

Priority Deed -Operating Provisions (Version October 2012)

1. Meaning of words

Terms defined in the Schedule have, when used in this deed, the meanings given in the Schedule. In addition, the following words have the meanings set out below in this deed:

'Grantor' means each person named in the Schedule as the 'Grantor'. If there is more than one person named, this means each person named separately and every two or more of those persons jointly.

'Interest, Costs and Charges' means any:

- (a) interest, including interest on interest and capitalised interest, secured by a Security Interest;
- (b) charges, fees and expenses for the acceptance, payment, discount or endorsement of bills of exchange by any Secured Party which is secured by a Security Interest; or
- (c) other taxes (including duties or levies), fees, charges, expenses or costs, of any nature, the Grantor is obliged to pay to a Secured Party which is secured by a Security Interest.

'Junior Creditor' has the meaning set out in clause 4(a).

'Personal Property' means 'personal property' as defined in the PPS Act.

'PPS Act' means the Personal Property Securities Act 2009 (Commonwealth).

'Receiver' means an administrator, receiver, receiver and manager, controller, liquidator, trustee in bankruptcy or similar person.

'Schedule' means the schedule to this deed.

'Secured Party' means a party to this deed.

'Secured Property' means the property described as 'Secured Property' in Item 2 of the Schedule and includes any proceeds of any nature relating to that property (including any 'proceeds' as defined in the PPS Act), whether or not any Security Interest extends to any other property of any nature. A reference to the Secured Property includes any part of it.

'Security Interest' means:

- (a) each security interest of any nature listed in the Schedule;
- (b) any other security interest that a Secured Party holds at any time over any Secured Property; and
- (c) any replacement of any such security interest (which, insofar as it relates to Personal Property, remains continuously perfected).

2. General interpretation rules

- (a) Words importing the singular include the plural and vice versa.
- (b) A reference to any party includes that party's executors, administrators or permitted assigns or, being a company, its successors or permitted assigns.
- (c) A reference to a person includes any entity recognised by law.
- (d) Every agreement or undertaking expressed or implied by which more than one person agrees or undertakes any obligation or derives any benefit binds or benefits those persons jointly and each of them severally.
- (e) A reference to any statute includes any consolidations, amendments, re-enactments and replacements.
- (f) The word 'including' is not a word of limitation and is not restricted by any accompanying example.

3. Priority and subordination

The parties agree that the Security Interests will have the priority set out in the Schedule in respect of the Secured Property.

4. Direction to pay

- (a) If a Security Interest of a Secured Party (such Secured Party, the **'Junior Creditor'**) is described in the Schedule as having a lower priority than any other Security Interest of another Secured Party, the Junior Creditor agrees to release its Security Interest to the extent that it relates to assets which are the subject of a bona fide sale for fair market value by that other Secured Party provided that the full net proceeds are dealt with in accordance with clause 4(b).

(b) Unless it is contrary to the requirements of, or prohibited by any law, each Secured Party agrees to pay, and direct any Receiver appointed to the Grantor or the Secured Property to pay, the net proceeds of realisation of the Secured Property which it receives (after deduction only of the reasonable expenses of the Secured Party or Receiver in realising those proceeds) in accordance with the priority agreed in this deed.

5. Enforcement rights

This deed does not restrict a Secured Party from taking action to enforce its Security Interest in accordance with its terms, provided that no Secured Party will exercise any rights to retain any Secured Property under Division 4 of Part 4.3 of the PPS Act or any rights of foreclosure it might have in relation to any Secured Property without each other Secured Party's prior written consent.

6. Invalidity

If any Security Interest is not enforceable for any reason against the Secured Property, including as a result of any release of that Security Interest, then this deed will not apply in relation to that Security Interest but will continue to apply in relation to any other Security Interest.

7. Priority provisions

Subject to clause 8, the subordination and order of priority set out in this deed is not affected by:

- (a) the order in which the Security Interests are executed, registered or perfected or the order in which anything else occurs;
- (b) the terms of any Security Interest;
- (c) when money secured by any Security Interest becomes owing;
- (d) the repayment of any money secured by any Security Interest or the re-advance of any money repaid, any fluctuation in the amount secured or any change in the nature of any monetary obligations secured by a Security Interest;
- (e) any amendment or variation of the terms of any Security Interest;
- (f) the appointment of a Receiver to the Grantor or any of its assets;

- (g) any steps being taken by any Secured Party to enforce its Security Interest;
- (h) any dealing or transaction of any kind between the Grantor and any other person;
- (i) any rule of law or equity to the contrary; or
- (j) any other matter or thing.

8. Consent and registration of Security Interests

- (a) Each Secured Party consents to execution, registration and perfection of each Security Interest.
- (b) In respect of any Secured Property that is **real property (or any interest in real property)** located in Australia, each Secured Party agrees, within a reasonable time of being requested by any other Secured Party to do so:
 - (i) to produce to any relevant land titles office any certificate of title for that real property held by it; or
 - (ii) to issue any letter of consent required from it,in any case, to enable registration of any Security Interest where required.

9. Assignment

- (a) No Secured Party may assign or otherwise transfer any of its rights or obligations under this deed except to a person to whom the Secured Party has assigned or transferred its Security Interest in accordance with clause 9(b).
- (b) A Secured Party must not assign or transfer its Security Interest unless:
 - (i) the assignment or transfer is required by law;
 - (ii) the assignment or transfer is made under or results from the enforcement of any Security Interest or the exercise of a right of subrogation; or
 - (iii) the recipient agrees with each other Secured Party in writing to be bound by this deed.

In the case of clauses 9(b)(i) and 9(b)(ii), the Secured Party holding the Security Interest that is assigned or transferred must notify each other Secured Party of the

assignment or transfer and notify the assignee or transferee of the existence of this deed prior to the date of the assignment or transfer.

10. Application of PPS Act

- (a) Where the Secured Property is or includes Personal Property, this deed is an agreement to subordinate security interests for the purposes of section 61 of the PPS Act.
- (b) Unless expressly provided to the contrary in this deed, the subordination contained in this deed is not intended for the benefit of any person who is not or does not become a party to this deed.

11. Service of notices

Notices given or made under this deed must be in writing addressed to the Secured Party and served using one of the following methods in accordance with the relevant particulars in its address for service of notices listed in the Schedule or any other address, email address or facsimile number that a party may from time to time give to each other party in writing:

- (a) prepaid post, and such notices are taken to be received on the day they would be received in the ordinary course of post;
- (b) served personally at the address;
- (c) facsimile transmission, and such notices are taken to be received at the time shown in the transmission report which indicates that the whole transmission was sent; or
- (d) email, and such notices are taken to be received at the time shown in the transmission report which indicates that the email was sent unless the sender receives an automated message that the email has not been delivered.

Despite anything to the contrary in this deed, where a Secured Party has already served a notice on another party in respect of a subject matter in accordance with the PPS Act, the Secured Party is not obliged to send a further notice to that party in accordance with this deed in relation to the same subject matter.

12. Counterparts

This deed may be executed in any number of counterparts and all counterparts taken

together will constitute one instrument.

13. No marshalling

The Junior Creditor (if any) waives any right it has, or may have in the future, to marshalling in respect of each Security Interest of another Secured Party in relation to which the Junior Creditor's Security Interest is described in the Schedule as having a lower priority.

14. No notification for change in secured moneys

A Secured Party is not required to notify any other Secured Party of any increase in the amount secured by its Security Interest or any change in the nature of the amounts secured by its Security Interest.

15. Governing law

The law of the State or Territory of Australia of the address for service of notices stated in Item 3 of the Schedule to this deed (and if none specified then New South Wales) applies to this deed. The venue for any dispute can be any court in the capital city of that State or Territory.