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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549**

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**FORM 6-K**

**REPORT OF FOREIGN PRIVATE ISSUER  
PURSUANT TO RULE 13a-16 OR 15d-16 UNDER THE  
SECURITIES EXCHANGE ACT OF 1934**

For the month of: June 2018

Commission File Number: 001-38544

**NAKED BRAND GROUP LIMITED**

(Translation of registrant's name into English)

c/o Bendon Limited, Building 7C, Huntley Street, Alexandria, NSW 2015, Australia  
(Address of Principal Executive Offices)

Indicate by check mark whether the registrant files or will file annual reports under cover Form 20-F or Form 40-F. Form 20-F  Form 40-F

Indicate by check mark if the registrant is submitting the Form 6-K in paper as permitted by Regulation S-T Rule 101(b)(1):

Indicate by check mark if the registrant is submitting the Form 6-K in paper as permitted by Regulation S-T Rule 101(b)(7):

Indicate by check mark whether the registrant by furnishing the information contained in this Form is also thereby furnishing the information to the Commission pursuant to Rule 12g3-2(b) under the Securities Exchange Act of 1934. Yes  No

If "Yes" is marked, indicate below the file number assigned to the registrant in connection with Rule 12g3-2(b): 82-\_\_\_\_\_.

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## Consummation of Business Combination

On June 19, 2018 (the “Closing Date”), Naked Brand Group Limited (formerly Bendon Group Holdings Limited, the “Registrant”) consummated the transactions contemplated by that certain Agreement and Plan of Reorganization, dated as of May 25, 2017 (as amended on July 26, 2017, February 21, 2018, March 19, 2018, and April 23, 2018, the “Merger Agreement”), by and among the Registrant, Naked Brand Group, Inc., a Nevada corporation (“Naked”), Bendon Limited, a New Zealand limited company (“Bendon”), Naked Merger Sub Inc., a Nevada corporation and a wholly owned subsidiary of the Registrant (“Merger Sub”) and, solely for the purposes of certain sections of the Merger Agreement, Bendon Investments Ltd., a New Zealand company and the former owner of a majority of the outstanding shares of Bendon. On June 11, 2018, Naked had held its Special Meeting of stockholders, at which Naked’s stockholders approved the Merger Agreement and the transactions contemplated thereby.

On the Closing Date, pursuant to the Merger Agreement, (a) Bendon and the Registrant completed a reorganization, pursuant to which all of the shareholders of Bendon exchanged all of their outstanding ordinary shares of Bendon for ordinary shares of the Registrant (the “Reorganization”), and (b) immediately thereafter, Merger Sub merged with and into Naked, with Naked surviving as a wholly-owned subsidiary of the Registrant (the “Merger”, and together with the Reorganization, the “Transactions”).

Upon completion of the Reorganization, the shareholders of Bendon received an aggregate of 16,355,803 ordinary shares of the Registrant. Upon completion of the Merger, each share of Naked common stock was automatically converted into 0.2 ordinary shares of the Registrant (the “Per Share Consideration”), with fractional shares rounded up to the nearest whole share, for an aggregate of 2,068,438 ordinary shares of the Registrant. Outstanding options and warrants of Naked, by their terms, automatically entitle the holders to purchase ordinary shares of the Registrant, with the number of underlying shares and exercise price proportionately adjusted to reflect the Per Share Consideration.

In connection with the Transactions, Carole Hochman, Chief Executive Officer of Naked and Executive Chairman of the Registrant, entered into a lock-up agreement with the Registrant, which restricts Ms. Hochman from selling any of the Registrant’s ordinary shares that she received as a result of the Merger during the six month period after the Closing Date, subject to certain exceptions. The form of the lock-up agreement is included as Exhibit 10.3 to this Report on Form 6-K and is incorporated by reference herein.

The Merger Agreement and the Transactions are more fully described under the sections titled “*The Merger Proposal*” and “*The Merger Agreement*” beginning on pages 63 and 84, respectively, of the definitive proxy statement/prospectus filed by the Registrant with the Securities and Exchange Commission on April 27, 2018 (as supplemented and amended on June 1, 2018, the “Proxy Statement/Prospectus”), and such description is incorporated herein by reference. The summary of the Merger Agreement set forth above and in the Proxy Statement/Prospectus is qualified in its entirety by reference to the full text of the Merger Agreement, a copy of which is included as Annex A to the Proxy Statement/Prospectus and is incorporated by reference herein.

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Simultaneously with the closing of the Transactions, the Registrant consummated the sale of 4,534,137 ordinary shares of the Registrant for an aggregate purchase price of \$17,003,000 in a private placement (the "PIPE Investment"). The sales were made pursuant to subscription agreements between the Registrant and each of the investors in the PIPE Investment. In addition, each investor received a five-year warrant to purchase the same number of ordinary shares of the Registrant for which such investor subscribed. Accordingly, the Registrant issued warrants to purchase an aggregate of 4,534,137 ordinary shares to the investors. The warrants have an exercise price of \$3.75 per share and have certain "cashless" exercise features. In conjunction with the PIPE Investment, the Registrant and certain of the investors executed a Registration Rights Agreement which requires the Registrant, within thirty (30) days of the completion of the Transactions, to file a registration statement covering the resale of all of the ordinary shares sold in the PIPE Investment, including the ordinary shares issuable upon the exercise of the warrants.

Immediately after giving effect to the Reorganization, Merger, and the PIPE Investment, all as described above, there were 22,958,378 ordinary shares of the Registrant issued and outstanding, an aggregate of 757,645 ordinary shares of the Registrant underlying options and warrants issuable to the former Naked stockholders, and an aggregate of 4,534,137 ordinary shares of the Registrant underlying warrants issued to the investors in the PIPE Investment. The former shareholders of Bendon hold 71.24% of the Registrant's issued and outstanding ordinary shares, the former stockholders of Naked hold 9.01% of the Registrant's issued and outstanding ordinary shares, and the investors in the PIPE Investment hold 19.75% of the Registrant's issued and outstanding ordinary shares.

On June 18, 2018, the board of directors of the Registrant and its sole shareholder approved by written consent a change in the Registrant's name from Bendon Group Holdings Limited to Naked Brand Group Limited, effective on and from the Closing Date.

The ordinary shares of the Registrant have been approved for listing on the Nasdaq Capital Market under the trading symbol "NAKD". Trading will commence on June 20, 2018.

### **Unregistered Sales of Equity Securities**

The ordinary shares of the Registrant issued in the Reorganization were issued in reliance on the exemption from registration provided by Regulation S promulgated under the Securities Act of 1933, as amended (the "Securities Act"), which exempts offerings made outside the United States.

The ordinary shares and warrants issued as part of the PIPE Investment were offered and sold in a private placement to accredited investors pursuant to an exemption from registration provided by Section 4(a)(2) of the Securities Act.

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## Amendment to Credit Facility

In connection with the Reorganization and Merger, on the Closing Date, the Registrant entered into a Deed of Amendment and Restatement and Accession (the "Restated Agreement") that amended and restated that certain Facility Agreement among Bendon Limited, as borrower (the "Borrower"), the Registrant and certain affiliates thereof as guarantors (collectively, the "Guarantors"), and Bank of New Zealand, as lender (the "Lender"), originally dated June 27, 2016. Under the Restated Agreement, the Lender consented to the execution of the Merger Agreement and the consummation of the Reorganization and Merger and agreed to reduce the Borrower's outstanding debt of US\$27,000,000 to US\$14,000,000 on the basis that the Registrant repays US\$13,000,000 of the current facility immediately following the closing of the Transactions.

Under the Restated Agreement, the Lender extended to the Borrower (1) a revolving credit facility in an aggregate principal amount of NZ\$20,000,000 (US\$14,000,000) (the "Revolving Facility") and (2) an instrument facility in an aggregate principal amount of NZ\$1,345,000 (US\$941,500) (the "Instrument Facility"). The Borrower may request to draw down in New Zealand Dollars ("NZD"), or in Australian Dollars, Euros, Pounds Sterling, or US Dollars (collectively "Optional Currency").

Borrowings under the Revolving Facility requested in NZD will bear interest during the interest period (which is a period of one, two, or three months, as specified by the Borrower in its request for a drawing) at a rate per annum equal to the sum of (i) the BKBM for the relevant interest period, as determined in accordance with the Restated Agreement, and (ii) a liquidity premium applied by the Lender, and (iii) an additional Business Basis Premium, as published on the Lender's website, if the interest period is greater than one month but less than three months, and (iv) 2.00% per annum. Borrowings under the Revolving Facility requested in Optional Currency will bear interest at the sum of 2.00% per annum plus the applicable exchange rate, as notified to the Borrower by the Lender. The Borrower may prepay drawings, together with accrued interest, under the Revolving Facility upon three business days' notice.

Borrowings under the Instrument Facility may be in any form agreed by the Borrower and Lender so long as they are denominated in NZD or an Optional Currency and have a term no less than one month from the date of issuance.

On June 19, 2018, the Registrant caused US\$13,000,000 of the proceeds of the PIPE Investment to be paid to the Lender. The Borrower agreed to pay the Lender a line fee, payable quarterly in advance, at the rate of 1.00% and 0.75% per annum, respectively, of the aggregate principal amount of the Revolving Facility and Instrument Facility. Additionally, the Borrower agreed to pay the Lender a quarterly issuance fee in the amount of 0.25% of the maximum liability under each of the Revolving Facility and Instrument Facility as specified by the Lender in accordance with its current trade terms. The Borrower also must pay certain costs and expenses of the Lender, including the costs and expenses in connection with entering into the Restated Agreement.

On June 19, 2018, Naked entered into a Supplemental Deed for New Guarantors, for the benefit of the Lender, pursuant to which Naked became a Guarantor under the Restated Agreement.

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All of the obligations under the Restated Agreement are guaranteed by Naked, Bendon, the Registrant, and the other Guarantors party thereto. The obligations are secured by, among other things, all of the real and personal property of Bendon, the Registrant, and the other Guarantors (but not by Naked), including inventory, accounts receivable, shares, and share rights.

The Restated Agreement contains certain customary representations and warranties, and certain customary covenants that restrict the Registrant's ability to, among other things (i) create any security interest affecting its property, other than certain permitted security interests, (ii) dispose of all or a substantial part of its property, other than certain permitted disposals, (iii) create, incur, or assume indebtedness, except indebtedness that is fully subordinated to amounts owed under the Restated Agreement on terms satisfactory to the Lender, (iv) make certain distributions, (v) engage in transactions with affiliates, and (vi) engage in fundamental changes, including mergers, acquisitions, dissolutions, and liquidations, or form or acquire subsidiaries, or transfer its jurisdiction of incorporation, or change its name.

Events of default under the Restated Agreement include, but are not limited to, (i) the Registrant's failure to pay principal, interest, or fees when due, (ii) the Registrant's material breach of any representation or warranty, (iii) the Registrant's failure or refusal to perform, observe, or comply with certain covenants, (iv) liquidation, reorganization, or other relief relating to bankruptcy or insolvency, (v) cross default under certain other material indebtedness, and (vi) a change in control. Upon default due to failure to pay an amount when due, the Borrower will be required to pay a default interest rate equal to the sum of the interest otherwise payable on the amount due plus 2.00% per annum. Upon the occurrence of any event of default, the Lender may foreclose on any or all of the security of the Guarantors, and Lender may cancel the facility, declare any drawings, advance, or other indebtedness due and payable either immediately, on demand, or on such other date as the Lender may specify, and/or require the Borrower to make a prepayment under any outstanding instrument.

The foregoing summary of the Restated Agreement is qualified in its entirety by reference to the full text of the Restated Agreement, a copy of which is included as Exhibit 10.1 to this Report on Form 6-K and is incorporated herein by reference.

### **Equity Incentive Plan**

On June 18, 2018, the board of directors of the Registrant approved the 2017 Long-Term Incentive Plan (the "2017 Plan"), as described under the section titled "*Management of Holdco Following the Transactions – Incentive Plan*" beginning on page 114 of the Proxy Statement/Prospectus, which description is incorporated herein by reference. The 2017 Plan, which is subject to the approval of the Registrant's shareholders within one year, reserves up to 4,000,000 ordinary shares of the Registrant for grant to officers, directors, employees, and consultants. To date, no shares have been granted under the 2017 Plan.

The Registrant may grant the following types of awards under the 2017 Plan: (i) qualified incentive share options and non-qualified share options, (ii) share appreciation rights to persons who are or have been granted share options, (iii) restricted shares, and (iv) other share-based awards, including purchase rights, shares that are not subject to any restrictions or conditions, convertible or exchangeable debentures or other rights convertible into the Registrant's ordinary shares, and awards valued by reference to the value of securities of or the performance of the Registrant or one of its subsidiaries.

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The 2017 Plan is administered by a committee of the board of directors comprised of solely “non-employee” directors, as defined in Rule 16b-3 under the Securities Exchange Act of 1934, as amended (the “Exchange Act”). Subject to the provisions of the 2017 Plan, the committee determines, among other things, the persons to whom from time to time awards may be granted, the specific type of awards to be granted, the number of shares subject to each award, share prices, any restrictions or limitations on the awards, and any vesting, exchange, deferral, surrender, cancellation, acceleration, termination, exercise or forfeiture provisions related to the awards.

The summary of the 2017 Plan set forth above and in the Proxy Statement/Prospectus is qualified in its entirety by reference to the full text of the 2017 Plan, a copy of which is included as Annex C to the Proxy Statement/Prospectus and is incorporated by reference herein.

### **Appointment of Principal Officers and Directors**

Effective as of the closing of the Transactions, the board of directors of the Registrant was increased to four members, and Carole Hochman (Executive Chairman), Paul Hayes, and Andrew Shape were appointed to the board, joining Justin Davis-Rice. In connection with their appointment, Howard Herman and Craig McDonald resigned from the board. The directors will serve on the Registrant’s board of directors until the annual general meeting or until their successors are duly elected and qualified. Messrs. Hayes, Shape, and Davis-Rice were appointed to the Audit Committee; Messrs. Hayes and Shape were appointed to the Nominating Committee; and Messrs. Hayes and Shape were appointed to the Compensation Committee.

Justin Davis-Rice, the Chief Executive Officer of Bendon, became the Registrant’s Chief Executive Officer, Howard Herman became the Registrant’s Chief Financial Officer, and Carole Hochman, the Chief Executive Officer of Naked, became the Registrant’s Executive Chairman.

Reference is made to the disclosure described in the Proxy Statement/Prospectus in the section titled “*Management of Holdco Following the Transactions*” beginning on page 101 for biographical information about each of the directors and officers of the Registrant, which is incorporated herein by reference.

### **Possible but Not Yet Probable Acquisition of FOH Online Corp.**

Bendon has had advanced discussions with the sole shareholder of FOH Online Corp. (“FOH Online”) pursuant to which the parties have specified terms by which Bendon could acquire FOH Online from such shareholder as described in more detail in the Proxy Statement/Prospectus in the section titled “*Business of Bendon — Possible but not yet Probable Acquisition of FOH Online Corp*” beginning on page 149. If Bendon is able to acquire FOH Online, the Registrant would issue to the shareholder of FOH Online (or its designees) an aggregate of 1,304,917 (US\$8,220,979 using share price US\$6.30) ordinary shares, plus the assumption by the Registrant of approximately US\$9,500,000 of FOH Online debt. As a result of the acquisition, the combined company would have a license to sell certain Frederick’s of Hollywood products as described in more detail in the Proxy Statement/Prospectus.

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## Regulation FD Disclosure

On June 20, 2018, a press release was issued announcing the completion of the Transactions and reporting Bendon's financial results for the fiscal year ended January 31, 2018. A copy of the press release is furnished herewith as Exhibit 99.1 and is incorporated herein by reference. It shall not be deemed "filed" for purposes of Section 18 of the Exchange Act, or incorporated by reference in any filing made pursuant to the Exchange Act or under the Securities Act, except as may be expressly set forth by specific reference in such filing.

## Financial Statements of Business Acquired

The Registrant intends to file an annual report on Form 20-F as promptly as practicable, which will contain or incorporate by reference financial and other information with respect to Bendon and Naked for the fiscal year ended January 31, 2018.

## Exhibits

- 2.1 [Agreement and Plan of Merger \(included as Annex A in the Proxy Statement/Prospectus and incorporated by reference herein\).](#)
  - 4.1 [Specimen Ordinary Share Certificate of the Registrant \(incorporated by reference to Exhibit 4.1 of the Registration Statement on Form F-4, File No. 333-223786, declared effective by the Securities and Exchange Commission on April 26, 2018\).](#)
  - 4.2 [Form of Registration Rights Agreement between the Registrant and the investors in the PIPE Investment.](#)
  - 10.1 [Form of Deed of Amendment and Restatement and Accession, dated as of June 19, 2018, by and among Bendon Limited, Bendon Group Holdings Limited, and certain affiliates thereof as guarantors, and Bank of New Zealand.](#)
  - 10.2 [Bendon Group Holdings Limited 2017 Long Term Incentive Plan \(included as Annex C in the Proxy Statement/Prospectus and incorporated by reference herein\).](#)
  - 10.3 [Form of Lock-up Agreement \(incorporated by reference to Exhibit A of Exhibit 2.1 to the Current Report on Form 8-K filed by Naked Brand Group Inc. on May 25, 2017\).](#)
  - 99.1 [Press release dated June 20, 2018.](#)
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**SIGNATURE**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Dated: June 20, 2018

NAKED BRAND GROUP LIMITED

By: /s/ Justin Davis-Rice  
Name: Justin Davis-Rice  
Title: Chief Executive Officer

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## REGISTRATION RIGHTS AGREEMENT

This Registration Rights Agreement (this "Agreement") is made and entered into as of June \_\_, 2018, between Bendon Group Holdings Limited, a limited liability public company incorporated and registered in the state of New South Wales, Australia (the "Company"), and each of the several Subscribers signatory hereto (each such Subscriber, a "Subscriber" and, collectively, the "Subscribers").

This Agreement is made pursuant to the Share Subscription and Warrant Agreement, dated as of the date hereof, between the Company and each Subscriber (the "Subscription Agreement").

The Company and each Subscriber hereby agrees as follows:

1. Definitions.

**Capitalized terms used and not otherwise defined herein that are defined in the Subscription Agreement shall have the meanings given such terms in the Subscription Agreement.** As used in this Agreement, the following terms shall have the following meanings:

"Advice" shall have the meaning set forth in Section 6(d).

"Effectiveness Date" means, with respect to the Initial Registration Statement required to be filed hereunder, the 90<sup>th</sup> calendar day following the date hereof (or, in the event of a "review" by the US Securities and Exchange Commission ("Commission"), the 120<sup>th</sup> calendar day following the date hereof) and with respect to any additional Registration Statements which may be required pursuant to Section 2(c) or Section 3(c), the 60<sup>th</sup> calendar day following the date on which an additional Registration Statement is required to be filed hereunder (or, in the event of a "review" by the Commission, the 90<sup>th</sup> calendar day following the date such additional Registration Statement is required to be filed hereunder); provided, however, that in the event the Company is notified by the Commission that one or more of the above Registration Statements will not be reviewed or is no longer subject to further review and comments, the Effectiveness Date as to such Registration Statement shall be the fifth Trading Day following the date on which the Company is so notified if such date precedes the dates otherwise required above, provided, further, if such Effectiveness Date falls on a day that is not a Trading Day, then the Effectiveness Date shall be the next succeeding Trading Day.

"Effectiveness Period" shall have the meaning set forth in Section 2(a).

"Event" shall have the meaning set forth in Section 2(d).

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“Event Date” shall have the meaning set forth in Section 2(d).

“Filing Date” means, with respect to the Initial Registration Statement required hereunder, the 30<sup>th</sup> calendar day following the date hereof and, with respect to any additional Registration Statements which may be required pursuant to Section 2(c) or Section 3(c), the earliest practical date on which the Company is permitted by SEC Guidance to file such additional Registration Statement related to the Registrable Securities.

“Holder” or “Holders” means the holder or holders, as the case may be, from time to time of Registrable Securities.

“Indemnified Party” shall have the meaning set forth in Section 5(c).

“Indemnifying Party” shall have the meaning set forth in Section 5(c).

“Initial Registration Statement” means the initial Registration Statement filed pursuant to this Agreement.

“Losses” shall have the meaning set forth in Section 5(a).

“Plan of Distribution” shall have the meaning set forth in Section 2(a).

“Prospectus” means the prospectus included in a Registration Statement (including, without limitation, a prospectus that includes any information previously omitted from a prospectus filed as part of an effective registration statement in reliance upon Rule 430A promulgated by the Commission pursuant to the United States Securities Act of 1933 (“Securities Act”)), as amended or supplemented by any prospectus supplement, with respect to the terms of the offering of any portion of the Registrable Securities covered by a Registration Statement, and all other amendments and supplements to the Prospectus, including post-effective amendments, and all material incorporated by reference or deemed to be incorporated by reference in such Prospectus.

“Registrable Securities” means, as of any date of determination, (a) all Subscription Shares, (b) all Ordinary Shares then issued and issuable upon exercise of the Warrants (assuming on such date the Warrants are exercised in full without regard to any exercise limitations therein), and (c) any securities issued or then issuable upon any stock split, dividend or other distribution, recapitalization or similar event with respect to the foregoing.

“Registration Statement” means any registration statement required to be filed hereunder pursuant to Section 2(a) and any additional registration statements contemplated by Section 2(c) or Section 3(c), including (in each case) the Prospectus, amendments and supplements to any such registration statement or Prospectus, including pre- and post-effective amendments, all exhibits thereto, and all material incorporated by reference or deemed to be incorporated by reference in any such registration statement.

“Rule 415” means Rule 415 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended or interpreted from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same purpose and effect as such Rule.

“Rule 424” means Rule 424 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended or interpreted from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same purpose and effect as such Rule.

“Selling Stockholder Questionnaire” shall have the meaning set forth in Section 3(a).

“SEC Guidance” means (i) any publicly-available written or oral guidance of the Commission staff, or any comments, requirements or requests of the Commission staff and (ii) the Securities Act.

“Trading Day” means a day on which the Company’s Ordinary Shares trades on the Trading Market.

“Trading Market” means the New York Stock Exchange, Nasdaq Stock Market or any other national securities exchange.

## 2. Shelf Registration.

(a) On or prior to each Filing Date, the Company shall prepare and file with the Commission a Registration Statement covering the resale of all of the Registrable Securities that are not then registered on an effective Registration Statement for an offering to be made on a continuous basis pursuant to Rule 415. Each Registration Statement filed hereunder shall be on Form S-3 (except if the Company is not then eligible to register for resale the Registrable Securities on Form S-3, in which case such registration shall be on another appropriate form in accordance herewith, subject to the provisions of Section 2(e)) and shall contain (unless otherwise directed by at least 85% in interest of the Holders) substantially the “Plan of Distribution” attached hereto as Annex A and substantially the “Selling Stockholder” section attached hereto as Annex B; provided, however, that no Holder shall be required to be named as an “underwriter” without such Holder’s express prior written consent. Subject to the terms of this Agreement, the Company shall use its best efforts to cause a Registration Statement filed under this Agreement (including, without limitation, under Section 3(c)) to be declared effective under the Securities Act as promptly as possible after the filing thereof, but in any event no later than the applicable Effectiveness Date, and shall use its best efforts to keep such Registration Statement continuously effective under the Securities Act until the date that all Registrable Securities covered by such Registration Statement (i) have been sold, thereunder or pursuant to Rule 144, or (ii) may be sold without volume or manner-of-sale restrictions pursuant to Rule 144 and without the requirement for the Company to be in compliance with the current public information requirement under Rule 144, as determined by the counsel to the Company pursuant to a written opinion letter to such effect, addressed and acceptable to the Transfer Agent and the affected Holders (the “Effectiveness Period”). The Company shall telephonically request effectiveness of a Registration Statement as of 5:00 p.m. (New York City time) on a Trading Day. The Company shall immediately notify the Holders via facsimile or by e-mail of the effectiveness of a Registration Statement on the same Trading Day that the Company telephonically confirms effectiveness with the Commission, which shall be the date requested for effectiveness of such Registration Statement. The Company shall, by 9:30 a.m. (New York City time) on the Trading Day after the effective date of such Registration Statement, file a final Prospectus with the Commission as required by Rule 424. Failure to so notify the Holder within two (2) Trading Days of such notification of effectiveness or failure to file a final Prospectus as foreshall shall be deemed an Event under Section 2(d).

(b) Notwithstanding the registration obligations set forth in Section 2(a), if the Commission informs the Company that all of the Registrable Securities cannot, as a result of the application of Rule 415, be registered for resale as a secondary offering on a single registration statement, the Company agrees to promptly inform each of the Holders thereof and use its commercially reasonable efforts to file amendments to the Initial Registration Statement as required by the Commission, covering the maximum number of Registrable Securities permitted to be registered by the Commission, on Form S-3 or such other form available to register for resale the Registrable Securities as a secondary offering, subject to the provisions of Section 2(e); provided, however, that prior to filing such amendment, the Company shall be obligated to use diligent efforts to advocate with the Commission for the registration of all of the Registrable Securities in accordance with the SEC Guidance, including without limitation, Compliance and Disclosure Interpretation 612.09.

(c) Notwithstanding any other provision of this Agreement and subject to the payment of liquidated damages pursuant to Section 2(d), if the Commission or any SEC Guidance sets forth a limitation on the number of Registrable Securities permitted to be registered on a particular Registration Statement as a secondary offering (and notwithstanding that the Company used diligent efforts to advocate with the Commission for the registration of all or a greater portion of Registrable Securities), unless otherwise directed in writing by a Holder as to its Registrable Securities, the number of Registrable Securities to be registered on such Registration Statement will be reduced as follows:

- a. First, the Company shall reduce Registrable Securities represented by Warrant Shares (applied, in the case that some Warrant Shares may be registered, to the Holders on a pro rata basis based on the total number of unregistered Warrant Shares held by such Holders) on a pro rata basis with all other securities being registered on such Registration Statement; and
- b. Second, the Company shall reduce Registrable Securities represented by Shares (applied, in the case that some Shares may be registered, to the Holders on a pro rata basis based on the total number of unregistered Shares held by such Holders) on a pro rata basis with all other securities being registered on such Registration Statement.

In the event of a cutback hereunder, the Company shall give the Holder at least five (5) Trading Days prior written notice along with the calculations as to such Holder's allotment. In the event the Company amends the Initial Registration Statement in accordance with the foregoing, the Company will use its best efforts to file with the Commission, as promptly as allowed by Commission or SEC Guidance provided to the Company or to registrants of securities in general, one or more registration statements on Form S-3 or such other form available to register for resale those Registrable Securities that were not registered for resale on the Initial Registration Statement, as amended.

(d) If: (i) the Initial Registration Statement is not filed on or prior to its Filing Date (if the Company files the Initial Registration Statement without affording the Holders the opportunity to review and comment on the same as required by Section 3(a) herein, the Company shall be deemed to have not satisfied this clause (i)), or (ii) the Company fails to file with the Commission a request for acceleration of a Registration Statement in accordance with Rule 461 promulgated by the Commission pursuant to the Securities Act, within five Trading Days of the date that the Company is notified (orally or in writing, whichever is earlier) by the Commission that such Registration Statement will not be "reviewed" or will not be subject to further review, or (iii) prior to the effective date of a Registration Statement, the Company fails to file a pre-effective amendment and otherwise respond in writing to comments made by the Commission in respect of such Registration Statement within fifteen (15) calendar days after the receipt of comments by or notice from the Commission that such amendment is required in order for such Registration Statement to be declared effective, or (iv) a Registration Statement registering for resale all of the Registrable Securities is not declared effective by the Commission by the Effectiveness Date of the Initial Registration Statement, or (v) after the effective date of a Registration Statement, such Registration Statement ceases for any reason to remain continuously effective as to all Registrable Securities included in such Registration Statement, or the Holders are otherwise not permitted to utilize the Prospectus therein to resell such Registrable Securities, for more than fifteen (15) consecutive calendar days or more than an aggregate of twenty (20) calendar days (which need not be consecutive calendar days) during any 12-month period (any such failure or breach being referred to as an "Event", and for purposes of clauses (i) and (iv), the date on which such Event occurs, and for purpose of clause (ii) the date on which such five (5) Trading Day period is exceeded, and for purpose of clause (iii) the date which such fifteen (15) calendar day period is exceeded, and for purpose of clause (v) the date on which such fifteen (15) or twenty (20) calendar day period, as applicable, is exceeded being referred to as "Event Date"), then, in addition to any other rights the Holders may have hereunder or under applicable law, on each such Event Date and on each monthly anniversary of each such Event Date (if the applicable Event shall not have been cured by such date) until the applicable Event is cured, the Company shall pay to each Holder an amount in cash, as partial liquidated damages and not as a penalty, equal to the product of 1.0% multiplied by the aggregate Subscription Price paid by such Holder pursuant to the Subscription Agreement. The parties agree that the maximum aggregate liquidated damages payable to a Holder under this Agreement shall be 5% of the aggregate Subscription Price paid by such Holder pursuant to the Subscription Agreement. If the Company fails to pay any partial liquidated damages pursuant to this Section in full within seven days after the date payable, the Company will pay interest thereon at a rate of 18% per annum (or such lesser maximum amount that is permitted to be paid by applicable law) to the Holder, accruing daily from the date such partial liquidated damages are due until such amounts, plus all such interest thereon, are paid in full. The partial liquidated damages pursuant to the terms hereof shall apply on a daily pro rata basis for any portion of a month prior to the cure of an Event.

(e) If Form S-3 is not available for the registration of the resale of Registrable Securities hereunder, the Company shall (i) register the resale of the Registrable Securities on another appropriate form and (ii) undertake to register the Registrable Securities on Form S-3 as soon as such form is available, provided that the Company shall maintain the effectiveness of the Registration Statement then in effect until such time as a Registration Statement on Form S-3 covering the Registrable Securities has been declared effective by the Commission.

(f) Notwithstanding anything to the contrary contained herein, in no event shall the Company be permitted to name any Holder or affiliate of a Holder as any Underwriter without the prior written consent of such Holder.

### 3. Registration Procedures.

In connection with the Company's registration obligations hereunder, the Company shall:

(a) Not less than two (2) Trading Days prior to the filing of each Registration Statement and not less than one (1) Trading Day prior to the filing of any related Prospectus or any amendment or supplement thereto (including any document that would be incorporated or deemed to be incorporated therein by reference), the Company shall (i) furnish to each Holder copies of all such documents proposed to be filed, which documents (other than those incorporated or deemed to be incorporated by reference) will be subject to the review of such Holders, and (ii) cause its officers and directors, counsel and independent registered public accountants to respond to such inquiries as shall be necessary, in the reasonable opinion of respective counsel to each Holder, to conduct a reasonable investigation within the meaning of the Securities Act. The Company shall not file a Registration Statement or any such Prospectus or any amendments or supplements thereto to which the Holders of a majority of the Registrable Securities shall reasonably object in good faith, provided that, the Company is notified of such objection in writing no later than two (2) Trading Days after the Holders have been so furnished copies of a Registration Statement or one (1) Trading Day after the Holders have been so furnished copies of any related Prospectus or amendments or supplements thereto. Each Holder agrees to furnish to the Company a completed questionnaire in the form attached to this Agreement as Annex B (a "Selling Stockholder Questionnaire") on a date that is not less than two (2) Trading Days prior to the Filing Date or by the end of the fourth (4<sup>th</sup>) Trading Day following the date on which such Holder receives draft materials in accordance with this Section.

(b) (i) Prepare and file with the Commission such amendments, including post-effective amendments, to a Registration Statement and the Prospectus used in connection therewith as may be necessary to keep a Registration Statement continuously effective as to the applicable Registrable Securities for the Effectiveness Period and prepare and file with the Commission such additional Registration Statements in order to register for resale under the Securities Act all of the Registrable Securities, (ii) cause the related Prospectus to be amended or supplemented by any required Prospectus supplement (subject to the terms of this Agreement), and, as so supplemented or amended, to be filed pursuant to Rule 424, (iii) respond as promptly as reasonably possible to any comments received from the Commission with respect to a Registration Statement or any amendment thereto and provide as promptly as reasonably possible to the Holders true and complete copies of all correspondence from and to the Commission relating to a Registration Statement (provided that, the Company shall excise any information contained therein which would constitute material non-public information regarding the Company or any of its Subsidiaries), and (iv) comply in all material respects with the applicable provisions of the Securities Act and the Exchange Act with respect to the disposition of all Registrable Securities covered by a Registration Statement during the applicable period in accordance (subject to the terms of this Agreement) with the intended methods of disposition by the Holders thereof set forth in such Registration Statement as so amended or in such Prospectus as so supplemented.

(c) If during the Effectiveness Period, the number of Registrable Securities at any time exceeds 100% of the number of Ordinary Shares then registered in a Registration Statement, then the Company shall file as soon as reasonably practicable, but in any case prior to the applicable Filing Date, an additional Registration Statement covering the resale by the Holders of not less than the number of such Registrable Securities.



(d) Notify the Holders of Registrable Securities to be sold (which notice shall, pursuant to clauses (iii) through (vi) hereof, be accompanied by an instruction to suspend the use of the Prospectus until the requisite changes have been made) as promptly as reasonably possible (and, in the case of (i)(A) below, not less than one (1) Trading Day prior to such filing) and (if requested by any such Person) confirm such notice in writing no later than one (1) Trading Day following the day (i)(A) when a Prospectus or any Prospectus supplement or post-effective amendment to a Registration Statement is proposed to be filed, (B) when the Commission notifies the Company whether there will be a “review” of such Registration Statement and whenever the Commission comments in writing on such Registration Statement, and (C) with respect to a Registration Statement or any post-effective amendment, when the same has become effective, (ii) of any request by the Commission or any other federal or state governmental authority for amendments or supplements to a Registration Statement or Prospectus or for additional information, (iii) of the issuance by the Commission or any other federal or state governmental authority of any stop order suspending the effectiveness of a Registration Statement covering any or all of the Registrable Securities or the initiation of any Proceedings for that purpose, (iv) of the receipt by the Company of any notification with respect to the suspension of the qualification or exemption from qualification of any of the Registrable Securities for sale in any jurisdiction, or the initiation or threatening of any Proceeding for such purpose, (v) of the occurrence of any event or passage of time that makes the financial statements included in a Registration Statement ineligible for inclusion therein or any statement made in a Registration Statement or Prospectus or any document incorporated or deemed to be incorporated therein by reference untrue in any material respect or that requires any revisions to a Registration Statement, Prospectus or other documents so that, in the case of a Registration Statement or the Prospectus, as the case may be, it will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, and (vi) of the occurrence or existence of any pending corporate development with respect to the Company that the Company believes may be material and that, in the determination of the Company, makes it not in the best interest of the Company to allow continued availability of a Registration Statement or Prospectus; provided, however, that in no event shall any such notice contain any information which would constitute material, non-public information regarding the Company or any of its Subsidiaries.

(e) Use its best efforts to avoid the issuance of, or, if issued, obtain the withdrawal of (i) any order stopping or suspending the effectiveness of a Registration Statement, or (ii) any suspension of the qualification (or exemption from qualification) of any of the Registrable Securities for sale in any jurisdiction, at the earliest practicable moment.

(f) Furnish to each Holder, without charge, at least one conformed copy of each such Registration Statement and each amendment thereto, including financial statements and schedules, all documents incorporated or deemed to be incorporated therein by reference to the extent requested by such Person, and all exhibits to the extent requested by such Person (including those previously furnished or incorporated by reference) promptly after the filing of such documents with the Commission; provided, that any such item which is available on the EDGAR system (or successor thereto) need not be furnished in physical form.

(g) Subject to the terms of this Agreement, the Company hereby consents to the use of such Prospectus and each amendment or supplement thereto by each of the selling Holders in connection with the offering and sale of the Registrable Securities covered by such Prospectus and any amendment or supplement thereto, except after the giving of any notice pursuant to Section 3(d).

(h) Prior to any resale of Registrable Securities by a Holder, use its commercially reasonable efforts to register or qualify or cooperate with the selling Holders in connection with the registration or qualification (or exemption from the Registration or qualification) of such Registrable Securities for the resale by the Holder under the securities or Blue Sky laws of such jurisdictions within the United States as any Holder reasonably requests in writing, to keep each registration or qualification (or exemption therefrom) effective during the Effectiveness Period and to do any and all other acts or things reasonably necessary to enable the disposition in such jurisdictions of the Registrable Securities covered by each Registration Statement, provided that the Company shall not be required to qualify generally to do business in any jurisdiction where it is not then so qualified, subject the Company to any material tax in any such jurisdiction where it is not then so subject or file a general consent to service of process in any such jurisdiction.

(i) If requested by a Holder, cooperate with such Holder to facilitate the timely preparation and delivery of certificates representing Registrable Securities to be delivered to a transferee pursuant to a Registration Statement, which certificates shall be free, to the extent permitted by the Subscription Agreement and applicable law, of all restrictive legends, and to enable such Registrable Securities to be in such denominations and registered in such names as any such Holder may request.

(j) Upon the occurrence of any event contemplated by Section 3(d), as promptly as reasonably possible under the circumstances taking into account the Company's good faith assessment of any adverse consequences to the Company and its stockholders of the premature disclosure of such event, prepare a supplement or amendment, including a post-effective amendment, to a Registration Statement or a supplement to the related Prospectus or any document incorporated or deemed to be incorporated therein by reference, and file any other required document so that, as thereafter delivered, neither a Registration Statement nor such Prospectus will contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. If the Company notifies the Holders in accordance with clauses (iii) through (vi) of Section 3(d) above to suspend the use of any Prospectus until the requisite changes to such Prospectus have been made, then the Holders shall suspend use of such Prospectus. The Company will use its best efforts to ensure that the use of the Prospectus may be resumed as promptly as is practicable. The Company shall be entitled to exercise its right under this Section 3(j) to suspend the availability of a Registration Statement and Prospectus, subject to the payment of partial liquidated damages otherwise required pursuant to Section 2(d), for a period not to exceed 60 calendar days (which need not be consecutive days) in any 12-month period.

(k) Otherwise use commercially reasonable efforts to comply with all applicable rules and regulations of the Commission under the Securities Act and the Securities Exchange Act of 1934 ("Exchange Act"), including, without limitation, Rule 172 under the Securities Act, file any final Prospectus, including any supplement or amendment thereof, with the Commission pursuant to Rule 424 under the Securities Act, promptly inform the Holders in writing if, at any time during the Effectiveness Period, the Company does not satisfy the conditions specified in Rule 172 and, as a result thereof, the Holders are required to deliver a Prospectus in connection with any disposition of Registrable Securities and take such other actions as may be reasonably necessary to facilitate the registration of the Registrable Securities hereunder.

(l) The Company shall use its best efforts to maintain eligibility for use of Form S-3 (or any successor form thereto) for the registration of the resale of Registrable Securities.

(m) The Company may require each selling Holder to furnish to the Company a certified statement as to the number of Ordinary Shares beneficially owned by such Holder and, if required by the Commission, the natural persons thereof that have voting and dispositive control over the shares. During any periods that the Company is unable to meet its obligations hereunder with respect to the registration of the Registrable Securities solely because any Holder fails to furnish such information within three Trading Days of the Company's request, any liquidated damages that are accruing at such time as to such Holder only shall be tolled and any Event that may otherwise occur solely because of such delay shall be suspended as to such Holder only, until such information is delivered to the Company.

4. Registration Expenses. All fees and expenses incident to the performance of or compliance with, this Agreement by the Company shall be borne by the Company whether or not any Registrable Securities are sold pursuant to a Registration Statement. The fees and expenses referred to in the foregoing sentence shall include, without limitation, (i) all registration and filing fees (including, without limitation, fees and expenses of the Company's counsel and independent registered public accountants) (A) with respect to filings made with the Commission, (B) with respect to filings required to be made with any Trading Market on which the Ordinary Shares are then listed for trading, and (C) in compliance with applicable state securities or Blue Sky laws reasonably agreed to by the Company in writing (including, without limitation, fees and disbursements of counsel for the Company in connection with Blue Sky qualifications or exemptions of the Registrable Securities), (ii) printing expenses (including, without limitation, expenses of printing certificates for Registrable Securities), (iii) messenger, telephone and delivery expenses, (iv) fees and disbursements of counsel for the Company, (v) Securities Act liability insurance, if the Company so desires such insurance, and (vi) fees and expenses of all other Persons retained by the Company in connection with the consummation of the transactions contemplated by this Agreement. In addition, the Company shall be responsible for all of its internal expenses incurred in connection with the consummation of the transactions contemplated by this Agreement (including, without limitation, all salaries and expenses of its officers and employees performing legal or accounting duties), the expense of any annual audit and the fees and expenses incurred in connection with the listing of the Registrable Securities on any securities exchange as required hereunder. In no event shall the Company be responsible for any broker or similar commissions of any Holder or, except to the extent provided for in the Transaction Documents, any legal fees or other costs of the Holders.

5. Indemnification.

(a) Indemnification by the Company. The Company shall, notwithstanding any termination of this Agreement, indemnify and hold harmless each Holder, the officers, directors, members, partners, agents, brokers (including brokers who offer and sell Registrable Securities as principal as a result of a pledge or any failure to perform under a margin call of Ordinary Shares), investment advisors and employees (and any other Persons with a functionally equivalent role of a Person holding such titles, notwithstanding a lack of such title or any other title) of each of them, each Person who controls any such Holder (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) and the officers, directors, members, stockholders, partners, agents and employees (and any other Persons with a functionally equivalent role of a Person holding such titles, notwithstanding a lack of such title or any other title) of each such controlling Person, to the fullest extent permitted by applicable law, from and against any and all losses, claims, damages, liabilities, costs (including, without limitation, reasonable attorneys' fees) and expenses (collectively, "Losses"), as incurred, arising out of or relating to (1) any untrue or alleged untrue statement of a material fact contained in a Registration Statement, any Prospectus or any form of prospectus or in any amendment or supplement thereto or in any preliminary prospectus, or arising out of or relating to any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein (in the case of any Prospectus or supplement thereto, in light of the circumstances under which they were made) not misleading or (2) any violation or alleged violation by the Company of the Securities Act, the Exchange Act or any state securities law, or any rule or regulation thereunder, in connection with the performance of its obligations under this Agreement, except to the extent, but only to the extent, that (i) such untrue statements or omissions are based solely upon information regarding such Holder furnished in writing to the Company by such Holder expressly for use therein, or to the extent that such information relates to such Holder or such Holder's proposed method of distribution of Registrable Securities and was reviewed and expressly approved in writing by such Holder expressly for use in a Registration Statement, such Prospectus or in any amendment or supplement thereto (it being understood that the Holder has approved Annex A hereto for this purpose) or (ii) in the case of an occurrence of an event of the type specified in Section 3(d)(iii)-(vi), the use by such Holder of an outdated, defective or otherwise unavailable Prospectus after the Company has notified such Holder in writing that the Prospectus is outdated, defective or otherwise unavailable for use by such Holder and prior to the receipt by such Holder of the Advice contemplated in Section 6(d). The Company shall notify the Holders promptly of the institution, threat or assertion of any Proceeding arising from or in connection with the transactions contemplated by this Agreement of which the Company is aware. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of such indemnified person and shall survive the transfer of any Registrable Securities by any of the Holders in accordance with Section 6(h).

(b) Indemnification by Holders. Each Holder shall, severally and not jointly, indemnify and hold harmless the Company, its directors, officers, agents and employees, each Person who controls the Company (within the meaning of Section 15 of the Securities Act and Section 20 of the Exchange Act), and the directors, officers, agents or employees of such controlling Persons, to the fullest extent permitted by applicable law, from and against all Losses, as incurred, to the extent arising out of or based solely upon: any untrue or alleged untrue statement of a material fact contained in any Registration Statement, any Prospectus, or in any amendment or supplement thereto or in any preliminary prospectus, or arising out of or relating to any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein (in the case of any Prospectus or supplement thereto, in light of the circumstances under which they were made) not misleading (i) to the extent, but only to the extent, that such untrue statement or omission is contained in any information so furnished in writing by such Holder to the Company expressly for inclusion in such Registration Statement or such Prospectus or (ii) to the extent, but only to the extent, that such information relates to such Holder's information provided in the Selling Stockholder Questionnaire or the proposed method of distribution of Registrable Securities and was reviewed and expressly approved in writing by such Holder expressly for use in a Registration Statement (it being understood that the Holder has approved Annex A hereto for this purpose), such Prospectus or in any amendment or supplement thereto. In no event shall the liability of a selling Holder be greater in amount than the dollar amount of the proceeds (net of all expenses paid by such Holder in connection with any claim relating to this Section 5 and the amount of any damages such Holder has otherwise been required to pay by reason of such untrue statement or omission) received by such Holder upon the sale of the Registrable Securities included in the Registration Statement giving rise to such indemnification obligation.

(c) Conduct of Indemnification Proceedings. If any Proceeding shall be brought or asserted against any Person entitled to indemnity hereunder (an "Indemnified Party"), such Indemnified Party shall promptly notify the Person from whom indemnity is sought (the "Indemnifying Party") in writing, and the Indemnifying Party shall have the right to assume the defense thereof, including the employment of counsel reasonably satisfactory to the Indemnified Party and the payment of all fees and expenses incurred in connection with defense thereof, provided that the failure of any Indemnified Party to give such notice shall not relieve the Indemnifying Party of its obligations or liabilities pursuant to this Agreement, except (and only) to the extent that it shall be finally determined by a court of competent jurisdiction (which determination is not subject to appeal or further review) that such failure shall have materially and adversely prejudiced the Indemnifying Party.

An Indemnified Party shall have the right to employ separate counsel in any such Proceeding and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party or Parties unless: (1) the Indemnifying Party has agreed in writing to pay such fees and expenses, (2) the Indemnifying Party shall have failed promptly to assume the defense of such Proceeding and to employ counsel reasonably satisfactory to such Indemnified Party in any such Proceeding, or (3) the named parties to any such Proceeding (including any impleaded parties) include both such Indemnified Party and the Indemnifying Party, and counsel to the Indemnified Party shall reasonably believe that a material conflict of interest is likely to exist if the same counsel were to represent such Indemnified Party and the Indemnifying Party (in which case, if such Indemnified Party notifies the Indemnifying Party in writing that it elects to employ separate counsel at the expense of the Indemnifying Party, the Indemnifying Party shall not have the right to assume the defense thereof and the reasonable fees and expenses of no more than one separate counsel shall be at the expense of the Indemnifying Party). The Indemnifying Party shall not be liable for any settlement of any such Proceeding effected without its written consent, which consent shall not be unreasonably withheld or delayed. No Indemnifying Party shall, without the prior written consent of the Indemnified Party, effect any settlement of any pending Proceeding in respect of which any Indemnified Party is a party, unless such settlement includes an unconditional release of such Indemnified Party from all liability on claims that are the subject matter of such Proceeding.

Subject to the terms of this Agreement, all reasonable fees and expenses of the Indemnified Party (including reasonable fees and expenses to the extent incurred in connection with investigating or preparing to defend such Proceeding in a manner not inconsistent with this Section) shall be paid to the Indemnified Party, as incurred, within ten Trading Days of written notice thereof to the Indemnifying Party, provided that the Indemnified Party shall promptly reimburse the Indemnifying Party for that portion of such fees and expenses applicable to such actions for which such Indemnified Party is finally determined by a court of competent jurisdiction (which determination is not subject to appeal or further review) not to be entitled to indemnification hereunder.

(d) Contribution. If the indemnification under Section 5(a) or 5(b) is unavailable to an Indemnified Party or insufficient to hold an Indemnified Party harmless for any Losses, then each Indemnifying Party shall contribute to the amount paid or payable by such Indemnified Party, in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party and Indemnified Party in connection with the actions, statements or omissions that resulted in such Losses as well as any other relevant equitable considerations. The relative fault of such Indemnifying Party and Indemnified Party shall be determined by reference to, among other things, whether any action in question, including any untrue or alleged untrue statement of a material fact or omission or alleged omission of a material fact, has been taken or made by, or relates to information supplied by, such Indemnifying Party or Indemnified Party, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such action, statement or omission. The amount paid or payable by a party as a result of any Losses shall be deemed to include, subject to the limitations set forth in this Agreement, any reasonable attorneys' or other fees or expenses incurred by such party in connection with any Proceeding to the extent such party would have been indemnified for such fees or expenses if the indemnification provided for in this Section was available to such party in accordance with its terms.

The parties hereto agree that it would not be just and equitable if contribution pursuant to this Section 5(d) were determined by pro rata allocation or by any other method of allocation that does not take into account the equitable considerations referred to in the immediately preceding paragraph. In no event shall the contribution obligation of a Holder of Registrable Securities be greater in amount than the dollar amount of the proceeds (net of all expenses paid by such Holder in connection with any claim relating to this Section 5 and the amount of any damages such Holder has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission) received by it upon the sale of the Registrable Securities giving rise to such contribution obligation.

The indemnity and contribution agreements contained in this Section are in addition to any liability that the Indemnifying Parties may have to the Indemnified Parties.

6. Miscellaneous.

(a) Remedies. In the event of a breach by the Company or by a Holder of any of their respective obligations under this Agreement, each Holder or the Company, as the case may be, in addition to being entitled to exercise all rights granted by law and under this Agreement, including recovery of damages, shall be entitled to specific performance of its rights under this Agreement. Each of the Company and each Holder agrees that monetary damages would not provide adequate compensation for any losses incurred by reason of a breach by it of any of the provisions of this Agreement and hereby further agrees that, in the event of any action for specific performance in respect of such breach, it shall not assert or shall waive the defense that a remedy at law would be adequate.

(b) [RESERVED]

(c) [RESERVED]

(d) Discontinued Disposition. By its acquisition of Registrable Securities, each Holder agrees that, upon receipt of a notice from the Company of the occurrence of any event of the kind described in Section 3(d)(iii) through (vi), such Holder will forthwith discontinue disposition of such Registrable Securities under a Registration Statement until it is advised in writing (the "Advice") by the Company that the use of the applicable Prospectus (as it may have been supplemented or amended) may be resumed. The Company will use its best efforts to ensure that the use of the Prospectus may be resumed as promptly as is practicable. The Company agrees and acknowledges that any periods during which the Holder is required to discontinue the disposition of the Registrable Securities hereunder shall be subject to the provisions of Section 2(d).

(e) Piggy-Back Registrations. If, at any time during the Effectiveness Period, there is not an effective Registration Statement covering all of the Registrable Securities and the Company shall determine to prepare and file with the Commission a registration statement relating to an offering for its own account or the account of others under the Securities Act of any of its equity securities, other than on Form S-4 or Form S-8 (each as promulgated under the Securities Act) or their then equivalents relating to equity securities to be issued solely in connection with any acquisition of any entity or business or equity securities issuable in connection with the Company's stock option or other employee benefit plans, then the Company shall deliver to each Holder a written notice of such determination and, if within fifteen days after the date of the delivery of such notice, any such Holder shall so request in writing, the Company shall include in such registration statement all or any part of such Registrable Securities such Holder requests to be registered; provided, however, (i) that the Company shall not be required to register any Registrable Securities pursuant to this Section 6(e) that are eligible for resale pursuant to Rule 144 (without volume restrictions or current public information requirements) promulgated by the Commission pursuant to the Securities Act or that are the subject of a then effective Registration Statement that is available for resales or other dispositions by such Holder and (ii) any such piggy-back registration rights shall be subject to, if underwritten, customary underwriter cutbacks (at the underwriter's discretion) provided in the event that some but not all of the unregistered Registrable Securities may be included, any such cutbacks are applied ratably in proportion to each Holder's unregistered Registrable Securities then held.



(f) Amendments and Waivers. The provisions of this Agreement, including the provisions of this sentence, may not be amended, modified or supplemented, and waivers or consents to departures from the provisions hereof may not be given, unless the same shall be in writing and signed by the Company and the Holders of 50.1% or more of the then outstanding Registrable Securities (for purposes of clarification, this includes any Registrable Securities issuable upon exercise or conversion of any Security), provided that, if any amendment, modification or waiver disproportionately and adversely impacts a Holder (or group of Holders), the consent of such disproportionately impacted Holder (or group of Holders) shall be required. If a Registration Statement does not register all of the Registrable Securities pursuant to a waiver or amendment done in compliance with the previous sentence, then the number of Registrable Securities to be registered for each Holder shall be reduced pro rata among all Holders and each Holder shall have the right to designate which of its Registrable Securities shall be omitted from such Registration Statement. Notwithstanding the foregoing, a waiver or consent to depart from the provisions hereof with respect to a matter that relates exclusively to the rights of a Holder or some Holders and that does not directly or indirectly affect the rights of other Holders may be given only by such Holder or Holders of all of the Registrable Securities to which such waiver or consent relates; provided, however, that the provisions of this sentence may not be amended, modified, or supplemented except in accordance with the provisions of the first sentence of this Section 6(f). No consideration shall be offered or paid to any Person to amend or consent to a waiver or modification of any provision of this Agreement unless the same consideration also is offered to all of the parties to this Agreement.

(g) Notices. Any and all notices or other communications or deliveries required or permitted to be provided hereunder shall be delivered as set forth in the Subscription Agreement.

(h) Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of each of the parties and shall inure to the benefit of each Holder. The Company may not assign (except by merger) its rights or obligations hereunder without the prior written consent of all of the Holders of the then outstanding Registrable Securities.

(i) No Inconsistent Agreements. Neither the Company nor any of its Subsidiaries has entered, as of the date hereof, nor shall the Company or any of its Subsidiaries, on or after the date of this Agreement, enter into any agreement with respect to its securities, that would have the effect of impairing the rights granted to the Holders in this Agreement or otherwise conflicts with the provisions hereof. Except as set forth on Schedule 6(i), neither the Company nor any of its Subsidiaries has previously entered into any agreement granting any registration rights with respect to any of its securities to any Person that have not been satisfied in full.

(j) Execution and Counterparts. This Agreement may be executed in two or more counterparts, all of which when taken together shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party, it being understood that both parties need not sign the same counterpart. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a “.pdf” format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or “.pdf” signature page were an original thereof.

(k) Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be determined in accordance with the provisions of the Subscription Agreement.

(l) Cumulative Remedies. The remedies provided herein are cumulative and not exclusive of any other remedies provided by law.

(m) Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions set forth herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated, and the parties hereto shall use their commercially reasonable efforts to find and employ an alternative means to achieve the same or substantially the same result as that contemplated by such term, provision, covenant or restriction. It is hereby stipulated and declared to be the intention of the parties that they would have executed the remaining terms, provisions, covenants and restrictions without including any of such that may be hereafter declared invalid, illegal, void or unenforceable.

(n) Headings. The headings in this Agreement are for convenience only, do not constitute a part of the Agreement and shall not be deemed to limit or affect any of the provisions hereof.

(o) Independent Nature of Holders' Obligations and Rights. The obligations of each Holder hereunder are several and not joint with the obligations of any other Holder hereunder, and no Holder shall be responsible in any way for the performance of the obligations of any other Holder hereunder. Nothing contained herein or in any other agreement or document delivered at any closing, and no action taken by any Holder pursuant hereto or thereto, shall be deemed to constitute the Holders as a partnership, an association, a joint venture or any other kind of group or entity, or create a presumption that the Holders are in any way acting in concert or as a group or entity with respect to such obligations or the transactions contemplated by this Agreement or any other matters, and the Company acknowledges that the Holders are not acting in concert or as a group, and the Company shall not assert any such claim, with respect to such obligations or transactions. Each Holder shall be entitled to protect and enforce its rights, including without limitation the rights arising out of this Agreement, and it shall not be necessary for any other Holder to be joined as an additional party in any proceeding for such purpose. The use of a single agreement with respect to the obligations of the Company contained was solely in the control of the Company, not the action or decision of any Holder, and was done solely for the convenience of the Company and not because it was required or requested to do so by any Holder. It is expressly understood and agreed that each provision contained in this Agreement is between the Company and a Holder, solely, and not between the Company and the Holders collectively and not between and among Holders.

\*\*\*\*\*

*(Signature Pages Follow)*

IN WITNESS WHEREOF, the parties have executed this Registration Rights Agreement as of the date first written above.

BENDON GROUP HOLDINGS LIMITED

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title:

[SIGNATURE PAGE OF HOLDERS FOLLOWS]

---

[SIGNATURE PAGE OF HOLDERS TO BENDON RRA]

Name of Holder: \_\_\_\_\_

*Signature of Authorized Signatory of Holder:* \_\_\_\_\_

Name of Authorized Signatory: \_\_\_\_\_

Title of Authorized Signatory: \_\_\_\_\_

[SIGNATURE PAGES CONTINUE]

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Dated

2018

**DEED OF AMENDMENT AND  
RESTATEMENT AND ACCESSION  
(relating to the Facility Agreement  
originally dated 27 June 2016  
(as amended from time to time))**

Initial Borrower  
**BENDON LIMITED**

Initial Guarantors  
**THE PARTIES LISTED IN SCHEDULE 1**

Acceding Guarantor and Acceding Security Provider  
**BENDON GROUP HOLDINGS LIMITED**

Lender  
**BANK OF NEW ZEALAND**

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## PARTIES

1. **BENDON LIMITED** (Company Number 110935) (the “**Initial Borrower**”);
2. **THE PARTIES LISTED IN SCHEDULE 1** (the “**Initial Guarantors**”);
3. **BENDON GROUP HOLDINGS LIMITED** (ACN 619 054 938) (the “**Acceding Guarantor**” and the “**Acceding Security Provider**); and
4. **BANK OF NEW ZEALAND** (the “**Lender**”).

## BACKGROUND

- A. The Initial Borrower, Initial Guarantors and the Lender are party to the Existing Agreement.
- B. It is proposed that following the reorganisation of the Bendon group pursuant to the Merger Implementation Plan, Bendon Group Holdings Limited will be the sole shareholder of both the Borrower and Naked.
- C. The parties have agreed to amend and restate the Existing Agreement as set out in this deed including provision for the accession of the Acceding Guarantor and the granting of security by the Acceding Security Provider

## TERMS OF THIS DEED

### 1. INTERPRETATION

- 1.1 **Definitions:** Unless the context otherwise requires, in this deed:

“**Amended Agreement**” means the Existing Agreement as amended and restated on the Effective Date in accordance with this deed.

“**Company**” has the meaning given to it in the Composite GSD.

“**Composite GSD**” means the composite general security deed dated 27 June 2016 given by Bendon Limited, among other Initial Guarantors, in favour of the Lender (as secured party) (as amended from time to time).

“**Effective Date**” means the date notified by the Lender as the Effective Date in accordance with clause 2.

“**Existing Agreement**” means the Facility Agreement dated 26 June 2016 between the Parent (as parent), the Initial Guarantors (as guarantors) and the Lender (as lender) (as amended from time to time).

“**Merger**” means the merger between Naked Merger Sub (as defined in the Merger Implementation Plan) and Naked, as provided for in the Merger Implementation Plan.

“**Merger Implementation Plan**” means the merger implementation plan prepared by the Initial Borrower and sets out in sufficient detail the steps and payment flows (including timing) to implement the Merger, including (among other things):

---

- (a) the funds flow demonstrating the repayment of the Amount Outstanding under the Existing Agreement in accordance with conditions precedent 6; and
- (b) the conversion into equity the debt currently subordinated pursuant to the Deeds of Subordination (as defined in the Existing Agreement).

“Naked” means Naked Brand Group Inc.

1.2 **Definitions in Amended Agreement:** Terms capitalised but not defined in this deed have the meaning given to them in the Existing Agreement.

1.3 **Miscellaneous:** Except to the extent that the context requires otherwise, the interpretation provisions in clauses 1.2, 1.3 and 1.4 of the Amended Agreement shall apply to this deed.

## 2. EFFECTIVE DATE

The Effective Date shall be the date the Lender confirms to the Borrower that it has received, and found to be satisfactory to it in form and substance, the documents and evidence described in Schedule 2.

## 3. AMENDMENT AND RESTATEMENT

3.1 **Amendment and restatement:** With effect from the Effective Date, the Existing Agreement shall be amended and restated in the form set out in Schedule 3, so that the rights and obligations assumed by the parties shall, on and after the Effective Date, be governed by and construed in accordance with the Amended Agreement.

3.2 **References to Existing Agreement:** With effect from the Effective Date, all references in the Finance Documents (other than this deed) to the Existing Agreement will mean the Amended Agreement.

3.3 **Continuing Agreement:** Except to the extent amended by this deed, the Existing Agreement remains in full force and effect.

3.4 **Finance Document:** This deed is a Finance Document for the purposes of the Amended Agreement.

3.5 **Condition Subsequent:** It is a condition subsequent to the amendment and restatement of the Existing Agreement under this deed that:

- (a) within 2 Business Days of the Effective Date, Naked (and each of its wholly owned subsidiaries, including Naked Inc) accedes to the Amended Agreement as a New Guarantor by fulfilling the requirements set out in clause 26.3 of the Amended Agreement; and
  - (b) within 30 days of the Effective Date, the GBP-denominated outstanding bank guarantee issued by The Hongkong and Shanghai Banking Corporation is terminated and replaced by a corresponding Instrument issued by the Lender.
  - (c) Failure to satisfy the condition specified in paragraphs (a) and (b) above within the stated timeframe shall constitute an immediate Event of Default.
-



#### **4. ACCESSION OF ACCEDING GUARANTOR TO AMENDED AGREEMENT**

- 4.1 The Acceding Guarantor has resolved to execute this deed for the purpose of becoming a Guarantor under the Amended Agreement pursuant to the provisions to that effect contained in clause 26.3 of the Amended Agreement.
- 4.2 The Acceding Guarantor declares, for the benefit of the Lender, that it is a Guarantor and will be deemed to be a party under the Amended Agreement, which shall apply to the Acceding Guarantor as a Guarantor and agrees to be bound by all the terms and conditions of the Amended Agreement as if it were a party to the Amended Agreement with the rights and obligations of a Guarantor under the Amended Agreement.
- 4.3 Each provision of the Amended Agreement relating to or affecting the Guarantors is deemed to be incorporated into this deed in the same manner and to the same extent as if set out in full and made applicable to the Acceding Guarantor. The Acceding Guarantor undertakes to the Lender to punctually comply with all the undertakings imposed on it under this Deed and agrees that it is bound by all the terms and conditions of the Amended Agreement as if it were an original party to the Amended Agreement with the rights, liabilities and obligations of a Guarantor under the Amended Agreement
- 4.4 Pursuant to section 14 of the Property Law Act 2007, it is declared that there shall be deemed to be incorporated in this deed all the covenants, powers, conditions and provisions of the Amended Agreement in the same manner and to the same extent as if the covenants, powers, conditions and provisions had been (with all necessary changes) set out in full in this deed and made applicable to the Acceding Guarantor, and the Acceding Guarantor accordingly covenants and agrees jointly and severally with all other Guarantors to duly perform and comply with and be bound by those covenants, powers, conditions and provisions.
- 4.5 The Acceding Guarantor represents that it has the power to enter into this deed and has taken all necessary action to enter into the transactions referred to in the deed and to execute this deed in order to make this deed binding on it.

#### **5. ACCESSION OF ACCEDING SECURITY PROVIDER TO THE COMPOSITE GSD**

- 5.1 For the purposes of this clause 5, capitalised terms not otherwise defined in this deed shall have the meaning given to that term in the Composite GSD.
- 5.2 The Acceding Security Provider has resolved to execute this deed for the purposes of becoming a Company under the Composite GSD pursuant to the provisions to that effect contained in clause 4 of the Composite GSD.
- 5.3 The Acceding Security Provider declares for the benefit of the Lender (in its capacity as Secured Party under the Composite GSD), that it is a Company and will be deemed to be a party under the Composite GSD which shall apply to the Acceding Security Provider as a Company.
- 5.4 To secure due payment of the Secured Indebtedness and performance of the Secured Obligations, the Acceding Security Provider grants to the Lender (in its capacity as Secured Party under the Composite GSD):
-

(a) a security interest in its Personal Property; and

(b) a fixed charge over its Other Property.

5.5 In respect of its accounts receivable, the security interest takes effect as a transfer of those accounts receivable.

5.6 These security interests will be treated for the purposes of the Composite GSD as having being created pursuant to clause 3 of the Composite GSD.

5.7 Each provision of the Composite GSD relating to or affecting the Companies or the security interests created under the Composite GSD is deemed to be incorporated in this deed in the same manner and to the same extent as if set out in full and made applicable to the Acceding Security Provider. The Acceding Security Provider undertakes to the Lender (in its capacity as Secured Party under the Composite GSD) to punctually comply with all the undertakings imposed on it under this deed or the Composite GSD.

5.8 The Acceding Security Provider irrevocably appoints the Lender, any Receiver, each nominee or the Lender (in its capacity as Secured Party) in whose name any Secured Property is held and each authorised officer or attorney of the Lender (in its capacity as Secured Party) severally to be its attorney (with full power to appoint substitutes and to sub-delegate) on its behalf and in its name or otherwise in the same terms as set out in clause 14 of the Composite GSD.

5.9 The Acceding Security Provider and the Lender agrees that:

(a) this deed is supplemental to the Composite GSD, in terms of section 14 of the Property Law Act 2007; and

(b) this deed constitutes a "Supplemental Deed" for the purposes of the Composite GSD.

## 6. REPRESENTATIONS AND WARRANTIES

6.1 **General:** each of the Initial Borrower, the Initial Guarantors and the Acceding Guarantors makes the representations in clause 21 of the Amended Agreement on the date of this deed, and shall be deemed to make those representations and warranties on the Effective Date, in each case by reference to the facts and circumstances existing as at that date.

6.2 **Current compliance:** each Obligor represents and warrants in relation to itself and each other Obligor that there is no subsisting breach by it or any other Obligor of any of their undertakings in any Finance Document.

## 7. CONTINUING LIABILITY

Notwithstanding any other provision of this deed, on and from the Effective Date the rights and liabilities of all parties shall be preserved in respect of any breach of the Existing Agreement which arose prior to the Effective Date (whether or not any party was aware of such breach prior to that Effective Date) and all corresponding indemnity or other rights and obligations in respect of any such breach are likewise preserved.

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## 8. ACKNOWLEDGEMENT

- 8.1 Each of the Obligors acknowledges and agrees to the terms of this deed and confirms that its obligations under or in relation to the Amended Agreement howsoever arising remain in full force and effect.
- 8.2 The Lender consents to the steps set out in the Merger Implementation Plan, subject to the Effective Date occurring within 10 Business Days of the date of this deed.

## 9. GENERAL

- 9.1 **Arrangement Fee:** The Borrower will pay to the Lender, on 1 October 2018, an arrangement fee of 3.00 per cent of the Facility Limit, The Lender acknowledges that NZ\$50,000 has been received in part payment of this fee.
- 9.2 **Costs:** Clause 19 of the Amended Agreement is incorporated into this deed as if set out in full and with any necessary consequential amendment **and forms part of this deed.**
- 9.3 **Governing Law:** This deed is governed by and must be construed in accordance with the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the Courts of New Zealand.
- 9.4 **Service:** Without prejudice to any other mode of service allowed under any relevant law, each Initial Guarantor, each Acceding Guarantor and the Acceding Security Provider not incorporated in New Zealand:
- (a) irrevocably appoints the Initial Borrower as its agent for service of process in relation to any proceedings in connection with any Finance Document (including this deed); and
  - (b) agrees that failure by a process agent to notify the relevant Initial Guarantor, Acceding Guarantor or Acceding Security Provider of the process will not invalidate the proceedings concerned.
- 9.5 **Counterparts:** This deed may be signed in any number of counterparts, all of which together shall constitute one and the same instrument. Any party may enter into this deed by signing any such counterpart.

## 10. DELIVERY AND NOTICE

- 10.1 Without limiting any other mode of delivery this deed will be delivered by each party on the earlier of:
- (a) physical delivery of an original of this deed, executed by each party, into the custody of each other party or its solicitors; or
  - (b) transmission by each party, its solicitors or any other person authorised in writing by that party of a facsimile, photocopied or scanned copy of an original of this deed, executed by that party, to each other party or its solicitors.
- 10.2 The Acceding Guarantor's and Acceding Security Provider's initial notice details are as follows:
-

Bendon Group Holdings Limited  
Address: Alexandria Creative Park, Building 7C,  
2 Huntley Street, Alexandria NSW 2015,  
Sydney, Australia

Attention: Howard Herman Facsimile

+61 2 9384 2401 Telephone: +61 2 9384 2420

Email: [Howard.Herman@bendon.com](mailto:Howard.Herman@bendon.com)

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**SCHEDULE 1  
INITIAL GUARANTORS**

1. Bandon Limited (Company Number 110935)
  2. Bandon Retail Limited (Company Number 1013361)
  3. Bandon Holdings Limited (Company Number 480331)
  4. Bandon UK Limited
  5. Bandon Holdings Pty Limited (ACN 094 492 841)
  6. Bandon USA Inc.
  7. Bandon Pty Limited (ACN 001 222 064)
  8. Bandon Intimates Pty Limited (ACN 153 498 116)
  9. Bandon Retail Pty Limited (ACN 149 125 388)
  10. PS Holdings No. 1 Pty Limited (ACN 142 982 483)
  11. Pleasure State Pty Limited in its personal capacity and in its capacity as trustee of the Pleasure State Unit Trust (ACN 108 588 076)
  12. Pleasure State (HK) Limited (a company incorporated in Hong Kong with company registration number 1247545)
-

**SCHEDULE 2**  
**CONDITIONS PRECEDENT**

1. **Finance Documents:** An executed copy of:

- (a) this deed; and
- (b) an accession deed in respect of the Bendon Group Holdings Limited's accession to the General Security Deed (Aus).

2. **Directors Certificates:**

- (a) in respect of the Initial Borrower and each Initial Guarantor incorporated in New Zealand, a director's certificate with customary attachments including powers of attorney (if any) in substantially the applicable form set out in Schedule 5 of the Amended Agreement;
  - (b) in respect of Bendon UK Limited, a director's certificate attaching or otherwise certifying previously delivered copies of:
    - (i) certificate of incorporation and any certificate of incorporation on change of name;
    - (ii) memorandum and articles of association;
    - (iii) shareholder resolutions; and
    - (iv) specimen signatures;
  - (c) in respect of the Acceding Guarantor and each Initial Guarantor incorporated or established in Australia:

delivery to the Lender of a verification certificate signed by two directors or a director and secretary of each Australian entity, in form and substance satisfactory to the Lender, attaching or otherwise certifying previously delivered copies of:

    - (1) certificate of registration and any change of name certificate;
    - (2) constitutional documents, and in relation to the Trustee, the Trust Deed;
    - (3) power of attorney (if applicable); and
    - (4) specimen signatures; and
    - (ii) search results satisfactory to the Lender of ASIC and the 'register' as defined in the Australian PPSA in relation to the Group and evidence that appropriate Australian PPSA registrations have been made on the 'register' as defined in the Australian PPSA;
  - (d) In respect of Pleasure State (HK) Limited, a director's certificate attaching or otherwise certifying previously delivered copies of:
    - (i) certificate of incorporation and any certificate of incorporation on change of name;
    - (ii) memorandum and articles of association;
    - (iii) if relevant, power of attorney;
    - (iv) shareholder resolutions; and \_
-

(v) specimen signatures;

(e) In respect of Bendon USA Inc.:

(i) a certificate from the secretary or comparable authorized representative of Bendon USA Inc., dated the date of this deed, attaching or otherwise certifying previously delivered copies of:

(1) the certificate of incorporation of Bendon USA Inc., certified by the Secretary of State of the State of Delaware, and evidence of good standing;

(2) the bylaws of Bendon USA Inc.; and

(3) an officer incumbency and specimen signature certificate.

(ii) a closing certificate of Bendon USA Inc., signed by an authorized officer of Bendon USA Inc., as to clauses 2.3(b) and 2.3(c) of the Amended Agreement.

3. **Legal Opinions:** The following legal opinions:

(a) a legal opinion from Buddle Findlay in relation to New Zealand law; and

(b) a legal opinion from Norton Rose Fulbright in relation to Australian law.

4. **Fees:** Payment of all fees, costs and expenses due and payable to the Lender (including, without limitation, the arrangement fee under clause 8.1) and its advisers (including the Lender's legal advisers).

5. **Repayment:** Evidence to the satisfaction of the Lender that the Amount Outstanding under the Existing Agreement has been or will be reduced to NZ\$20,000,000 (not taking into account any issued Instruments) on or prior to the Effective Date.

6. **Merger Implementation Plan:** a certified copy of the Merger Implementation Plan.

7. **Merger:** a confirmation from a director of Bendon Limited that the Merger has occurred in accordance with the Merger Implementation Plan.

8. **Registration of Security:** evidence to the satisfaction of the Lender that required registrations in respect of the accession deed to the General Security Deed (Aus) have been or will be effected, and all other things necessary to achieve the priorities required by the Lender have been or will be completed to the Lender's satisfaction.

9. **Sub-ordinated Debt:** evidence to the satisfaction of the Lender that:

(a) all subordinated debt (howsoever described) under each deed of subordination set out below has converted to equity:

(i) deeds of subordination dated on or about the date hereof between the Initial Borrower, the Lender and each of EJ Group Limited and Nesriver Pty Limited;

(ii) deed of subordination dated 29 September 2016 between the Initial Borrower, Linkrik Investment Limited and the Lender;

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- (iii) deed of subordination dated 29 September 2016 between the Initial Borrower, Daniel Raymond Fields and the Lender;
  - (iv) deed of subordination dated 10 November 2016 between the Initial Borrower, ENARES Pty Ltd and the Lender;
  - (v) deed of subordination dated 15 December 2016 between the Initial Borrower, Gemini Global Investment Fund Pte Ltd and the Lender; and
  - (vi) deed of subordination dated 16 December 2016 between the Initial Borrower, MV Finances SARL and the Lender,
- (b) each security interest granted by Bendon Limited in favour of EJ Group Limited, Nesriver Pty Limited, Linkrik Investment Limited, Daniel Raymond Fields, ENARES Pty Ltd, Gemini Global Investment Fund Pte Ltd or MV Finances SARL (if any) have been fully and irrevocably discharged.

10. **Group Structure:** A certified copy of a diagram showing the structure of the Consolidated Group as at the Effective Date.

11. **KYC/Identification:** To the extent not already provided to the Lender, all documentation reasonably required by the Lender in order to carry out “know your customer” or similar checks under applicable laws relating to anti-money laundering, terrorist financing and trade sanctions in connection with the transactions contemplated by the Finance Documents.

12. **Tax Confirmation:** Confirmation from a director of the Initial Borrower that:

- (a) the taxes and tax arrangements of each Obligor are up to date as at the Commencement Date and each Obligor is in compliance with its obligations (including in connection with any payment plan arrangements) in all material respects;
- (b) each Obligor has no current or anticipated tax issues or tax liabilities (other than those existing in the ordinary course of business or that have been previously disclosed to the Lender) or disputes with the New Zealand Inland Revenue Department or the revenue authorities in any other jurisdiction.

13. **Other:** Any other documents or other evidence reasonably requested by the Lender.

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**SCHEDULE 3  
(AMENDED AGREEMENT)**

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**Amended and Restated  
Facility Agreement**

**Bendon Limited**

Initial Borrower

and

**Bendon Limited, Bendon Retail Limited, Bendon Holdings Limited,  
Bendon UK Limited, Bendon Group Holdings Limited, Bendon Holdings  
Pty Limited, Bendon USA Inc., Bendon Pty Limited, Bendon Intimates  
Pty Limited, Bendon Retail Pty Limited, PS Holdings No. 1 Pty Limited,  
Pleasure State Pty Limited and Pleasure State (HK) Limited**

Initial Guarantors

and

**Bank of New  
Zealand** Lender

**Originally Dated 27 June 2016 (as amended from time to time)**

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This **Loan Facility Agreement** is originally made on 27 June 2016 (as amended from time to time, most recently pursuant to a Deed of Amendment and Restatement dated June 2018)

**between** 1. Bendon Limited (the **Initial Borrower**)

**and** 2. Bendon Retail Limited, Bendon Holdings Limited, Bendon UK Limited a company incorporated under the laws of England and Wales with company number 04200853, Bendon Group Holdings Limited, Bendon Holdings Pty Limited, Bendon USA Inc., Bendon Pty Limited, Bendon Intimates Pty Limited, Bendon Retail Pty Limited, PS Holdings No. 1 Pty Limited, Pleasure State Pty Limited (in its personal capacity and as trustee of the Pleasure State Unit Trust) and Pleasure State (HK) Limited (a company incorporated in Hong Kong with company registration number 1247545) (together, the **Initial Guarantors** and each, an **Initial Guarantor**)

**and** 3. Bank of New Zealand (the **Lender**)

## **Introduction**

The Lender is willing to make available to the Borrower a loan facility on the terms of this Agreement.

## **It is agreed**

### **1. Interpretation**

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#### **1.1 Definitions**

In this Agreement, unless the context otherwise requires:

**Accommodation** means any Drawing or other accommodation provided to an Obligor under this Agreement;

**Accounting Principles** means:

- (a) in respect of an Obligor incorporated in New Zealand, generally accepted accounting practice as defined in section 8 of the Financial Reporting Act 2013;
- (b) in respect of an Obligor incorporated in any other jurisdiction, generally accepted accounting practice in that jurisdiction;

**Actual Gross Profit** means, in relation to a period, the actual gross profit of the Group for that period, as provided for in the monthly financial accounts provided pursuant to clause 22.2(b);

**Actual Sales** means, in relation to a period, the actual sales of the Group for that period, as provided for in the monthly financial accounts provided pursuant to clause 22.2(b);

**Advance** means a Drawing (or part of a Drawing) made by the Lender to the Borrower or the issuance of an Instrument by the Lender on behalf of the Borrower;

**Amount Outstanding** means, at any time, the NZ Dollar Equivalent of:

- (a) the aggregate principal amount of each Drawing outstanding at that time; and
- (b) the Maximum Liability of all Instruments on issue at that time, together with any interest, fees, costs and other amounts then due and payable by the Borrower to the Lender;

**AUD** means the lawful currency of Australia;

**Australian Corporations Act** means the *Corporations Act 2001* (Cth) (Australia);

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

**Australian Tax Act** means the *Income Tax Assessment Act 1936* (Cth) (Australia) or the *Income Tax Assessment Act 1997* (Cth) (Australia);

**Available Facility** means, at any time:

- (a) in respect of the Revolving Credit Facility, the Revolving Credit Facility Limit less:
  - (i) the amount of the Revolving Credit Facility Limit that has been cancelled; and
  - (ii) the NZ Dollar Equivalent of the aggregate amount of all Drawings that are outstanding at that time;
- (b) in respect of the Instrument Facility, the Instrument Facility Limit less:
  - (i) the Maximum Liability in respect of any outstanding Instruments issued by the Lender; and
  - (ii) the Maximum Liability in respect of any other Instruments that are due to be made or issued on or before the proposed Drawing Date, other than any Instruments that are due to expire or to be cancelled, repaid or prepaid (including, in relation to Instruments, amounts of cash cover or cash collateral due to be received) on or before the proposed Drawing Date;

**Availability Period** means:

- (a) in relation to the Instrument Facility, the period starting on the Commencement Date and ending on the earlier of:
  - (i) 10 Business Days prior to the Termination Date; and
  - (ii) the date that the Instrument Facility is cancelled under this Agreement; and
- (b) in relation to the Revolving Credit Facility, the period starting on the Commencement Date and ending on the earlier of:
  - (i) 10 Business Days prior to the Termination Date; and
  - (ii) the date that the Revolving Credit Facility is cancelled under this Agreement;

**BBP Rate** means the Lender's 'Business Basis Premium' rate (rounded upwards to four decimal **places**) for the relevant period displayed on the Lender's website (currently published at <https://www.bnz.co.nz/business-banking/loans-and-finance/committed-cash-advance-facility>, or on any replacement page on the Lender's website which displays that rate).

**Beneficiary** means, in relation to an Instrument, the person or persons in whose favour that Instrument is issued;

**BKBM** means, in relation to any Drawing:

- (a) the applicable Screen Rate as of the Specified Time for a period equal in length to the Interest Period of that Drawing; or
- (b) as otherwise determined pursuant to clause 9, and if, in either case, that rate is less than zero, BKBM shall be deemed to be zero.

**BNZ Liquidity Amount** means the amount determined by the Lender from time to time and advised to the Borrower as the liquidity premium applied by the Lender to advances or other accommodation;

**Borrower** means the Initial Borrower and any other person who becomes a Borrower under clause 26.2 (Additional Borrowers);

**Budgeted Gross Profit** means, in relation to a period, the budgeted gross profit of the Group for that period, as provided for in the budget provided pursuant to clause 22.2(d);

**Budgeted Sales** means, in relation to a period, the budgeted gross profit of the Group for that period, as provided for in the budget provided pursuant to clause 22.2(d);

**Business Basis Premium** means, in relation to any Drawing:

- (a) the applicable BBP Rate as of the Specified Time for a period equal in length to the Interest Period of the Drawing; or
- (b) as otherwise determined pursuant to clause 9.

**Business Day** means a day other than a Saturday or Sunday on which registered banks (as defined in the Reserve Bank of New Zealand Act 1989) are open for business in Wellington and Auckland;

**Capital Expenditure** means any expenditure which would in accordance with the Accounting Principles be treated as capital expenditure in the audited consolidated financial statements of the Consolidated Group;

**Certificate** means any document of title relating to any Shares or Share Rights; **Code** means the Internal Revenue Code of 1986, as amended;

**Commencement Date** means 27 June 2016;

**Compliance Certificate** means a compliance certificate substantially in the form set out in Part A of Schedule 7 (Form of Compliance Certificate) and provided to the Lender in accordance with clause 22.2 (Reporting undertakings);

**Consolidated Group** means, at any time, the group of companies comprised of the Parent and its subsidiaries at that time;

**Contribution Notice** means a contribution notice issued by the Pensions Regulator under section 38 or section 47 of the Pensions Act 2004 (UK);

**Control Event** means in respect of any Secured Property that is, or would have been, a Revolving Asset:

- (a) the relevant Obligor breaches, or attempts to breach clause 4.1 of the General Security Deed (Aus) in respect of that Secured Property or takes any step which would result in it doing so;
- (b) a person takes a step (including signing a notice or direction) which is likely to result in taxes, or an amount owing to an authority, ranking ahead of the security interest in that Secured Property under this document;
- (c) distress is levied or a judgment, order or security interest is enforced or becomes enforceable over that Secured Property;
- (d) the Lender gives a notice to the relevant Obligor that such Secured Property is not a Revolving Asset (however, the Lender may only give a notice if an Event of Default is continuing);
- (e) in respect of all Secured Property that is or would have been Revolving Assets, an Event of Default referred to in clause 23.1(f) or 23.1(g) of this Agreement occurs;

**Deed of Amendment and Restatement (June 2018)** means the deed of amendment and restatement dated \_\_\_ June 2018 between the Borrower, the Guarantors and the Lender.

**Drawing** means each principal amount advanced (or to be advanced) to the Borrower under the Revolving Credit Facility in accordance with the terms of this Agreement;

**Drawing Date** means, in relation to a Drawing or an Instrument, the date on which it is (or is to be) advanced, which must be a Business Day during the relevant Availability Period;

**Drawing Notice** means a drawing notice substantially in the form set out in Schedule 2;

**EBIT** means, in respect of any period and a Group, the consolidated net profit after tax of the relevant Group for that period, as would be disclosed in the financial statements of the relevant Group if prepared in accordance with Accounting Principles for that period, adjusted by:

- (a) adding an amount equal to the aggregate of:
  - (i) Total Interest Costs;
  - (ii) losses of an unusual, abnormal or non-recurring nature for that period;
  - (iii) the income tax expense for that period;
  - (iv) unrealised exchange losses for that period;



- (v) any reduction during that period in the non-cash mark to market value of financial derivatives entered into by a Group Member as required by Accounting Principles; and
  - (vi) losses of a capital nature or that relate to unrealised revaluation losses, in each case for that period;
- (b) deducting an amount equal to the aggregate of:
- (i) gains of an unusual, abnormal or non-recurring nature for that period;
  - (ii) unrealised exchange gains for that period;
  - (iii) any increase during that period in the non-cash mark to market value of financial derivatives entered into by a Group Member as required by Accounting Principles; and
  - (iv) profits of a capital nature or that relate to unrealised revaluation gains, in each case for that period, as adjusted to remove earnings of any Group Member that have been included in the earnings of the Group but that are attributable to any third party (not being a Group Member);

**EBITDA** means, in respect of any period and a Group, the sum of:

- (a) EBIT for that Group for that period; and
- (b) depreciation and amortisation on fixed and other property of the relevant Group during that period, which would be disclosed by consolidated financial statements of the Group if they were prepared in accordance with Accounting Principles as at the last day of that period;

**Effective Date** has the meaning given to that term in the Deed of Amendment and Restatement (June 2018);

**Environmental Law** means any law relating to the environment, land or water use, noise, smell, pollution or contamination, toxic or hazardous substances, waste disposal or conservation (including the Resource Management Act 1991) and any consent or notice under any such law;

**Event of Default** means any event specified in clause 23 (Events of Default) and any other event agreed from time to time by the Lender and the Borrower to constitute an Event of Default;

**Event of Review** means any event specified in clause 24 (Event of Review) and any other event agreed from time to time by the Lender and the Borrower to constitute an Event of Review;

**Euros** and **EUR** refers to the official unit of exchange of, and the currency of the majority of the states comprising, the European Union;

**Facility** means the Revolving Credit Facility and the Instrument Facility and **Facilities** means both;

**Facility Limit** means the aggregate, at any time, of the Revolving Credit Facility Limit and the Instrument Facility Limit at that time;

**FATCA** means:

- (a) sections 1471 to 1474 of the Code or any associated regulations;
- (b) any treaty, law or regulation of any other jurisdiction, or relating to an intergovernmental agreement between the US and any other jurisdiction, which (in either case) facilitates the implementation of any law or regulation referred to in paragraph (a) above; or
- (c) any agreement pursuant to the implementation of any treaty, law or regulation referred to in paragraphs (a) or (b) above with the US Internal Revenue Service, the US government or any governmental or taxation authority in any other jurisdiction;

**FATCA Application Date** means:

- (a) in relation to a “withholdable payment” described in section 1473(1)(A)(i) of the Code (which relates to payments of interest and certain other payments from sources within the US), 1 July 2014;
- (b) in relation to a “withholdable payment” described in section 1473(1)(A)(ii) of the Code (which relates to “gross proceeds” from the disposition of property of a type that can produce interest from sources within the US), 1 January 2019; or
- (c) in relation to a “passthru payment” described in section 1471(d)(7) of the Code not falling within paragraphs (a) or (b) above, 1 January 2019, or, in each case, such other date from which such payment may become subject to a deduction or withholding required by FATCA as a result of any change in FATCA after the date of this Agreement;

**FATCA Deduction** means a deduction or withholding from a payment under a Finance Document required by FATCA;

**FATCA Exempt Party** means a party that is entitled to receive payments free from any FATCA Deduction;

**Finance Debt** means any indebtedness in respect of money borrowed or raised or any other financial accommodation whatever in the nature of, or having a similar economic effect to, borrowing or raising money, including indebtedness under or in respect of a negotiable or other financial instrument, guarantee, interest, currency exchange or commodity hedge or other arrangement of any kind (calculated on a net and marked to market basis), redeemable share, share the subject of a guarantee, discounting arrangement, the principal amount of any finance or capital lease, hire purchase, deferred purchase price of an asset or service (other than where the relevant transaction is entered into in the ordinary course of business and the purchase price is paid within 120 days of supply) or an obligation to deliver goods or other property or provision of services paid for in advance by a financier or in relation to another financing transaction;

**Finance Documents** means:

- (a) this Agreement;
- (b) the Security Documents;

- (c) the Deed of Amendment and Restatement (June 2018);
- (d) any Hedge Agreement;
- (e) each Transactional Banking Document; and
- (f) each novation agreement between the Lender and ANZ Bank New Zealand Limited relating to any Hedge Agreement existing at the Commencement Date; and
- (g) each agreement evidencing an Ancillary Facility (including the business visa facility provided by the Lender on or about the date of this Agreement), and each other agreement (present or future), agreed by the Lender and the Borrower to be a Finance Document;

**Financial Support Direction** means a financial support direction issued by the Pensions Regulator under section 43 of the Pensions Act 2004 (UK);

**Free Cashflow** means, in respect of the Guaranteeing Group for a period, the greater of (1) zero, and (2) EBITDA for that period after:

- (a) adding the aggregate of any unusual, abnormal or non-recurring cash gains during that period which have been deducted from net profit for the purposes of determining EBIT;
- (b) deducting the aggregate, without double counting, of:
  - (i) tax paid for that period;
  - (ii) Total Interest Costs for that period net of all cash interest earned by an Obligor in that period;
  - (iii) Capital Expenditure for that period;
  - (iv) any unusual, abnormal or non-recurring losses or charges paid in cash during that period and which have been added to net profit for the purposes of determining EBIT; and
  - (v) any non-cash items in EBITDA which are not otherwise adjusted pursuant to sub-paragraphs (i) to (iv) above; and
- (c) adding the amount of any decrease (and deducting the amount of any increase) in working capital for that period calculated as:
  - (i) the aggregate value of accounts and other receivables and inventory, less the value of accounts and other payables on the last day of that period, for the Guaranteeing Group; less
  - (ii) the aggregate value of accounts and other receivables and inventory, less the value of accounts and other payables on the first day of that period, for the Guaranteeing Group, adjusted for the cash changes in all current assets and current liabilities other than cash;

provided that no amount shall be added (or deducted) more than once; **GBP** refers to the lawful currency of the United Kingdom;

**General Security Deed (Aus)** means the General Security Deed dated on or about the date hereof between the Obligors named in paragraph 2 of Schedule 3 and the Lender;

**Group** means the Consolidated Group or the Guaranteeing Group, as the context requires;

**Group Member** means any member of the Consolidated Group or the Guaranteeing Group, as the context requires;

**GST** means any goods and services or similar tax levied in accordance with the applicable GST Act;

**GST Act** means the New Zealand Goods and Services Tax Act 1985 or the Australian A New Tax System (Goods and Services Tax) Act 1999 (Cth);

**Guaranteed Indebtedness** means all indebtedness of the Obligors to the Lender;

**Guaranteeing Group** means, at any time, the group of companies comprised of each Obligor at that time;

**Guarantors** means the Initial Guarantors and any other person who becomes a Guarantor under clause 26.3 (Additional Guarantors);

**Hedge Agreement** means each agreement pursuant to which an Obligor enters into a Treasury Transaction with the Lender (including, for the avoidance of doubt, each ISDA or other derivatives master agreement and each Confirmation (as defined therein) relating thereto);

**Income Tax Act** means the Income Tax Act 2007;

**Insolvency Regulation** shall mean the Council Regulation (EC) No. 1346/2000 on Insolvency Proceedings;

**Instrument** means a letter of credit, bank guarantee, performance bond or other similar financial instrument issued under the Instrument Facility;

**Instrument Facility** means the Instrument facility provided by the Lender in accordance with clause 10;

**Instrument Facility Limit** means NZ\$1,345,000 as reduced from time to time in accordance with this Agreement;

**Interest Cover Ratio** means, for any period from the first day of the Borrower's financial year and ending on a Reporting Date, the ratio of EBITDA of the Guaranteeing Group to interest payable under this Agreement for the period ending on that Reporting Date;

**Interest Period** means each period by reference to which an interest rate applicable to a Drawing, any Advance or another sum is determined in accordance with this Agreement;

**Interpolated BBP Rate** means, in relation to any Drawing, the rate (rounded to the same number of decimal places as the two relevant BBP Rates) which results from interpolating on a linear basis between:

- (a) the BBP Rate for the longest period (for which the BBP Rate is available) which is less than the Interest Period of that Drawing; and
- (b) the BBP Rate for the shortest period (for which the BBP Rate is available) which exceeds the Interest Period of that Drawing, each as of the Specified Time, provided that there shall be deemed to be a BBP Rate available in respect of three month periods, being a rate of 0% per annum, notwithstanding that this period and rate may not be displayed on the Lender's website;

**Interpolated Screen Rate** means, in relation to any Drawing, the rate (rounded to the same number of decimal places as the two relevant Screen Rates) which results from interpolating on a linear basis between:

- (a) the Screen Rate for the longest period (for which the Screen Rate is available) which is less than the Interest Period of that Drawing; and
- (b) the Screen Rate for the shortest period (for which the Screen Rate is available) which exceeds the Interest Period of that Drawing, each as of the Specified Time;

**Inventory** means, on any date, the book value of all stock in trade (which for the purpose of this definition means, on any date, the aggregate value of stock held by the Obligors for the purposes of its business on that date, excluding all stock where the value attributed to it on the balance sheet exceeds market value, obsolete stock, stock that is over 90 days old and all stock that is subject to any Security Interest (excluding any security interest held by the Lender pursuant to the Transaction Documents)) held by the Obligors as at that date.

**Inventory and Receivables** means, on any date, the sum of Inventory and Receivables as at that date.

**Inventory and Receivables Ratio** means, on any Reporting Date, the ratio of Inventory and Receivables to Working Capital Debt on that date.

**IP** means all trademarks, service marks, trade names, domain names, logos, get-up, patents, inventions, registered and unregistered design rights, copyrights, topography rights, database rights, rights in confidential information and know how, and any associated or similar rights anywhere in the world, which as now or in the future owns or (to the extent of its interests) in which it now or in the future has an interest (in each case whether registered or unregistered and including any related licenses and sub-licenses of the same granted by it or to it, applications and rights to apply for the same);

**Issuer** means each company that has issued Shares to an Obligor, including another Obligor; **Margin** means 2.00% per cent per annum;

**Marketable Securities** means:

- (a) 'intermediated securities' and 'investment instruments' (each as defined in the Australian PPSA);

- (b) an undertaking referred to in the exceptions in paragraphs (a), (b) and (c) of the definition of 'debenture' in the Australian Corporations Act;
- (c) a unit or other interest in a trust or partnership; and
- (d) a right or an option in relation to any of the above, whether issued or unissued;

**Material Secured Property** means Secured Property with a value of greater than NZ\$100,000 or its equivalent in any other currency;

**Maximum Liability** means, in respect of an Instrument, the amount specified in that Instrument as the maximum aggregate liability able to be claimed (exclusive of interest on such liability) under that Instrument in the currency in which the Instrument is denominated less any amount cancelled and any amount paid by the Borrower to the Lender in respect of that Instrument whether as a deposit, cash collateral or otherwise that has been approved by the Lender as reducing the Maximum Liability in respect of that Instrument;

**Monthly Compliance Certificate** means a compliance certificate substantially in the form set out in Part B of Schedule 7 (Form of Monthly Compliance Certificate) and provided to the Lender in accordance with clause 22.2 (Reporting undertakings);

**New Borrower** has the meaning given to it in clause 26.2 (Additional Borrowers); **New Guarantor** has the meaning given to it in clause 26.3 (Additional Guarantors);

**New Security Provider** has the meaning given to it in clause 26.4 (Additional Security Providers);

**NY Financing Documents** means:

- (a) the security agreement, dated as of the date hereof, between Bendon USA Inc. and the Lender; and
- (b) the pledge agreement, dated as of the date hereof, between Bendon Holdings Limited and the Lender with respect to Bendon Holdings Limited's shares of Bendon USA Inc.;

**NZ Dollar Equivalent** means, in relation to an amount of NZ Dollars, that amount, and, in relation to an amount in an Optional Currency, the amount of NZ Dollars which the Lender could purchase with that amount of US Dollars, AUD, GBP or Euros, (as appropriate), in the New Zealand inter-bank market at 11 a.m. (New Zealand time) on the day on which the calculation is required to be made;

**NZ Dollars**, **NZ\$** and **NZD** refer to New Zealand currency; **NZ PPSA** means the Personal Property Securities Act 1999; **Obligor** means the Borrower and each Guarantor;

**Operating Lease Expense** means, in relation to any period, the aggregate of any rental paid in that period in connection with any operating lease of real property (but excluding a lease that would be treated as a finance lease pursuant to the Accounting Principles);

**Optional Currency** means AUD, EUR, GBP or USD;

**Other Property** means Real Property and all of a Security Provider's other present and after-acquired property that is not Personal Property;

**Parent** means Bendon Group Holdings Limited (ACN 619 054 938).

**Pensions Regulator** means the body corporate called the Pensions Regulator established under Part I of the Pensions Act 2004 (UK);

**Permitted Acquisition** means:

- (a) an acquisition made for fair value in the ordinary course of business;
- (b) an acquisition that is the purchase of an asset by one Security Provider from another Security Provider; or
- (c) an acquisition that occurs with the prior written approval of the

Lender; **Permitted Disposal** means a disposal:

- (a) in respect of which the Lender has given its prior written consent;
- (b) of inventory made in the ordinary course of business of the disposing entity;
- (c) of property where the proceeds of disposal are used within 12 months to purchase replacement property comparable or superior as to type, value or quality;
- (d) of property for fair market value on commercial arms' length terms;
- (e) of cash for fair market value on commercial arm's length terms and in the ordinary course of business of the disposing entity;
- (f) of obsolete or redundant vehicles, plant and equipment for cash;
- (g) of property (including by way of distribution or payment on account of any inter-Security Provider loan arrangement) from one Security Provider to another Security Provider;
- (h) expressly permitted under a Finance Document;

**Permitted Financial Accommodation** means, in relation to a Security Provider, financial accommodation provided by that Security Provider at a time when no Event of Default subsists:

- (a) pursuant to the Finance Documents;
- (b) to another Security Provider;
- (c) to a Customer in the ordinary course of business on arms' length commercial terms provided that the aggregate financial accommodation provided under this paragraph (c) at any time does not exceed NZ\$500,000 or the NZ Dollar Equivalent thereof;
- (d) (provided no Event of Default is continuing at the relevant time) to another Group Member (which is not a Security Provider), provided the aggregate amount of all such Finance Debt does not exceed \$100,000 at any time; or

(e) with the prior written consent of the Lender;

**Permitted Security** means a security interest:

- (a) created under a Finance Document;
- (b) in respect of which the Lender has given its prior written consent;
- (c) granted by one Security Provider in favour of another Security Provider;
- (d) in relation to personal property that is created or provided for by:
  - (i) a transfer of an account receivable or chattel paper;
  - (ii) a lease for a term of more than one year; or
  - (iii) a commercial consignment,  
that does not secure payment or performance of an obligation;
- (e) arising out of any netting or set-off arrangement entered into by a Security Provider with another Security Provider for the purpose of netting debit and credit balances of Group Members, provided that such arrangement does not give rise to a security interest over property of a Security Provider in support of liabilities of a Group Member that is not a Security Provider.
- (f) that is a right of set-off arising in the ordinary course of the ordinary day-to-day business of an Obligor and that does not secure indebtedness;
- (g) that arises as a result of legal proceedings discharged within 30 days or otherwise being contested in good faith and not otherwise constituting an Event of Default;
- (h) that is expressly permitted under a Finance Document; and
- (i) arising under finance leases entered into in the ordinary course of business provided the value of the assets subject to lease at any time does not exceed \$500,000;

**Personal Property** means all of each Security Provider's present and after-acquired personal property including all personal property in which the Obligor has rights, whether now or in the future;

**Potential Event of Default** means any event or circumstance that, with the giving of notice, lapse of time or fulfilment of another requirement, would constitute an Event of Default;

**PPSA** means the Australian PPSA and the NZ PPSA;

**PPSR** has the meaning given to the term 'register' in the PPSA;

**Quotation Day** means, in relation to any period for which an interest rate is to be determined, the first day of that period;

**Real Property** means all of each Obligor's present and after-acquired freehold and registered leasehold land, all estates and interests in land and all buildings, structures and fixtures (including trade fixtures) for the time being on that land;



**Receivables** means, on any date, the aggregate amount all trade debts payable to a Security Provider on that date (which for the purpose of this definition means, debts incurred on arm's length commercial terms arising in the normal course of the Guaranteeing Group's business) which are payable on demand or within 90 days from that date (without double counting), excluding:

- (a) all amounts in arrears for greater than 90 days or that are uncollectable; and
- (b) all accounts receivable in respect of, and where the debtors are, related persons. **Reference Bank Rate** means:
  - (a) the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Lender at its request by the Reference Banks as the rate at which the relevant Reference Bank could borrow funds in the New Zealand bank bill market and for the relevant period were it do so by asking for and then accepting interbank offers for deposits in reasonable market size for that period; or
  - (b) (if the rate referred to in paragraph (a) is not available), the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Lender at its request by the Reference Banks as the rate at which the relevant Reference Bank could raise funds in the wholesale market for NZ Dollars for the relevant period;

**Reference Banks** means the principal offices in Auckland of the Lender, ANZ Bank New Zealand Limited, Westpac New Zealand Limited and ASB Bank Limited, or such other entities as may be appointed by the Lender in consultation with the Borrower;

**Relevant Party** means each Obligor and each other party to a Finance Document (other than the Lender);

**Reporting Date** means:

- (a) during the period commencing on the Commencement Date and ending on 31 December 2018, 31 March, 30 June, 30 September and 30 December in each year; and
- (b) thereafter, 31 January, 30 April, 31 July, 31 October in each year;

**Reporting Period** means, on any Reporting Date, the 12 month period ending on that Reporting Date;

**Revolving Asset** means any Secured Property:

- (a) which is:
  - (i) inventory;
  - (ii) a negotiable instrument;
  - (iii) machinery, plant, or equipment which is not inventory and has a value of less than \$100,000 or its equivalent; or
  - (iv) money (including money withdrawn or transferred from an account with a bank or other financial institution); and

(b) in relation to which no Control Event has occurred, subject to clause 4.4 of the General Security Deed (Aus);

**Revolving Credit Facility** means the revolving credit facility of a maximum aggregate principal amount of the Revolving Credit Facility Limit (as reduced from time to time in accordance with this Agreement), to be made available on the terms of this Agreement;

**Revolving Credit Facility Limit** means NZ\$20,000,000 (as reduced from time to time in accordance with this Agreement) to be made available on the terms of this Agreement;

**Rollover Advance** means one or more Drawings under the Revolving Credit Facility:

- (a) made or to be made on the same day that a maturing Drawing under the Revolving Credit Facility is due to be repaid;
- (b) the aggregate amount of which is equal to or less than the amount of the maturing Drawing under the Revolving Credit Facility;
- (c) in the same currency as the maturing Drawing under the Revolving Credit Facility; and
- (d) made or to be made to the same Borrower for the purpose of refinancing that maturing Drawing under the Revolving Credit Facility;

**RWT Exemption Certificate** has the meaning given to it in section YA 1 of the Income Tax Act;

**RWT Rules** has the meaning given to it in section YA 1 of the Income Tax Act;

**Screen Rate** means the New Zealand bank bill reference rate (bid) (rounded upwards to four decimal places) administered by the New Zealand Financial Markets Association (or any other person who takes over the administration of that rate) for the relevant period displayed on page BKBM of the Thomson Reuters screen (or any replacement Thomson Reuters page which displays that rate), or on the appropriate page of such other information service which publishes that rate from time to time in place of Thomson Reuters. If such page or service ceases to be available, the Lender may specify another page or service displaying the relevant rate after consultation with the Borrower;

**Secured Property** means all present and future right, title and interest (legal and equitable) of each Security Provider in and to all Personal Property and all Other Property, including, without limitation:

- (a) the Shares;
- (b) the Share Rights;
- (c) the Certificates; and
- (d) all proceeds of the Shares and Share Rights;

**Security Documents** means each of the agreements set out in Schedule 3 (Security Documents) and each other security agreement, guarantee or other agreement (present or future) expressed or intended to guarantee or secure the Obligors' obligations under this Agreement;

**Security Provider** means a Borrower or Guarantor who has granted security over all its property to secure all of the obligations of the Obligors under the Finance Documents;

**Serial Numbered Secured Property** means:

- (a) as at the date of this document, the Secured Property described in Schedule 9 to this Agreement;
- (b) any other Secured Property that must be described by serial number in a registration on the New Zealand personal property securities register or the PPSR; and
- (c) any other Secured Property that may be described by serial number in a registration on the PPSR;

**Share Rights** means all securities, property and other rights (whether in or of the Issuer or another person) to which a holder of Shares is entitled or offered, including any distribution, option or property issued by way of a rights or bonus issue;

**Shares** means all shares of an Issuer issued to or owned by an

Obligor; **Specified Time** means 10.45am on the Quotation Day;

**Supplemental Deed** means a supplemental deed:

- (a) in respect of a New Borrower, in the form of Schedule 5 (Form of Supplemental Deed for New Borrower); and
- (b) in respect of a New Guarantor, in the form of Schedule 6 (Form of Supplemental Deed for New Guarantor);

**Termination Date** means the date that is twelve months from the Effective Date;

**Total Interest Cost** means, for a Group for a period, the gross amount of all interest and financing costs incurred by the Group over that period, calculated on a consolidated basis in accordance with Accounting Principles, after taking into account all realised losses and profits on foreign currency borrowings and financing transactions (other than amounts transferred to foreign currency transaction reserves), including:

- (a) the amount of all discounts and similar allowances on the issue or disposal of debt instruments;
- (b) all finance charges under finance leases and hire purchase agreements;
- (c) the amount of all dividends paid or payable on redeemable shares issued by any member of the Group; and
- (d) all other expenses and amounts that are required by Accounting Principles to be treated as interest or financing costs,

but excluding interest and financing costs on money borrowed or raised to acquire, develop or improve fixed assets, to the extent that they have been capitalised in the accounts of the Group and excluding:

- (e) any realised costs of closing out a Treasury Transaction that are incurred in connection with the acquisition or disposal of a subsidiary or business after the date of this agreement;
- (f) any dividends paid on redeemable shares and any other interest and financing costs paid by one member of the Group to another member of the Group; and
- (g) any non-cash items included in interest in the most recent financial statements of the Group;

**Transactional Banking Document** means any document entered into from time to time between an Obligor and the Lender under which one or more Transactional Banking Facilities are made available to any member of the Guaranteeing Group;

**Transactional Banking Facilities** means any day to day banking facilities or arrangements made available to a member of the Guaranteeing Group by the Lender in connection with the ordinary course of trade of that member of the Guaranteeing Group;

**Treasury Transaction** means any foreign exchange agreement, currency or interest purchase, interest rate swap, cap or collar agreement, currency swap agreement, currency and interest rate future or option contract, commodity swap, option, cap, collar, floor or swaption or other similar agreement (whether entered into before, on, or after the date of this Agreement);

**Trust** means the Pleasure State Unit Trust ABN 20 730 241 229;

**Trust Deed** means the trust deed dated 13 May 2004 constituting the Trust, as varied by the deed polls for variation of trust dated 12 August 2011, 8 April 2013, and includes each document approved by the Lender for the purposes of this definition which amends, varies or supplements that trust deed;

**Trustee** means Pleasure State Pty Limited ACN 108 588 076, in its capacity as trustee of the Trust;

**UK Obligors** means each Obligor incorporated in England and Wales;

**US Dollars** and **USD** refer to the lawful currency of the United States of

America; **US Tax Obligor** means:

- (a) a Borrower which is resident for tax purposes in the United States of America; or
- (b) an Obligor some or all of whose payments under the Finance Documents are from sources within the United States of America for US federal income tax purposes; and

**Working Capital Debt** means, on any date, the Amount Outstanding under the Revolving Credit Facility as at that date.

## 1.2 Construction

In this Agreement, unless the context otherwise requires:

an **agreement** includes a contract, deed, licence, undertaking and other document or legally enforceable arrangement (in each case, whether or not in writing, present and future), and includes that document as amended, assigned, novated or substituted from time to time;

**compromise** includes a compromise as defined in section 227 of the Companies Act 1993;

a **consent** includes an approval, authorisation, exemption, filing, licence, order, permit, recording or registration;

one person being **controlled** by another means that the other person (whether directly or indirectly and whether by the ownership of share capital, the possession of voting power, contract or otherwise):

- (a) has the power to appoint and/or remove the majority of the members of the governing body of that person;
- (b) otherwise controls or has the power to control the affairs and policies of that person; or
- (c) is in a position to derive the whole or a substantial part of the benefit of that person;

**costs** incurred by a person include all commissions, charges, losses, expenses (including legal fees on a solicitor and own client basis) and taxes incurred by that person;

a **directive** includes a directive, regulation and requirement (in each case, whether or not having the force of law but, if not having the force of law, the compliance with which is in accordance with the general practice of persons to whom the directive is addressed);

**disposing** of property includes:

- (a) selling, assigning, novating, leasing, lending, exchanging, transferring, granting a concession, surrendering, licensing, reserving, waiving, compromising, releasing, dealing, subordinating, varying the terms of, parting with possession of, granting an option, right or interest in respect of, or otherwise dealing with that property;
- (b) the payment of money (including a distribution by way of dividend); and
- (c) an agreement for any of these, but

excludes the creation of a security interest;

**distribution** is defined in section 2 of the Companies Act 1993, and includes any reduction of capital (including a redemption by a company of its own shares), any acquisition by a company of any share in itself or in its holding company, and any financial assistance provided by a company to enable another person to acquire any such share;

**financial statements** has the meaning specified in section 6 of the Financial Reporting Act 2013;

**group financial statements** has the meaning specified in section 7 of the Financial Reporting Act 2013;

a **guarantee** includes an indemnity, letter of credit, letter of comfort, suretyship and other agreement, the economic effect of which is to provide security, or otherwise assume responsibility, for the indebtedness or obligations of another person;

a **holding company** of a person includes a holding company as defined in section 5 of the Companies Act 1993 and section 9 of the Australian Corporations Act;

**indebtedness** includes any obligation relating to the payment of money;

- (a) whether present or future, actual or contingent;
- (b) whether incurred alone, jointly, severally, or jointly and severally and as principal, surety or otherwise;
- (c) whether due to the lender alone, or with another person, and whether the Lender is entitled for its own account or for the account of another person;
- (d) whether arising from a banker and customer relationship or another relationship;
- (e) whether originally contemplated by the debtor or the Lender or not;
- (f) whether the Lender is the original person the amount was owed to, or an assignee and, if the Lender is an assignee:
  - (i) whether or not the debtor consented to, or was aware of the assignment; and
  - (ii) regardless of when the assignment occurred; and
- (g) if determined pursuant to any award, order, judgment or decree against the debtor, whether or not the debtor was party to the court proceedings, arbitration or other dispute resolution process in which that award, order, judgment or decree was made,

including any such obligation arising under derivative or similar products;

the **liquidation** of a person includes the dissolution, administration, winding-up and bankruptcy of that person and any analogous procedure under the law of any jurisdiction in which that person is incorporated, domiciled, carries on business or has property;

**loss** excludes loss of profit and loss of margin;

something having a **material adverse effect** is a reference to it having, in the reasonable opinion of the Lender, a material adverse effect on:

- (a) the consolidated financial condition or operations of the Group; or
- (b) the Group's ability to comply with any of its material obligations under any Finance Document; or
- (c) the validity or enforceability of, or the effectiveness or ranking of any security interest created under or in connection with a Security Document or the rights and remedies of the Lender under any Finance Document,

and references to **material adverse change** shall be construed accordingly;

obligations include covenants, conditions, stipulations, representations, warranties, guarantees, undertakings, assurances and agreements;

a **person** includes an individual, a body corporate, an association of persons (whether corporate or not), a trust, a state, an agency of a state and any other entity (in each case, whether or not having separate legal personality);

**property** includes:

- (a) anything that is capable of being owned, whether it is real or personal property, and whether it is tangible or intangible; and
- (b) the whole and any part of the relevant person's business, assets (including leased assets), undertaking, revenues, benefits and rights, (in each case, present and future), and reference to any property includes any legal or equitable interest in it;

**related person** means:

- (a) any related company (as defined in section 2(3) of the Companies Act 1993, but as if the word "subsidiary" in that section had the same meaning as "subsidiary" in this Agreement) of an Obligor;
- (b) in relation to any Obligor incorporated under the laws of Australia, any related body corporate (as defined in section 9 of the Australian Corporations Act) of that Obligor;
- (c) any person that is treated as an associated company of an Obligor in terms of Accounting Principles;
- (d) any person who beneficially owns (or together with its related persons, determined on the same basis as set out in paragraphs (a), (b) and (c) above, beneficially owns) whether directly or indirectly, 20% or more of the equity share capital in the Borrower;
- (e) any related entity (determined on the same basis as set out in paragraphs (a), (b) and (c) above) of any person referred to in paragraph (d) above; and
- (f) the beneficiary of a trust under which a trustee of the trust is a related entity in terms of paragraphs (a) to (e) above;

**rights** includes authorities, consents, discretions, remedies, powers and causes of

action; a **security interest** includes:

- (a) a mortgage, pledge, charge, lien, hypothecation, encumbrance, deferred purchase, title retention, finance lease, contractual right of set-off, flawed asset arrangement, sale-and-repurchase and sale-and-leaseback arrangement, order and other arrangement of any kind, the economic effect of which is to secure a creditor;
- (b) a "security interest" as defined in section 17(1)(a) of the PPSA in respect of which the relevant person is the debtor; and
- (c) a "security interest" as defined in sections 12(1) or (2) of the Australian PPSA;

a **subsidiary** of a person includes:

- (a) a subsidiary as defined in section 5 of the Companies Act 1993 (as if the term "company" in those sections includes entities incorporated in a jurisdiction other than New Zealand); and
- (b) an "in substance" subsidiary and any other person treated as a subsidiary under Accounting Principles;

- (c) a person controlled (whether directly or indirectly and whether by ownership of share capital, possession of voting power, contract or otherwise) by that person;
- (d) in relation to an Obligor incorporated under the laws of Australia, a subsidiary within the meaning of Part 1.2 of Division 6 of the Australian Corporations Act, but as if the body corporate includes any entity for the purpose of which any beneficial interest or unit in a trust will be deemed to be shares; and
- (e) in relation to Pleasure State (HK) Limited:

- (i) a subsidiary within the meaning of section 15 of the Companies Ordinance (Cap.622) of Hong Kong; and
- (ii) any company which would be a subsidiary within the meaning of section 15 of the Companies Ordinance (Cap.622) of Hong Kong but for any Security subsisting over the shares in that company from time to time,

but on the basis that a person shall be treated as a member of a company if any shares in that company are held by that person's nominee or any other person acting on that person's behalf;

- (f) in relation to a UK Obligor:
  - (i) a subsidiary within the meaning of section 1159 of the Companies Act 2006 (UK); and
  - (ii) any company which would be a subsidiary within the meaning of section 1159 of the Companies Act 2006 (UK) but for any security interest subsisting over the shares in that company from time to time,

but on the basis that a person shall be treated as a member of a company if any shares in that company are held by that person's nominee or any other person acting on that person's behalf;

**tax(es)** includes any tax, levy, impost, stamp or other duty and any other charge, deduction or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay, or any delay in paying, any of the same);

**writing** includes a facsimile transmission, an email communication and any means of reproducing words in a tangible and permanently visible form;

a reference to a **party, clause, schedule** or **annexure** is a reference to a party to, clause of, schedule to or annexure to, this Agreement;

the word "**including**", when introducing an example, does not limit the meaning of the words to which the example relates;

an Event of Default, Event of Review or Potential Event of Default is **continuing** until it has been waived in writing by, or remedied to the satisfaction of, the Lender;

an agreement, representation or undertaking given by an Obligor in favour of two or more persons is for the benefit of them jointly and each of them severally;

a gender includes each other gender;



the singular includes the plural and vice versa;

where a word or phrase is defined, its other grammatical forms have a corresponding meaning;

any legislation includes a modification and re-enactment of, legislation enacted in substitution for, and a regulation, order-in-council and other instrument from time to time issued or made under, that legislation; and

a party to this Agreement or another agreement includes its successors and its permitted assignees, novatees and transferees.

Headings and the table of contents are to be ignored in construing this Agreement.

Unless the contrary intention appears, where an Obligor holds any property as trustee for any trust (including where the trust has not been disclosed to the Lender), the Finance Documents are binding on the relevant Obligor in its personal capacity and in its capacity as trustee of the relevant trust and references to the Obligor's assets, liabilities, acts or omissions include any assets, liabilities, acts or omissions of the Obligor as trustee of the relevant trust.

### 1.3 **Joint and several liability**

The liability of, and obligations on, each Obligor under this Agreement are joint and several.

Any New Borrower is jointly and severally liable with any existing Borrower under this Agreement. References in this Agreement to "Borrower" are to each Borrower individually, and to all Borrowers together.

Any New Guarantor is jointly and severally liable with any existing Guarantor under this Agreement. References in this Agreement to "Guarantor" are to each Guarantor individually, and to all Guarantors together.

### 1.4 **PPSA**

The terms "collateral" and "debtor" in the definition of "security interest" above have the meanings given to them in the PPSA, and where it relates to an Obligor incorporated under the laws of Australia or any of its subsidiaries incorporated under the laws of Australia, a reference to these terms has the meaning given in the Australian PPSA.

## 2. **Facilities**

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### 2.1 **Availability**

The Lender agrees to make each Facility available to the Borrower on the terms of this Agreement and in the manner set out below:

<b>Facility</b>	<b>Manner of Use</b>
<b>Revolving Credit Facility</b>	By making Drawings denominated in NZ\$ or an Optional Currency.
<b>Instrument Facility</b>	By requesting the Lender to issue Instruments (denominated in NZ\$ or an Optional Currency) during the relevant Availability Period.

## 2.2 Purpose

The Borrower will use the net proceeds of any Accommodation for the purposes specified below:

<b>Facility</b>	<b>Purpose</b>
<b>Revolving Credit Facility</b>	To refinance the Borrower's existing (as at the Effective Date) customised average rate loan facilities and stock and debtor finance facilities with the Lender and for general commercial purposes of the Group.
<b>Instrument Facility</b>	To fund the rental bonding requirements of the Guaranteeing Group.

## 2.3 Conditions to any Accommodation

The Lender will not be obliged to make any Accommodation available under a Facility unless:

(a) **Conditions precedent**

the Effective Date has occurred under and as defined in the Deed of Amendment and Restatement (May 2018).;

(b) **No Event of Default**

(i) no Event of Default; and

(ii) (unless the Accommodation is a Rollover Advance) no Potential Event of Default,

has occurred, or will occur, as a result of the making available of that Accommodation;

(c) **Representations**

the representations made in, or in connection with, the Finance Documents are true, accurate and complied with in all material respects on the Drawing Date, as if repeated on that date by reference to the facts and circumstances then existing;

(d) **Unusual circumstances**

none of the events contemplated by clause 17 have occurred, or are reasonably likely to occur, on the Drawing Date.

## 2.4 Drawdown

The Lender will make an Advance to the Borrower on any Business Day nominated by the Borrower during the relevant Availability Period if:

(a) **Drawing Notice**

the Lender has received from the Borrower a Drawing Notice not later than 2.00 pm on the Business Day before the proposed Drawing Date, which notice will be irrevocable and must specify:

- (i) the Facility from which the Advance is requested;
- (ii) the requested amount of the Advance, which must be an integral amount of NZ\$100,000;
- (iii) the proposed Drawing Date;
- (iv) the currency of that Advance, which must be NZ\$ or an Optional Currency;
- (v) the requested length of the Interest Period applicable to the Advance.

(b) **Available Facility**

- (i) the NZ Dollar Equivalent of the amount of that Advance does not exceed the applicable Available Facility; and
- (ii) (if the currency of an Advance is an Optional Currency) the currency is readily available in the amount required and freely convertible into NZ Dollars in the wholesale market for that currency on the Quotation Date and the Drawing Date,

failing which the Lender may discontinue the requested drawdown of the Advance, or make the requested Advance and waive any of these conditions.

2.5 **Application on re-drawing**

Subject to compliance with clause 2.4, all or part of a Drawing may, if the Borrower so requests in the relevant Drawing Notice, be applied by the Lender in or towards repayment of a Drawing to be repaid on that Drawing Date, so that only the net amount is payable on that day. Nothing in this clause affects the obligation of the Borrower to make timely repayment of a Drawing in full if such application is not made.

2.6 **Right of Review**

- (a) The Lender may review the Facilities at any time. This will generally be done annually, but may be done at other times.
- (b) The Borrower acknowledges and agrees that the Lender in its absolute discretion may, by notice in writing to the Borrower, vary the percentage rate appearing in the definition of Margin.
- (c) All variations to the Margin shall be effective and become binding upon the parties fourteen days (or such longer period as advised by the Lender) after the date of the notice notifying such change.

3. [Intentionally deleted]
4. [Intentionally deleted]
5. [Intentionally deleted]
6. [Intentionally deleted]
7. [Intentionally deleted]

## **8. Revolving Credit Facility**

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### **8.1 Availability**

The Lender agrees to make the Revolving Credit Facility available to the Borrower on the terms of this Agreement. The Revolving Credit Facility will be made available in NZ\$ or an Optional Currency and by Drawings on any Business Day during the Availability Period of the Revolving Credit Facility.

### **8.2 Interest Rate**

The Borrower shall pay interest on each Drawing for each Interest Period at the rate per annum determined by the Lender to be:

- (a) in respect of a Drawing in NZ\$, the sum of:
  - (i) BKBM for that Interest Period;
  - (ii) the BNZ Liquidity Amount;
  - (iii) in respect of a Drawing in NZ\$ with an Interest Period of one or two months, or any other period that is greater than one month but less than three months, the Business Basis Premium for that Interest Period; and
  - (iv) the Margin;
- (b) in respect of a Drawing in an Optional Currency, the percentage rate per annum (rounded upwards to four decimal places) which is the sum of:
  - (i) the Margin; and
  - (ii) the rate of interest notified to the Borrower by the Lender to be that which expresses as a percentage rate per annum, the cost to the Lender of funding that Drawing from whatever source it may reasonably select,

subject always to clause 9.

### 8.3 Interest Payment

On the last day of each Interest Period for a Drawing under the Revolving Credit Facility (or, in the case of an Interest Period longer than three months, on each day during that period that falls at three monthly intervals from the first day of that period), the Borrower shall pay to the Lender all unpaid interest accrued on each Drawing during the relevant Interest Period (or, in the case of an Interest Period longer than three months, during the relevant three month period) at the applicable rate of interest for that Interest Period. The Lender will notify the Borrower of each determination of the applicable rate of interest and of each amount of interest payable under this clause but failure to do so will not affect the obligation of the Borrower to pay interest.

### 8.4 Interest Periods

Each Interest Period for a Drawing will be a period commencing on the applicable Drawing Date of one, two or three months as the Borrower may nominate in the relevant Drawing Notice (or such other period as the Lender may agree in writing) except that:

- (a) an Interest Period that commences on a day for which there is no numerically corresponding day in the month that Interest Period expires will end on the last Business Day of that month;
- (b) if an Interest Period would otherwise end on a day that is not a Business Day, that Interest Period will be extended to end on the next succeeding Business Day, unless the result of that extension would be to carry the Interest Period over into the next calendar month, in which case the relevant Interest Period will expire on the previous Business Day;
- (c) no Interest Period will extend beyond the Termination Date;
- (d) if the Borrower fails to nominate the length of an Interest Period, the Interest Period will be of three month's duration,

and if (a) or (b) apply, the next Interest Period will end on the day it would have ended if the previous Interest Period had not been extended or shortened.

### 8.5 Prepayment

The Borrower may prepay a Drawing in full (or any part of it being not less than NZ\$100,000 and that is a whole multiple of NZ\$100,000) on the Borrower giving the Lender not less than three Business Days' notice of its intention to do so, specifying the date and the amount of the prepayment. That notice will be irrevocable and will bind the Borrower to make the prepayment specified in it. On the date of prepayment, the Borrower shall prepay the relevant Drawing (or part of it) together with accrued interest on that Drawing (or part of it) and any amount due under clause 18 (Indemnities).

### 8.6 Redrawing

Amounts prepaid under clause 8.5 will be available for re-borrowing.

### 8.7 Repayment

The Borrower will repay each Drawing on the last day of its Interest Period and will repay all outstanding Drawings on the Termination Date, together with all interest and costs payable under the Finance Documents.

## 8.8 Currency equalisation

- (a) On the last day of each Interest Period the Lender shall calculate the NZ Dollar Equivalent of the Amount Outstanding under the each Facility by reference to the Lender's spot rate of exchange on that date.
- (b) If at any time the aggregate NZ Dollar Equivalent of the Amount Outstanding under that Facility as calculated under paragraph (a) above (the **Aggregate NZ Dollar Amount**) exceeds 105 per cent of Facility Limit for that Facility, then the Borrower shall, within 5 Business Days of written notice from the Lender, ensure that an amount equal to the difference between the Aggregate NZ Dollar Amount and the Facility Limit for that Facility is applied in prepayment of the Amount Outstanding under that Facility. Any amounts prepaid in accordance with this clause 8.8 will not be available for redrawing.

## 9. Changes to the calculation of interest

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### 9.1 Unavailability of Screen Rate

- (a) **Interpolated Screen Rate:** If no Screen Rate is available for the Interest Period of a Drawing, the applicable BKBM shall be the Interpolated Screen Rate for a period equal in length to the Interest Period of the relevant Drawing, except where the Interest Period is less than one month, in which case there shall be no BKBM for that Drawing and clause 9.5 shall apply to that Drawing for that Interest Period.
- (b) **Reference Bank Rate:** If no Screen Rate is available for the Interest Period of a Drawing (not being a Drawing with an Interest Period less than one month), and it is not possible to calculate the Interpolated Screen Rate, the applicable BKBM shall be the Reference Bank Rate as of the Specified Time for a period equal in length to the Interest Period of that Drawing.
- (c) **Cost of funds:** If paragraph (b) above applies but no Reference Bank Rate is available for the relevant Interest Period, there shall be no BKBM for that Drawing and clause 9.5 shall apply to that Drawing for that Interest Period.

### 9.2 Calculation of Reference Bank Rate

- (a) Subject to paragraph (b) below, if BKBM is to be determined on the basis of a Reference Bank Rate but a Reference Bank does not supply a quotation by the Specified Time, the Reference Bank Rate shall be calculated on the basis of the quotations of the remaining Reference Banks.
- (b) If at or about 12.00pm on the Quotation Day, none or only one of the Reference Banks supplies a quotation, there shall be no Reference Bank Rate for that Interest Period and clause 9.45 shall apply to that Drawing for that Interest Period.

### 9.3 Interpolated BBP Rate

If the Business Basis Premium is to be applied to a Drawing under clause 8.2 and no BBP Rate is available for the relevant Interest Period, the applicable Business Basis Premium shall be the Interpolated BBP Rate for a period equal in length to the Interest Period of the relevant Drawing.

#### 9.4 **Market disruption**

If before 5.00pm on the Business Day after the Quotation Day for the relevant Interest Period, the Lender notifies the Borrower that as a result of market circumstances not limited to it (whether or not those circumstances, or their effect on the Lender's cost of funds, subsisted on the date of this Agreement), the cost to it of funding the Drawing (from whatever source it may reasonably select) would be in excess of BKBM plus any applicable Business Basis Premium, then clause 9.5 shall apply to the Drawing for the relevant Interest Period.

#### 9.5 **Cost of funds**

- (a) If this clause applies, the rate of interest for the relevant Drawing for the relevant Interest Period shall be the percentage rate per annum (rounded upwards to four decimal places) which is the sum of:
- (i) the Margin; and
  - (ii) the rate of interest notified to the Borrower by the Lender to be that which expresses as a percentage rate per annum, the cost to it of funding that Drawing from whatever source it may reasonably select.

That rate is to be notified as soon as practicable and in any event before interest is due to be paid in respect of that Interest Period.

- (b) If this clause 9.5 applies and the Lender or the Borrower so requires, the Lender and the Borrower shall enter into negotiations (for a period of not more than 30 days) with a view to agreeing a substitute basis for determining the rate of interest.
- (c) Any alternative basis agreed pursuant to paragraph (b) above shall, with the prior consent of the Lender and the Borrower, be binding on all parties.

#### 9.6 **Notice**

The Lender shall promptly notify the Borrower if there is a market disruption event under clause 9.4.

#### 9.7 **Break Costs**

- (a) The Borrower shall, within three Business Days of demand by the Lender, pay to the Lender its Break Costs attributable to all or any part of a Drawing being paid by that Borrower on a day other than the last day of an Interest Period for that Drawing.
- (b) The Lender shall, as soon as reasonably practicable after a demand by the Borrower, provide a certificate confirming the amount of its Break Costs for any Interest Period in which they accrue.

### 10. **Instrument Facility**

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#### 10.1 **Availability**

The Lender agrees to make the Instrument Facility available to the Borrower on the terms of this Agreement. The Instrument Facility will be made available by the issuing of Instruments.

## 10.2 **Conditions precedent to each Instrument**

The Lender will make an Instrument available in accordance with clause 10.3, on any Business Day during the Availability Period nominated by the Borrower if:

### (a) **Available Facility**

the amount of the Instrument, when aggregated with all of the other outstanding Instruments (if any), intended to be issued on the same day, would not cause the applicable Available Facility to be exceeded on the Drawing Date;

### (b) **Limits on Instruments**

no more than 20 Instruments being outstanding at any one time.

## 10.3 **Instruments**

Subject to compliance with clause 10.2, the Lender shall issue an Instrument in NZ\$ or an Optional Currency on account of the Borrower if no later than 10.30 a.m. on the second Business Day before the proposed Drawdown Date the Lender has received from the Borrower a duly completed Drawing Notice for that Instrument which shall be irrevocable and which shall specify:

- (a) the type of Instrument (attaching a copy of the agreed form of the Instrument pursuant to clause 10.4(a));
- (b) the Drawing Date for that Instrument;
- (c) the Maximum Liability under that Instrument; and
- (d) the Beneficiary of that Instrument.

## 10.4 **Form of Instruments**

Each Instrument issued by the Lender must:

- (a) be in the form agreed by the Borrower and the Lender;
- (b) contain a “pay and walk” clause, if required by the Lender;
- (c) have an Expiry Date which is not later than the Termination Date;
- (d) be denominated in NZ\$ or an Optional Currency; and
- (e) be payable on a Business Day and have a term no less than one month from the date of issue of that Instrument.

## 10.5 **Authority to make payments**

The Borrower irrevocably authorises the Lender to pay immediately any amount demanded at any time under an Instrument. The Lender:



- (a) need not first refer to any member of the Consolidated Group or obtain its authority for the payment; and
- (b) need not enquire whether the demand has been properly made (provided that the demand has been made in the prescribed form, if any); and
- (c) may meet any demand even though a member of the Consolidated Group disputes the validity of the demand.

**10.6 Borrower's undertaking to reimburse**

The Borrower may reimburse, repay or otherwise discharge the amounts owing or contingently owing in respect of any issued Instrument by:

- (a) providing to the Lender, cash collateral (on terms satisfactory to the Lender) in an amount not less than the Maximum Liability of the issued Instrument; or
- (b) cancelling that Instrument by procuring the Beneficiary under that Instrument to return the original to the Lender.

**10.7 Expiring Instruments**

The Instrument Facility Limit is not reduced when an Instrument expires, is repaid or is otherwise discharged.

**10.8 Indemnity**

The Borrower unconditionally and irrevocably indemnifies the Lender against any liability or loss arising from, and any costs incurred in connection with, the Lender making payment pursuant to or receiving a claim in respect of an Instrument. The Borrower agrees to pay amounts due under this indemnity on demand from the Lender. For the avoidance of doubt, any payment made under this clause shall be paid in the same currency as the Instrument in respect of which the payment was made.

**10.9 Rights are protected**

The rights of the Lender under the Instrument Facility in respect of an Instrument and the Borrower's obligations with respect to an Instrument are not affected by anything (other than in the case of fraud, gross negligence or wilful misconduct on the part of the Lender) that might otherwise affect them under law or otherwise, including:

- (a) any inaccuracy, insufficiency, forgery or alteration in any certificate, Instrument or other document which purports to be made, issued or delivered under this Agreement or under any Instrument;
- (b) the fact that the Lender releases a member of the Consolidated Group (or another person) or gives them a concession, such as more time to pay, or compounds or compromises with them;
- (c) laches, acquiescence or delay on the part of the Lender or another person;
- (d) any variation or novation of a right of the Lender or another person; or

(e) the fact that the obligations of any person other than a member of the Consolidated Group may not be enforceable.

#### **10.10 Prohibitions on issue of certain Instruments**

The Lender is not obliged to issue an Instrument in respect of any Beneficiary if the issue would cause a breach by the Lender of any applicable law.

#### **10.11 Redrawing**

Subject to compliance with the provisions of this Agreement relating to drawdown, amounts under the Instrument Facility which are repaid or prepaid in accordance with this Agreement or amounts available as a result of the cancellation or release of an Instrument shall be available for drawing or redrawing during the Availability Period for the Instrument Facility.

### **11. Ancillary Facilities**

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#### **11.1 Availability**

The Lender may, at its option, agree to make additional facilities available to the Obligors.

#### **11.2 Documentation**

Any ancillary facility will be made on the terms specified in a separate agreement to be entered into between the Lender and the relevant Obligor(s) at the relevant time, and will be subject to the terms of that agreement.

### **12. Repayment**

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The Borrower will repay all outstanding Drawings on the Termination Date, in each case, together with all interest and costs payable under the Finance Documents.

### **13. Illegality**

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If, at any time, the Lender determines that it is, or is likely to be, or will become, unlawful or contrary to any law, treaty or directive of any agency of state or other regulatory, monetary or accounting authority to make, fund or allow to remain outstanding all or part of the Facility or any Accommodation, or to charge or receive interest at any applicable rate, or to comply with any of its obligations or exercise any of its rights under a Finance Document, then, on the Lender notifying the Borrower accordingly:

- (a) the obligation of the Lender to make the Facility or any Accommodation available will be cancelled; and
- (b) where the Facility or part of it has been made available, the Borrower will repay the Amount Outstanding either immediately or, if permitted by law, treaty or directive, on the expiry of each current Interest Period (if applicable) relating to it.

#### 14. **Default interest**

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If the Borrower does not pay, when due, an amount payable by it under a Finance Document then, without prejudice to its other obligations, the Borrower will pay interest on that overdue amount (including interest payable under this clause) calculated from its due date to the date of its receipt by the Lender (after as well as before judgment), compounded and payable at intervals selected by the Lender at its discretion (each a **Default Interest Period**). This obligation to pay default interest arises without the need for a notice or demand. The rate of default interest (the **Default Rate**) will be the aggregate of:

- (a) The rate of interest that would otherwise be payable pursuant to clause 8.2; and
- (b) 2 percent per annum,

on the first day of the relevant Default Interest Period.

#### 15. **Fees**

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##### 15.1 **Establishment fee**

*[Intentionally deleted]*

##### 15.2 **Line fee**

- (a) The Borrower will pay to the Lender a line fee at the rate of 1.00 per cent per annum of the Revolving Credit Facility Limit.
- (b) The Borrower will pay to the Lender a line fee at the rate of 0.75 per cent per annum of the Instrument Facility Limit.
- (c) Each such line fee is payable quarterly in advance from the Effective Date to the later of the Termination Date and the date on which the Amount Outstanding is received by the Lender.

##### 15.3 **Issuance fee**

- (a) The Borrowers shall pay to the Lender an issuance fee in an amount equal to 1.00% of the Maximum Liability of the Lender per annum under each Instrument as specified by the Lender in accordance with its current trade terms relating to such Instruments.
- (b) Such issuance fees shall be payable quarterly in advance (starting on the date of issue of that Instrument) until such time as the relevant Instrument is formally cancelled by the Lender (which will be deemed to occur after the Instrument expires). These issuance fees are subject to review at the Lender's sole discretion.
- (c) Other fees may be payable in respect of Instruments provided by the Lender as specified by the Lender in accordance with its current trade terms relating to such Instruments or as otherwise agreed with a Borrower. These fees are subject to review at the Lender's sole discretion.

15.4 **No refund**

No fee payable by the Borrower is refundable in any circumstance, even where payable in advance.

16. **Taxes**

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16.1 **Gross up**

If:

- (a) an Obligor or a person on its behalf is required by law to make a deduction or withholding on account of tax from any amount paid or payable by it under a Finance Document; or
- (b) the Lender or a person on its behalf is required by law to make any payment for or on account of tax (other than tax on overall net income of the Lender) on or in relation to any amount received or receivable by it under a Finance Document,

then the relevant Obligor will:

- (c) ensure that any such deduction or withholding does not exceed the legal minimum and shall pay the amount required to be deducted or withheld to the relevant authority before the date any penalty begins to accrue; and
- (d) increase the actual amount paid to the Lender to the extent necessary to ensure that after any such deduction, withholding or payment is made, the Lender actually receives and retains on the due date (free from any liability in respect of any such deduction, withholding or payment, and ignoring any amount that the Lender is deemed to have received by reason of any legislation) a net amount equal to the amount that it would have received and so retained had no such deduction, withholding or payment been required to be made.

16.2 **Tax credit**

If the Lender receives the benefit of a final tax refund or credit resulting from an Obligor having made a deduction or withholding referred to in, or in respect of which an Obligor has made an increased payment under, clause 16.1 (Gross up), it will pay to the relevant Obligor such part of that benefit as, in the Lender's reasonable opinion, will leave it in a no less favourable position (after that payment, and taking account of any additional payment made to it under clause 16.1 (Gross up) and any tax payable by it on that additional payment) than it would have been in if no deduction or withholding or payment had been required. In doing so, the Lender:

- (a) will be the sole judge of the amount of any such benefit and the date on which it is received and paid;
- (b) has absolute discretion as to the order and manner in which it employs or claims tax credits and allowances available to it and is under no obligation to claim relief from any of its tax liabilities in respect of any such deduction or withholding in priority to any other claims, credits or deductions available to it; and
- (c) has no obligation to disclose to the Obligor any information regarding its tax affairs or computations.

### 16.3 New Zealand Resident Withholding Tax

The Lender:

**(a) RWT Exemption Certificate**

confirms to the Borrower that, as at the date of this Agreement (or, if later, as at the date it becomes party to this Agreement), it is a person of the type listed in section 32E(2)(a) to (h) of the Tax Administration Act 1994, and holds an RWT Exemption Certificate;

**(b) Undertaking to maintain certificate**

undertakes to the Borrower to use reasonable endeavours to maintain the currency of its RWT Exemption Certificate until the Termination Date, provided that the Lender is lawfully able to do so;

**(c) Obligation to notify**

agrees to notify the Borrower promptly if it ceases to hold, or ceases to be entitled to hold, an RWT Exemption Certificate, following which the Lender and the Borrower shall negotiate in good faith for a period not exceeding 30 days with a view to agreeing upon an arrangement that will ensure, so far as possible, that the Borrower is not disadvantaged, and the Lender is not advantaged, by reason of the loss of the RWT Exemption Certificate. If no such arrangement is agreed within the 30 day period, clause 16.1 (Gross up) will continue to apply.

### 16.4 FATCA

Notwithstanding anything to the contrary herein, nothing in clause 16.1 or 17 shall apply to the extent the relevant amount relates to a FATCA Deduction required to be made by a party to this Agreement.

### 16.5 FATCA Information

(a) Subject to paragraph (c) below, each of the Lender and an Obligor (in this clause a **Party**) shall, within ten Business Days of a reasonable request by another Party:

(i) confirm to that other Party whether it is:

(A) a FATCA Exempt Party; or

(B) not a FATCA Exempt Party;

(ii) supply to that other Party such forms, documentation and other information relating to its status under FATCA as that other Party reasonably requests for the purposes of that other Party's compliance with FATCA;

(iii) supply to that other Party such forms, documentation and other information relating to its status as that other Party reasonably requests for the purposes of that other Party's compliance with any other law, regulation, or exchange of information regime.

- (b) If a Party confirms to another Party pursuant to paragraph (a)(i) above that it is a FATCA Exempt Party and it subsequently becomes aware that it is not or has ceased to be a FATCA Exempt Party, that Party shall notify that other Party reasonably promptly.
- (c) Paragraph (a) above shall not oblige any Party to do anything, which would or might in its reasonable opinion constitute a breach of:
- (i) any law or regulation;
  - (ii) any fiduciary duty; or
  - (iii) any duty of confidentiality.
- (d) If a Party fails to confirm whether or not it is a FATCA Exempt Party or to supply forms, documentation or other information requested in accordance with paragraph (a)(i) or (ii) above (including, for the avoidance of doubt, where paragraph (c) above applies), then such Party shall be treated for the purposes of the Finance Documents (and payments under them) as if it is not a FATCA Exempt Party until such time as the Party in question provides the requested confirmation, forms, documentation or other information.
- (e) If an Obligor is a US Tax Obligor or the Lender or the Borrower reasonably believes that its obligations under FATCA or any other applicable law or regulation require it, the Lender shall, within ten Business Days of:
- (i) where an Obligor is a US Tax Obligor and the Lender is Bank of New Zealand, the date of this Agreement;
  - (ii) where an Obligor is a US Tax Obligor on the date of any assignment by the Lender pursuant to clause 25.1 and the Lender is not Bank of New Zealand, the date of that assignment;
  - (iii) the date a new US Tax Obligor accedes as an Obligor; or
  - (iv) where an Obligor is not a US Tax Obligor, the date of a request from the Lender, supply to the Borrower:
  - (v) a withholding certificate on Form W-8, Form W-9 or any other relevant form; or
  - (vi) any withholding statement or other document, authorisation or waiver as the Lender may require to certify or establish the status of such Lender under FATCA or that other law or regulation.
- (f) The Lender shall provide any withholding certificate, withholding statement, document, authorisation or waiver it receives from any other person pursuant to paragraph (e) above to the Borrower.
- (g) If any withholding certificate, withholding statement, document, authorisation or waiver provided to the Borrower pursuant to paragraph (e) or (f) above is or becomes materially inaccurate or incomplete, that Lender shall promptly update it and provide such updated withholding certificate, withholding statement, document, authorisation or waiver to the Borrower unless it is unlawful for the Lender to do so (in which case the Lender shall promptly notify the Borrower). The Lender shall provide any such updated withholding certificate, withholding statement, document, authorisation or waiver to the Borrower.

- (h) The Borrower may rely on any withholding certificate, withholding statement, document, authorisation or waiver it receives from a Lender pursuant to paragraph (e) or (g) above without further verification. The Borrower shall not be liable for any action taken by it under or in connection with paragraphs (e), (f) or (g) above.

#### 16.6 **FATCA Deduction**

- (a) Each Party may make any FATCA Deduction it is required to make by FATCA, and any payment required in connection with that FATCA Deduction, and no Party shall be required to increase any payment in respect of which it makes such a FATCA Deduction or otherwise compensate the recipient of the payment for that FATCA Deduction.
- (b) Each Party shall promptly, upon becoming aware that it must make a FATCA Deduction (or that there is any change in the rate or the basis of such FATCA Deduction), notify the Party to whom it is making the payment and, in addition, shall notify the Borrower and the Lender if appropriate.

#### 16.7 **GST**

If any supply by the Lender to the Borrower in relation to any Finance Document is, at the time of supply, subject to GST, the Borrower will, subject to receipt of a valid tax invoice, pay to the Lender an amount equal to the applicable goods and services tax in addition to the consideration for that supply.

Where a Finance Document requires any party to reimburse the Lender for any costs or expenses, such costs or expenses shall include any indirect tax (including GST) incurred by the Lender in respect of those costs or expenses save to the extent that the Lender is entitled to a repayment or credit in respect of the indirect tax. Where applicable, the Lender will promptly provide the party with a tax invoice complying with the relevant indirect tax legislation.

#### 16.8 **Stamp duty**

The Obligors must:

- (a) pay; and
- (b) within 3 Business Days of demand, indemnify the Lender against any cost, expense, loss or liability the Lender incurs in relation to, all stamp duty, registration or other similar tax payable in respect of any Finance Document.

#### 16.9 **Notice of legal requirements**

If a party is required to make a deduction, withholding or payment for or on account of tax or on another account, it shall promptly notify each other party immediately.

#### 16.10 Tax receipts

Promptly after the making by an Obligor of a deduction or withholding, the Borrower will deliver to the Lender a receipt or other documentation reasonably satisfactory to the Lender evidencing the deduction or withholding.

#### 16.11 Limitation for default by Lender

Nothing in this clause 16 shall be construed as requiring an Obligor to pay an amount to the Lender on account of a tax which is a penalty or interest payable in connection with the Lender's failure to pay an amount to the revenue in any jurisdiction after receiving it from an Obligor.

### 17. Increased costs

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#### 17.1 Increased costs

If, at any time, as a result of:

- (a) the introduction of, or a change in, a law, treaty or directive of an agency of state or other regulatory, monetary or accounting authority, or in its interpretation by the agency or authority charged with its administration, or by a court of competent jurisdiction (including the implementation or application of, or compliance with, any document that forms part of the international capital or regulatory framework for banks published by the Basel Committee on Banking Supervision but excluding Basel III); or
- (b) compliance by the Lender or by a person with whom the Lender may have a loan, swap or other funding or participation arrangement with a directive of an agency of state or other regulatory, monetary or accounting authority,

in each case after the date of this Agreement (or, in relation to a person becoming party to this Agreement subsequently, the date it becomes party to this Agreement) the Lender determines that:

- (c) the cost to it of making, funding or maintaining the Facility or any Accommodation or any other amount under a Finance Document, or all or any of the amounts comprised in a class of advances formed by or including the Facility or any Accommodation or any other amount is increased; or
- (d) an amount payable to it or its effective return under a Finance Document is reduced; or
- (e) there is a reduction in the effective rate of return on its overall capital that, in its view, is attributable to either of paragraphs (a) or (b) above applying in relation to its obligations under a Finance Document or to any class of obligations of which they form part; or
- (f) it makes a payment or forgoes any interest or other return on or calculated by reference to a sum received or receivable by it from a Relevant Party under a Finance Document in an amount that the Lender considers material,

then, and in each case (whether or not the Lender is aware at the date of this Agreement that any such introduction, change or directive will subsequently take effect):



(g) the Lender will notify the Borrower; and

on demand from time to time by the Lender, the Borrower will pay to the Lender, the amount certified by the Lender to be necessary to compensate it (and except to the extent that the Borrower is already liable to compensate it under this Agreement) for that increased cost, reduction, payment or forgone interest or other return (or that portion of it as in the Lender's opinion, is attributable to the Facility or any Accommodation or the Lender's obligations under a Finance Document) (if requested by the Borrower, this certificate will provide reasonable details of the composition of this amount).

No demand may be made under this clause 17.1 in relation to any increased cost arising in respect of tax or as a consequence of the wilful misconduct or negligence of the Lender.

**17.2 Minimisation**

If the Lender has acted in good faith, an amount certified under sub-clause 17.1 (Increased costs) above will be payable regardless of whether an increased cost, reduction, payment or forgone interest or other return referred to in that clause could have been avoided.

**17.3 Survival of obligations**

The obligations of the Borrower under sub-clause 17.1 (Increased costs) above are to survive termination of the Facility and payment of all other indebtedness due under any Finance Document.

**17.4 Changes in market conditions**

If, by reason of circumstances affecting any relevant interbank market generally, it is or may be impossible for the Lender to obtain the relevant currency in that market (and accordingly it is impossible for it to make, fund or maintain the Facility or any Accommodation or any other amount under a Finance Document, or all or any of the amounts comprised in a class of advances formed by or including the Facility or any Accommodation) for any period, the Lender is to notify the Borrower promptly and:

- (a) if the Accommodation has not been made, the obligation of the Lender to make the Accommodation available will be suspended; and
- (b) if the Accommodation has been made, the Borrower will repay the Accommodation and all other indebtedness of the Borrower under each Finance Document either immediately or, as the Lender elects, on the next date for payment of interest.

Without prejudice to the Borrower's obligations to repay, the Borrower and the Lender are to negotiate in good faith with a view to agreeing terms for making the Facility available from another source. However, the Lender is under no obligation to agree to terms or to continue those negotiations if terms are not agreed promptly.

## 18. Indemnities

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### 18.1 General indemnity

Subject to any mandatory law, the Obligors will indemnify the Lender against each cost incurred by it as a result of:

- (a) the occurrence or continuance of an Event of Default; or
- (b) an amount payable by the Obligors under a Finance Document not being paid when due, whether by prepayment, acceleration or otherwise (but, so far as appropriate, credit is to be given for amounts, if any, of default interest paid under the Finance Document); or
- (c) a prepayment of a Drawing being made or becoming due, or another amount being paid or becoming due, otherwise than on the last day of an Interest Period relating to it (whether or not that payment is permitted or required under this Agreement); or
- (d) a Drawing not being drawn on the requested Drawing Date (other than by reason of default by the Lender); or
- (e) any Advance not being advanced on the requested Drawing Date (other than by reason of default by the Lender); or
- (f) an enquiry by a Government Agency involving an Obligor; or
- (g) reliance by the Lender (acting reasonably) on any communication made to it via electronic mail by an authorised signatory of the Borrower,

by payment on demand to the Lender, of the amount that the Lender certifies is required to compensate the Lender for that cost, including each cost incurred in liquidating or re-employing:

- (h) deposits or other funds acquired or arranged to fund or maintain a Drawing or any Advance or any part of it; and
- (i) any transaction entered into in anticipation of drawdown and/or disbursement of a Drawing or any Advance.

### 18.2 Currency indemnity

If an amount due from a Relevant Party under a Finance Document or under a suit, action or proceeding has to be converted from the currency (the **first currency**) in which it is payable into another currency (the **second currency**) for the purposes of:

- (a) making or filing a claim or proof against a Relevant Party; or
- (b) obtaining an order or judgment in any court; or
- (c) enforcing an order or judgment,

then the Obligors will indemnify the Lender by payment on demand in immediately available funds, in the currency stipulated by the Lender, against each cost incurred by the Lender as a result of any discrepancy between:

- (d) the rate of exchange used for that purpose to convert the sum in question from the first currency into the second currency; and
- (e) the rate of exchange at which the Lender may, in the ordinary course of business, purchase the first currency with the second currency.

Each amount due under this clause will be due as a separate debt and will not be affected by, or merged into, a judgment obtained for other sums due.

**18.3 Indemnities irrevocable**

The above indemnities are unconditional and irrevocable, and will survive both termination of this Agreement and payment of all other indebtedness due under the Finance Documents.

**19. Costs**

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The Borrower will pay each cost incurred by the Lender in connection with:

- (a) the preparation, negotiation, entry into, execution, stamping, registration and release of each Finance Document;
- (b) each amendment to, waiver or consent in respect of, or discharge or release of or under, a Finance Document; and
- (c) the exercise, protection, investigation or enforcement of the Lender's rights under a Finance Document;

in each case, on demand and on a full indemnity basis. The costs in relation to (a) and (b) must be reasonable.

**20. Cross guarantee**

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**20.1 Guarantee**

Each Obligor unconditionally and irrevocably jointly and severally guarantees to the Lender due payment by each other Obligor (in this clause, referred to as the **Debtor**), of the Guaranteed Indebtedness.

**20.2 Payment**

Each Obligor undertakes to the Lender that if, for any reason, a Debtor does not pay when due (whether by acceleration or otherwise) any of its Guaranteed Indebtedness, it will pay the relevant amount to the Lender immediately on demand.

**20.3 Unenforceability of obligations**

As a separate and continuing undertaking, each Obligor unconditionally and irrevocably undertakes to the Lender that, should any Guaranteed Indebtedness not be recoverable from an Obligor under any Finance Document for any reason, including a provision of any Finance Document or an obligation (or purported obligation) of an Obligor to pay any Guaranteed Indebtedness being or becoming void, voidable, unenforceable or otherwise invalid, and whether or not that reason is or was known to the Lender, and whether or not that reason is:

- (a) a defect in or lack of powers of that Obligor or the Debtor or any other person, or the irregular exercise of those powers; or
- (b) a defect in or lack of authority by a person purporting to act on behalf of that Obligor or the Debtor or any other person; or

- (c) a legal or other limitation (whether under the Limitation Act 2010 or otherwise), disability or incapacity of that Obligor or the Debtor; or
- (d) the liquidation, administration, amalgamation, change in status, constitution or control, reconstruction or reorganisation of that Obligor or the Debtor (or the commencement of steps to effect the same),

that Obligor will, as a sole and independent obligation, pay to the Lender on demand the amount that the Lender would otherwise have been able to recover (on a full indemnity basis). The expression "Guaranteed Indebtedness" includes any indebtedness that would have been included in that expression but for anything referred to in this clause.

#### 20.4 **Suspense account**

All amounts from time to time received by the Lender in respect of the Guaranteed Indebtedness of a Debtor from an Obligor other than the Borrower or otherwise on account of any Obligor may be placed in a suspense account (the **Suspense Account**) with a view to preserving the rights of the Lender, to the extent permitted by law, to prove for the whole of the Guaranteed Indebtedness of the Debtor in the event of any proceeding in, or analogous to, liquidation, administration, amalgamation, change in status, constitution or control, reconstruction or reorganisation of the Debtor or any other Obligor. Any interest paid on the amount for the time being in the Suspense Account shall not be payable by the Lender to any Obligor.

#### 20.5 **Liability as sole principal debtor**

As between each Obligor and the Lender (but without affecting the obligations of a Debtor) each Obligor is liable under this clause in relation to the Guaranteed Indebtedness as a sole and principal debtor and not as a surety.

#### 20.6 **No discharge**

- (a) No Obligor is discharged, nor are its obligations affected, by:
  - (i) any time, indulgence, waiver or consent at any time given to a Relevant Party or another person; or
  - (ii) an amendment (however fundamental) to, or replacement of, a Finance Document or to another security interest, guarantee or other agreement (whether or not that amendment increases the liability of that Obligor); or
  - (iii) the existence, validity or enforceability of, or the enforcement of or failure to enforce, or the release of any person or property from any Finance Document or other security interest, guarantee or agreement; or
  - (iv) the liquidation, amalgamation, change in status, constitution or control, reconstruction or reorganisation of any Relevant Party or another person (or the commencement of steps to effect any of these); or
  - (v) anything else whatever.

The Lender is not liable to any Obligor in respect of any of these matters, even though the Obligors' rights in subrogation or otherwise may be prejudiced as a result.

- (b) Each Obligor acknowledges and accepts that:
  - (i) the Lender may release one or more Obligor's obligations under this Agreement without the release of each other Obligor;
  - (ii) release by the Lender of one Obligor from its obligations under this Agreement does not constitute release of the obligations of any other Obligor; and
  - (iii) in any case where an Obligor is released by the Lender from its obligations under this Agreement, the Lender's rights and remedies against each remaining Obligor are preserved.

#### 20.7 **Continuing guarantee**

This guarantee and each Obligor's obligations under this Agreement:

- (a) are a continuing security, notwithstanding intermediate payments, settlement of accounts or payments or anything else;
- (b) are in addition to, and not to be merged in, any security interest, guarantee or other agreement, whenever in existence, in favour of any person; and
- (c) will remain in full force and effect until the execution by the Lender of an unconditional discharge of each Obligor's obligations under this Agreement.

#### 20.8 **No competition**

No Obligor will, without the written consent of the Lender:

- (a) take, accept or hold a security interest from another Obligor or, in relation to Guaranteed Indebtedness, from another person; or
- (b) take steps to recover (whether directly or by set-off, counterclaim or otherwise) or accept money or other property, or exercise or enforce rights in respect of, any indebtedness of another Obligor to that Obligor arising in any way or, in relation to Guaranteed Indebtedness, indebtedness of another person to that Obligor; or
- (c) claim, prove or accept payment in composition by, or a liquidation of, another Obligor or, in relation to Guaranteed Indebtedness, another person,

and until such time as the Guaranteed Indebtedness has been fully paid, each Obligor waives all rights of subrogation to which it would otherwise be entitled by reason of performance of its obligations under the guarantee in this clause or any other guarantee given in respect of indebtedness of an Obligor. If, notwithstanding this sub-clause, an Obligor holds or receives any such security interest, money or property, that Obligor will pay or transfer it to the Lender immediately and, pending that payment or transfer, will hold it on trust for the Lender.

## 21. Representations

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### 21.1 Representations and warranties of Obligors

Each Obligor represents and warrants that:

#### (a) Existence, power and authority

it:

(i) in the case of each Obligor in its personal capacity:

(A) is duly incorporated, validly existing and (where the concept of good standing applies) in good standing under the laws of its jurisdiction of incorporation;

(B) has full power and authority to conduct its business as presently conducted;

(C) has full power and authority to enter into, deliver and comply with its obligations under the Finance Documents;

(D) is qualified to do business and (where the concept of good standing applies) in good standing in each other jurisdiction where such qualification is required for it to enter into, deliver and comply with its obligations under the Finance Documents; and

(E) has taken all corporate and other action and obtained all consents needed to enable it to do so;

(ii) in the case of the Trustee, it has the power under the Trust Deed to own the Trust assets and carry on the business of the Trust as it is being conducted, has full power to enter into, deliver and comply with its obligations under the Finance Documents, and has taken all action and obtained all consents needed to enable it to do so;

#### (b) No consents

no consent, approval or authorization of, filing with, notice to or other act by or in respect of, any governmental authority or any other person is required in connection with the transactions contemplated hereunder or with the execution, delivery and performance by it of any Finance Document to which it is a party, except consents, authorizations, filings and notices which have been obtained or made and are in full force and effect;

#### (c) Obligations enforceable

it has duly executed and delivered each of the Finance Documents to which it is a party and its obligations under the Finance Documents are legal, valid, binding and enforceable in accordance with their respective terms, subject to equitable principles and insolvency laws of general application;

#### (d) No default

it is not in default, nor will its entry into any Finance Document to which it is a party cause it to default, under:

(i) any agreement relating to indebtedness; or

(ii) any guarantee; or

(iii) any other agreement,

to an extent or in a manner that has, or might have, a material adverse effect on it and no such agreement limits its capacity to sell any Debts and give title thereto to the Lender;

**(e) Compliance with laws, no conflict**

its entry into the Finance Documents and the exercise of its rights and obligations under and in connection with the Finance Documents does not:

- (i) contravene any law to which it is subject;
- (ii) conflict with or result in a breach of, any agreement to which it is a party where such breach or conflict would have a material adverse effect;
- (iii) conflict with or result in a breach of any of the documents constituting it (including, in relation to the Trustee, the Trust Deed); or
- (iv) limit any of its powers or any right or ability of its directors to exercise its powers;

**(f) Solvency**

- (i) in the case of each Obligor in its personal capacity, it is solvent and able to pay its indebtedness as it falls due; and
- (ii) in the case of the Trustee, it is solvent and able to pay its indebtedness as it falls due from the relevant Trust assets, where indebtedness is incurred as a Trustee;

**(g) No security interest**

except as disclosed to and accepted in writing by the Lender and any Permitted Security, no security interest exists over or affects, nor is there any agreement to give or permit to exist, any security interest over or affecting, any of its property;

**(h) Financial statements**

the latest audited annual financial statements as delivered to the Lender:

- (i) include those most recently prepared for the last period and as at the last date for which financial statements have been prepared, and include copies of all documents required by law to accompany them;
- (ii) were prepared in accordance with Accounting Principles;
- (iii) give a true and fair view of its financial position and, in relation to that period, the consolidated financial position of the Consolidated Group as at the date and for the period to which they relate;
- (iv) disclose or reserve against all liabilities (contingent or otherwise) as at that date and all unrealised or anticipated costs from any commitment entered into by the relevant person(s) and that existed on that date;
- (v) include a true and complete copy of any auditor's report; and

(vi) are signed by two directors (or one, if there is only one director);

**(i) No material adverse change**

there has been no material adverse change since the last date as at which any of the financial statements referred to in the preceding sub-clause were made up;

**(j) Litigation**

no litigation, arbitration or administrative proceeding is, as at the Commencement Date, current or pending or, to its knowledge, threatened that has, or could have, a material adverse effect on it or on the Lender's ability to exercise or enforce its rights under any Finance Document;

**(k) Information**

(i) all information provided by it or any other person on its behalf to the Lender in connection with the Finance Documents was true in all material respects as at the date that information was provided, and remains so;

(ii) there are no facts or circumstances that have not been disclosed to the Lender that would make the information referred to in sub-paragraph (i) above untrue or misleading in any material respect; and

(iii) it has disclosed to the Lender all information that would be material to assessment by the Lender of the risks to be assumed by the Lender under the Facility;

**(l) No Event of Default**

no Event of Default has occurred and is continuing;

**(m) Security Documents**

each of the Security Documents is effective to create in favour of the Lender a legal, valid and enforceable lien on, and security interest in, the Secured Property described therein and proceeds thereof as security for the obligations of the Obligors under the Finance Documents;

**(n) Ranking of obligations**

(i) in respect of each Obligor in its personal capacity, its liabilities under each Finance Document to which it is a party will at all times rank at least pari passu with the claims of all of its other creditors, except where such claims are preferred solely by operation of law or are secured pursuant to a Permitted Security;

(ii) in respect of the Trustee:

(A) to the extent that its payment obligations under the Finance Documents are not indemnified out of Trust assets, they rank at least pari passu with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally; and



(B) to the extent that its payment obligations under the Finance Documents are indemnified out of Trust assets, they rank at least pari passu with the claims of all its other unsecured and unsubordinated Trust creditors, except for obligations mandatorily preferred by law;

(o) **Not trustee**

other than in relation to the Trustee as trustee of the Trust, it is not a trustee of any trust;

(p) **Group structure chart**

the group structure diagram in Schedule 8 sets out the true and correct corporate structure and ownership of the Consolidated Group at the Commencement Date and does not omit any material detail;

(q) **Intellectual Property**

it owns or has licensed to it on arm's length terms, or otherwise has available to it, all IP rights necessary for the conduct of its business and all software necessary for the conduct of its business in each case where failure to do so has or would be likely to have a material adverse effect;

(r) **No amount owing the**

Shares are fully paid;

(s) **Sole owner**

(i) in the case of each Obligor, in its personal capacity, it is the sole legal and (subject to any Permitted Security) beneficial owner of, and has rights in, all the Secured Property;

(ii) in the case of the Trustee, it is the sole legal owner of, or otherwise has or will have a sufficient right, interest or power to grant a security interest in the Trust assets;

(t) **Share certificates**

other than as notified to the Lender in writing or in respect of a UK Obligor, no Certificates have been issued in respect of the Shares or units in the Trust;

(u) **No other interest**

no other person has any interest in, or other right over, the Secured Property except:

(i) to the extent (if any) set out in or permitted by the Finance Documents;

(ii) Permitted Security; or

(iii) as otherwise agreed in writing by the Lender;

(v) **No foreign property**

at the date of this Agreement, all of its Material Secured Property is in its possession and is situated in New Zealand and/or Australia other than shares it owns in overseas entities; and

(w) **Serial Numbered Secured Property**

at the date of this document, the information in Schedule 9 is true in all respects and includes the details of all of its Serial Numbered Secured Property.

(x) **Listing**

in relation to any Obligor whose shares are listed on a registered stock exchange only, it will comply with the rules applicable to that registered stock exchange where failure to do so has or is reasonably likely to have a Material Adverse Effect.

21.2 **Trust representations**

The Trustee represents and warrants personally, and as trustee, to the Lender:

(a) **Obligor as trustee**

- (i) it is the only trustee of the Trust. No action has been taken or, to the best of its knowledge or belief, proposed by any person with the power or standing to do so to remove it as trustee of the Trust or to appoint an additional trustee to the Trust;
- (ii) there are no former trustees of the Trust; and
- (iii) it has never been the only unit holder of the Trust;

(b) **the Trust**

- (i) the Trust is properly constituted. No action has been taken or, to the best of its knowledge or belief, proposed by any person with the power or standing to do so to terminate or resettle the Trust; and
- (ii) the Trust is not a managed investment scheme which must be registered under Part 5C.1 of the Australian Corporations Act;

(c) **the Trust Deed**

- (i) each copy of the Trust Deed given to the Lender on or before the date of this Agreement is a true and up to date copy and discloses all the terms of the Trust, other than those implied by law; and
- (ii) the Trust Deed constitutes valid, binding and enforceable obligations of the parties to it and is duly stamped and complies with all applicable laws;

(d) **powers and duties**

it has the power to enter into the Finance Documents and the transactions they contemplate, exercise its right under them and comply with its obligations in connection with them as trustee of the Trust and in doing so it has acted and is acting properly. All requirements to enable it to do so have been and remain satisfied;

**(e) the Trust assets**

except as expressly permitted by the Finance Documents, no Trust asset has been resettled or vested in any person. No one is presently entitled to call for the distribution of the Trust assets; and

**(f) the Trustee's Indemnity**

- (i) it enjoys the benefit of and may exercise and enforce rights of indemnity or other rights to apply, use or retain Trust assets to satisfy its obligations arising under or in connection with the Finance Documents and the transactions they contemplate, without the consent or approval of any person or court. Those rights are not subject to a limitation or obligation to make good or clear accounts and the Lender may subrogate to them except to the extent affected by their own conduct;
- (ii) after taking into account all other present and contingent Trust liabilities and its rights of contribution and subrogation, the Trust assets are sufficiently valuable and liquid to satisfy in full its indemnity with respect to its payment obligations in connection with the Finance Documents and the transactions they contemplate as and when they become due and payable; and
- (iii) no application or order has been sought by a person other than a Lender or has been made in any court for a person to subrogate to its indemnity with respect to Trust assets.

**21.3 Representations in relation to UK Obligors**

Each UK Obligor represents that:

**(a) Centre of main interests**

for the purposes of the Insolvency Regulation, its centre of main interest (as that term is used in Article 3(1) of the Insolvency Regulation), is situated in England and Wales and it has no "establishment" (as that term is used in Article 2(h) of the Insolvency Regulation) in any other jurisdiction;

**(b) Pensions**

it is not or has not at any time been:

- (i) an employer (for the purposes of sections 38 to 51 of the Pensions Act 2004 (UK)) of an occupational pension scheme which is not a money purchase scheme (both terms as defined in the Pensions Schemes Act 1993 (UK)); or
- (ii) "connected" with or an "associate" (as those terms are used in sections 38 and 43 of the Pensions Act 2004) (UK) of such an employer. No UK Obligor has been issued with a Financial Support Direction or a Contribution Notice in respect of any pension scheme.

**21.4 Representations continuing - general**

Each of the representations in this clause (but not clause 21.3(b)) will be deemed to be repeated on each date a Drawing is requested, on each Drawing Date and on each Interest Payment Date so long as this Agreement remains in effect by reference to the facts and circumstances then existing, except that each reference to financial statements will be construed as a reference to the latest available financial statements of the relevant person.

**21.5 Representations relating to future Secured Property**

Whenever any Secured Property is acquired by a Security Provider or comes into existence after the date of this Deed, that Security Provider will be deemed to give the representations in clause 21.121.1(s), 21.1(t), 21.1(u) (if relevant), (v) and (w) in respect of that Secured Property.

**21.6 Reliance on representations**

Each Obligor acknowledges that the Lender has been induced to enter into this Agreement and will be induced to make the Facilities available in reliance on the representations in this clause.

**21.7 No representations to Obligors**

Each Obligor acknowledges and accepts that it has not relied and will not rely on any statement made by or on behalf of the Lender in deciding to enter into any Finance Document or to exercise any right or perform any obligation under any Finance Document.

**22. Undertakings**

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**22.1 General undertakings**

Each Obligor (or, in relation to clauses 22.1(o), (p), (q), (s) and (u), each Security Provider only) undertakes that it will:

**(a) Events of Default**

notify the Lender of the occurrence of any Event of Default or Potential Event of Default and any event or circumstance that may have a material adverse effect on it, immediately upon becoming aware of it, giving full details of it and of any action taken (or to be taken) as a result;

**(b) Use of Accommodation**

use any Accommodation solely for the purposes set out in this Agreement (failing which the relevant amounts will be held on trust for the Lender);

**(c) Conduct of business**

(i) pay all its indebtedness when due; and

(ii) comply with all consents and all obligations binding on it by law, contract or otherwise,

where failure to do so would have a material adverse effect on it;

(d) **Maintenance of corporate existence**

do all things necessary to maintain its corporate existence and the corporate existence of each other Obligor, where failure to do so would have a material adverse effect on it;

(e) **Maintain consents**

maintain in full effect all consents required to enable it to comply with its obligations under the Finance Documents where failure to do so would have a material adverse effect on it;

(f) **Compliance with laws**

duly and promptly comply with all laws, directives and consents the non-compliance with which might give rise to a security interest (not being a Permitted Security) or have a material adverse effect on it, or that may adversely affect the rights or security of the Lender under a Finance Document;

(g) **Pay taxes**

(i) file all tax returns as required by law, and pay and discharge all taxes (including GST payable in accordance with the GST Act and all income tax assessed against it pursuant to the Income Tax Act 2007 or otherwise, or in relation to an Obligor incorporated under the laws of Australia, the Australian Tax Act), assessments and governmental charges payable by it or on its property prior to the date that penalties become payable, except only to the extent that those taxes, assessments or governmental charges are being contested in good faith by appropriate proceedings and adequate reserves are set aside for their payment, where failure to do so would have a material adverse effect on it;

(ii) lodge such returns as may be required to be lodged by it pursuant to the terms of the Income Tax Act 2007 (or in relation to an Obligor incorporated under the laws of Australia, the Australian Tax Act) or otherwise;

(h) **Further assurance**

promptly, and at its own cost:

(i) deposit with the Lender all documents of title constituting or evidencing the Secured Property unless (without limiting (ii) below) those documents of title are required to be retained by the Obligors to enable them to conduct their business as presently conducted;

(ii) deposit with the Lender each Certificate;

(iii) (on request) execute and deliver to the Lender all transfers, assignments, novations and other agreements;

(iv) do all acts and things in respect of a Finance Document,

in respect of (ii) to (iv) as the Lender may deem necessary to secure the full benefit of its rights under any Finance Document or to transfer to the Lender title to any Debt but, while no Event of Default is continuing, subject to any qualifications as to timing or when the Lender may request the same as set out in the Security Documents;

(i) **Information to be true**

- (i) ensure that all information provided by it to the Lender in connection with the Finance Documents after the date of this Agreement is true in all material respects as at the date that information is provided; and
- (ii) not omit to state any fact or circumstance that would make that information untrue or misleading in any material respect; and
- (iii) ensure that all projections and forecasts made by it will be prepared in good faith based upon what it believes to be reasonable assumptions it being understood that such forecasts and projections are subject to significant uncertainties and contingencies, many of which are beyond its control and it can give no assurance that the projections and forecasts will be realised;

(j) **Insurance**

ensure that it, and each of its subsidiaries, will:

- (i) keep insured with reputable insurers all its property of an insurable nature that is customarily insured (either generally or by persons carrying on a similar business) against loss or damage by fire and other risks normally insured against, by persons carrying on the same class of business as that carried on by it (and any other risks that the Lender may from time to time reasonably require), for their replacement value (meaning the total cost of entirely rebuilding, reinstating or replacing that property in the event of it being completely destroyed, together with architects' and surveyors' fees) or such lower value as the Lender may agree in writing;
- (ii) maintain insurance with reputable insurers against loss of profits and third party liabilities at levels no lower than those adopted from time to time by persons carrying on a similar business of a comparable size;
- (iii) maintain insurance over all stock with reputable insurers and for an amount not less than the Revolving Credit Facility Limit; and
- (iv) promptly pay all premiums and do all other things necessary to maintain the insurances required by this clause;

(k) **Environmental Laws**

- (i) comply (and has complied with) all Environmental Laws affecting its operation or its property, where failure to do so would have a material adverse effect on it;
- (ii) inform the Lender of any material breach of an Environmental Law, or any notice or order received by it under an Environmental Law, that is likely to adversely affect it or its property;
- (iii) provide the Lender on reasonable request (but not more frequently than annually), but at the Borrower's sole cost, with environmental audits and reports in respect of its property, in a form and from an independent consultant acceptable to the Lender; and

(iv) indemnify the Lender against all liabilities and costs arising out of any act or omission of it in respect of any circumstance that breaches, or might breach, any Environmental Law;

(l) **Proper accounts**

keep and maintain proper accounts and records in relation to its business and make immediate and correct entries of all its transactions;

(m) **Company records**

(i) in relation to an Obligor incorporated in New Zealand, keep its share register at its registered office and its books of account at either its registered office or its principal place of business in New Zealand or such other place in New Zealand as the Borrower has notified to the Registrar of Companies under section 195 of the Companies Act 1993; and

(ii) permit the Lender and its solicitors and accountants and others acting under its authority to inspect and examine the same at all reasonable times and to take copies thereof or extracts therefrom and to take all necessary steps to enable the Lender and such other parties access to the Borrower's registered office and principal place of business or such other place at which such records are kept (as the case may be) to enable such inspection and examination to take place;

(n) **Right of inspection**

(i) permit, and to take all necessary steps to enable, the Lender and its authorised officers and agents, to enter at all reasonable times upon any land, premises or offices, occupied by the Borrower to inspect the stock-in-trade, raw material, and work in progress of the Borrower and each and every one of its books, delivery and dispatch docket, accounts (including all bank accounts), records, returns (including income tax, group tax and GST returns) and papers of every description (and where copies of such are available to inspect such copies); and

(ii) permit the Lender, its solicitors, accountants and other authorised officers to retain for such period as the Lender, or such persons think fit all such books, delivery and dispatch docket, accounts, records, returns, and papers of every description unless any of those documents are required to enable it to conduct its business; and

(iii) permit the Lender and its authorised officers and agents to take copies of any of the aforementioned documents on reasonable request;

(o) **Maintain and repair Secured Property**

maintain in good working order all Material Secured Property and, on request of the Lender, remedy every material defect in the condition of any Material Secured Property;

(p) **Serial-numbered goods**

(i) on request, provide the Lender with any serial numbers that the Lender requires to make an effective registration against all serial-numbered goods or Serial Numbered Secured Property (in each case, with a value of greater than \$100,000), either on execution of this Agreement or (if later) when the serial-numbered goods or Serial Numbered Secured Property become Secured Property;

- (ii) notify the Lender immediately of any serial number when it is allocated to any Secured Property that is a serial-numbered good or Serial Numbered Secured Property (in each case with a value of greater than \$100,000); and
- (iii) except with the Lender's prior written consent, not change or remove the serial number of any serial-numbered goods or Serial Numbered Secured Property after it has disclosed the serial number to the Lender;

(q) **Grant security**

in relation to any Obligor who is not a Security Provider, if at any time prior to the Termination Date, the Lender (in its sole discretion) requires that Obligor to become a Security Provider and grant security over its assets in favour of the Lender, that Obligor will, within 10 Business Days following a written request from the Lender, take all required action to grant security over all (or any part as agreed by the Lender) of its present and after acquired property, in favour of the Lender, to secure all of the obligations of the Obligors under the Finance Documents (and therefore become a Security Provider), together with delivering:

- (i) a certificate of a director of the Obligor, in the form of Schedule 6 where the New Borrower is incorporated in New Zealand (or such other form as the Lender may require);
- (ii) a legal opinion in form and substance, and from solicitors, acceptable to the Lender; and
- (iii) all other information and documentation reasonably requested by the Lender.

(r) **Not alter Secured Property**

ensure that no material alteration is made to any Material Secured Property outside the ordinary course of business;

(s) **Registration of security**

promptly register each security interest created under the Finance Documents in each jurisdiction (other than New Zealand, Australia and the United States of America) in which registration may be required or advisable in order to ensure its enforceability, validity and priority;

(t) **Transactional Banking**

maintain all transactional banking (including deposits and foreign exchange hedging) with the Lender unless the Lender is unable to provide the necessary services in the Obligor's jurisdiction of operation; and

(u) **Preserve and protect security**

promptly do everything reasonably requested by the Lender to:

- (i) preserve and protect the value of the Secured Property, fair wear and tear and depreciation in the ordinary course of business excluded; and



(ii) protect and enforce its title and rights, and the Lender's security interest in the Secured Property;

(v) **Marketable Securities**

if the Secured Property includes Marketable Securities:

- (i) provide the Lender with control over the Secured Property in accordance with the Australian PPSA and otherwise in the manner requested by the Lender, including by doing the following:
  - (A) on request by the Lender, execute and deliver to the Lender transfer forms in relation to those Marketable Securities (undated and blank as to transferee and consideration and otherwise in form and substance satisfactory to the Lender);
  - (B) enter into any tripartite agreement or other agreement requested by the Lender with the relevant Obligor's sponsor or intermediary with respect to the Marketable Securities, in form and substance satisfactory to the Lender;
- (ii) notify the Lender as soon as it becomes aware of:
  - (A) any right or entitlement it may take up or exercise arising directly or indirectly at any time from or in relation to the Marketable Securities and exercise all such rights and entitlements in accordance with any instructions from the Lender;
  - (B) any proposal or action taken to convert any Secured Property comprising certificated Marketable Securities into uncertificated Marketable Securities and immediately take any steps necessary to comply with its obligations under clause 22.1(w);
- (iii) not do anything (including by exercising its voting rights) or fail to do anything which could entitle any person to a lien or other security interest over any of the Marketable Securities or which could result in the forfeiture of the Marketable Securities or adversely affect the value of the Marketable Securities;

(w) **control and possession**

to the extent that any Secured Property is of a type over which a security interest could be perfected by 'control' or by 'possession' each as defined under the PPSA, promptly do anything that the Lender may require to enable it to perfect the security interest of the Lender over that Secured Property by control or by possession except where (and for so long as):

- (i) control has been given to the holder of a Permitted Security;
- (ii) it is not possible for more than one party to effect control of the Secured Property; and
- (iii) the Lender has expressly agreed in writing to subordinate the security interest created by the relevant Security Documents to that Permitted Security,

or the Secured Property is inventory (as defined in the PPSA) or a Revolving Asset;

(x) **listing**

in relation to any Obligor whose shares are listed on a registered stock exchange only:

- (i) comply with the rules applicable to that registered stock exchange where failure to do so has or is reasonably likely to have a Material Adverse Effect; and
- (ii) notify the Lender in writing of any person holding or likely to hold a relevant interest of 20% or more of the shares in the relevant Obligor or that ceases to hold such interest;

(y) **delisting**

notify the Lender in writing of any event or circumstance where an Obligor' shares are delisted from any registered stock exchange or the relevant Obligor having the intention to delist its shares from any registered stock exchange or any event or circumstance where such shares are suspended from trading or placed in a trading halt other than at the request of the relevant Obligor;

(z) **change of details**

notify the Lender:

- (i) on becoming aware that it has received, or is likely to receive, an ACN, ABN, ARBN or ARSN, (in its own capacity or as trustee) under which it holds any Secured Property; and
- (ii) at least 14 days before applying for such a new number;

(aa) **Chattel Paper**

at the request of the Lender, promptly give possession of any Chattel Paper (as defined in the PPSA) that is Material Secured Property to the Lender;

(bb) **PPSA policies and steps**

if:

- (i) an Obligor holds any security interests as defined in the PPSA (**PPSA Security Interests**); and
- (ii) a failure by the Obligor to perfect any of the PPSA Security Interests referred to in paragraph (i) would or would be likely to have a Material Adverse Effect,

the Obligor must (at its own cost):

- (iii) provide evidence to the Lender that the Obligor has in place procedures for the perfection of those PPSA Security Interests, being procedures which ensure that the Obligor takes all reasonable steps to obtain the highest ranking priority possible under the Australian PPSA in respect of those PPSA Security Interests (**Procedures**); and
- (iv) keep the Procedures up to date and comply with the Procedures; and

If the Lender reasonably suspects that an Obligor is failing to comply with clause 22.1(2)(iii), the Lender may request an audit of the Procedures and the Obligor's compliance with the Procedures. That audit must be undertaken by a person approved by the Lender and, if it is established that the Obligor was not following the Procedures in any material respect, at the expense of the Obligor.

## 22.2 Reporting and information undertakings

The Borrower and the Parent (as applicable) undertakes that it will:

### (a) Accounts

as soon as available and in any event within 180 days after the end of its financial years, deliver to the Lender:

- (i) the Borrower's audited consolidated financial statements and group financial statements as at the end of and for that financial year; and
- (ii) the Parent's audited consolidated financial statements and group financial statements as at the end of and for that financial year;

### (b) Monthly Management Accounts

as soon as available and in any event within 30 days after the last day of each month, provide the Lender with copies of the Borrower's monthly financial accounts of the Consolidated Group prepared by the management of the Borrower in accordance with Accounting Principles;

### (c) Compliance Certificate

- (i) with each monthly financial accounts delivered pursuant to clause 22.2(b) up to and including 31 December 2018, provide the Lender with a Monthly Compliance Certificate signed by two directors of the Borrower or a director and the Chief Financial Officer; and
- (ii) within 30 days after each Reporting Date, provide the Lender with a Compliance Certificate signed by two directors of the Borrower or a director and the Chief Financial Officer;

### (d) Budget

as soon as it becomes available and in any event not later than 30 June in each year (or, from 1 January 2019 onwards, 31 January in each year), the Borrower's annual budget (including assumptions and appropriate commentary and containing a fully integrated statement of financial position, statement of financial performance, cashflow and Capital Expenditure budget) for the Consolidated Group for that financial year;

### (e) Other information

promptly:

- (i) deliver to the Lender:

- (A) details of any bona fide litigation, arbitration or administrative proceeding in respect of an amount in excess of \$2,000,000 or its equivalent in other currencies;
  - (B) upon request, a certificate signed by a director certifying that, other than as previously notified in writing to the Lender, no Event of Default, Event of Review or Potential Event of Default has occurred and is continuing;
  - (C) on request, a list of all investment securities (as defined in the PPSA) held by it;
  - (D) upon obtaining actual knowledge of the occurrence of any Event of Default or Event of Review, a notice describing the same in reasonable detail and, together with such notice or as soon thereafter as possible, a written description of the action that it has taken or proposes to take with respect thereto;
- (ii) notify the Lender in writing of:
- (A) any change in its authorised signatories, giving specified signatures and evidence satisfactory to the Lender of their authority;
  - (B) the occurrence of any circumstance, act or condition (including the adoption, amendment or repeal of any governmental rule or notice (whether formal or informal, written or oral) or the failure to comply with the terms and conditions of any legal requirement) which could reasonably be expected to result in a material adverse effect on its ability to grant the liens intended to be granted under the Finance Documents or otherwise perform its obligations thereunder;
  - (C) any Material Secured Property that is located abroad;
  - (D) any Material Secured Property that is to be moved from the jurisdiction where it was situated at the time the security interest under a Security Document attached to it;
  - (E) if any material personal property that is not Material Secured Property and which is subject to a security interest that has attached becomes an accession to any Secured Property, promptly having become aware of that; or
  - (F) on the Lender's request, of the present location of any Material Secured Property,
- except in relation to inventory disposed of in the ordinary course of an Obligor's ordinary business;
- (iii) immediately notify the Lender if it becomes bound to complete the acquisition of any:
- (A) Real Property;
  - (B) investment securities (as defined in the PPSA) outside the ordinary course of its ordinary business; or

- (iv) within seven days of request, provide to the Lender any other information that the Lender reasonably requests with respect to its business or financial condition.

### 22.3 **Financial undertakings**

The Borrower (or, in relation to clause 22.3(a), the Parent) undertakes to the Lender that:

(a) **Group coverage**

the Parent will procure that each of its wholly owned subsidiaries executes a Supplemental Deed and delivers to the Lender the documents and information specified in clause 26.3.

(b) **Interest Cover Ratio**

the Interest Cover Ratio, calculated as at each Reporting Date (commencing on the 30 April 2019 Reporting Date) in respect of the Reporting Period ending on the Reporting Date, is greater than 3.00 times;

(c) **Gross EBITDA Ratio**

the EBITDA for the Guaranteeing Group for:

- (i) the three months ending on 30 September 2018, is greater than \$0; and
- (ii) the six months ending on 31 December 2018, is greater than NZ\$3,000,000.

(d) **Inventory and Receivables Ratio**

the Inventory and Receivables Ratio, calculated as at each Reporting Date (commencing on the 30 September 2018 Reporting Date), is greater than 2.00 times.

(e) **Actual Sales, Actual Gross Profit Variance to Budget**

in relation to each calendar month for the period up to and including 31 December 2018:

- (i) the Actual Sales of the Group for that calendar month shall not adversely vary from the Budgeted Sales of the Group for that calendar month by more than 10%; and
- (ii) the Actual Gross Profit of the Group for that calendar month shall not adversely vary from the Budgeted Gross Profit for that calendar month by more than 10%.

### 22.4 **Changes to Accounting Principles**

If, in the reasonable opinion of the Lender or the Borrower, any changes to Accounting Principles materially alter the effect of any undertaking in clause 22.3 (Financial undertakings), or any defined term used in any such undertakings, the Lender and the Borrower will negotiate in good faith to amend the relevant undertakings and definitions so that they have an effect comparable to the effect of the undertakings in clause 22.3 (Financial undertakings) at the date of this Agreement. If amendments are not agreed within 30 days (or any longer period agreed in writing between the Lender and the Borrower), then the Borrower will provide, with the financial statements and other information required under clause 22.2 (Reporting and information undertakings) any reconciliation statements (audited, where applicable) necessary to enable calculations based on Accounting Principles as it was before such changes, and the changes will be ignored for the purposes of this clause.

## 22.5 **Negative undertakings**

Each Obligor undertakes that it will not, without the prior written consent of the Lender:

(a) **Security interests**

create or permit to exist any security interest over or affecting its property, other than a Permitted Security; or

(b) **Disposals**

either by a single transaction or series of transactions, whether related or not and whether voluntary or involuntary, dispose of all or a substantial part of its property other than a Permitted Disposal; or

(c) **Indebtedness**

incur any Finance Debt, except:

(i) under a Finance Document;

(ii) indebtedness owed by one Security Provider to another Security Provider; and

(iii) indebtedness that is fully subordinated to all amounts owed under the Finance Documents on terms satisfactory to the Lender; or

(d) **Distributions**

make any distribution except:

(i) by a wholly-owned subsidiary of an Obligor to the Obligor;

(ii) by one Security Provider to another Security Provider; or

(iii) where paid from Free Cashflow or net profit after tax provided that:

(A) the total of all such dividends in the 12 month period ending on the last day of a financial year of the Borrower does not exceed the lesser of net profit after tax and Free Cashflow; and

(B) no Event of Default or Potential Event of Default has occurred or would occur as a result of making that distribution; or

(e) **Transactions with related persons**

either by a single transaction or a series of transactions, whether related or not and whether voluntary or involuntary:

(i) dispose of any of its property to, or purchase any property from;

- (ii) provide services to, or accept services from;
- (iii) provide financial accommodation to, or accept indebtedness from; or
- (iv) enter into any other transaction, with, or for the benefit of, any related person, other than:
- (v) where such transaction is entered into for fair market value on commercial arms' length terms; or
- (vi) where such transaction is expressly permitted by a Finance Document; or

(f) **Financial accommodation**

be a creditor or guarantor in respect of any Finance Debt except for:

- (i) Permitted Financial Accommodation; or
- (ii) any indebtedness referred to in sub-clause (c)(iii) above;

(g) **Change of business**

make a substantial change in the nature or scope of its business as presently conducted; or

(h) **Merger**

enter into any amalgamation, demerger, merger, consolidation or corporate reconstruction other than with another Obligor provided that where the reconstruction involves the Borrower, the Borrower must be the continuing entity;

(i) **Acquisition**

purchase or subscribe for shares or securities in another company or acquire a business or an undertaking or any property (or, in each case, any interest in any of them) unless:

- (i) no Event of Default has occurred and is continuing or would occur as a result of such acquisition; and
- (ii) the acquisition is a Permitted Acquisition; or

(j) **Transfer jurisdiction of incorporation**

transfer its jurisdiction of incorporation or place of domicile for tax purposes or, in respect of an Obligor incorporated in the United States of America, change its sole place of business or chief executive office, in each case without the prior written consent of the Lender;

(k) **Trustee**

other than in relation to the Trustee as trustee of the Trust, become a trustee of any trust;

(l) **Subsidiaries**

form or acquire any subsidiary other than where the Borrower complies with clause 22.3(a);

(m) **No accessions or fixtures**

allow any Material Secured Property to become an accession or fixture to any property that is not Secured Property (other than Real Property or otherwise subject to a security interest in favour of the Lender), or to be affixed to any land (other than any freehold interest in land in respect of which the Lender has a first ranking registered mortgage) other than in the ordinary course of business;

(n) **No prejudicial actions or omissions**

do, omit to do, or allow to occur, anything that might:

(i) render any Secured Property or a security interest created under a Security Document unenforceable or liable to forfeiture or cancellation; or

(ii) cause or contribute to a material deterioration in the value of any Secured Property; or

(iii) otherwise adversely affect the security of the Lender under any Relevant Document;

(o) **Change of name**

change its name without giving at least 14 days prior written notice to the Lender; or

(p) **No processed or commingled goods**

without the Lender's prior written consent, permit any Material Secured Property to be manufactured, processed, assembled or commingled with anything that is not also Secured Property; and

(q) **No rights of set-off**

allow any of its accounts receivable to be subject to any right of set-off or combination of accounts or another defence or claim (other than rights that arise solely by operation of law or in the ordinary course of business).

22.6 **Trustee undertakings**

The Trustee must comply in all respects with the undertakings set out in this clause 22.6.

(a) **The Trust Deed**

The Trustee:

(i) must comply with the Trust Deed; and

(ii) unless required by law, must not without the prior written consent of the Lender do anything which results in or could result in a variation of, or a supplement to, the Trust Deed, in a way that has or is likely to have a material adverse effect or that adversely affects or is likely to adversely affect its rights of indemnity or other rights to apply, use or retain Trust assets to satisfy its obligations arising under or in connection with the Finance Documents, or the transactions they contemplate, or the Lender's rights with respect to such rights.



(b) **The Trustee's indemnity**

The Trustee must take all steps available to it (including exercising its rights of indemnity and realising or otherwise dealing with Trust assets) to ensure it is actually indemnified out of Trust assets to discharge any liability arising under or in connection the Finance Documents or the transactions they contemplate when that liability is payable.

(c) **The Obligor as trustee**

The Trustee must not resign or retire as trustee of the Trust or cause or permit any other person to become an additional trustee of the Trust or do anything which results in or could result in the retirement, removal or replacement of the Trustee as trustee of the Trust.

(d) **Preserving the Trust**

The Trustee must not do anything which results in or is reasonably likely to result in:

- (i) the termination or winding up of the Trust;
- (ii) the resettlement or vesting of any Trust assets that is not permitted by the Finance Documents; or
- (iii) it being disqualified from holding Trust assets.

(e) **The Trust assets**

The Trustee must not:

- (i) acquire any Trust assets other than in the name of the Trustee or any custodian on behalf of the Trust;
- (ii) do anything which effects or facilitates a resettling or vesting of any Trust Assets;
- (iii) mix the Trust assets, or do anything which results in or could result in the Trust assets being mixed, with other property if that would restrict or impair in any way its rights of indemnity or other rights to apply, use or retain Trust assets to satisfy its obligations arising under or in connection with the Finance Documents or the transactions they contemplate.

(f) **Distributions, redemptions and remuneration**

- (i) The Trustee must not make any distribution of Trust assets to the unit holders of the Trust, or redeem units in the Trust, except where no Event of Default is continuing or would result or where a distribution would be permitted under clause 22.5(d).
- (ii) The Trustee must not take any remuneration for itself out of Trust assets if and for so long as an Event of Default is continuing or would result.

## 22.7 Undertakings in relation to UK Obligors

Each UK Obligor undertakes that it will:

### (a) Centre of main interests

maintain its centre of main interests in its jurisdiction of incorporation for the purposes of the Insolvency Regulation.

### (b) Pensions

ensure that:

- (i) it is not or has not been at any time an employer (for the purposes of sections 38 to 51 of the Pensions Act 2004 (UK)) of an occupational pension scheme which is not a money purchase scheme (both terms as defined in the Pension Schemes Act 1993 (UK)) or “connected” with or an “associate” of (as those terms are defined in sections 38 or 43 of the Pensions Act 2004) (UK) such an employer;
- (ii) it shall deliver to the Lender:
  - (A) at such times as those reports are prepared in order to comply with the then current statutory or auditing requirements (as applicable either to the trustees of any relevant schemes or to the UK Obligor); and
  - (B) at any other time if the Lender reasonably believes that any relevant statutory or auditing requirements are not being complied with, actuarial reports in relation to all pension schemes mentioned in clause 22.7(b)(ii)(A) above; and
- (iii) it shall promptly notify the Lender of any material change in the rate of contributions to any pension scheme mentioned in clause 22.7(b)(ii)(A) above paid or recommended to be paid (whether by the scheme actuary or otherwise) or required (by law or otherwise).

## 22.8 Authority to auditors

Each Obligor authorises the Lender to discuss its financial statements and financial affairs at any time with the Obligors’ auditors and financial advisers, and irrevocably authorises and requests its auditors and financial advisers to participate in those discussions and to provide any information the Lender requests.

## 22.9 Appointment of investigative accountants and auditors

If the Lender reasonably believes that a breach of a Finance Document has occurred or is likely to occur, each Obligor authorises the Lender, at its discretion, to appoint:

- (a) an investigative accountant (who may not be a receiver); and/or
- (b) an auditor, in each case including before and after an Event of Default has occurred, to make whatever investigations into the Obligors’ financial condition and otherwise that it deems are necessary to determine whether or not a breach has in fact occurred or is likely to occur, provided that:

- (c) the Lender may only make such an appointment or appointments two times in any year; and
- (d) the costs of such investigation shall be borne by:
  - (i) the Obligors, if a breach has occurred; and
  - (ii) by the Lender, if a breach has not occurred.

## 23. Events of Default

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### 23.1 Events of Default

An Event of Default occurs if, at any time and for any reason, whether or not within the control of a party:

(a) **Non-payment**

an Obligor fails to pay on its due date any principal or, within three Business Days of its due date, any interest or other amount payable under any Finance Document; or

(b) **Breach of undertaking**

(i) an Obligor does not comply with any of its obligations under any of the undertakings set out in:

(A) paragraph (q) of sub-clause 22.1 (General undertakings);

(B) paragraph (a) of sub-clause 22.2 (Reporting and information undertakings);

(C) sub-clause 22.3 (Financial undertakings), other than sub-clause 22.3(e) (Actual Sales, Actual Gross Profit Variance to Budget); or

(ii) an undertaking given to the Lender or its solicitors by the Obligors in connection with a Finance Document is not complied with.

(c) **Breach of other obligations**

an Obligor fails to comply with any of its other obligations under a Finance Document in any respect that the Lender considers material and, in the case of a failure that is capable of remedy, that failure is not remedied to the satisfaction of the Lender within 10 Business Days after notice of that failure has been given to the Borrower by the Lender; or

(d) **Breach of representation**

a representation or statement by an Obligor in or in connection with a Finance Document is not true in all material respects, or is or proves to have been untrue or misleading in any material respect, when made or repeated and, in any case where the underlying failure causing the breach of representation is capable of remedy, that failure is not remedied to the satisfaction of the Lender within 10 Business Days after notice of that failure has been given to the Borrower by the Lender; or

(e) **Avoidance or repudiation**

- (i) a Finance Document ceases to be in full force and effect or its validity or enforceability is contested by an Obligor; or
- (ii) an Obligor repudiates, or does anything evidencing an intention to repudiate, a Finance Document; or

(f) **Insolvency**

- (i) an Obligor:
  - (A) is insolvent or admits or is unable to pay its indebtedness as it falls due, or is deemed to be so under any law; or
  - (B) makes, or proposes to make, a compromise, composition, assignment or arrangement with, or for the benefit of, its creditors generally in relation to its liabilities or debts; or
- (ii) in respect of any UK Obligor or an Obligor incorporated or established in Australia, a moratorium or other protection from its creditors is declared or imposed in respect of any its indebtedness; or

(g) **Enforcement**

- (i) a distress, attachment, execution or other legal process is levied against property of an Obligor with a value of in excess of the NZ Dollar Equivalent of \$500,000 and is not discharged or stayed within 30 days; or
- (ii) a receiver, trustee, manager, administrator or similar officer is appointed in respect of it or any material part of its property; or

(h) **Amalgamation**

the board of an Obligor passes a resolution for, or in contemplation of, an amalgamation of the Obligor with another company (other than in circumstances where such amalgamation would be permitted under clause 22.5(h) (Merger)); or

(i) **Liquidation**

- (i) any corporate action, legal proceedings or other procedure or step is taken in relation to the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of any Obligor except for the purpose of, and followed by, a reconstruction or reorganisation (not involving or arising out of insolvency) on terms approved by the Lender before that step is taken; or
- (ii) an order is made, resolution passed or other step taken by a person for the liquidation of an Obligor, or a receiver, administrative receiver, administrator, compulsory manager or other similar officer is appointed in respect of any Obligor or any of its assets, except for the purpose of, and followed by, a reconstruction or reorganisation (not involving or arising out of insolvency) on terms approved by the Lender before that step is taken; or

(j) **Pooling of debts**

an order is made against an Obligor requiring it to pay the whole or any part of claims made against another company that is in liquidation;

(k) **Corporations (Investigation and Management) Act 1989**

an Obligor is declared at risk pursuant to the Corporations (Investigation and Management) Act 1989, or a statutory manager is appointed or any step taken with a view to any such appointment in respect of it under that Act; or

(l) **Cessation of business**

an Obligor ceases, or threatens to cease, to conduct all or a substantial part of its business other than in connection with an amalgamation permitted under clause 22.5(h) or which is approved by the Lender; or

(m) **Material adverse change**

any other event or series of events, whether related or not, occurs, or any circumstances arise or exist which, in the reasonable opinion of the Lender, has, or is likely to have, a material adverse effect on an Obligor; or

(n) **Enforcement of security**

a security interest in property of an Obligor becomes enforceable; or

(o) **Cross default**

any Finance Debt of an Obligor for an amount not less than the NZ Dollar Equivalent of \$500,000:

(i) is not paid when due; or

(ii) becomes due, or capable of being declared due, before it would otherwise have been due;

or a facility for financial accommodation or underwriting facility available to an Obligor is cancelled or suspended by a person providing it by reason of an event of default (however defined or described); or

(p) **Illegality**

it is, or will become, unlawful for an Obligor to comply with any of its material obligations under a Finance Document in any material respect; or

(q) **Minority buy-out rights**

an Obligor agrees to purchase shares of a shareholder or arranges for some other person to agree to purchase those shares on terms that subject the Obligor to any type of liability or obligation, following receipt by the Obligor of a notice by that shareholder pursuant to section 111(1) of the Companies Act 1993; or

(r) **Change in shareholding**

any shares in the capital of an Obligor are transferred by the present holders or there is any change in the proportions in which shares are held in the capital of an Obligor by the present shareholders, or any of the rights attaching to any of the shares in the capital of an Obligor are altered, varied, or modified, in each case without the prior written consent of the Lender other than, in the case of the Parent, a transfer by a person who is a shareholder of the Parent on the date of this Agreement to another person who is a shareholder of the Parent on the date of this Agreement or to an affiliate of that person provided that:

- (i) the Lender retains a security interest in the relevant shares or rights; and
- (ii) no change of control of the Parent occurs; or

(s) **Meeting to consider default action**

a meeting of directors or shareholders of an Obligor passes a resolution, the passing or the performance of which would cause an Event of Default; or

(t) **UK Pensions**

the Pensions Regulator issues a Financial Support Direction or a Contribution Notice to any UK Obligor.

23.2 **Consequences**

On and after the occurrence of an Event of Default, the Security Documents will become immediately enforceable and the Lender may at any time, by notice to the Borrower:

- (a) cancel the Facility; and/or
- (b) declare any or all of the Drawings, any Advance and any other indebtedness of the Borrower under the Finance Documents to be, and those Drawings, any Advance and that indebtedness will be, due and payable either immediately or on demand or at such later date as the Lender may specify; and/or
- (c) by notice to the Borrower, require the Borrower to deposit with the Lender an amount equal to the aggregate Maximum Liability under all outstanding Instruments, in each case such prepayment and deposit to be made immediately (or within any period specified by the Lender).

23.3 **Enforcement despite earlier payment**

This Agreement may be enforced:

- (a) regardless of whether the Lender has accepted a payment of interest or other amount after the occurrence of an Event of Default; and
- (b) without the need for any notice to, or for the consent or agreement of, the Obligors or another person.

**24.1 Event of Review**

Each of the events of circumstances set out in this clause 24, whether or not within the control of any Obligor, is an Event of Review:

- (a) any Obligor whose shares are listed on a registered stock exchange are delisted or suspended for a period greater than 10 trading days, other than as a result of a trading halt requested by the relevant Obligor; or
- (b) if any person, either alone or through its related persons acquires directly or indirectly ownership in an Obligor whose shares are listed on a registered stock exchange of more than 50% of the issued ordinary shares in the capital of that Obligor; or
- (c) an Obligor does not comply with its obligations under clause 22.3(e) (Actual Sales, Actual Gross Profit Variance to Budget).

**24.2 Consequences**

- (a) At any time while an Event of Review subsists, the Lender may, by notice in writing to the Borrower, require that the Borrower enter into negotiations with the Lender to determine whether the Lender and the Borrower can agree the basis (if any) on which the Lender would continue to provide the Facilities notwithstanding the Event of Review.
- (b) If after 30 days from the date of the notice from the Lender referred to in paragraph (a) above, the Lender and the Borrower have not agreed the basis on which the Lender will continue to provide the Facilities, notwithstanding the relevant Event of Review, the Lender may, at any time and by not less than 60 days' notice to the Borrower, cancel each Facility whereupon:
  - (i) each Facility Limit shall be reduced to zero;
  - (ii) the Borrower shall pay or prepay all Amounts Outstanding immediately (or within any period specified by the Lender)

**25. Changes to the Lender**

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**25.1 Assignment by Lender**

The Lender may assign or novate any of its rights and obligations under the Finance Documents to another bank or financial institution with the prior written consent of the Borrower, which:

- (a) shall not be unreasonably withheld;
- (b) should be deemed to be given if no response is received within 5 business days;
- (c) shall not be required where an Event of Default is continuing; and
- (d) shall not be required where the Lender remains the lender of record.

## 25.2 **No increased costs**

Notwithstanding anything to the contrary in this Agreement, if (other than at the request of the Borrower), the Lender assigns or novates any of its rights or obligations under this Agreement, the Obligors will not be required to pay any net increase in the aggregate amount payable under this Agreement (including under clauses 16 and 17) that is a direct consequence of that assignment or novation and which the Lender or its assignee or novatee was aware, or ought reasonably to have been aware, on the date of that assignment or novation.

## 25.3 **Disclosure of information**

The Lender may disclose, on a confidential basis, to a potential assignee, novatee, transferee or other person (not being a trade competitor of the Group) with whom contractual relations in connection with the Finance Documents are contemplated, any information about the Obligors, whether or not that information was obtained in confidence and whether or not that information is publicly available. The Lender shall only provide information to another person as contemplated by this clause on terms that oblige the recipient to hold the information on a confidential basis for the benefit of each member of the Group.

## 26. **Changes to the Obligors**

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### 26.1 **Assignment by Obligors**

The Obligors may not assign, novate or transfer any of their rights or obligations under a Finance Document without the prior written consent of the Lender.

### 26.2 **Additional Borrowers**

The Borrower may, at any time during the Availability Period and with the prior written consent of the Lender, elect for a subsidiary to become a Borrower under this Agreement (in this clause, the **New Borrower**) by executing a Supplemental Deed and delivering to the Lender:

- (a) a certificate of a director of the New Borrower, in the form of Schedule 5 where the New Borrower is incorporated in New Zealand (or such other form as the Lender may require);
- (b) duly executed Security Documents, in each case in form and substance satisfactory to the Lender (but on the basis that documents consistent with the Security Documents entered into as initial conditions precedent will be satisfactory to the Lender), in respect of the New Borrower and its property, in favour of the Lender, to secure all of the obligations of the Obligors under the Finance Documents;
- (c) a legal opinion in form and substance, and from solicitors, acceptable to the Lender; and
- (d) all other information and documentation reasonably requested by the Lender.



### 26.3 **Additional Guarantors**

If, at any time prior to the Termination Date, a new wholly-owned subsidiary is formed or acquired by an Obligor, the Obligors will procure that such subsidiary becomes a Guarantor under this Agreement (in this clause, the **New Guarantor**) by delivering to the Lender:

- (a) a certificate of a director of the New Guarantor, in the form of Schedule 4 where the New Guarantor is incorporated in New Zealand (or such other form as the Lender may require);
- (b) a duly executed Supplemental Deed in the form of Schedule 6;
- (c) a legal opinion in form and substance, and from solicitors, acceptable to the Lender; and
- (d) all other information and documentation reasonably requested by the Lender.

### 26.4 **Additional Security Providers**

If, at any time prior to the Termination Date, a new wholly-owned subsidiary is formed or acquired by an Obligor, the Obligors will procure that such subsidiary becomes a Security Provider (unless, at the Borrower's written request, the Lender agrees otherwise) under this Agreement (in this clause, the **New Security Provider**) by delivering to the Lender:

- (a) a certificate of a director of the New Guarantor, in the form of Schedule 4 where the New Security Provider is incorporated in New Zealand (or such other form as the Lender may require);
- (b) duly executed Security Documents, in each case in form and substance satisfactory to the Lender (but on the basis that documents consistent with the Security Documents entered into as initial conditions precedent will be satisfactory to the Lender), in respect of the New Security Provider and its property, in favour of the Lender, to secure all of the obligations of the Obligors under the Finance Documents;
- (c) a legal opinion in form and substance, and from solicitors, acceptable to the Lender; and
- (d) all other information and documentation reasonably requested by the Lender.

### 26.5 **Lender's acceptance**

When the Lender is satisfied in all respects with the information and documentation provided to it under clause 26.2 (Additional Borrowers) and/or clause 26.3 (Additional Guarantors), it will:

- (a) countersign the Supplemental Deed on behalf of itself, and all other parties to this Agreement; and
- (b) retain one counterpart to the Supplemental Deed and deliver the other counterpart to the Borrower.

Each other party to this Agreement irrevocably authorises the Lender to sign each Supplemental Deed on its behalf. On the Lender's execution of the Supplemental Deed, the New Borrower and/or New Guarantor, as the case may be will be bound by the Finance Documents as if it were an original party to them and named as a Borrower and/or Guarantor, as the case may be.

## 27. **Payment mechanics**

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### 27.1 **Business days**

Where a payment under this Agreement is due on a day that is not a Business Day, the due date will be the next Business Day (unless the next Business Day falls in another calendar month, in which case the due date will be the previous Business Day).

### 27.2 **Mode**

Each payment to the Lender under a Finance Document is to be made on the due date by 2.00pm (local time in the place of payment) in immediately available freely transferable funds in the manner and to the account at the bank that the Lender, by notice to the Borrower, specifies from time to time. If a payment is made on the due date but after the specified time, the Borrower will pay to the Lender, on request, interest on the amount paid until the next Business Day (as if the payment were made on the later day).

### 27.3 **Payments to be free and clear**

Each payment by the Obligors to the Lender under a Finance Document will be made:

- (a) free of any restriction or condition; and
- (b) free and clear of and (except to the extent required by law) without any deduction or withholding for or on account of tax or on any other account, whether by way of set-off, counterclaim or otherwise.

### 27.4 **Reinstatement**

If a payment made by an Obligor pursuant to a Finance Document is avoided by law:

- (a) that payment will be deemed not to have discharged or affected the relevant obligation of the Obligors; and
- (b) the Lender and the Obligors will be deemed to be restored to the position in which each would have been if that payment had not been made.

## 28. **Set-off and deposits**

### 28.1 **Set-off**

Each Obligor authorises the Lender to apply (without prior notice or demand) any credit balance of that Obligor on any account in any currency and at any of its offices in or towards satisfaction of any indebtedness then due to it under a Finance Document and unpaid. If, at any time an Event of Default is continuing, an amount is contingently due, or an amount due is not quantified, the Lender may retain and withhold repayment of any such credit balance and the payment of interest or other money pending that amount becoming due and/or being quantified, and may set-off the maximum liability that may at any time be owing to it by an Obligor. The Lender:

- (a) may use any credit balance to buy other currencies and may break any term deposit to effect that application; and
- (b) need not exercise its rights under this sub-clause, which are without prejudice and in addition to its rights under each other Finance Document and any other right of set-off, combination of accounts, lien or other right to which it is at any time otherwise entitled (by law or contract).

## 28.2 **Contractual rights**

The rights of the Lender under this clause are contractual rights affecting the terms on which a credit balance is held and the creation of those rights does not constitute the creation of a security interest in that credit balance.

## 29. **Power of Attorney**

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Each Obligor hereby irrevocably appoints the Lender and every authorised officer of the Lender, its true and lawful attorney both jointly and severally, during and after the termination of this Agreement, in the Obligor's name to execute all documents and do all things required in order to give effect to the provisions of this Agreement including (without limitation) the execution of all assurances, acts and deeds referred to in clause 22.1(h):

The Lender and its authorised officers shall not exercise any rights under this clause unless:

- (a) an Event of Default is continuing; or
- (b) the Obligors have failed to do something they are required to do under this Agreement within five Business Days of being requested to do so.

## 30. **Calculations and evidence**

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### 30.1 **Basis of calculation**

All interest will accrue from day to day and will be calculated on the basis of the number of days elapsed and a 365 day year for amounts in NZ\$, GBP or AUD and 360 days for amounts in USD or EUR.

Interest in respect of each Interest Period will accrue from (and including) its first day to (but excluding) its last.

### 30.2 **Accounts**

The entries made in the accounts maintained by the Lender are conclusive evidence (absent manifest error) of the existence and amounts of the obligations of the Obligors recorded in them.

### 30.3 **Certificates conclusive**

A certificate by the Lender of an interest rate, exchange rate or amount payable under this Agreement is conclusive evidence (absent manifest error) for all purposes, including for any proceedings.

## **31. Remedies and waivers**

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### **31.1 Exercise of rights and waivers**

Time is of the essence in respect of all dates and times for compliance by the Relevant Parties with their obligations under each Finance Document. However, no failure to exercise, and no delay in exercising, a right of the Lender under a Finance Document will operate as a waiver of that right, nor will a single or partial exercise of a right preclude another or further exercise of that right or the exercise of another right. No waiver by the Lender of its rights under a Finance Document is effective unless it is in writing signed by the Lender.

### **31.2 Remedies cumulative**

The rights of the Lender under the Finance Documents are cumulative and not exclusive of any rights provided by law.

## **32. Notices**

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### **32.1 General**

In connection with any notice or other communication (a Communication) made by an Obligor to the Lender under any Finance Document, the Lender:

- (a) may take the Communication at face value, and has no obligation to take any steps to ensure it was sent by the person it was purported to be sent by;
- (b) has no obligation to act on any incorrect or incomplete Communication, or any Communication that does not comply with any agreed process; and
- (c) is authorised to accept any electronic mail address, facsimile number or personal delivery address advised to it from time to time by an authorised signatory of an Obligor.

### **32.2 Addresses**

Each notice or other communication under this Agreement will be made in writing and sent by electronic mail, facsimile, personal delivery or by post to the addressee at the electronic mail address, facsimile number or address, and marked for the attention of the person or office holder (if any), from time to time designated for the purpose by the addressee to the other party. The initial electronic mail address, facsimile number, address and relevant person or office holder of each party is set out under its name at the end of this Agreement.

### 32.3 **Delivery**

#### (a) **General**

No communication will be effective until received. A communication to the Obligors is, however, deemed to be received:

- (i) in the case of a letter, on the third Business Day after posting;
- (ii) in the case of a facsimile, on the Business Day on which it is despatched or, if despatched after 5.00 p.m. (in the place of receipt) on a Business Day or on a non-Business Day, on the next Business Day after the date of despatch; and
- (iii) in the case of an electronic mail, when it is actually received in readable form.

A communication to the Obligors, or any of them, is deemed to be received when it is deemed to be received by the Borrower in accordance with this clause.

#### (b) **Electronic mail**

Electronic mail to the Lender must:

- (i) be sent from a contact of the relevant Obligor authorised by the Lender to communicate by electronic mail;
- (ii) be sent to the exact electronic mail address specified by the Lender from time to time; and
- (iii) in the case of a Drawing Notice, attach a pdf copy of the original Drawing Notice, signed by an authorised signatory of the Obligor.

All parties acknowledge the risk of receiving non-encrypted electronic mail containing confidential information that may also be privileged and accept that:

- (iv) the Lender shall not be responsible for unauthorised access and/or alteration to any electronic mail, nor for the consequences arising as a result of use of information that may have been illegitimately accessed or altered, except in the case of gross negligence or wilful misconduct of the Lender; and
- (v) the Lender has no obligation to look behind an instruction to check that it was sent by the person it was purported to be sent by, or to act on incorrect or incomplete instructions.

### 32.4 **Borrower**

(a) By signing this Agreement, or a Supplemental Deed, each Obligor irrevocably appoints the Borrower to act on its behalf as its agent in relation to the Finance Documents and irrevocably authorises:

- (i) the Borrower on its behalf to supply all information concerning itself contemplated by the Finance Documents to the Lender and to give all notices and instructions without further reference to the consent of that Obligor; and
- (ii) the Lender to give any notice, demand or other communication to that Obligor pursuant to the Finance Documents to the Borrower,

and in each case the Obligor shall be bound as though the Obligor itself had given the notices and instructions, and received the relevant notices, demands or other communications.

(b) In the event of any conflict between any notices or other communications of the Borrower and any other Obligor, those of the Borrower will prevail.

### 33. Australian PPSA provisions

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#### 33.1 Exclusion of certain provisions

Where the Lender has a security interest (as defined in the Australian PPSA) under any Finance Document, to the extent the law permits:

- (a) for the purposes of sections 115(1) and 115(7) of the Australian PPSA:
  - (i) the Lender need not comply with sections 95, 118(1)(b), 121(4), 125, 130, 132(3)(d) or 132(4) of the Australian PPSA; and
  - (ii) sections 142 and 143 of the Australian PPSA are excluded;
- (b) for the purposes of section 115(7) of the Australian PPSA, the Lender need not comply with sections 132 and 137(3);
- (c) each party waives its right to receive from the Lender any notice required under the Australian PPSA (including a notice of a verification statement);
- (d) if the Lender exercises a right, power or remedy in connection with it, that exercise is taken not to be an exercise of a right, power or remedy under the Australian PPSA unless the Lender states otherwise at the time of exercise. However, this clause does not apply to a right, power or remedy which can only be exercised under the Australian PPSA; and
- (e) if the Australian PPSA is amended to permit the parties to agree not to comply with or to exclude other provisions of the PPSA, the Lender may notify the Borrower that any of these provisions is excluded, or that the Finance Parties need not comply with any of these provisions.

This does not affect any rights a person has or would have other than by reason of the Australian PPSA and applies despite any other clause in any Finance Document.

#### 33.2 Further assurances

Whenever the Lender requests an Obligor to do anything:

- (a) to ensure any Finance Document (or any security interest (as defined in the Australian PPSA) or other security interest under any Finance Document) is fully effective, enforceable and perfected with the contemplated priority;
- (b) for more satisfactorily assuring or securing to the Lender the property the subject of any such security interest or other security interest in a manner consistent with the Finance Documents; or
- (c) for aiding the exercise of any power in any Finance Document, the Obligor shall do it promptly at its own cost. This may include obtaining consents, signing documents, getting documents completed and signed and supplying information, delivering documents and evidence of title and executed blank transfers, or otherwise giving possession or control with respect to any property the subject of any security interest or Security.

## 34. **Miscellaneous**

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### 34.1 **Impossibility**

The Lender will not be liable for any failure to perform or comply with its obligations under this Agreement resulting directly or indirectly from the action or inaction of a governmental or local authority, strike, labour disturbance (whether of its employees, officers or otherwise) or any other cause that is beyond its control.

### 34.2 **Anti money laundering**

- (a) The Borrower agrees that the Lender may delay, block or refuse to process any transaction without incurring any liability if it is suspected that:
- (i) the transaction may breach any laws or regulations in New Zealand or any other country;
  - (ii) the transaction involves any person (natural, corporate or governmental) that is itself sanctioned or is connected, directly or indirectly, to any person that is sanctioned under economic and trade sanctions imposed by the United States, the United Nations, the European Union or any country; or
  - (iii) the transaction may directly or indirectly involve the proceeds of, or be applied for the purposes of, conduct that is unlawful in New Zealand or any other country.
- (b) The Borrower must (and must procure that each other Obligor will) provide all information to the Lender that the Lender reasonably requires in order to manage its money-laundering, terrorism-financing or economic and trade sanctions risk or to comply with any laws or regulations in New Zealand or any other country. The Borrower agrees that the Lender may disclose any information concerning the Obligors to any law enforcement, regulatory agency or court where required by any such law or regulation in New Zealand or elsewhere.

### 34.3 **Benefit and burden of this Agreement**

This Agreement is binding on and enures for the benefit of the parties and their respective successors and their permitted assignees, novatees and transferees.

### 34.4 **Amendments**

No amendment to this Agreement is effective unless it is in writing signed by all the parties.

### 34.5 **Partial invalidity**

The illegality, invalidity or unenforceability of a provision of this Agreement under any law will not affect the legality, validity or enforceability of that provision under another law or the legality, validity or enforceability of another provision.

### 34.6 **Conflict of interests**

The Lender or a Receiver may exercise or agree to exercise a right given by this Agreement or by law, even though that person may have a conflict of interest in exercising such right.

**34.7 Consents**

Unless otherwise specified in this Agreement or expressly stated otherwise in a Finance Document, the Lender may give or withhold any approval or consent in that person's absolute discretion, and either conditionally or unconditionally.

**34.8 Counterparts**

This Agreement may be signed in any number of counterparts all of which, when taken together, will constitute one and the same instrument. A party may enter into this Agreement by executing any counterpart.

**34.9 Inconsistency**

In the event of any inconsistency between the provisions of this Agreement and the provisions of any other Finance Document, the provisions of this Agreement will prevail.

**34.10 Entire Agreement**

This Agreement, together with each other agreement made in writing signed by all the parties, constitutes the entire agreement between the parties.

**35. Governing law**

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**35.1 Governing law**

This Agreement is governed by, and is to be construed in accordance with, New Zealand law.

**35.2 Service of process**

Without prejudice to any other mode of service allowed under any relevant law, each Obligor (other than an Obligor incorporated in New Zealand):

- (a) irrevocably appoints the Borrower as its agent for service of process in relation to any proceedings in connection with any Finance Document; and
- (b) agrees that failure by a process agent to notify the relevant Obligor of the process will not invalidate the proceedings concerned.



## **Execution**

**Executed** as a Deed

*[Execution blocks intentionally deleted]*



**Naked Brand Group and Bendon Limited Successfully Complete Merger****- Bendon Limited Reports Results for the Fiscal Year Ended January 31, 2018**

NEW YORK- June 20, 2018 - Naked Brand Group Inc. (NASDAQ:NAKD) (“Naked”), an innovative fashion and lifestyle brand, and Bendon Limited, a global leader in intimate apparel and swimwear (“Bendon”), announced today that they have completed their previously announced business combination (“Business Combination” or the “Transactions”) pursuant to that certain Agreement and Plan of Reorganization, dated as of May 25, 2017 and amended on July 26, 2017, February 21, 2018, March 19, 2018 and April 23, 2018 (the “Merger Agreement”). The Merger Agreement was approved by the Company’s stockholders on June 11, 2018.

Under the terms of the Merger Agreement, Naked and Bendon became wholly-owned subsidiaries of a newly formed company, Bendon Group Holding Limited, which has been renamed Naked Brand Group Limited (“Holdco”), and exchanged their securities for ordinary shares of Holdco. The Naked shares were exchanged for Holdco shares at the rate of 1 Naked share for 0.2 Holdco shares. Holdco’s ordinary shares will commence trading on The Nasdaq Stock Market under the symbol “NAKD”.

Carole Hochman, Holdco’s newly appointed Executive Chairman and Naked’s Chief Executive Officer, commented, “We are thrilled to have completed this business combination thereby creating a powerful portfolio of iconic innerwear, sleepwear, and swimwear brands. This business combination is the culmination of hard work and dedication and we thank our shareholders for their support.”

Justin Davis-Rice, Holdco’s Chief Executive Officer, commented, “We believe this merger will enable the combined company to strengthen its global industry leadership and continue to drive growth over the long-term. Through the use of the U.S. capital markets, we anticipate having financial flexibility to expand distribution networks and further develop our businesses as well as acquire complementary brands. We are excited to further revolutionize the lingerie industry through our unwavering commitment to best in category innovation in design and technology within product and brand development.”

For additional information on the transaction, see Naked’s Current Report on Form 8-K and Holdco’s Report of Foreign Private Issuer on Form 6-K, each of which will be filed promptly and which can be obtained, without charge, at the SEC’s internet site (<http://www.sec.gov>).

Duane Morris LLP served as legal counsel to Naked. Graubard Miller, Russell McVeagh and Wynn Williams served as legal counsel to Bendon and Holdco.

**Financial Results of Bendon Limited:**

Bendon today also announced its financial results for the fiscal year ended January 31, 2018. Bendon reported revenue for the 2018 fiscal year of NZ\$131.4 million and net loss of NZ\$37.4 million. Bendon’s total assets were NZ\$88.1 million and its total liabilities were NZ\$93.8 million at January 31, 2018. Bendon also reported revenue for the 2017 fiscal year of NZ\$152.1 million and net loss of NZ\$39.9 million. Bendon’s total assets were NZ\$101.2 million and its total liabilities were NZ\$110.3 million at January 31, 2017.

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**Bendon Financial Information as prepared under IFRS and in New Zealand Dollars (NZ\$)***Consolidated Statement of Operations Data:*

	<b>Jan. 31, 2018 NZ\$000 12 months</b>	<b>Unaudited Jan. 31, 2017 NZ\$000 12 months</b>
Revenue	131,388	152,144
Cost of goods sold	(87,459)	(84,358)
Gross profit	43,929	67,786
Brand management	(53,653)	(53,957)
Administrative expenses	(4,131)	(3,712)
Corporate expenses	(12,851)	(12,920)
Finance expense	(8,791)	(11,214)
Brand transition, restructure and transaction expenses	(3,272)	(2,430)
Impairment expense	(1,914)	(2,865)
Other foreign currency gains/(losses)	757	(14,327)
Fair value gain/(loss) on convertible notes derivative	2,393	(592)
Loss before income tax	(37,533)	(34,230)
Income tax benefit/(expense)	(60)	(6,123)
Loss for the period	(37,593)	(40,352)
<i>Other comprehensive loss</i>		
Exchange differences on translation of foreign operations	148	384
Total comprehensive loss for the period	(37,445)	(39,968)

*Consolidated Balance Sheet Data:*

	<b>January 31, 2018 NZ\$000</b>	<b>January 31, 2017 NZ\$000</b>
Cash and cash equivalents	10,739	2,645
Working capital	(20,752)	(19,644)
Total assets	88,096	101,232
Borrowings	52,121	68,998
Total shareholders' equity	(5,710)	(9,044)

Unless otherwise noted, all translations from U.S. dollars to New Zealand dollars were made at the closing rate as at January 31, 2018 of NZ\$1 = US\$1.36. We make no representation that any New Zealand dollars or U.S. dollar amounts could have been, or could be, converted into U.S. dollar or New Zealand dollars, as the case may be, at any particular rate, at the rates stated below, or at all.

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In connection with the closing of the Business Combination, Bendon completed certain equity financings and debt restructurings. After accounting for the consummation of the Business Combination and the related financings and restructurings, the unaudited pro forma balance sheet as of January 31, 2018 is as follows:

	<b>Without Impact of Transactions</b>		<b>Pro Forma Adjustments Resulting from Transactions</b>			<b>After Impact of Transactions</b>	
	<i>(\$NZD in thousands)</i>	<i>(\$USD in thousands)</i>	<i>(\$NZD in thousands)</i>	<i>(\$USD in thousands)</i>		<i>(\$NZD in thousands)</i>	<i>(\$USD in thousands)</i>
<b>Assets:</b>							
Current	76,314	57,327	15,004	10,503	a,b,e	91,318	67,830
Non-current	17,861	13,417	0	0		17,861	13,417
<b>Total assets</b>	<b>94,175</b>	<b>70,744</b>	<b>15,004</b>	<b>10,503</b>		<b>109,179</b>	<b>81,247</b>
<b>Liabilities and stockholders' equity:</b>							
Current	91,899	69,034	(31,262)	(22,533)	a, c,d	60,636	46,501
Non-current	2,711	2,037	0	0		2,711	2,037
<b>Total Liabilities</b>	<b>94,610</b>	<b>71,071</b>	<b>(31,262)</b>	<b>(22,533)</b>		<b>63,347</b>	<b>48,537</b>
<b>Stockholders' equity</b>	<b>(435)</b>	<b>(327)</b>	<b>46,267</b>	<b>33,036</b>	b,c,d,e	<b>45,831</b>	<b>32,709</b>
<b>Total liabilities and stockholders' equity</b>	<b>94,175</b>	<b>70,744</b>	<b>15,004</b>	<b>10,503</b>		<b>109,179</b>	<b>81,247</b>

Pro forma adjustments resulting upon Transactions:

- a) Restructure of the BNZ facility on completion of Transactions NZD\$18,571 (USD\$13,000)
- b) Capital raised from Novo on March 6, 2018 and April 5, 2018 totaling NZD\$9,286 (USD\$6,500)
- c) Shareholder loans converted to equity on completion of Transactions NZD\$10,951 (USD \$8,226)
- d) AEE Acquisitions Holdings LLC Note converted on completion of Transactions NZD\$1,740 (USD\$1,307)
- e) PIPE investment on completion of Transactions NZD\$24,290 (USD\$17,003)

#### **About Naked Brand Group Limited:**

Naked Brand Group Limited is a leading intimate apparel and swimwear company with a diverse portfolio of brands. The company designs, manufactures and markets a portfolio of 10 company-owned and licensed brands, catering to a broad cross-section of consumers and market segments. Brands include Naked, Bendon, Bendon Man, Davenport, Evollove, Fayreform, Hickory, Lovable, Pleasure State, Heidi Klum Intimates, Heidi Klum Man, Heidi Klum Swim. Naked Brand Group Limited products are available in 34 countries worldwide through 3,000+ retail doors, a growing network of E-commerce sites and 63 company-owned Bendon retail and outlet stores in Australia, New Zealand and Ireland. Brands are distributed through premier department stores, specialty stores, independent boutiques and third-party e-commerce sites globally, including Macy's, Nordstrom, Saks Fifth Avenue, Harrods, Selfridges, Amazon and asos among others.

[www.nakedbrands.com](http://www.nakedbrands.com)

**About Bendon Limited:**

Bendon is a global leader in intimate apparel and swimwear renowned for its best in category innovation in design, and technology and unwavering commitment to premium quality products throughout its 70-year history. Bendon has a portfolio of 10 highly productive brands, including owned brands Bendon, Bendon Man, Davenport, Evollove, Fayreform, Hickory, Lovable (in Australia and New Zealand) and Pleasure State, as well as licensed brands Heidi Klum Intimates and Swimwear and Stella McCartney Lingerie and Swimwear.

In October 2014 Bendon named supermodel and television host Heidi Klum as the Creative Director and face of Bendon's flagship Intimates collection, succeeding Elle Macpherson after 25 years with the brand. Bendon products are distributed through over 4,000 doors across 43 countries as well as through a growing network of 60 company-owned Bendon retail and outlet stores in Australia, New Zealand and Ireland. Bendon's global supply chain is one of its strongest assets, controlling sourcing, manufacturing and production at over 30 partner facilities across Asia. Bendon has more than 700 staff at offices and stores in Auckland, Sydney, New York, London and Hong Kong and is poised for continued meaningful growth as it opens additional retail stores and expands its current portfolio of products.

[www.bendongroup.com](http://www.bendongroup.com)

**FORWARD-LOOKING STATEMENTS**

Certain statements in this communication regarding the merger of Naked with and into Merger-Sub, including any statements regarding the expected benefits and synergies of the transaction, future opportunities for the combined company and products, and any other statements regarding Bendon's and Naked's future expectations, beliefs, plans, objectives, financial conditions, assumptions or future events or performance that are not historical facts are forward-looking statements. These statements are often, but not always, made through the use of words or phrases such as "may," "believe," "anticipate," "could," "should," "intend," "plan," "will," "aim(s)," "can," "would," "expect(s)," "estimate(s)," "project(s)," "forecast(s)," "positioned," "approximately," "potential," "goal," "pro forma," "strategy," "outlook" and similar expressions. All such forward-looking statements involve estimates and assumptions that are subject to risks, uncertainties and other factors that could cause actual results to differ materially from the results expressed or implied in this communication. These statements are based on management's current expectations and/or beliefs and assumptions that management considers reasonable, which assumptions may or may not prove correct.

Among the key factors that could cause actual results to differ materially from those expressed or implied in the forward-looking statements are the following: (i) the risk of disruptions to current plans and operations, increased operating costs and the potential difficulties in maintaining customer, supplier, employee, operational and strategic relationships as a result of the announcement and consummation of the Merger or otherwise; (ii) adverse results in any legal proceedings that may be instituted against Bendon or Naked, their respective affiliates or others; (iii) the risk that the projected value creation and efficiencies from the Merger will not be realized, or will not be realized within the anticipated time period; (iv) Holdco's ability to promptly, efficiently and effectively integrate Naked's operations into those of the combined company; (v) the lack of a public market for shares of Holdco's common stock and the possibility that a market for such shares may not develop; (vi) working capital needs; (vii) continued compliance with government regulations; (viii) labor practices; (ix) the combined company's ability to achieve increased market acceptance for its product and penetrate new markets; and (x) the possibility that Bendon or Naked may be adversely affected by other economic, business and/or competitive factors, including rapidly changing customer preferences and trends.

**Naked Brand Group**

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