

RAC Finance Limited

Standard commercial conditions to security agreement - individuals/sole traders

May 2012



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1 Introduction

- 1.1 You acknowledge that *you* have entered into this *security agreement* for valuable consideration from *us* and agree with *us* as follows.
- 1.2 These standard conditions are to be read together with the security agreement form signed by you, by the additional covenantor, and by us.
- 1.3 When the security agreement form has been signed by you by the additional covenantor, and by us, it will create a binding security agreement.
- 1.4 You acknowledge that we will register a financing statement on the PPSR to protect our security interest in the secured property.
- 1.5 Words used in this security agreement that are printed like this are defined in **Clause 28**.

2 Consideration

- 2.1 In consideration of *you* entering into this *security agreement*, we will provide a secured *commercial loan* to you, subject to the terms of this *security agreement*.
- 2.2 The *loan amount* referred to in the *security agreement form* is the total amount that may be drawn down by *you* and *you* must use the *loan amount* for the *purpose*.
- 2.3 We may debit or charge to the *loan amount* interest, taxes and any other amount referred to in the *security agreement*.

3. Title and Security (Personal Property Securities Act 2009 (PPSA))

- 3.1 You grant to *us* a *purchase money security interest (PMSI)* in the *motor vehicle* and agree that the *PMSI* has attached to the *motor vehicle* and that the attachment of the *PMSI* has in no way been deferred or postponed from the date of this *security agreement*.
- 3.2 You will provide all information required by us, including the *serial number* of the *motor vehicle* to enable registration, renewal or making an amendment demand of a *security interest* and/or *PMSI* under the *PPSA* and the *PPS Reg*.
- 3.3 Our interest in the *secured property* is as the *secured party* and is a legal interest;

- 3.4 The *secured money* comprises all amounts payable to *us* under this *security agreement* from time to time, including, without limitation, the *secured money* and all other amounts the payment or repayment of which forms part of the *obligations*.
- 3.5 We may enter into this *security agreement* as principal or as agent for another person and we may transfer *our* interests in the *secured property* or in this *security agreement*, or give another person an interest in or form of security over either of them, without getting *your* consent.
- 3.6 You agree that: nothing in sections 130 or 143 of the *PPSA* will apply to this *security agreement*, or the collateral under this *security agreement*.
- 3.7 You agree to waive your rights to do any of the following:
 - receive notice of removal of an *accession* under s 95 of the *PPSA*;
 - receive notice of an intention to seize *collateral* under s 123 of the *PPSA*;
 - receive notice of disposal of collateral under s 130 of the *PPSA*;
 - receive a statement of account if there is no disposal under s130(4) of the *PPSA*;
 - receive notice of retention of collateral under s 135 of the *PPSA*;
 - redeem the collateral under s 142 of the *PPSA*;
 - reinstate the *security agreement* under s 143 of the *PPSA*;
 - object to the purchase of the collateral by the secured party under s 129 of the *PPSA*; and
 - receive a statement of account under s 132(3)(d) of the *PPSA* following a disposal showing the amounts paid to other secured parties and whether security interests held by other secured parties have been discharged.

For further information on the Personal Property Securities Act 2009 refer to www.ppsr.gov.au.

4. Repayment of Secured Money

- 4.1 The *secured money* is repayable on demand but we will not make demand for repayment of the whole of the *secured money* until the end of the *term*, or such other term as might be agreed by *us* in writing, unless *you* are in default under the *security agreement*.

- 4.2 When we have received all the money payable to *us* and, provided *you* are not in default under the *security agreement*, we will release the *secured property* from the *PMSI* referred to in clause 3.

5. Representations and Warranties

General

- 5.1 Each *transaction party* represents and warrants to *us* that:

- **Business purpose** – *You* will use the *motor vehicle* for business purposes;
- **Capacity** – each *transaction party* has capacity to unconditionally execute and comply with its obligations under the *transaction document*;
- **Binding obligations** – each *transaction document* binds each *transaction party* who is a party to it, and is enforceable by *us* against that *transaction party*;
- **No contravention** – no *transaction party* will breach any law, its constituent documents or any obligations it has to any other person by executing and complying with the *transaction document*;
- **Disclosure** – information given to *us* by the *transaction party* is correct, complete and not misleading;
- **Trust** – no *transaction party* is trustee of any trust, other than a trust *you* have told *us* about prior to entering into the *transaction document*;
- **Insurance** – each *policy* is enforceable against the relevant insurer in accordance with its terms and is not void or voidable;
- **Financial statements** – *financial statements* of the *transaction party* given to *us* are true, fair and accurate at the date on which they are prepared;
- **No change in financial position** – there has been no material change in the financial position of any *transaction party* since the date the last *financial statements* were given to *us*;
- **No default** – no *event of default* subsists;
- **No potential event of default** – no event has occurred which constitutes or which, with the giving of notice and/or the lapse of time and/or a relevant determination by *us*, would constitute an *event of default*; and
- **Application** – each of the representations and warranties set out in any *application* are true and correct.

- **Further information** – *You* undertake to sign any further documents and/or provide any further information (to be complete, accurate and up-to-date in all respects), which *we* may reasonably require to register a financing statement or financing change statement on the *PPSR* in respect of the *PMSI* granted to *us* under clause 3.1.

Secured property

- 5.2 *You* represent and warrant to *us* that in respect of the *secured property*:

- **Ownership** – *You* are the sole legal and (except to the extent it is held in a trust) beneficial owner;
- **No sale** – *You* have not sold, agreed to sell, or given any option to purchase, the *secured property* except as disclosed to *us* in writing;
- **No encumbrances** – the *secured property* is free from *encumbrances*, other than *encumbrances* listed on a title search of the *secured property* or *encumbrances* we have consented to in writing;
- **No outstanding charges** – there are no charges (including *licence fees*,) due to any person or *government body* in respect of the *secured property*.

- 5.3 The representations and warranties set out above are taken to be made each day that the *secured money* is owing.

Acknowledgements

- 5.4 Each *transaction party* acknowledges that:

- the *transaction party* has not entered into the *transaction document* in reliance on any representation, warranty, promise or statement by *us* or any person on *our* behalf and each *transaction party* has made independent enquiries and obtained such advice (legal, accounting and/or financial) as is considered appropriate before entering into this *security agreement*;
- we have entered into the *transaction document* in reliance on the representations and warranties set out above;
- any person who introduces *you* to *us* or vice versa:
 - (i) is not *our* agent for the purposes of this *security agreement*;
 - (ii) has made no representation, warranty or undertaking on *our* behalf;

(iii) is not authorised to make representations on *our* behalf.

▪ We may give to any *transaction party*:

- (i) a copy of the *security agreement*; and
- (ii) a copy of any notice sent to you under this *security agreement*.

6. The Motor Vehicle

6.1 Delivery

You are responsible for obtaining the *motor vehicle*.

6.2 Use

Provided there has been no breach of the *security agreement*, you may have custody of the *motor vehicle* during the *term* and we may not interfere with your right to use the *motor vehicle* unless this *security agreement* permits *us* to do so.

6.3 Acknowledgement

You acknowledge that:

- *you* have not relied on *our* skill and judgment in deciding to acquire the *motor vehicle*;
- *we* have not made any representation, warranty, undertaking of the safety of the *motor vehicle*;

6.4 Warranty

You warrant that you:

- hold and will continue to hold a current *motor vehicle driver's licence* during the *term*;
- will use the *motor vehicle* for commercial purposes.

7. Your Obligations

7.1 You must:

- use the *motor vehicle* only for the purpose for which the *motor vehicle* was designed and must observe any law relating to the use of the *motor vehicle*;
- ensure that the *motor vehicle* is registered at all times with the Department of Planning and Infrastructure;
- not, without *our* consent:
 - (i) mortgage the *secured property* to another person or use the *secured property* to secure other loans;
 - (ii) sell or part with possession of the *secured property*;

(iii) make any alterations to the *secured property* or add to the *secured property*;

(iv) do anything or allow anything to happen that might reduce the value of the *secured property*;

- make it clear to others that *we* have a *security interest* over the *secured property*;
- **Pay secured money** – pay the *secured money* to *us* in accordance with the *transaction documents*, or otherwise as *we* reasonably require;
- **Pay interest** – pay interest on any *secured money* from time to time owing by *you* to *us* in accordance with the requirements of the *transaction documents* or otherwise as *we* reasonably require;
- **Secured property** – not transfer, lease or otherwise deal with any of the *secured property* without *our* written consent, or allow any encumbrances over of the *secured property*, other than encumbrances to which *we* have consented in writing;
- **Possession of secured property** – not part with possession of the *secured property*;
- **Change of control** – if a *transaction party* is a corporation, not permit a *change of control* without *our* prior written consent;
- **Maintain status** – do everything necessary to maintain and to ensure that *you* have the right, and are properly qualified, to conduct *your* business and *you* obtain and maintain all necessary licences and franchises;
- **Information** – give *us* on demand any information in relation to a *transaction document*, any *secured property* and *your* financial affairs and business operations;
- **Obligations** – *You* must comply with the *your* obligations, including under any encumbrance or law relating to the *secured property* and institute or defend any legal proceedings which *we* reasonably require to protect the *secured property*;
- **Give notices** – give notice to *us* as soon as *you* become aware of any *event of default*, any *encumbrance* being created (other than a *security*), any litigation or claim in respect of *you* or the *secured property* or any event which may have a *material effect*.
- tell *us* if the place where the *motor vehicle* is ordinarily kept has changed from the address specified in the *security agreement form*.

8. Insurance

- 8.1 *You* must effect and maintain insurance over the *secured property* with insurers, for amounts, against risks and on terms that *we* reasonably require or, in the absence of any express requirement, that a prudent and reasonable owner of the *secured property* would effect and maintain.
- 8.2 *You* must ensure that each *policy* must be in a form and substance satisfactory to *us* and with a reputable and solvent insurer and is taken out in your name and *our* name as co-insureds and that *our* respective interests in the *secured property* are insured against loss.
- 8.3 *You* must:
- give *us* on demand a certificate which satisfies *us* that any *policy* we require is current and no premiums or other money are outstanding;
 - give *us* all *policies* and documents relating to the *policies* we require, including all renewal certificates, certificates of currency and endorsement slips; and
 - not do or omit to do anything which may prejudice the insurance policy or policies or which may adversely affect any entitlement to make a claim under any *policy*.
- 8.4 *We* may, but *You* must not without *our* prior written consent, enforce, conduct, settle or compromise claims under any *policy* in relation to the *secured property* irrespective of whether the *policy* also relates to other property.
- 8.5 Until the *secured money* has been paid in full, any money paid by an insurer under any *policy* must, subject to the provisions of that *policy* and of any *security*, be applied in any way that *we* direct at our absolute discretion.

9. Maintenance

- 9.1 *You* must keep the *secured property* in good repair (fair wear and tear excepted) and ensure that the *secured property* is serviced and maintained in accordance with the supplier's specifications;
- 9.2 *You* must ensure that any repairs on the *secured property* are carried out by qualified and competent persons;
- 9.3 Alterations, *accessions* or additions may not be made to the *secured property* without the prior written consent of *us*;

- 9.4 *You* acknowledge that any *accessions* or replacement parts become part of the *secured property*.

10. Access

- 10.1 *You* must allow *us* and/or *our* representatives and *you* hereby authorise *us* and/or *our* representatives, to enter the place where the *secured property* is usually kept:
- to inspect the condition of the *secured property*;
 - to check whether the terms of this *security agreement* are being complied with;
 - to exercise any of *our* rights under this *security agreement*.
- 10.2 *We* must give *you* reasonable notice of entry.

11. Loss or Damage

- 11.1 *You* must tell *us* immediately if the *secured property* is:
- stolen;
 - destroyed;
 - damaged to such an extent that *you* or the insurer decides that repair is impractical or uneconomic.
- 11.2 *We* are entitled to receive all amounts which are paid to *you* by the insurer or any other person because of any event listed in 11.1. If *you* receive any amount, *you* hold such amount on trust for *us*.
- 11.3 *You* must pay to *us* on the next *payment date* after any of the events listed in 11.1 the discharge value of the *secured money* on that date less any money *we* have received from the insurer or any other person because of the event in 11.1;

If an event in 11.1 happens, *you* agree to promptly make a claim on any policy of insurance in relation to the *secured property* and to use *your* best endeavours to pursue any such claim;

In consideration of *you* making a claim on any policy of insurance, *we* agree that *you* may pay to *us* all amounts due and payable to *us* in relation to the *secured property* by instalments as follows:

- (i) on each payment date after the happening of any of the events in 11.1, an amount equal to the repayment instalment which would otherwise have been payable on that payment date;

- (ii) the balance of all amounts due under the *security agreement* in relation to the *secured property* on the earlier of six (6) months from the date of the happening of any of the events in 11.1 and the date we receive any money from the insurer or any other person because of an event in 11.1, together with interest calculated on the daily balances from the due date until all amounts are paid.

11.4 When you make a payment under 11.3, we will:

- discharge the registration of the *security interest* and/or *PMSI* from the *PPSR*; and
- notify you of the revised payment instalment and any related taxes (including GST) and duty.

11.5 If we receive money from the insurer or any other person after you have paid the amount due to us, we will refund to you the amount received less the amount due.

11.6 If the *secured property* is damaged but not to the extent as listed in 11.1, you must restore the *security property* to the condition the *security property* was in before the *security property* was damaged.

12. Repayments

12.1 You must pay to us:

- on or before the *payment date*, the *repayment instalment*;
- at the same time as the repayment instalment, any fees and charges payable to us under the *security agreement*;
- on request from us all other moneys, duties and taxes (including GST) payable in connection with the *security agreement* or *transaction document*.

12.2 You must sign all documents (including direct debit authority form) and maintain all procedures necessary to enable us to debit direct from your bank account when they become due, repayment instalments and any other amount under this *security agreement*.

12.3 You must not withhold any or part of any payment under this *security agreement* from us because:

- the *secured property* is damaged, does not operate or is not in your possession;
- you claim to have a set off, counterclaim or other right against us or any other person.

13. Overdue Payments

13.1 You must pay to us interest calculated on daily balance at the ordinary interest rate on any amount which is not paid on time for the period it is unpaid.

13.2 We may on the first day of the month:

- charge interest (at the ordinary interest rate) on unpaid interest for any period; and
- add it to the amount for which you are already liable under this *security agreement*.

13.3 You must pay all interest specified in 13.2.

13.4 Interest shall be payable on any amount paid by us in connection with the *secured property* or this *security agreement* until the amount is reimbursed or recovered by us.

14. Indemnities

14.1 You, and the *additional covenantor* indemnify us against any *break costs*, liability or loss arising from any costs, charges and expenses (including on account of funds borrowed, contracted for or used to fund any amount payable by it) in connection with the provision of the *loan amount* or this *security agreement* or any *event of default* and our collection agent fees, legal fees and expenses on an indemnity basis reasonably incurred caused or contributed by:

- us exercising or attempting to exercise a right under this *security agreement* or any *transaction document*;
- us endorsing duty and/or registering the *PMSI* • you not complying with this *security agreement* or any *transaction document*;
- us being required to repossess the *secured property*;
- us being required to repair/restore the *security property* and to sell the *secured property*;
- us receiving payments under this *security agreement* other than on the due dates;
- any prepayment or any payment being made on a date other than a *repayment date*, or;
- anything we do in reliance on any communication purporting to be from a *transaction party*.

14.2 Each indemnity is a continuing obligation, separate and independent from your other obligations. Each indemnity continues after this *security agreement* ends or is terminated. It is not necessary for *us* to incur expenses or make a payment before *we* can enforce a right of indemnity.

15. Commission

15.1 *You* agree to *us* paying commission, fees or other remuneration to any person who introduces *you* to *us* or vice versa. *You* acknowledge that *we* may take any such payment into account when calculating the repayment instalments.

16. Events of Default

16.1 Each of the following is an *event of default* (whether or not it is caused by anything outside the control of any *transaction party*):

- **Failure to pay** a *transaction party* fails to pay on time any money due for payment by it under a *transaction document*;
- **Failure to comply** a *transaction party* fails to do something it must do under a *transaction document*, or does something that it is not permitted to do under a *transaction document*;
- **Untrue warranty** a warranty or representation made or deemed to be made to *us* by a *transaction party* is untrue or misleading in any material respect;
- **Void document** a *transaction document* is void, voidable or otherwise cannot be enforced by *us*, or is claimed to be so by a *transaction party*;
- **Loss of priority** a *security* does not have, or ceases to have, the priority which it purports to have under the relevant *transaction document*;
- **Authorisation ceasing** an authorisation from a *government body* necessary to enable a *transaction party* to comply with its obligations under the *transaction documents* or carry on its principal activity is withheld or ceases to be in full force and effect;
- **Legal action** any court, tribunal, authority or regulatory body does anything relating to any property of a *transaction party* (for example issuing a notice or making an order confiscating or forfeiting property) which, in *our* opinion has or is likely to have a *material effect*;
- **Judgment to pay** an order for payment is made or judgment is entered against *you* and is not paid by *you* within 10 *business days*;
- **Enforcement of other security** a person who holds a *security interest* over any property of a *transaction party* takes any step to enforce that *security interest*;
- **Insolvency** an *insolvency event* occurs in relation to a *transaction party*;
- **Cessation of business** any *transaction party* ceases or threatens to cease to carry on any substantial part of its business;
- **Change of control** – *change of control* occurs without *our* prior written consent;
- **Death or incapacity** a *transaction party* who is a natural person dies, ceases to have legal capacity or becomes a person protected by the State;
- **Material effect** an event or series of events, which in *our* opinion has or is likely to have a *material effect*;

16.2 If *we* believe that any one or more of the events described in clause 16.1 has occurred, *we* may determine in *our* absolute discretion that an *event of default* has occurred. *Our* determination will be final and binding on *you*.

17. Default Powers

General

17.1 While an *event of default* subsists, *we* may exercise any or all of the rights set out in this *security agreement* in any way and at any time that *we* think fit. *Our* rights set out in the *security agreement* may be exercised without the need for any demand or notice.

Acceleration

17.2 While an *event of default* subsists, *we* may give *you* a notice in accordance with this *security agreement* determining that the *secured money* is immediately due for payment. When *you* receive the notice, *you* must immediately pay in full the amount referred to in that notice.

Statutory and implied powers

17.3 While an *event of default* subsists, *we* may exercise all rights capable of being conferred by law on secured parties under security interests or otherwise.

Repossession of the motor vehicle

- 17.4 If you do not pay the *secured money* set out in the notice referred to in this clause, *we*, or *our* representative may:
- enter and remain upon any premises where the *motor vehicle* is or where we suspect the *motor vehicle* is without liability for trespass or otherwise, and take possession and control of the *motor vehicle*.

Reposessed motor vehicle

- 17.5 As soon as practicable after the *motor vehicle* is reposessed by *us*, *we* must:
- offer it for sale by public auction or tender and need not include any warranty on the condition of suitability of the *motor vehicle*; or
 - take any other steps permitted by law *we* decide to mitigate *our* loss.

Ancillary powers

- 17.6 While an *event of default* subsists, *we* may:
- execute any deed or other document as attorney for *you* for the purpose of exercising any of *our* rights under this *security agreement*;
 - delegate to any person any right (including this right of delegation) under this *security agreement*; and
 - do anything reasonably incidental or conducive to the exercise of any of our other rights under this *security agreement*.

18 Exercise of Default Rights

Exclusion of legislation

- 18.1 The provisions implied in *security agreements* by the *PPSA* are negated or varied only so far as they are inconsistent with this *security agreement* and are otherwise varied so as to become consistent with this *security agreement*.
- 18.2 Any statutory restrictions (other than mandatory restrictions) on any of *our* rights or an *attorney* to lease or otherwise deal with the *secured property* do not apply.

Default notice

- 18.3 *We*, and an *attorney* may exercise any right under this *security agreement* in relation to an *event of default* without first giving notice to *you* or allowing the lapse of any period of time to the extent that the law permits.

- 18.4 If a law requires that a notice be given or a lapse of time occur before any right can be exercised, then the period of notice or lapse of time is one day.

Application of money

- 18.5 Subject to any mandatory statutory requirements and to the rights of the holder of any *security interest* ranking in priority to, or equally with, this *security interest*, the *remedy proceeds* will be applied by *us*, or an *attorney* as follows:
- first, towards the payment or reimbursement of the *costs* of and incidental to the exercise or enforcement or attempted exercise or enforcement of *our* rights;
 - secondly, towards the remuneration of any *attorney*;
 - thirdly, towards the *secured money*, and the *remedy proceeds* must be appropriated between them as *we* think fit; and
 - fourthly, to any person entitled to the *secured property* or authorised to give receipts for that money.

Contingent indebtedness

- 18.6 If part of the *secured money* is contingently owing, or in *our* reasonable opinion, there is a prospect that it may become owing (whether actually or contingently) and *we* receive any money under this *security agreement*, *we* may:
- pay that money into a suspense account and hold it as security for the payment of the *secured money*;
 - at any time appropriate any money in the suspense account towards the satisfaction of any money due for payment by *you* to *us* in any way that *we* think fit, and
 - when the *secured money* is satisfied in full or *we* no longer hold that opinion, *we* must pay the balance to any person entitled to the *secured property* or authorised to give receipts for that money.

Third party dealings

- 18.7 Any person dealing with *us*, or an *attorney* in relation to this *security agreement*:
- need not be concerned to enquire whether the right is exercisable or properly exercised; the *attorney* is properly appointed; or any money paid by it to *us*, or an *attorney* is properly applied; and

- the title of that person to any property acquired by it from *us*, or an *attorney* will not be adversely affected by the right not being exercisable or any improper appointment, exercise of the right or application of money of which it does not have actual notice.

18.8 The benefit of this **clause** is held on trust for the benefit of *us*, each *attorney* and each person dealing with any of them.

19. Preservation of Our Rights

Primary obligations

19.1 *Your* obligation to pay the *secured money* is a primary obligation. *We* are not obliged to enforce any right against any person or property before making a demand for payment by *you*.

Preservation of your obligations

19.2 *Your* obligations and *our* rights under this *security agreement* will not be affected by anything which, but for this **clause**, might prejudice them.

Suspension of your rights

- 19.3 *You* waive any right to be subrogated to, or otherwise have the benefit of, this *security agreement* until the *secured money* has been satisfied in full and in *our* reasonable opinion, any payment towards the satisfaction of the *secured money* is not void, voidable or otherwise unenforceable or refundable.
- 19.4 *You* must not exercise a right of set-off or counterclaim which reduces or extinguishes *your* obligation to pay the *secured money*.
- 19.5 *We* are not obliged to marshal in *your* favour any *security* or any property that *we* have an interest in or may be entitled to receive.

Reinstatement of our rights

- 19.6 If a transaction or payment relating to the *secured money* is void, voidable or otherwise unenforceable or refundable:
- *we* are entitled against *you* to all rights under this *security agreement* that *we* would have had if the transaction or payment was not void, voidable or unenforceable or refundable; and
 - *you* must do all things and sign such documents necessary or convenient to restore to *us* the *security interests* created by this *security agreement* and *our* rights under this *security agreement* immediately before that transaction or payment.

20. Our Rights and Obligations

Additional security

20.1 If *we* reasonably believe that:

- the value of any *secured property* has declined; or
 - the amount secured by a *security* has increased for any reason,
- you* agree to provide *us* with any additional *security* *we* ask for within the timeframe *we* reasonably require.

Appointment of valuers and consultants

20.2 *We* may appoint a valuer to value the *secured property* (at *your* cost) every 3 years during the term of this *security agreement* or at any other time *we* choose.

20.3 If *we* reasonably believe that:

- an *event of default* subsists; or
- circumstances exist which could lead to an *event of default* occurring,

we may appoint any *consultants* *we* believe are appropriate to investigate and report on whether *our* belief is correct. *You* must provide reasonable assistance to any *consultant* (including by providing them with any documentation or other information they ask for).

You must pay all costs associated with the appointment of any *consultant*.

20.4 *You* acknowledge and agree that:

- any valuer and any *consultant* *we* appoint pursuant to this clause is an independent contractor and is not *our* agent or employee; and
- any report or other information *we* obtain from a valuer or *consultant* is for *our* use only.

Authority to complete and amend

20.5 Each *transaction party* authorises *us* to:

- fill in any blanks in the *transaction document*; and
- make any amendments to any *transaction document* to accurately reflect or give effect to the terms of this *security agreement*.

21. Costs and Expenses

21.1 *You*, and the *additional covenantor* must pay to *us* on demand:

- *our costs* relating to the negotiation, preparation, execution and duty payable in respect of this *security agreement*, the *PMSI* and any variation or discharge of it;
- *our costs* relating to any *event of default* or the exercise or attempted exercise or the preservation of any of *our* rights under this *security agreement* and
- any taxes and registration or other fees (including fines and penalties relating to the taxes and fees) which are payable in relation to this *security agreement* or any transaction contemplated by it.

21.2 If we must pay GST on any *supply* made under this security agreement, *you* must pay to *us* an amount equal to the GST payable on the *supply*, when the consideration for the *supply* is to be provided under this *security agreement*, in addition to the consideration.

21.3 If *you*, and the *additional covenantor* are required to pay for or reimburse *us* for *our costs* or any expense *we* incur, or if *you* are required to make a payment under an indemnity in relation to any *cost* or expense, the amount *you* must pay is the sum of:

- the amount of the expense or outgoing less any *input tax credit* in respect of that expense or outgoing that *we* are entitled to; and
- if *our* recovery from *you* is in respect of a *taxable supply*, an amount equal to the GST payable by *us* in relation to that recovery.

22. Attorney

Appointment

22.1 *You* irrevocably appoint *us* or any of our *authorised representative* as *your attorney* with the power, after a notice is given under this *security agreement*, to do all acts and things which *you* are obliged to do under this *security agreement* or which in the *attorney's* opinion are reasonable and necessary in connection with the *secured property*, the protection or perfection of *our* interest in the *secured property* or to enable the exercise of any of *our* rights.

General

22.2 Any *attorney* may exercise any right solely for the benefit of *us*, even if the exercise of the right constitutes a conflict of interest or duty.

22.3 *You* ratify anything done or not done by the *attorney* under the power of attorney.

22.4 The power of attorney is granted to secure the compliance of *your* obligations to *us* and any proprietary interests under this *security agreement*, and for valuable consideration (receipt of which is acknowledged).

23. Notice Provisions

23.1 Any notice under this *security agreement* must be in writing.

23.2 In addition to any other lawful means, *we* may serve a notice on any *transaction party* by:

- personally delivering or leaving it at a *transaction party's current address*,
- mailing the notice by pre-paid post to a *transaction party's current address*, in which case the notice will be taken to have been received by the *transaction party* on the second *business day* after posting; or
- sending it by fax to the *transaction party's current address*, in which case the notice will be taken to have been received by the *transaction party* when *our* fax machine produces a report confirming that the fax was sent in full to the *transaction party's current address*. That report is conclusive evidence that the *transaction party* received the fax in full at the time indicated
- email

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

23.4 *We* are not taken to receive a notice under this *security agreement* until *we* actually receive the notice in legible form.

24 General Provisions

Assignment

24.1 *We* may *assign our* rights and obligations under this *security agreement* to any person without obtaining any *transaction party's* consent. *You* agree:

- that *we* may disclose any information or documents *we* consider necessary; and
- to execute any documents *we* reasonably specify, to assist *us* to exercise any of these rights.

- 24.2 *You* must not *assign* any rights or obligations under this *security agreement* without *our* written consent.

Governing law

- 24.3 This *security agreement* is governed by the laws of the State of Western Australia. 24.4 *You* irrevocably submit to the non-exclusive jurisdiction of the courts exercising jurisdiction there.

Waiver

- 24.5 A waiver of *our* rights under this *security agreement* will not be effective unless it is in writing.
- 24.6 A waiver or indulgence *we* grant under this *security agreement* does not affect *our* rights in relation to any further breach of this *security agreement*.

25. Capacity of the Transaction Parties

Trusts

- 25.1 If *you* enter into this *security agreement* as trustee of a trust (whether or not *you* have told *us* about the trust) then unless a Trust Warranty Deed says otherwise:

- *you* warrant that the trust does not have an ABN for the trust for the enterprise that holds or has an interest in the *secured property*;
- *you* are liable under this *security agreement* as trustee of the trust and in its own right;
- a reference to *you* includes *you* as trustee of the trust and in *your* own right;
- a reference to *your* property or business includes property owned and business carried on by *you* as trustee of the trust and property owned and business carried on by *you* in *your* own right;
- *you* warrant that *you* have power as trustee of the trust to execute and perform *your* obligations under this *security agreement* and have properly performed *your* obligations to the beneficiaries;
- *you* warrant that all action required by the trust deed to authorise *your* execution and performance of this *security agreement* has been taken;
- *you* warrant that *you* have not defaulted in the performance of *your* obligations as trustee;
- *you* warrant that no action has been taken to terminate the trust;

- *you* warrant that except where the *application* states otherwise, *you* are the only trustee of the trust and will ensure that *you* remain the only trustee of the trust; and
- *you* warrant that *you* have a right to be fully indemnified out of *trust property* in relation to *your* obligations under this *security agreement*. *You* must not release or dispose of *your* equitable lien over the *trust property* which secures that indemnity;
- *you* warrant that *you* are properly incorporated and solvent;
- *you* warrant that the rights of the beneficiaries in relation to the *trust property* are subject to *our* rights and interests in the *trust property* and any rights or interests to which *we* may from time to time be subrogated; and
- *you* must comply with *your* obligations as trustee of the trust, must ensure that the *trust property* is not mixed with any other property and must ensure that the trust is not terminated or its terms varied, that *trust property* is not resettled and that the capital of the *trust property* is not distributed at any time.

Partnerships

- 25.2 If any two or more of *you* enter into this *security agreement* as partners of a partnership (whether or not *you* have told *us* about the partnership):

- *you* warrant that the partnership has an ABN for the partnership for the enterprise that holds or has an interest in the *secured property*;
- both *you* and the partnership are liable under this *security agreement*;
- a reference to *your* property or business includes property owned and business carried on by the partnership, *your* partnership interests and property owned and business carried on by *you* in *your* own right;
- *you* warrant that the partnership is duly constituted in accordance with the partnership agreement and each of *you* are all of the partners of the partnership at the date of this *security agreement*;
- *you* warrant that all necessary action required by the partnership agreement to authorise the unconditional execution and delivery of, and compliance with *your* obligations under, this *security agreement* has been taken;
- *you* must not vary, amend, revoke or terminate the partnership agreement except with *our* consent; and

- *you* must not permit any other person to become a partner in the partnership except with *our* consent and after the incoming partner has executed such documents as *we* required so that the incoming partner is bound under the *PMSI* and this *security agreement*.

26. General

- 26.1 **Amendment** – No variation or waiver of, or any consent to any departure by a party from, a provision of this *security agreement* is of any force and effect unless it is confirmed in writing signed by the parties and then that variation, waiver or consent is effective only to the extent for which it is made or given.
- 26.2 **Waiver** – The failure, delay, relaxation or indulgence on the part of any *transaction party* in exercising any power or right conferred upon that *transaction party* by this *security agreement* does not operate as a waiver of that power or right, nor does any single exercise of any power or right preclude any other or further exercise of it the exercise of any other power or right under this *security agreement*.
- 26.3 **Liability of parties** – If any *transaction party* to this *security agreement* consists of more than one person then the liability of those persons in all respects under this agreement is a joint liability of all those person and a separate liability of each of those persons.
- 26.4 **Entire Agreement** – This *security agreement* constitutes the sole and entire agreement between the parties and a warranty, representation, guarantee or other term or condition of any nature not contained or recorded in this agreement is of no force or effect.
- 26.5 **Severance** – If any provision of this agreement is invalid and not enforceable in accordance with its terms, other provisions which are self-sustaining and capable of separate enforcement with regard to the invalid provision, are and continue to be valid and enforceable in accordance with their terms.

- 26.6 **Further assurance** – Each party must do, sign and execute and deliver and must procure that each of its employees and agents does, signs, executes and delivers, all deeds, documents, instruments and acts reasonably required or contemplated of it or them by notice from another party to effectively carry out and give full effect to this *security agreement* and the rights and obligations of the parties under it, both before and after the end of the *term*.

- 26.7 **Counterparts** – This *security agreement* may be executed by any number of counterparts and all of these counterparts taken together constitute one and the same instrument.

- 26.8 **Attorneys** – Where this *security agreement* is executed on behalf of a party by an attorney, that attorney by executing declares that the attorney has no notice of the revocation of the power of attorney under the authority of which the attorney executes the agreement on behalf of that party.

- 26.9 **Time of the essence** – Time shall be of the essence of this *security agreement* in all respects.

27 Meaning and Interpretation of Words

Meanings of words

- 27.1 In the *transaction documents*, terms have the following meanings, unless a contrary intention appears:

Accession means goods that are installed in, or affixed to, the *secured property*.

Additional covenantor means the additional covenantor described in the *security agreement form*.

Application means, in relation to a *facility*, the application completed on-line at the office of the agent.

Applicable legislation means in respect of the goods the Chattel Securities Act 1987 (as amended) and the Personal Property Securities Act 2009 (as amended) and in respect of real property the Transfer of Land Act 1893 (as amended), any subsidiary legislation and any other laws in those places applicable to or affecting the *Secured Property*.

Arrears means any unpaid overdue *secured money* as described in the *security agreement form*.

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

Assign includes an assignment, transfer, mortgage and anything with a similar effect including the giving of an interest in or form of *security interest* to a person, and *assignment* has a corresponding meaning.

Authorised representative means in relation to any party:

- If that party is a corporation, a director or secretary of that party or an officer of that corporation whose title contains the word “manager” or “director”, or a person performing the functions of any of them;
- That party’s lawyer; and
- A person appointed by that party to act as an authorised representative for the purpose of this document and whose appointment is notified in writing by the appointor to the other party.

Bankruptcy means:

- In relation to any corporation the appointment of an administrator, provisional liquidator or liquidator in respect of it because it is or may be insolvent; and
- In relation to an individual, that person becoming an insolvent under administration as defined in section of the Bankruptcy Act 1966 (Cth).

Break costs means the amount *we* calculate as being the amount *we* lose as a result of termination of any back to back funding arrangements or the liquidation or re-deployment of deposits or other funds *we* acquire or contract for to fund the *facility* and any loss of margin. It includes any amount necessary to compensate *us* for loss of yield as a result of that termination.

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

Change of control means where a *transaction party* is a corporation or a trustee the person or persons who control it cease to have that control, or a change takes place in the *transaction party’s* directors, or a transfer of shares in the *transaction party* is registered or new shares or options for shares in its capital are issued. Where the party is a trustee the person or persons who is or are the trustee or trustees is or are removed and ceases to have control of the trust.

Collateral means the *secured property*.

Commercial loan means the loan *we* will provide to *you* upon consideration of *you*, the *additional covenantor* and the *grantor* entering into the *security agreement*.

Consultant means accountants or financial managers or any other experts whom *we* have approved.

Corporations Act means the Corporations Act 2001 (Cth).

Costs include our reasonable internal administration costs and legal costs on a full indemnity basis.

Current address means:

- for notices sent to *us*, the current address (or if the notice is sent by fax, the current fax number) of the *loan office*; or
- for notices sent to *you*, the last address (or if the notice is sent by fax, the last fax number) which *you* advise *us* of in writing.

Default notice means a notice under clause 19.

Dishonour fee means the amount specified in the *security agreement form* and is applied when a cheque deposited into our account is not paid by your bank. The fee is then charged to your account where the cheque is dishonoured.

Early termination fee means the amount specified in the *security agreement form*.

Encumbrance means:

- any interest in or right over the *secured property*;
- anything which prevents, restricts or delays:
 - (i) the exercise of any right over the *secured property*;

- (ii) the use of the *secured property*; or
- (ii) the registration of any interest in or dealing with the *secured property*.

Event of default means any event described in clause 16.

Facility means in relation to each *borrower*, the facilities described in the *application*.

Facility limit means in relation to a *facility*, the amount described in the *application*.

Financial statements means statements of financial performance and statements of financial position together with statements, reports and notes attached to or intended to be read with any of those statements. If a *transaction party* is required by law to have its *financial statements* audited, or if we otherwise require a *transaction party* to prepare audited *financial statements*, they must be audited, by an auditor we have approved.

Financing statement means a document registered on the *PPSR* to notify a *security interest*.

Government body means:

- any person, agency or other thing exercising an executive, legislative, judicial or other governmental function of any country or political sub-division of any country;
- any public authority constituted by or under a law of any country or political sub-division of any country; and
- any person deriving a right by delegation directly or indirectly from any other government body.

Grantor means *You*.

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

Insolvency event means in relation to a person:

- the person is or states that it is unable to pay from its own money all its debts as and when they become due and payable;
- the person is taken or must be presumed to be insolvent or unable to pay its debts under any applicable legislation;

- an application or order is made for the winding up or dissolution of the person or a resolution is passed or any steps are taken to pass a resolution for its winding up or dissolution;
- an administrator, liquidator, controller or person with a similar function is appointed in respect of the person, or any action is taken to appoint any such person and the action is not stayed, withdrawn or dismissed within seven days;
- the person is deregistered under the *Corporations Act* or notice of its proposed deregistration is given to the corporation;
- a distress, attachment or execution is levied or becomes enforceable against any property of the person;
- the person enters into or takes any action to enter into an arrangement (including a scheme of arrangement or deed of company arrangement), composition or compromise with, or assignment for the benefit of, all or any class of its creditors or members or a moratorium involving any of them;
- a petition for the making of a sequestration order against the estate of the person is presented and the petition is not stayed, withdrawn or dismissed within seven days or the person presents a petition against itself;
- the person presents a declaration of intention under the Bankruptcy Act 1966 (Cth);
- anything analogous to or of a similar effect to anything described above under the law of any relevant jurisdiction occurs in respect of the person;
- any indebtedness of the person becomes due for payment before its stated maturity other than by the exercise of an option of the person to pay it before its maturity; or
- the person fails to pay when due for payment any indebtedness.

Loan amount means the loan amount referred to in the *commercial loan agreement form*.

Material effect means a material adverse effect on either:

- *Your* ability to perform its obligations under this document; or
 - the effectiveness, priority enforceability of this or any other credit support.

security agreement form and these *standard conditions*.

Motor vehicle means a motor vehicle built to be propelled wholly on land, by a motor that forms part of the property and:

- is capable of a speed of at least 10 Km/h; or
- has 1 or more motors that have a total power of greater than 200W; and
- does not run on rails, tram lines or other fixed paths,

being a passenger motor vehicle, light commercial motor vehicle being no more than 5 tonnes used for commercial purposes only, but which excludes trucks or motor vehicles over 5 tonnes and agricultural equipment.

Monthly account keeping fee means the fee defined in the *security agreement form*.

Motor vehicle driver's licence means any licence or permit which allows *you* to drive the *goods*.

Obligations means all the obligations and liabilities of *you* to *us* under the *security agreement* whether related to the payment of money or the performance or omission of any act or thing, including non-liquidated and contingent liabilities.

Payment date means the payment date detailed in the *security agreement form*.

Permitted encumbrance means an encumbrance created with *our* consent and is an encumbrance that is an encumbrance arising by operation of law to secure a monetary obligation maturing not more than 90 days after the date on which it is originally incurred.

Potential event of default means anything which with the giving of notice, lapse of time, fulfilment of any condition or determination of materiality will constitute, or would be likely to constitute, an event of default.

Policy means each insurance policy which a *transaction party* is obliged to take out or maintain under a *transaction document*.

PPSA means the *Personal Property Securities Act 2009*.

PPSR means the Personal Property Securities Register.

PPS Reg means the *Personal Property Securities Regulations 2010*;

Purpose means the purpose described in the *security agreement form*.

Relevant jurisdiction means the State of Western Australia.

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

Repayment instalment means the repayment instalment detailed in the *commercial finance agreement form*;

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

Secured money means all money which *you* (whether or not with another person) are or at any time may become actually or contingently liable to pay to *us* or for *our* account for any reason whatsoever. It includes money by way of principal, interest, fees, *taxes*, costs, indemnities, charges, duties or expenses or payment of liquidated or unliquidated damages for which *you* are or at any time may become so liable.

Secured property means the secured property referred to in the *security agreement form* together with any *accessions*, fixtures and/or fittings made to the secured property from time to time.

Security means any instrument or transaction which reserves or creates a *security interest* or under which a person agrees to create a *security interest*.

Security agreement comprises the *standard conditions* and *security agreement form*.

Security agreement form means the form entitled *security agreement form* which incorporates the *standard conditions*.

Security interest means any interest in or right over property which secures the payment of a debt or other monetary obligation or the performance of any other obligation.

Serial number means a vehicle identification number in accordance with national standards, as in force from time to time, made under the *Motor Vehicle Standards Act 1989*.

Standard conditions means the terms and conditions contained in this document.

Supply has the same meaning as taxable supply in the GST Act;

Taxes means a taxes (including any tax in the nature of a goods and services tax), rates, levies, imposts or duties (other than those on the net overall income of the creditor) and any interest, penalties, fines and expenses relating to any of them.

Term means the term of the *commercial loan* as set out in the *security agreement form* or such other period as the parties may in writing agree.

Transaction document means:

- the *security agreement form*;
- the *security*;
- the *financing statement* and the *PMSI*;
- any agreement relating to the priority of a *security*;
- any other present or future document or agreement under which *secured money* is or may become payable at any time;
- any document which we agree in writing to be a *transaction document* for the purposes of this *security agreement*;
- any agreement or instrument created under any of them; and
- each document entered into for the purpose of amending, novating, restating, renewing or replacing any of them.

Transaction party means:

- *you*;
- the *additional covenantor*;
- where any *security interest* is granted or created by any person or persons in addition to the *mortgagor* to secure the *secured money*, the *mortgagor* and that person or those persons; and
- where any person enters into a loan or other facility agreement or a credit support agreement or any other document in relation to the secured money or the secured property or both, that person or those persons.

Trust property means the present and future rights, undertaking and property comprising the trust fund of any trust.

Us means the mortgagee described in the *commercial finance agreement form* and *we* and *our* has a corresponding meaning

You means the *granter* described in the *commercial finance agreement form* and *your* has a corresponding meaning.

28. Interpretation

- 28.1 Terms consideration, GST, input tax credit, supply and taxable supply each has the meaning given in the A New Tax System (Goods and Services Tax) Act 1999.
- 28.2 Headings are only for convenience and do not affect the interpretation of this mortgage.
- 28.3 References to the singular include references to the plural and vice versa.
- 28.4 “Includes” and “including” are not words of limitation.
- 28.5 Examples are descriptive only, and are not exhaustive.
- 28.6 A reference to a thing includes all or any part of that thing.
- 28.7 A reference to a person includes any company, partnership, trust, joint venture or association.
- 28.8 If there is more than one of you then the liability of each of you is joint and several.
- 28.9 A reference to a document or statute includes all variations, supplements or replacements to it.
- 28.10 Where this mortgage requires you to do anything on a day which is not a business day, then you must do that thing on the preceding business day.
- 28.11 References to time are to Perth time.
- 28.12 Time is of the essence in each of the transaction documents.

Metropolitan Member Service Centres

Carousel:	Shop 1098, Westfield Carousel Shopping Centre, Albany Highway
Mandurah:	Shop 112, Centro Mandurah Shopping Centre, Pinjarra Road
Morley:	Shop 1, Morley Market Shopping Centre, Bishop Street
West Perth:	832 Wellington Street

Regional Member Service Centres

Albany:	110 Albany Highway
Bunbury:	Shop 32 Stirling Centre, 22-28 Stephen Street
Geraldton:	Shop 29, Centro Northgate Shopping Centre, Chapman Road
Kalgoorlie:	51-53 Hannan Street

General Enquiries

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Visit www.rac.com.au/finance or any RAC Member Service Centre listed above.

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Current as at April 2013

