

Gateway Bank

**Commercial Property Loan
General Terms and Conditions**

Effective 15 December 2023



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Part A - Loan Terms

1. About these terms and conditions

- 1.1 These are the Gateway Commercial Property Loan General Terms and Conditions Version 3 – September 2023 incorporated into loan contracts referring to these terms and conditions. They form part of your *loan contract*.
- 1.2 This document does not contain all the precontractual information required to be given to you. You must read this document together with the document that contains the Financial Table.
- 1.3 Words in *italics* have a special meaning. These words are defined at the end of this document or in the document that contains the Financial Table.

2. Code(s) of Practice

We will comply with the requirements of the Customer Owned Banking Code of Practice where those requirements apply to your dealings with us. This code changes from time to time. If you would like to know more about your rights under the Customer Owned Banking Code of Practice, contact us.

3. Other documents you must read

- 3.1 In addition to your *loan contract* (which includes these General Terms and Conditions), you must read and comply with:
 - (a) the Mortgage Common Provisions;
 - (b) access methods, if applicable; and
 - (c) any other conditions reasonably imposed by us.
- 3.2 Take particular notice of the things you must do and must not do with the *mortgaged property* and when your payments are due.

4. When there is a binding legal contract between you and us

NOTE: Until the *loan date*, we have the right to change the terms of your *loan contract* or to withdraw our offer to lend altogether.

There is no binding legal contract between us until the *loan date* or such earlier date as we decide. This means that until the *loan date*:

- (a) you are not bound to go ahead; and
- (b) we have the right to change the terms of your *loan contract* or to withdraw it

altogether and decline to make an advance of funds to you if anything occurs which we reasonably believe makes proceeding with the loan undesirable. We are not obliged to make an advance of funds until all relevant conditions are fulfilled to our satisfaction. You may be liable for costs even if we decide not to proceed.

5. Joint borrowers

- 5.1 If there are two or more borrowers, each of you is individually liable, and all of you are jointly liable. This means that we may take legal action against any one of you for all the outstanding amounts.
- 5.2 Each borrower can bind each other borrower. For example, any one of you can authorise a redraw, a split into one or more loan accounts, or any other activity in respect of your loan. Each borrower and any *guarantor* will be liable even if they did not know about or agree to the transaction.

NOTE: This means that each one of you can be required to pay the whole amount owing even if you have some other arrangement among yourselves and even if not all of you benefit equally.

- 5.3 Despite clause 5.2, we will comply with any request by any one of you:
- (a) that all borrowers be required to approve any future withdrawals; or
 - (b) to suspend any loan account (or a redraw facility on any loan account) to allow all borrowers time to reach agreement about dispersal of the account funds.
- 5.4 Despite this clause 5, we may require all borrowers and *guarantors* to authorise any activity with respect to your loan.

6. Representations and warranties

- 6.1 You represent and warrant that all information you have given us regarding your financial and personal affairs and any *mortgaged property* is true and correct.
- 6.2 You also represent and warrant that other than as disclosed to us in writing prior to the *loan date*:
- (a) there are no unpaid rates or taxes owing in respect of the *mortgaged property*;
 - (b) the *mortgaged property* will be occupied by you (unless otherwise approved by us);
 - (c) there are no notices or proposals from any government or other authority adversely affecting the *mortgaged property*;
 - (d) there are no defects or disputes relating to the *mortgaged property*; and
 - (e) there are no structural alterations or improvements on the *mortgaged property* which require approval by the council or any other authority which have not been approved.

7. What we can do with your loan account

- 7.1 We can debit your loan account with any amounts due under your *loan contract*, such as interest and credit fees and charges, and any amounts lent to you or at your request. If you have more than one loan account, we can debit these amounts to any of your loan accounts.
- 7.2 If a third party makes a payment to you on our behalf, we can debit your loan account on the date that money is made available to you.
- 7.3 You may with our approval split your loan account into two or more accounts or switch account types. The following are examples of switches. Some or all of these options may not be available to you.
- (a) Convert from a variable interest rate to a fixed interest rate and vice versa.
 - (b) Consolidate one or more loan accounts.
 - (c) Convert from interest only repayments to principal and interest repayments and vice versa.

You may request a split or switch prior to the initial drawdown, in which case the change takes effect from the *loan date*. We have full discretion whether or not to approve any split or switch requested by you.

- 7.4 We may combine two or more loan accounts if they have identical repayment types, interest rates, fixed rate periods (if applicable), interest only periods (if applicable), and loan purposes.
- 7.5 If a new loan account is created, separate repayment dates and interest debit dates may apply to that new account. If your loan account is split into two or more accounts, or if you switch between types of interest rate, you may have to pay interest on the amount switched or split to the date on which the switch or split occurs.
- 7.6 If you switch from a fixed rate loan to a variable rate loan during the fixed rate period, break costs and/or a switch fee may be payable if specified in the Financial Table (as varied from time to time).
- 7.7 If you do not draw down the total *amount of credit* on the *loan date*, any borrowing of the balance is subject to our approval.

8. Payments you must make

- 8.1 You must make all payments and pay all credit fees and charges that are payable under our *loan contract*. In addition, on the *final repayment date*, you must pay us the *amount you owe us*.

- 8.2 Payments will be credited to your loan account only when actually received by us. All payments must be made in full when they are due, without setting off or deducting any amounts you believe we owe you, and without counterclaiming any amounts from us.
- 8.3 You may with our approval make weekly or fortnightly repayments of the amount specified by us instead of making monthly repayments. If you want to make weekly or fortnightly repayments, please make appropriate arrangements with us.
- 8.4 Payments are to be made by direct debit or by any other reasonable method we direct. You must sign a direct debit authority to authorise us to debit one of your bank accounts for payments due under your *loan contract* and you must keep that account open. You authorise us to use that direct debit authority for payment of any amounts due under your *loan contract*. If an attempted direct debit fails, we may make reasonable further attempts to direct debit your account until the direct debit is successful.
- 8.5 The amount of each payment may include any applicable direct debit fees, taxes or charges relating to the payment method in addition to your repayment amount.
- 8.6 If any payment is due on a day which is not a *business day*, the payment must be made on or before the next *business day* unless that *business day* is in the next calendar month, in which case payment is due on the last *business day* of the current calendar month. If any payment is due on a day which is the 29th, 30th or 31st of a month with no such date, the payment must be made on or before on the 28th day of that calendar month.
- 8.7 If any payment to us is dishonoured, the payment will be treated as not having been made, and interest will continue to accrue on the unpaid daily balance until actual payment is received by us.
- 8.8 The *amount you owe us* must be repaid within 180 days from the date you die (or if there is more than one borrower, from the date the last borrower dies) unless other arrangements are made for the continuation of the loan to our satisfaction. We will discuss this with your executor or beneficiaries and seek to agree to a mutually acceptable solution. If there is more than one borrower, and one of the borrowers dies, we may allow the surviving borrower(s) to continue to access the loan account(s).
- 8.9 If you are required by law to deduct any amount from a payment due to us, unless we can receive a credit or rebate for that deduction, you must make an additional payment so that the amount we receive is not reduced.

9. How your payments are credited

- 9.1 We can apply any payment or other credit to any part of the *amount you owe us* in any order we determine.

- 9.2 If you have more than one account with us, and you make a payment without telling us in writing how the payment is to be applied, we can apply it to any one or more of the accounts in any way we think fit.
- 9.3 If any of your loan accounts are in arrears while one or more of your other loan accounts or other accounts with us have funds available to be drawn, you authorise us to appropriate from any one or more of those accounts to pay some or all of your arrears. We are not obliged to do this.

10. Interest

- 10.1 You must pay us interest on all amounts debited to your loan account from the date the amount is debited. Interest debited to your loan account forms part of the *amount you owe us*.
- 10.2 Interest will be debited to your loan account monthly in arrears on the last day of each calendar month (regardless of whether or not that day is a *business day*) and on the *final repayment date*. If a fixed rate period or interest only period ends on a day that is not a *business day*, your fixed rate or interest only period may end on the next *business day*.
- 10.3 In addition to debiting interest to your loan account as specified above, we may debit interest whenever the loan is in default, the whole of the *amount you owe us* is repaid, or we increase your *amount of credit* or vary your *loan contract*. Interest charges may also be debited on the date of any switch or split.
- 10.4 Interest charges are calculated by applying the interest rate to the unpaid balance owing to us at the end of each day. The end of each day for calculating interest charges is 5.00 pm Eastern Standard Time. The interest rate applied each day is equal to the annual percentage rate applicable to the loan at the time divided by 365.
- 10.5 Interest accrues on a daily basis from the day we disburse money at your request to make the first advance. This applies whether or not any real estate transaction to which the advance relates (such as a refinance or purchase) occurs on that day.
- 10.6 If more than one interest rate applies to your loan, we will apply the applicable daily percentage rate to the relevant loan account.
- 10.7 You can find out your current interest rate(s) at any time by contacting us. We can change your interest rate(s) at any time except during a fixed rate period.
- 10.8 If you become liable by a court order to pay any money due under your *loan contract*, you must pay interest at the higher of the rate ordered by the court or the rate payable under your *loan contract*.

11. Repaying your loan early

NOTE: You may have to pay fees if you repay your loan early. Significant fees (called 'break costs') may be payable if you repay all or part of a fixed rate loan early.

- 11.1 You may make additional payments or repay your loan in full at any time. If you do:
- (a) fees may be payable if specified in the Financial Table (as varied from time to time), including break costs if you repay your loan during a fixed rate period; and
 - (b) you may be able to redraw any excess repayments.
- 11.2 If you inform us that you propose to repay your loan in full, we may place a stop on all further debits to your loan account to enable us to provide you with a payout figure.

12. About fixed rate break costs

- 12.1 When lenders agree to lend money to a borrower for a fixed rate period, they may enter into finance arrangements to enable them to do so. If the loan is repaid or otherwise terminated before the end of the fixed rate period, lenders may incur costs under those finance arrangements. Lenders normally pass on these costs (commonly known as 'break costs') to borrowers. Break costs are payable irrespective of whether the lender has entered into specific finance arrangements to fund the loan, and may be calculated by reference to retail interest rates (i.e. the rate at which lenders can lend money on similar terms) or wholesale interest rates (i.e. the rate at which lenders obtain funding).

EXAMPLE: A lender lends \$200,000 to you at 9% per annum for a fixed rate period of three years. The lender enters finance arrangements to fund this loan at 8% per annum (the market rate). You decide to repay the loan early at the end of one year. The market rate has reduced to 5% per annum. The break costs will be an assessment of the cost or loss to the lender as a result of the early repayment.

Using the above figures, the lender could calculate the loss by multiplying the amount repaid early (\$200,000) by the difference in interest rates (3%) for the period starting from the date of repayment to the end of the fixed rate period (2 years) = $\$200,000 \times 3/100 \times 2 = \$12,000$. The amount you would have to pay will be slightly less than \$12,000 because the lender is receiving the money at the time of the early repayment rather than over the remaining fixed rate period.

- 12.2 This is an example only to assist your understanding of break costs. We may use various funding techniques, but the underlying principle holds true (even if the formula applied each time is different). Break costs may be payable even if there is no matching borrowing by us.

NOTE: If a fixed rate loan or any part of it is terminated early, break costs could be substantial, particularly if market interest rates have reduced during the fixed rate period. Ask us for an estimate of break costs before you arrange to repay a fixed rate loan early.

- 12.3 There are a number of ways we may calculate break costs. We will act reasonably when calculating the break costs that are payable by you and will charge no more than a reasonable estimate of our loss arising from the early repayment plus our average reasonable administrative costs. Because of the changes that occur over time in financial markets, it is not possible to state the method of calculating break costs.

13. About your redraw facility

This clause 13 applies if your loan has a redraw facility.

NOTE: We can change, suspend or cancel your redraw facility at any time.

- 13.1 We will tell you if redraw facilities are available. Redraws will be processed as we decide from time to time. If you request a redraw, we have full discretion whether or not to approve your request.
- 13.2 We may change, suspend or cancel the redraw facility at any time. We will tell you if we do any of these things.
- 13.3 Any redraw will be made from the loan account specified by you, or if no loan account is specified, the loan account determined by us.
- 13.4 Subject to this clause 13, if you have made extra payments above your minimum repayment amount, you may redraw all or any part of those extra payments provided that:
- (a) you have not defaulted under your *loan contract*;
 - (b) your redraw facility has not been suspended or cancelled by us;
 - (c) no further charge or security interest has been granted over any of the *security*;
and
 - (d) no other restrictions are set out in your *loan contract*.

- 13.5 The maximum amount available for redraw is the amount you have repaid early, less the amount of any previous redraws, permanent reductions to the balance of your loan account, and other debits as reasonably determined by us.
- 13.6 The amount you redraw must not be less than the minimum amount specified by us from time to time and must not be more than the maximum amount available for redraw. If you draw more than the amount available for redraw, you must repay the excess promptly after our demand, and we may charge default interest on that amount until it is repaid.
- 13.7 We may reduce the amount you can redraw by the estimated amount of your next scheduled repayment.
- 13.8 You must keep the method of making redraws from your loan accounts confidential to ensure that there are no unauthorised transactions or other dealings with your loan accounts.
- 13.9 You can obtain a redraw:
- (a) if internet banking is available under your loan, by using internet banking in accordance with our internet banking terms and conditions;
 - (b) if telephone banking is available under your loan, by using telephone banking in accordance with our telephone banking terms and conditions; or
 - (c) by any other method we approve from time to time.
- 13.10 If you make your request for redraw manually, you should allow at least two *business days* for your redraw to be processed.
- 13.11 If you attempt to redraw more than the amount available for redraw, we may (but are not obliged to) stop or prevent the payment.
- 13.12 If you request a redraw, and for that loan account your existing repayments are not sufficient to repay the amount owing under that loan account over the remaining term, we may recalculate your future repayments for that loan account.

14. Paying third parties by direct debit

- 14.1 With our approval, you can arrange for third parties to have a right to debit any of your loan accounts. Once set up, any request by a third party for payment under a direct debit authority will be treated as having been properly authorised by you. We can cancel this arrangement at any time, and we are not liable to you or anyone else if a payment is not made for any reason. Any arrangement must be confirmed before the *loan date* and may not be available after the *loan date* without our approval. We may impose an additional fee for any arrangement requested after the *loan date*.

15. Changes we can make to your *loan contract*

NOTE: We can make changes to your *loan contract* at any time (except interest rate changes during a fixed rate period). In making any changes, we will act reasonably.

- 15.1 Acting reasonably, we can change or vary any term of your *loan contract*:
- (a) that deals with the pricing of your loan, such as your interest rate, repayments, and credit fees and charges (but subject to any specific agreement such as a fixed rate period);
 - (b) that deals with the day you make repayments or we debit interest to your loan account;
 - (c) to accommodate a change in law or market practice;
 - (d) to accommodate a change in technology or other ways of communication;
 - (e) to accommodate a change in payment methods; or
 - (f) to make any other reasonable change.
- 15.2 If you are not satisfied with any change or variation to your *loan contract*, you may repay your loan in accordance with clause 11.
- 15.3 We will give you:
- (a) not less than 20 days notice of a change to the manner in which interest is calculated or applied;
 - (b) notice of a change to the interest rate(s) applicable to your loan not later than the day on which the change takes effect;
 - (c) not less than 20 days notice of a change to the amount, frequency or due date of your repayments;
 - (d) not less than 20 days notice of a change to the fees and charges payable;
 - (e) not less than 30 days notice of any other change we make to your *loan contract*.
- We may give you a shorter notice period or no notice if the change is not adverse to you or reduces your obligations. We may also not give you notice of a change to the amount of your repayments if your repayments are determined by reference to a method of calculation.
- 15.4 If there is a change to, or introduction of, a government charge that you directly or indirectly pay in connection with the loan, we will notify you of this reasonably promptly after the government notifies us, unless the government itself publicises the introduction or change.
- 15.5 We will give you notice of any change to your *loan contract* either in writing (including by electronic means) or by advertisement in a major newspaper. If notified by newspaper, the change will also be confirmed in your next statement of account. Any variation will take effect from the date specified in the notice of change we give you.

16. Statements of account

Statements of account will be sent to you at least once every six months or more frequently if required by law.

Part B - Default

NOTE: The events which may cause you to default under your loan are listed below. You may default under your loan even if you have made all your payments. If you do not make any payment by the due date, you must pay default interest on the overdue amount until it is paid. If you default, you may lose your property.

17. Default interest

- 17.1 Acting reasonably, we may change the default rate of interest at any time without your consent. You will be notified of any changes in the default rate in the same way any variations to the interest rate are notified to you.
- 17.2 If any amount due by you is not paid on the due date, you must pay default interest on the overdue amount until the overdue amount plus the default interest on that amount is paid. You will also be liable for any default fees specified in the Financial Table (as varied from time to time).
- 17.3 Default interest is also payable the following amounts until paid:
- (a) on the whole of the *amount you owe us* if that amount becomes due for any reason; and
 - (b) on any amount owing because you have drawn more than the amount available for redraw.
- 17.4 Default interest is calculated, accrues, is debited and is payable in the same way as ordinary interest.

18. Consequences of a breach of any term

- 18.1 If you breach any term of your *loan contract* or any *other agreement*, if an *event of default* occurs, or if any *security* or *guarantee* is terminated or is of reduced force and effect:
- (a) we will not be obliged to lend you any more money and can stop any redraws; and
 - (b) we may rectify the breach or *event of default* by performing your obligations under your *loan contract* or any *other agreement*.

19. Monetary events of default

A *monetary event of default* is an *event of default* that occurs as a result of your failure to make a payment. Each of the following is a *monetary event of default*:

- (a) you do not pay any money due to us under your *loan contract* or any *other agreement* by the due date for payment; or
- (b) you do not pay any amount exceeding \$50,000 to any person other than us by the due date for payment.

20. Non-monetary events of default

A *non-monetary event of default* is an *event of default* that occurs even if you have made all your payments. Each of the following is a *non-monetary event of default*:

- (a) if you are an individual:
 - (i) you become bankrupt;
 - (ii) you are unable to pay your debts as they fall due; or
 - (iii) you make any arrangement with your creditors;
- (b) if you or a *guarantor* is a company:
 - (i) proceedings are commenced to wind up the company;
 - (ii) a receiver, manager, receiver and manager, administrator, controller, provisional liquidator or liquidator is appointed to the company or any part of the company's assets; or
 - (iii) the company is, or is deemed or presumed by law or a court to be, insolvent;
- (c) you or a *guarantor* no longer has legal capacity;
- (d) enforcement proceedings are taken against you or a *guarantor*, or your or their assets, by another creditor, and we reasonably consider that it is likely to have a material impact on the ability of you or the *guarantor* to meet your or their financial obligations to us;
- (e) early repayment is required under any *other agreement*, or default based action is taken against you or a *guarantor* by us under any *other agreement*, in each case due to a *non-monetary event of default* of the kind described in this clause 20;
- (f) we reasonably believe that you or a *guarantor* has not complied with the law or any requirement of any competent authority, and we reasonably consider that such non-compliance is likely to have a material impact on your ability to meet your financial obligations to us or a material adverse effect on your assets or any business you conduct;
- (g) it becomes unlawful for you or us to continue with your *loan contract* or any *other agreement*;
- (h) you or a *guarantor* gives us information, or makes a representation or warranty to us, that is materially incorrect or misleading (including by omission), and is such

that we would not have provided the loan, or would only have provided the loan on different terms, if we had known the correct information;

- (i) you use the loan for a purpose not approved by us;
- (j) you use the loan for an illegal or improper purpose, or to finance an illegal or improper activity;
- (k) the assets of you or a *guarantor* are dealt with, or attempted to be dealt with, in breach of the terms of your *loan contract* or any *other agreement* without our prior written consent (which will not be unreasonably withheld), including:
 - (i) any of the *mortgaged property* becomes subject to a mortgage or charge without a priority agreement being in place between us and the other security holder on terms acceptable to us, acting reasonably;
 - (ii) any of the *mortgaged property* becomes subject to a mortgage or charge without our prior written consent, which will not be unreasonably withheld; or
 - (iii) the amount secured by any mortgage or charge over the *mortgaged property* is increased without our prior written consent, which will not be unreasonably withheld,

and we reasonably consider that such action is likely to have a material impact on your ability to meet your financial obligations to us;

- (l) you or a *guarantor* does not provide financial information required by us in connection with your loan;
- (m) you or a *guarantor* does not maintain a licence or permit necessary to conduct any business conducted by you or a *guarantor*;
- (n) you or a *guarantor* does not maintain insurance required by us in connection with your loan;
- (o) legal or beneficial ownership, or management control, of you or a *guarantor*, or your or their business, changes without our prior written consent, which will not be unreasonably withheld;
- (p) without our prior written consent (which will not be unreasonably withheld), the status, capacity or composition of you or a *guarantor* changes, including:
 - (i) you or a *guarantor* ceases to carry on all or a material part of your or their business, or disposes of all or a material part of your or their assets; or
 - (ii) if you or a *guarantor* is an individual, you or a *guarantor* is sentenced to jail for a term of longer than 12 months;
- (q) the *mortgaged property* is:
 - (i) materially damaged, destroyed or demolished, and we consider in our reasonable opinion that the *mortgaged property* cannot be expected to be reinstated within a reasonable time and without material loss of any material income from the *mortgaged property*; or
 - (ii) taken out of your control;

- (r) there is a material reduction in the value of the *mortgaged property*;
- (s) you, or any person on behalf of you, breach any material undertaking given to us or any condition imposed by us;
- (t) any repairs necessary to keep the *mortgaged property* in good repair are not made in a timely fashion;
- (u) any amount required to be paid in connection with the *mortgaged property* (including council rates, water rates, land tax or shared title contributions) is not paid within 90 days of the due date; or
- (v) any other event specified to be an *event of default* for the purposes of your *loan contract* occurs.

21. Notification of an event of default

Without limiting our rights under your *loan contract* in any way, you must promptly notify us in writing if any *event of default* occurs.

22. What the Lender can do if an event of default occurs

Subject to clauses 23 to 25, at any time after an *event of default* occurs, we can take any of the following actions.

- (a) Demand and require immediate payment of any money due under your *loan contract*.
- (b) Call up the loan and require payment of the *amount you owe us*.
- (c) Exercise any right or power conferred by law, your *loan contract* or any *security*, including taking possession of and selling any *mortgaged property*.

23. When we will act on a non-monetary event of default

We will only act on a non-monetary *event of default* if the event by its nature is material, or we reasonably consider that the event has had, or is likely to have, a material impact on:

- (a) the ability of you or a *guarantor* to meet your or their financial obligations to us (or our ability to assess this);
- (b) our security risk (or our ability to assess this); or
- (c) our legal or reputational risk where an event in clause 20(f), 20(g), 20(h) or 20(i) occurs.

24. Notice of enforcement if you are an individual

- 24.1 If you are an individual and not a *small business*, and an *event of default* occurs, we will not:

- (a) require you to repay the *amount you owe us*;
- (b) take enforcement action against you; or
- (c) enforce any *security* held to secure repayment of your loan, unless:
 - (d) we have given you at least 30 days written notice of the *event of default*; and
 - (e) if the *event of default* is remediable, you have not remedied that *event of default* within 30 days

24.2 If an *event of default* is remediable, and you remedy that *event of default* within 30 days, we may take any action specified in clauses 24.1(a), 24.1(b) or 24.1(c) if an *event of default* of the same type has arisen during that period.

24.3 We do not need to give you notice to repay an overdraft or on-demand facility.

24.4 Despite clause 24.1, we may give you less than 30 days notice or no notice if:

- (a) the *event of default* is unable to be remedied;
- (b) it is reasonable for us to do so to manage a material and immediate risk relating to the nature of the relevant *event of default*, your particular circumstances, or the value of the *mortgaged property* or any *security*; or
- (c) we have already given you a notice to remedy a non-monetary *event of default* and you have not remedied that *event of default*.

25. Notice of enforcement if you are a *small business*

25.1 If you are a *small business* and an *event of default* occurs, we will not:

- (a) require you to repay the *amount you owe us*;
- (b) take enforcement action against you; or
- (c) enforce any *security* held to secure repayment of your loan, unless:
 - (d) we have given you written notice of the *event of default* that complies with the notice period specified in clause 25.2; and
 - (e) if the *event of default* is remediable, you have not remedied that *event of default* within the notice period specified in clause 25.2.

25.2 If you are a *small business* and an *event of default* occurs:

- (a) we do not have to give you any notice if the *event of default* is a non-monetary *event of default* under clauses 20(a), 20(b), 20(d), 20(e), 20(f), 20(g) or 20(k);
- (b) we will give you at least 30 days written notice if the *event of default* is a monetary *event of default*; and
- (c) we will give you at least three months written notice if the *event of default* is a non-monetary *event of default* other than an *event of default* under clauses 20(a), 20(b), 20(d), 20(e), 20(f), 20(g) or 20(k) that is remediable.

26. How we may exercise our rights

- 26.1 We can take action even if we do not do so promptly after the *event of default* occurs. We do not lose any rights or forgive any *event of default* unless we do so in writing.
- 26.2 We can exercise these rights with or without taking possession of any *mortgaged property*. If we hold more than one *security*, we can enforce any one of the securities first or all of them at the same time.
- 26.3 Our rights and remedies under your *loan contract* may be exercised by any of our employees or any other person we authorise.
- 26.4 We are not liable for any loss caused by the exercise, attempted exercise, failure to exercise, or delay in exercising any of our rights or remedies, except where such loss arises from the mistake, error, fraud, negligence or wilful misconduct of us, our employees, our agents or a receiver we appoint.

27. Enforcement expenses

NOTE: If you default under your loan, enforcement expenses may be payable. This means that you may have to pay any of our reasonable costs incurred in maintaining the *mortgaged property*, collection expenses, and any other internal or external costs we incur as a result of your default.

- 27.1 Enforcement expenses may become payable under your *loan contract* and any *security* if you breach your *loan contract* or an *event of default* occurs. We may debit your loan account with our enforcement expenses at any time after they are incurred, and may then require you to pay these costs immediately (including by using any direct debit or similar authority you have given us), collect them with your regular repayments, or require them to be repaid by one or more repayments.
- 27.2 If your loan is regulated by the National Credit Code or similar laws, enforcement expenses payable by you will not exceed our reasonable enforcement costs (including internal costs).
- 27.3 Enforcement expenses include our expenses incurred in preserving, maintaining or selling the *mortgaged property* (including insurance, rates and taxes payable in respect of the *mortgaged property*), collection expenses, expenses resulting from dishonour of a payment, and any internal or external costs we incur as a result of you breaching your *loan contract* or an *event of default* occurring (including legal costs and expenses on a full indemnity basis or solicitor and own client basis, whichever is higher).

- 27.4 You indemnify us from and against any expense, loss, loss of profit, damage or liability which we incur as a consequence of a breach of your *loan contract* or an *event of default* occurring, except where such loss arises from the mistake, error, fraud, negligence or wilful misconduct of us, our employees, our agents or a receiver we appoint, or is otherwise recovered by us.

Part C - General Provisions

28. Government charges

- 28.1 You must pay us any government duties, taxes, and other charges on receipts, debits or withdrawals that apply to your loan. This includes (but is not limited to):
- (a) stamp duty;
 - (b) income tax payable by you (if the Commissioner of Taxation requires us to deduct this from your loan account);
 - (c) withholding tax; and
 - (d) goods and services tax (GST).
- 28.2 You must pay these duties, taxes and charges whether or not someone else is liable to pay them and whether or not the loan is made. We may debit these duties, taxes and charges to your loan account as and when they become payable. We do not need to tell you first.

29. Disclosures to *guarantors*

We may disclose the following documents to each *guarantor*:

- (a) a copy of any notice, including correspondence, to us or to you;
- (b) any credit report received in relation to you;
- (c) any financial statements you have given us;
- (d) any notice of demand, or information regarding a dishonour, on any loan with us;
- (e) information on any excess or overdrawing;
- (f) a copy of your statement of account; and
- (g) any other information about you and your loan accounts with us.

30. Providing financial statements

Within 14 days of our request, you must provide to us any information we reasonably require relating to your business, assets and financial affairs. For example, if you are an individual, we may require a copy of your taxation return or an assets and liabilities statement. In relation to a company, we may require a balance sheet, a profit and loss statement, or both. We may require this information to be certified or audited.

31. Anti-money laundering and counter-terrorism financing

- 31.1 You must not use your loan for the purposes of money laundering or terrorism financing. You indemnify us from and against any loss that we incur as a result of your breach of this obligation, except where such loss arises from the mistake, error, fraud, negligence or wilful misconduct of us, our employees, our agents or a receiver we appoint, or is otherwise recovered by us.
- 31.2 The *amount you owe us* may become payable if we reasonably believe that continuing with your *loan contract* would cause us to breach an applicable law or would represent an unacceptable level of risk for us because:
- (a) we reasonably believe that you have migrated to a country that we determine is 'high risk' given our obligations under anti-money laundering and counter-terrorism financing laws in respect of the services we provide;
 - (b) you fail to provide any information or document to us that we have requested for the purpose of our compliance with applicable laws (including any details necessary for us to verify your nationality in accordance with anti-money laundering and counter-terrorism financing laws); or
 - (c) we reasonably believe that you are 'high risk' given our obligations under anti-money laundering and counter-terrorism financing laws.
- 31.3 If any of the events in clause 31.2 occur, we will endeavour to give you not less than 90 days notice to repay the *amount you owe us*.
- 31.4 We may delay, block, freeze or refuse a transaction from any of your loan accounts if we have reasonable grounds to believe that the transaction breaches Australian anti-money laundering and counter-terrorism financing laws, other laws or sanctions (or the law or sanctions of any other country). If transactions are delayed, blocked, frozen or refused, we are not liable for any loss you suffer in connection with your use of the loan account.

32. If your loan account has a credit balance

If you repay us more than the *amount you owe us*, we may place the excess funds into a suspense account, deposit it with a bank, or pay it to you. We may not pay you interest on that amount.

33. Insuring the *mortgaged property*

- 33.1 You must keep the *mortgaged property* insured for not less than its full replacement value on terms approved by us against loss or damage by fire, storm, tempest and any other risks specified by us. You must also maintain public liability insurance in respect of the *mortgaged property* and any other insurance we reasonably require.

- 33.2 All insurance policies must be with an insurer approved by us, and our interest as mortgagee must be noted until the amount you owe us is repaid.
- 33.3 If any loss or damage to the *mortgaged property* occurs, we may enforce any rights under the insurance policy and settle any claim against the insurer. We may require any money paid by the insurer to be paid directly to us. We may apply that money as we see fit, including to repair or rebuild the *mortgaged property*, apply it towards repayment of the *amount you owe us*, or hold it as additional security for the loan.
- 33.4 You must provide evidence of currency of the insurance of the *mortgaged property* when requested by us.

34. Valuations of the *mortgaged property*

- 34.1 We may obtain valuations or other reports concerning the *mortgaged property* whenever and as often as we decide. You must assist this process by providing access to and information about the *mortgaged property* when requested by us.
- 34.2 Our processes in relation to external expert valuations will be fair and transparent. Our communication will be clear and we will explain the purpose of the valuation to you. If we have charged you (or you have reimbursed us) for a valuation of a commercial or agricultural real property, we will provide you with a copy of that valuation and the valuer instructions (except where enforcement action has already commenced). We will only appoint appropriately qualified and experienced valuers who are members of professional organisations which abide by a similar code of practice.
- 34.3 We accept no responsibility if you rely on these valuations. You should obtain your own valuations of the *mortgaged property*.

35. Governing law

Your *loan contract* is governed by the laws of the Australian state or territory in which the main *mortgaged property* (as determined by us) is located, or if there is no such determination, New South Wales. You agree to submit to the non-exclusive jurisdiction of the courts of that jurisdiction.

36. How we can deal with your *loan contract*

NOTE: We may disclose information about you to any third party involved in an actual or proposed assignment, novation or dealing by us, and that disclosure may be in a form that may enable that third party to identify you.

- 36.1 We may at any time assign, novate or otherwise deal with our rights and obligations under your *loan contract*, any *security*, and any document or agreement entered into or provided under or in connection with your *loan contract* in any way we wish. You must sign anything and do anything we reasonably require to enable any dealing with your *loan contract*, any *security*, and any document or agreement entered into or provided under or in connection with your *loan contract*. Any dealing with our rights does not change your obligations under your *loan contract* in any way.
- 36.2 You may not assign, novate or otherwise deal with your rights or obligations under your *loan contract*, any *security*, and any document or agreement entered into or provided under or in connection with your *loan contract*.
- 36.3 We may disclose information about you, your *loan contract* or any *security* to anybody involved in an actual or proposed assignment, novation or dealing by us with our rights under your *loan contract*.

37. Applicable laws

To the extent that your *loan contract* is regulated under consumer legislation (such as the National Credit Code) or any other law, any provisions in your *loan contract* which do not comply with that law have no effect, and to the extent necessary, your *loan contract* is to be read so it does not impose obligations prohibited by that law.

38. Severability

If any provision of your *loan contract* is illegal or becomes illegal at any time, the affected provision will cease to have effect, but the balance of your *loan contract* will remain in full force and effect, and we may by notice vary your *loan contract* so that the provision is no longer illegal.

39. If you are a trustee

If you are at any time trustee of any trust, you are liable under your *loan contract* in your own right and as trustee of the trust. Accordingly, we can recover against the trust assets as well as you. An *event of default* occurs if there is a change of trustee, a termination of the trust, or any material change to the terms of the trust without our prior written consent, which will not be unreasonably withheld. You must comply with your obligations as trustee of the trust.

40. Changes to your contact details

You must tell us promptly if your contact details change (including any residential, postal or electronic address, or your phone number) or if you think there is any

information that we should be aware of about your ability to comply with your *loan contract*.

41. How we can give you notices or other documents in connection with your loan

41.1 Subject to any applicable laws, we may give you any notice, statement, demand, court document (including any collection notice, default notice, court originating process or other court document) or other document connected to your *loan contract* or any mortgage given under your *loan contract* by:

- (a) giving it to you personally;
- (b) leaving it at or posting it to your residential or business address last known to us;
- (c) electronic means to your electronic address last known to us; or
- (d) any other means permitted by law.

41.2 Subject to any applicable laws, you consent to any notice, statement, demand, court document or other document connected to your *loan contract* or any mortgage given under your *loan contract* being given to you by electronic means, including any documents that would otherwise require personal service in accordance with the relevant court rules in force in the jurisdiction in which the *mortgaged property* is located.

41.3 Any notice, statement, demand, court document or other document given by us to you will be taken to have been served:

- (a) if posted, when it would have been delivered in the ordinary course of post;
- (b) if sent electronically, on conclusion of transmission.

41.4 Any notice, statement, demand, court document or other document may be signed by any employee, solicitor or agent on our behalf.

42. If we are a trustee

If we are at any time trustee or custodian of any trust, our liability is limited to the assets of that trust which are available to us to satisfy that liability.

43. Identification information

On request by us, you must provide us with any information we require about you or anyone authorised to operate your loan account and, if you are a company or trustee, information about beneficial owners of you.

44. If there is a trustee in bankruptcy or liquidator

If a trustee in bankruptcy or liquidator is appointed to you, they may ask us to refund a payment we have received in relation to your loan. To the extent we are obliged to or agree to make a refund, we may treat the original payment as if it had not been made except for the purpose of calculating interest payable by you.

45. Third party systems

Our provision of services and finance is dependent on third party systems and financing. We will not be liable to you for any failure or delay in meeting our obligations to you to the extent they are beyond our reasonable control, including:

- (a) any disruption to financial markets;
- (b) delays or failures in third party payment and settlement systems; and
- (c) any disruption of the internet, interference from third parties over the internet, or in relation to third party IT systems and infrastructure.

Part D - Definitions and interpretation

46. Definitions

In your *loan contract*, the following words are defined as follows.

- (a) *amount of credit* means the amount specified in the Financial Table in your *loan contract* as varied from time to time.
- (b) *amount you owe us* means the total amount outstanding from time to time in respect of all your accounts provided under your *loan contract*, including all accrued interest, fees and charges (including where applicable those that accrue on partial or total repayment), and includes any part of that amount.
- (c) *business day* means a day that is not a Saturday or Sunday, or a New South Wales or Commonwealth public holiday on which banks are generally not open to conduct business in New South Wales.
- (d) *event of default* means any event described in clauses 19 and 20.
- (e) *final repayment date* means the first to occur of:
 - (i) the date on which your loan term ends;
 - (ii) the date on which the final repayment is due as a result of your default;
 - (iii) the date on which you elect to repay the whole of the *amount you owe us*;
 - (iv) the date on which the whole of the *amount you owe us* becomes payable for some other reason; and
 - (v) such other date which we agree with you.

- (f) *guarantor* means any person who at any time guarantees to us the payment of all or any part of the *amount you owe us*, and includes any guarantor specified in your *loan contract*.
- (g) *loan contract* means the loan contract which incorporates these General Terms and Conditions and includes any variations of that loan contract. The document that contains the Financial Table and these General Terms and Conditions together comprise your *loan contract*.
- (h) *loan date* means the date we first advance funds to you.
- (i) *mortgaged property* means any real estate subject to the *security* and, where the context permits, any other property subject to the *security*, and includes any improvements, attachments or contracts relating to that property and any part of that property.
- (j) *other agreement* means any other agreement or arrangement under which we provide financial accommodation to you or any *guarantor* at any time.
- (k) *scheduled balance*, in relation to a loan account, means the amount which would be owing if all repayments were made on the due date.
- (l) *security* means the security specified in the document that contains the Financial Table and any other security from time to time given to secure your obligations under your *loan contract*.
- (m) *small business* has the meaning applied in the **Customer Owned Banking Code of Practice at the date of your *loan contract***.

47. Interpretation

In your *loan contract*:

- (a) a reference to the singular includes the plural;
- (b) a reference to a document includes any variation or replacement of it;
- (c) a reference to a person includes any other entity recognised by law;
- (d) a reference to a person or to a party to your *loan contract* includes its successors and permitted assigns;
- (e) headings are for ease of reference only and not to assist interpretation; and
- (f) use of examples is illustrative of the context only and does not limit the natural meaning of the terms of your *loan contract*.

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