basis), which we reasonably incur in exercising any of our rights under this Agreement, including any amounts actually incurred by us:

- (a) satisfying any lien claimed by anyone over the Goods;
- (b) remedying any breach of your obligations under this Agreement;
- (c) bringing legal proceedings against you or otherwise to protect our rights under this Agreement or over the Goods;
- (d) recovering amounts owing under this Agreement;
- (e) presenting Direct Debit authorities, cheques or other payment orders for payment;

(f) taking possession of, storing and preserving the Goods, preparing them for sale and selling them;

(g) exercising our rights under clause 9 or otherwise doing anything you should do under this Agreement, but did not (including without limitation keeping the Goods insured and registered);

(h) in relation to the delivery, installation, use or change of use, location, condition, operation, seizure, forfeiture or other confiscation of the Goods, or the loss, destruction, theft or damage however caused including loss of value resulting from insufficient, inadequate or faulty repair of the Goods;

(i) in relation to any claim or demand made by any third party in relation to the Goods or their use;

(j) in relation to any damage to property or death of, or injury to, any person suffered or sustained in connection with the Goods or their use;

(k) in relation to any loss, reduction or disallowance of any depreciation allowance or of any Tax deduction or rebate of any income or other Tax upon which we have relied in calculating the Rent Instalments;

(l) in relation to any new legislation or change in any legislation (including government revenue raising legislation) or subordinate legislation, or any change in any ruling, guideline, directive or requirement issued by any Governmental Agency or any change in the interpretation of any such legislation, subordinate legislation, ruling, guideline, directive or requirement that affects this Agreement; or

(m) where any Security Interest contemplated by this Agreement does not have its intended priority or being void, illegal, invalid, unenforceable or of limited force and effect.

13.2 The indemnity by you under this clause does not extend to loss (including loss of bargain or profit), damage, liabilities, costs, taxes, duties, charges and expenses suffered or incurred by us as a result of our mistake, error, fraud, wilful misconduct or negligent acts or omissions or those of, our agents or employees. We agree, upon written request by you, to provide to you in reasonable detail the calculation of any amount claimed and payable by you under this indemnity.

13.3 You must pay, or reimburse us for, all duties, taxes, fines and other government charges which are payable by us or you and which in any way relate to the Lease, or to anything supplied or done under or relating to it, including those relating to the Goods,

their use, possession or operation, as well as complying with any infringement notices relating to the Goods, and we may, by notice to you, vary the Rent Instalments by the amount of any variation in any such duties, taxes, fines and other government charges.

- 13.4 You must also pay to us on demand, the following fees:

<b>Information Fee</b> for a copy of a document or other information requested in relation to your account or this Agreement	\$0.00
<b>Dishonour Fee</b> for dishonour of any payment instruction or cheque drawn in our favour	\$5.00
<b>Late Payment Fee</b> for any instalment is not made within 5 days of the instalment due date	\$35.00
<b>Variation Fee</b> when you request a variation to this Agreement	at cost
<b>Asset Inspection Fee</b> when we require an asset inspection	at cost
<b>Asset Valuation Fee</b> when we require an asset valuation,	at cost
<b>Payment Handling Fee</b> when a payment is made via BPAY, by EFT or Direct Deposit	\$2.50 for direct deposit/ \$1.50 for BPAY or EFT
<b>Account Closing Fee</b>	\$20.00

We may debit these fees, when incurred by you, to your account with us.

#### 14. Appropriation of Payments

We may apply any money received from you, or from anyone else on your behalf, to the Secured Money owing by you, whether in connection with this Agreement or otherwise, unless you give us specific directions as to how any money is to be applied.

#### 15. What must happen at the end of Lease Term

- 15.1 At the end of the Lease, however it is terminated, we are entitled to possession of the Goods and you must immediately return the Goods to the place specified by us.

15.2 If the Goods are not returned to us when you are required to do this, you must pay us an amount equal to one day's proportion of a Rent Instalment for each day until the Goods are delivered to us.

15.3 If you do not return the Goods to us when you are due to do so and we are not able to recover possession of them within a reasonable period of time (to be determined by us in our absolute discretion), we may declare them to be lost and you must pay us the Market Value at that time (that amount will be calculated assuming that the Goods are in excellent condition for Goods of their age) as well as any other money which you owe to us.

15.4 Upon the Goods being received by us after expiry or termination of the Lease, we will sell the Goods for the best wholesale or other price we can reasonably obtain at the time and, if the Net Proceeds of Sale are less than the Residual Value, you must pay us on demand the amount of such deficiency.

15.5 If the Goods were in a damaged condition when received by us, the proceeds of any insurance received by us will be deducted from the amount you must pay under clause 15.4. However, in these circumstances, the insurer may be entitled to take the Goods and, if this happens, the Net Proceeds of Sale will be nil.

#### 16. Lease Early Termination Option

16.1 You may, at any time during the Lease Term, by giving us not less than 14 days' prior notice expiring on any date that any Rent Instalment is due for payment (**Payment Date**), terminate this Lease. The notice must specify this Lease and the Payment Date and is irrevocable. You may, at any time before giving such a notice, ask us to give you an estimate of the amount which would be payable under clause 16.2.

16.2 If you give us a notice under clause 16.1, you must, on the Payment Date specified in your notice:

- (a) return the Goods in good repair and working order (fair wear and tear excepted) to the place that we nominate;
- (b) sign and hand over with the Goods, all certificates and documents necessary to transfer the registration or licence of the Goods to the person that we nominate.  
Upon notification by us, you must pay the following amounts to us:
  - (i) if applicable, the amount which we certify is necessary to restore the Goods to good repair and working order (fair wear and tear excepted);
  - (ii) the Recoverable Amount.

16.3 This Lease terminates on the day on which you comply with clause 16.2.

## 17. Assignment

- 17.1 You must not assign this Agreement or any of your rights under it without our prior written consent.
- 17.2 We may, without your consent and without notice assign or otherwise deal with our rights under this Agreement in any way we consider appropriate provided any assignee or other party with whom we deal executes a deed poll confirming that they agree to be bound by the terms of this Agreement in enforcing any of our rights or obligations under this Agreement, as applicable.
- 17.3 You agree that we may disclose any information or documents considered desirable to help exercise this right. You agree that we may disclose information or documents at any time to a person to whom we assign or consider assigning rights under this Agreement and that person's advisors and service providers.

## 18. No waiver and delay

- 18.1 No waiver by us of our rights will be implied from anything done or omitted by us. Any express waiver by us of any right will not be deemed to extend to any continuing or recurring default by you of your obligations.
- 18.2 No delay or granting of time or other indulgence by us will affect our rights to enforce your obligations or exercise any right under this Agreement.

## 19. Validity

Every provision of this Agreement is independent of every other provision. If any provision of this Agreement is void or unenforceable, in whole or in part, that provision is severed and the validity of the remainder of the Agreement will not be affected.

## 20. Implied warranties and limitation of Liability

- 20.1 Where it is not lawful or possible to exclude conditions, warranties or rights implied or given in respect of this Agreement by the *Australian Securities and Investments Commission Act 2001* or other laws, our liability for any breach of such implied conditions, warranties or rights will (but only to the extent allowed by law) be limited (at our option):
- (a) In the case of goods supplied, to the replacement or repair of the goods or the supply of equivalent goods, the payment of the cost of

- repairing or replacing the goods or of acquiring equivalent goods; and
- (b) In the case of services supplied, to the supplying of the services again or the payment of the cost of having the services supplied again.

All other implied conditions, warranties and rights, together with any implied by custom or other circumstances, are excluded.

- 20.2 Subject to the provisions of clause 20.1 and despite any implication arising from any other clause in this Agreement, we are not liable to you in contract or in tort for, or in respect of, any direct or indirect loss or damage suffered by you or any other person arising out of any breach or other act or omission in connection with this Agreement, except where such loss arises from our mistake, error, fraud, wilful misconduct or negligent acts or omissions or those of, our agents or employees.

## 21. Certificates and other Communications

- 21.1 We may, in our discretion, approve the use of electronic methods by you to sign or indicate your acceptance of the terms of this Agreement. If this Agreement is signed or otherwise accepted by you (or on your behalf) by use of an electronic method, then you:
- (a) agree that we may rely on the electronic signature or acceptance as having the same force and effect as a handwritten signature; and
- (b) unconditionally consent to any method used by us (at our discretion) to identify the signatories and to confirm their intention to enter into a binding legal agreement.
- 21.2 You consent to us keeping this document in an electronic format and reproducing that stored document in accordance with the *Electronic Transactions Act 1999* when required for any purpose whatsoever, including in connection with any enforcement action or legal proceedings.
- 21.3 You agree that a verbal instruction, confirmation or agreement by you pursuant to this Agreement is binding on you. This includes any instruction, confirmation or agreement or confirmation by you over the telephone. You consent to us taping any conversation (including over the telephone) between you and us (and any of our contractors) and using that tape as proof of your instruction, confirmation or agreement.
- 21.4 You agree to provide to us any information or document that we have reasonably requested including:

- (a) to facilitate our compliance with applicable laws including to verify your nationality in accordance with anti-money laundering laws; and
- (b) to facilitate the registration of any Security Interest.

## 22. Notices

- 22.1 Any notice must be in writing and, with the exception of email, signed by the sender or any solicitor acting for the sender or, if a corporate party, an Authorised Officer of the sender or under the seal of or any power of attorney conferred by the sender.
- 22.2 You must notify us within 7 days of any change of your address.
- 22.3 Any written notice under this Agreement may be given to you:
- (a) personally;
  - (b) by post;
  - (c) by fax;
  - (d) by email; or
  - (e) in any other way permitted by law.
- 22.4 Any written notice under this Agreement given to us must be:
- (a) sent by post to our address stated at the beginning of this Agreement; or
  - (b) given by any other means permitted by law.
- 22.5 Any notice is effective for the purposes of this Agreement upon delivery to the recipient's address or; if sent by post: on the third Business Day after posting, if transmitted by facsimile: on production to the sender of a facsimile transmittal confirmation report prior to 4.00 pm local time on a Business Day in the place to which the written notice is sent, in the case of email: at the time it was sent unless the transmission medium reports a failure to transmit.

## 23. Governing Law

This Agreement is governed by the law of the State or Territory of the Customer's address as set out in the Schedule. If no address is stated, or if there is more than one Customer and you do not both/all reside in the same State or Territory, means the law of the State of New South Wales. The parties submit to the non-exclusive jurisdiction of the courts of that State or Territory.

## 24. Definitions and Interpretations

### 24.1 Definitions:

In this Agreement:

- (a) **"Account Keeping Fees"** means the amount specified as the "Account Keeping Fees" specified in the Schedule.

- (b) **"Agreement"** means our agreement with you as set out in the Schedule, these Novated Finance Lease Terms and, where applicable, any other documents referred to in such documents.
- (c) **"Authorised Officer"** means any director, secretary or other officer, employee or person notified in that capacity by any party to this Lease in or under any provision of this Lease to the other party, without withdrawal or cancellation of that notification as at that time; and in relation to us, also includes any of our managers, or acting or assisting managers, or solicitors.
- (d) **"Business Day"** is a week day on which banks are open for business in Sydney.
- (e) **"Commencement Date"** means the date on which we acquire the Goods from the Supplier.
- (f) **"Corporations Act"** means the Corporations Act 2001 (Cth).
- (g) **"Customer"** means each customer and all customers identified in the Schedule.
- (h) **"Default Event"** means any of the events described in clause 11.
- (i) **"Direct Debit"** means a transaction to effect payment by debit to your bank account and credit to us, initiated by us in accordance with your request and authorisation.
- (j) **"Discount Rate"** means our Rate of Return multiplied by 0.70 where our "Rate of Return" is the implicit rate which we use to calculate the amount of Rent Instalments.
- (k) **"Enforcement Action"** means the actions described in clause 12.1.
- (l) **"Novated Finance Lease Terms"** means the terms and conditions contained in the document entitled "Novated Finance Lease Terms".
- (m) **"financing statement"** has the meaning given to that term in the PPSA.
- (n) **"Goods"** means the "Goods" specified in the Schedule and includes any part of them together with any substitute or replacement of them, all replacement and spare parts, and additions and accessories fixed to the Goods, or any substitute or replacement of all or part of them.
- (o) **"Governmental Agency"** means any governmental, semi-government, administrative, fiscal, municipal, local, judicial or regulatory agency, department, instrumentality, body, utility, authority, commission, court or tribunal.
- (p) **"Insolvency Event"** means any of the following:
  - (i) a person is, or a person states that the person is, unable to pay from the person's own money all the person's

- debts as and when they become due and payable;
- (ii) a person is taken, or a person must be presumed, to be insolvent or unable to pay the person's debts under any applicable legislation;
  - (iii) an application or order is made for the winding up or dissolution of a corporation and is not withdrawn or dismissed within thirty (30) days or a resolution is passed or any steps are taken to pass a resolution for the winding up or dissolution of a corporation;
  - (iv) an administrator, provisional liquidator, liquidator or person having a similar or analogous function under the laws of any relevant jurisdiction is appointed in respect of a corporation;
  - (v) a controller or Receiver is appointed in respect of any property of a person or corporation or secured party takes possession of any property of a person or corporation;
  - (vi) a corporation is deregistered under the Corporations Act;
  - (vii) a person enters into or takes any action to enter into an arrangement (including a scheme of arrangement or deed of company arrangement), composition or compromise with, or assignment for the benefit of, all or any class of the person's creditors or members or a moratorium involving any of them, other than, in each case, in connection with a solvent reconstruction or which has been consented to us;
  - (viii) a petition for the making of a sequestration order against the estate of a person is presented and the petition is not stayed, withdrawn or dismissed within thirty (30) days or a person presents a petition against himself or herself;
  - (ix) a person presents a declaration of intention under section 54A of the *Bankruptcy Act 1966* (Cth).
- (q) **"Introducer"** means any person who has introduced you to us for the purposes of this Agreement, including any authorised distributor of that Introducer.
  - (r) **"Lease"** means the hire or lease of the Goods under this Agreement.
  - (s) **"Lease Term"** means the Lease Term specified in the Schedule.
  - (t) **"Market Value"** means the value of the Goods as determined by a person nominated by us as being experienced in valuing Goods of a type which are similar to the Goods.
  - (u) **"Net Proceeds of Sale"** means the proceeds of our sale of the Goods less any costs of selling, attempting to sell, storing, repairing and maintaining them provided that:
    - (i) if we have terminated the Lease under clause 11.7(a) due to loss, damage or destruction of the Goods or we are unable to take possession of the Goods or they are not otherwise returned to us, the Net Proceeds of Sale will be taken to be zero; and
    - (ii) if the Goods are returned to, or repossessed by, us upon expiry of the Lease Term and we are unsuccessful in selling them within 2 months, the Net Proceeds of Sale will be the Market Value less our reasonable costs of valuation.
  - (v) **"PPSA"** means the *Personal Property Securities Act 2009* (Cth).
  - (w) **"PPSR"** means the *Personal Property Securities Register*.
  - (x) **"Present Value"** of an amount due a future time (future value) is the amount calculated by applying the Discount Rate to the future value over the period between the time of calculation and the future time. For the purposes of calculating a Present Value in relation to the Residual Value, the Discount Rate is applied over the period between the time of calculation and expiry of the Lease Term.
- 24.2 **"Recoverable Amount"** at any time means the total of the following amounts:
- (a) any Rent Instalments and any other money then due for payment but which are unpaid as at the date of termination; and
  - (b) the Present Value of all Rent Instalments not then due which, but for the termination, would have been payable by you under this Lease as from the date of termination to the end of the Lease Term; and
  - (c) the Present Value of the amount by which the Net Proceeds of Sale are less than the Residual Value; and
  - (d) our reasonable expenses actually incurred in repossessing the Goods, which include any expenses reasonably incurred in attempting to

repossess the Goods and satisfying any lien claimed over them, whether justifiable or not, as well as any legal and other expenses reasonably incurred by us in relation to the repossession, storage and sale of the Goods including our internal administrative expenses for these things;

provided that,

- (e) this total will be adjusted for any variation in GST or other Taxes or impositions payable in respect of such reduced instalments when compared with the amounts provided for in the Rent Instalments; and
- (f) if the Net Proceeds of Sale exceed the Residual Value, the Recoverable Amount will be reduced by the amount of the excess.
- (g) **"Rent Instalment"** means the amount specified as the "Rent Instalment" in the Schedule;
- (h) **"Residual Value"** means the Residual Value specified in the Schedule.
- (i) **"Schedule"** means the Schedule to this Agreement.
- (j) **"Security Interest"** has the meaning given to that term in the PPSA.
- (k) **"Supplier"** means the person or entity that supplies the Goods or other goods or services, the subject of this Agreement.
- (l) **"Tax"** includes any tax, duty, charge or rate imposed or assessed under any legislation or by any Governmental Agency, together with any associated interest, penalty, fine, fee or other charge.
- (m) **"we"** or **"us"** means Pepper Asset Finance Pty Limited ACN 165 183 317 and for the purpose of doing anything under this Agreement, includes its officers, employees, and agents, successors and assigns.
- (n) **"you"** or **"your"** means the person named as Customer in the Schedule, and each and every one of them, jointly and separately.

### 24.3 Interpretation

In this Agreement unless the context requires:

- (a) the singular includes the plural and vice versa, any gender includes the other genders and a person includes an individual, a body corporate or a government;
- (b) words and expressions used in this Agreement, whether capitalised or otherwise, which are defined in PPSA but which are not expressly and separately defined in this Agreement have the same meanings as defined in PPSA when used

- (c) in this Agreement, unless the context otherwise requires; and capitalised terms not defined in these Novated Finance Lease Terms shall have the meaning set out in the Schedule.

### 25. Counterparts

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