



**Moula**

# **Business Lending General Terms**

Booklet version 3.1 – Effective 29 August 2019

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# Introduction

## 1. How this document applies

This document contains terms that apply to the Facility that we've offered to you under the Letter of Offer. You should read this document together with the Letter of Offer. The Letter of Offer may make changes to how this document applies to the Facility or Facilities (as applicable) described in that Letter of Offer.

## 2. Your acknowledgement about seeking your own legal advice

You acknowledge and agree that you've sought your own independent legal advice and independent financial advice before entering into this Agreement or if not, you acknowledge and agree that you understand and are comfortable entering into this Agreement based on your own enquiries and due diligence.

## 3. The Facility

We'll provide one or more of the following facilities to you:

- (a) a Term Loan Facility which you may use by one advance and which you must repay to us in instalments; or
- (b) a Line of Credit Facility which you may use by way of multiple advances and which you must also repay to us in instalments; or
- (c) a Moula Pay Facility, which you may utilise by way of multiple advances (payable directly to the Merchant as a Merchant Disbursement) and repayable to us in instalments pursuant to an agreed repayment schedule,

as nominated in the Letter of Offer (or if you've been offered a Moula Pay Facility, your Moula Pay Repayment Schedule, accessible via your Customer Dashboard and approved by you as a part of your Moula Pay Payment Authorisation), in each case subject to these General Terms, including your right to Voluntary Prepayment. You agree that you'll use that Facility on the terms of your Letter of Offer, this document and the other Finance Documents. In return for us providing you with the Facility, you agree to comply with all of the terms of each Finance Document.

## 4. Purpose

- (a) You promise that the Business Purpose Declaration that you made when applying to us for a Facility is and will remain correct for as long as you have a Facility with us.
- (b) You agree you'll only use a Facility or Loan for any of the following business-related purposes:
  - (i) help with business cash-flow;
  - (ii) purchase of inventory;
  - (iii) payment for business-related goods and services;
  - (iv) repaying business debt; or
  - (v) paying for business overheads.
- (c) You must not use a Facility or Loan for any non-business-related purpose.

# Term Loan Facility

If the Letter of Offer states that we'll provide you a Term Loan Facility, these provisions apply to that Facility.

## **5. We'll lend you monies in a single instalment, being the Loan Amount**

We agree to lend you money in a single instalment amount of the Loan Amount, on the terms of the Finance Documents.

## **6. When we'll advance the Loan Amount**

After we've received:

- (a) an accepted Letter of Offer from you (which has been signed in a manner that is satisfactory to us) and
- (b) all other documents or information we need and we've countersigned the Letter of Offer, we'll send funds to you in one instalment under the Term Loan Facility by paying the Loan Amount from our Lender Bank Account to your Registered Borrower Bank Account via electronic funds transfer on the next Business Day following our receipt of the last document or information we need (subject to any unforeseen delay or interruption in the Australian banking intermediary processes).

With respect to your Term Loan Facility, you acknowledge and agree that the Loan funds may take more than one Business Day to reach your Registered Borrower Bank Account, but your Repayment Dates will remain unaffected.

If you don't provide us with the Letter of Offer accepted by you (which has been signed in a manner that is satisfactory to us) or all other documents or information we need, or we do not sign the Letter of Offer, we aren't obliged to provide the Loan Amount.

# Line of Credit Facility

If the Letter of Offer states that we'll provide you a Line of Credit Facility, these provisions apply to that Facility.

## 7. We'll lend you monies in multiple instalments

### 7.1 Loan

Subject to the Finance Documents, during the Availability Period we agree to lend you money in multiple instalments, and you may borrow money from us, under a Line of Credit Facility on the terms of the Finance Documents. The maximum aggregate principal amount available under the Line of Credit Facility at any time is the Available Facility.

### 7.2 Draws

- (a) You may request no more than 6 Draws under this Agreement.
- (b) Each Draw that you request must be for a minimum amount of \$5,000 and in multiples of \$1,000.
- (c) If you make 6 Draws and there is still an unutilised part of the Available Facility remaining, 7.3(a) and (b) will apply.

### 7.3 Utilisation

If, on the Minimum Utilisation Test Date, the sum of all Draws is less than 40% of the Facility Amount for the Line of Credit Facility, then, unless we notify you otherwise in writing, on and from the day after the Minimum Utilisation Test Date:

- (a) the Facility Amount for the Line of Credit Facility is reduced to the Amount Owing; and
- (b) we aren't obliged to provide any further Draws.

## 8. How you obtain and use Draws

### 8.1 Conditions precedent to each Draw

Our obligation to provide each Draw is subject to all of the following conditions being met to our satisfaction before we provide the Draw:

- (a) **(sufficient notice)** we've received a Draw Request for the Draw by 3PM AEST at least 1 Business Day before the requested Draw date;
- (b) **(within Availability Period)** the Draw date is during the Availability Period;
- (c) **(within Available Facility)** the Draw is for an amount not exceeding the Available Facility;
- (d) **(financial data)** you've granted us with access to the same source of financial data as provided at the date you sign the Letter of Offer, and we were able to access and utilise the data to our satisfaction;
- (e) **(current 3 Month Revenue Average)** we are satisfied that the Current 3 Month Revenue Average is more than 75% of the Baseline 3 Month Revenue Average determined at the date of the relevant Draw Request;
- (f) **(no Event of Default)** we are satisfied that no Event of Default has occurred or is subsisting or is likely to result from the Draw being provided;
- (g) **(promises)** we are satisfied that each promise or representation an Obligor makes to us in the Finance Documents is correct and not misleading as at the date of the relevant Draw Request and as at the date of the relevant Draw is to be provided, with reference to the facts and circumstances on each of those dates;



- (h) **(no change in beneficial ownership)** there has been no material adverse change in the beneficial ownership of any Obligor;
- (i) **(other financing)** since the date of the Agreement, the Borrower has not entered into any borrowing or financing arrangements with any other lender that together do not exceed an amount greater than 25% of Facility Amount.
- (j) **(no creditworthiness deterioration)** since the date that we conducted applicable Obligor credit reference agency checks prior to entering into this Agreement, all of the following tests are satisfied:
  - (i) each Obligor's credit score has not deteriorated by more than 10%; and
  - (ii) each Obligor's credit record has no more than 1 credit enquiry from any lending business.

### 8.2 Waiver

The conditions precedent in this clause are for our sole benefit and may only be waived by us.

### 8.3 Draw Request

A Draw Request is irrevocable and is only effective when we actually receive it. You must not give a Draw Request which conflicts with a Draw restriction specified in the Finance Documents or which otherwise would breach a provision of the Finance Documents.

### 8.4 Draws provided net of interest

You agree that for each Draw (other than an Application Draw) we'll determine the Current Interest Amount, which will be deducted from the amount of the relevant Draw and applied in payment of Interest.

## 9. When we'll advance each Draw

If we are obliged to provide a Draw, we'll pay the Net Draw Amount to your Registered Borrower Bank Account via electronic funds transfer within 2 Business Days of our receipt of the applicable Draw Request, subject to any unforeseen delay or interruption in the Australian banking intermediary processes.

With respect to your Line of Credit Facility, you acknowledge and agree that, notwithstanding the Draw funds may take more than 1 Business Day to reach the Borrower's Registered Borrower Bank Account, the Repayment Dates will remain unaffected.

# Moula Pay Facility

If the Letter of Offer states that we'll provide you a Moula Pay Facility, the following provisions apply to that Facility.

## 10. We may lend monies under your Moula Pay Facility

- 10.1** Subject to the Finance Documents and the conditions precedent in clause 12.1, we agree to lend you money in multiple instalments, and you may borrow that money from us, under a Moula Pay Facility on the terms of the Finance Documents. The maximum aggregate amount you may borrow at any one time under your Moula Pay Facility is the Moula Pay Facility Limit. The amount available for payments with your Moula Pay Facility at any given time is the Available Facility.
- 10.2** An annual facility fee is applicable and payable by you on the date your Moula Pay Facility is approved, and annually on the anniversary of that date, as set out in your Letter of Offer.
- 10.3** We may vary the annual facility fee with at least 30 days' advance notice to you, which we may provide via electronic means including via your account.

## 11. The Moula Pay Facility process

### 11.1 Using your Moula Pay Facility

- (a) Once you have an approved Moula Pay Facility, it will be available to make payments at participating Merchants subject to the conditions precedent in clause 12.1 at the time of payment.
- (b) You'll be able to instruct a participating Merchant that you wish to use your Moula Pay Facility to pay for business-related goods and/or services.
- (c) Provided that the payment complies with the Promotional Term (including any minimum payment amount required under the Promotional Term), that participating Merchant will then submit to us a Merchant Payment Request. The Promotional Term may include periods that are interest and/or repayment free as determined and advertised by the Merchant from time to time (e.g. no interest and no repayments for 3 months, with up to 12 months to repay).
- (d) If the conditions precedent in clause 12.1 are satisfied, we'll confirm to the Merchant that the Merchant Payment Request has been successfully received and we'll notify you that a Merchant Payment Request is pending your approval in the Customer Dashboard.
- (e) We'll provide you (via Customer Dashboard), for your review and confirmation, your Moula Pay Repayment Schedule as well as the other terms on which we offer to provide the Loan for that Merchant Payment Request. The Moula Pay Repayment Schedule will include the details of the Promotional Term associated with the Merchant Payment Request. Your agreement to these terms is called a Moula Pay Payment Authorisation.
- (f) When we receive a Moula Pay Payment Authorisation from you, we'll establish a Loan under your Moula Pay Facility and proceed to make a Merchant Disbursement to the participating Merchant and you'll become obliged to repay us according to the Moula Pay Repayment Schedule for that Loan.

## **11.2 Varying or cancelling your Moula Pay Facility**

- (a) At any time, any Obligor to an active Moula Pay Facility may request the cancellation of the ongoing availability of the Facility by instructing Moula in writing via [support@moula.com.au](mailto:support@moula.com.au) to cancel that Moula Pay Facility. Any obligations already created under that Moula Pay Facility will continue until they are repaid in full. We'll notify all Obligors to the Facility once we've accepted the cancellation request.
- (b) At any time, we may permanently cancel the ongoing availability of your Moula Pay Facility (by reducing your Available Facility for your Moula Pay Facility to nil) in response to an Event of Default or the failure of any conditions precedent under clause 12.1. If this occurs, we'll notify all Obligors to the Moula Pay Facility of, and reason for, the cancellation of that Available Facility.
- (c) At any time but no more than once every 12 months, we may vary the Available Facility, interest rate for future Loans or other terms applicable to your Moula Pay Facility by providing you with no less than 90 days' notice of such variations.

## **11.3 Interaction with Merchants**

- (a) **(Conduct of participating Merchants)**
  - (i) Your Moula Pay Facility can only be used with a participating Merchant, meaning that the Merchant has an agreement with us to accept payments from us.
  - (ii) A Merchant may not accept your Moula Pay Facility in relation to some or all of their goods and/or services.
  - (iii) We do not warrant that a Merchant will accept your request to use your Moula Pay Facility for some or all of its products or services.
- (b) **(Availability may depend on your financial data)** The ongoing availability of your Moula Pay Facility to make additional payments is subject to the accurate, timely and ongoing provision of acceptable financial data in relation to your business. To the extent that you've authorised our electronic access to acceptable financial data in the form of accounting or bank transaction feeds, we'll automatically review this data on an as required basis. You acknowledge that, if we only have access to outdated financial data (meaning financial data which fails to satisfy the condition precedent contained in 12.1(c)), you'll be requested to supply us with current, acceptable financial data before accessing any part of the Loan Amount.
- (c) You are not permitted to use or attempt to use the Moula Pay Facility to make payments to yourself or a Related Party. Breach of this term entitles us to terminate the Moula Pay Facility immediately and in addition to our other rights under this agreement, recover any payments made by you to yourself or a Related Party with the Moula Pay Facility.

## **12. When and how we'll advance a Loan under your Moula Pay Facility**

### **12.1 Conditions precedent to each payment with your Moula Pay Facility**

Our obligation to provide a Loan relating to a payment with your Moula Pay Facility is subject to all of the following conditions precedent being met to our satisfaction before we provide that Loan:

- (a) **(within Available Facility)** you have instructed a participating Merchant to request a Merchant Payment Request for an amount that is at least the minimum amount of the Promotional Term of that payment but is less than the Available Facility of your Moula Pay Facility;
- (b) **(within Availability Period)** the date of the Moula Pay Payment Authorisation is during the Availability Period;



- (c) **(current financial data)** if:
  - (i) you've not made a Moula Pay Payment Authorisation within the first 3 months of the Availability Period, our financial data in relation to you must be less than 3 months old; or
  - (ii) after the first Moula Pay Payment Authorisation, our financial data in relation to you must be less than 6 months old;
- (d) **(consistent revenue)** following the provision by you of financial data in relation to you at any time subsequent to your application for your Moula Pay Facility, we are satisfied that your:
  - (i) Current 3 Month Revenue Average is not less than 75 per cent of the Baseline 3 Month Revenue Average; or
  - (ii) financial indebtedness has not materially increased since our last receipt of financial data in relation to you;
- (e) **(Loan performance)** we determine your creditworthiness has not deteriorated as a result of a failure to make a scheduled payment (whether or not this constitutes an Event of Default under the Finance Documents) on any current or prior Loans under any of your Facilities;
- (f) **(adverse search)** we've not become aware of adverse search results against an Obligor entity, including without limitation, search results in relation to an Obligor entity or a director (or directors) of an Obligor entity indicating:
  - (i) de-registration;
  - (ii) material litigation activity; or
  - (iii) a material deterioration in credit rating or solvency;
- (g) **(no Event of Default)** we are satisfied that no Event of Default is subsisting or is reasonably likely to result from the Loan being provided;
- (h) **(no change in beneficial ownership)** there has been no material adverse change in the beneficial ownership of any Obligor;
- (i) **(other financing)** since the date of the Agreement, the Borrower has not entered into any borrowing or financing arrangements with any other lender that together do not exceed an amount greater than 25% of the Available Facility;
- (j) **(no creditworthiness deterioration)** since the date that we conducted applicable Obligor credit reference agency checks prior to entering into this Agreement, all of the following tests are satisfied:
  - (i) each Obligor's credit score has not deteriorated by more than 10%; and
  - (ii) each Obligor's credit record has no more than 1 credit enquiry from any lending business; and
- (k) **(promises)** we are satisfied that each promise or representation an Obligor makes to us in the Finance Documents is correct and not misleading as at the date of the relevant Moula Pay Payment Authorisation and as at the date the relevant Loan is to be provided, with reference to the facts and circumstances on each of those dates.
- (l) You are not in arrears of any fee charged by us.

## 12.2 Failure to satisfy any conditions precedent

If any of the conditions precedent have not been met, the Merchant will be notified that the Merchant Payment Request has not been successfully received by Moula and that Moula will not make the payment. Under the provisions of clause 11.2, the failure to satisfy a condition precedent to the payment with Moula Pay may also result in cancellation of the ongoing availability of your Moula Pay Facility for further payments.

**12.3 Waiver**

The conditions precedent in this clause are for our sole benefit and may only be waived by us.

**12.4 How we'll pay and what happens next**

Subject to, in particular, clause 12.1, we'll send the Merchant Disbursement the subject of the Moula Pay Payment Authorisation from our Lender Bank Account directly to the Registered Merchant Bank Account. You'll be able to access your Moula Pay Repayment Schedule(s) at any time via your Customer Dashboard. Any Guarantors will also be notified of your Moula Pay Payment Authorisation and the corresponding obligations created under your Moula Pay Facility.

**13. Returns and refunds**

- (a) If you decide to return goods to a Merchant for a refund the subject of a Moula Pay Payment Authorisation, and the refund is accepted by the Merchant, you'll directly arrange the return with the Merchant.
- (b) It is your responsibility to notify the Merchant if you intend to return any goods or otherwise request a refund in respect of any goods or services.
- (c) Until such time that the Merchant has confirmed to us your eligibility for a refund, you'll remain liable to us for the full payment of the Repayment Amounts on the Repayment Dates.
- (d) Any funds received by us from the Merchant in connection with a return and refund for goods or services the subject of a Moula Pay Payment Authorisation, will be applied as if it were a Voluntary Prepayment in accordance with clause 15.6. Any refund amount received by us in excess of the Amount Owing will be refunded by us to your Registered Borrower Bank Account. For the avoidance of doubt:
  - (i) you remain liable for all Amounts Owing to the extent that our application of a refund only partly reduces the Amount Owing; and
  - (ii) if you've paid all Repayment Amounts in your Repayments Table and the Amount Owing is otherwise reduced to nil, you're entitled to any amounts in excess of the Amount Owing in accordance with and subject to this clause 13.

# Provisions applying to all Facilities

The provisions in this section apply to all Term Loan Facilities, Line of Credit Facilities and Moula Pay Facilities, unless otherwise specified.

## 14. Repaying your Loan

### 14.1 How you can repay your Loan

You must repay the Amount Owing by paying each Repayment Amount on each Repayment Date as set out in the Repayments Table (or in the case of a Moula Pay Facility, your Moula Pay Repayment Schedule, accessible via your Customer Dashboard) in immediately available funds to our Lender Bank Account (or as we otherwise direct). Each Repayment Amount comprises elements of both Interest and principal Loan repayments, as detailed in the Repayments Table and as amended by, among other things, any subsequent Loan or Draw or prepayments permitted under a Finance Document.

### 14.2 Redraw during the Availability Period

- (a) If your Facility is a Term Loan Facility, you may not redraw any principal amounts that you repay under this clause 14.
- (b) If your Facility is a Line of Credit Facility, then subject to you satisfying the requirements for another Draw (including, without limitation and as applicable, the conditions precedent in clauses 8.1), principal amounts repaid under this clause 14 may be redrawn during the Availability Period in the form of another Draw.
- (c) If your Facility is a Moula Pay Facility, principal amounts repaid will reduce your Amount Owing and this will increase your Available Facility up to the Moula Pay Facility Limit.

### 14.3 You authorise us to obtain a direct debit instruction

- (a) You authorise us to apply an Authorised Direct Debit Instruction to your Registered Borrower Bank Account for the payment of the Repayment Amounts and such other amounts expressly authorised for direct debit under this Agreement, or in such other manner agreed in writing between us.
- (b) The Authorised Direct Debit Instruction will remain valid unless it is revoked in writing, replaced by another Authorised Direct Debit Instruction, and notified to us.
- (c) We aren't obliged to debit any amount to your Registered Borrower Bank Account. If we do not debit your Registered Borrower Bank Account with an amount you owe to us, despite being authorised to do so, this does not constitute a waiver by us of your obligation to pay that amount to us.
- (d) The Authorised Direct Debit Instruction will be made through the Bulk Electronic Clearing System (**BECS**), where Moula's user identification in BECS is 500134.

### 14.4 There are extra fees payable if you fail to make a payment when due

If there are insufficient funds available in your Registered Borrower Bank Account to pay a Repayment Amount in accordance with your obligations under the Finance Documents on a scheduled Repayment Date, or if your bank dishonours the direct debit for any reason, you acknowledge that:

- (a) you'll incur a Direct Debit Dishonour Fee. For the avoidance of doubt, the fee relating to each direct debit dishonour:
  - (i) is capped at the amount specified in clause 2.7 of the Letter of Offer;
  - (ii) will be deducted from your Registered Borrower Bank Account; and

- (b) your bank may also charge you an additional fee due to insufficient funds available in your Registered Borrower Bank Account; and
- (c) an Event of Default will occur if you continue to have insufficient funds available in your Registered Borrower Bank Account for us to direct debit for a period of 5 Business Days from the scheduled Repayment Date, with the consequences under clause 20.5.

#### **14.5 Rescheduling of missed payment**

- (a) Where a Repayment Amount is not paid on a scheduled Repayment Date for any reason within 3 Business Days, then you agree that at our discretion we may adjust the amounts and dates in the Repayments Table with reference to the Rescheduled Repayment Amount are required to be paid on a date(s) which may be adjusted as a Rescheduling Event (with our exercise of any such adjustment at all times being limited according to what is reasonably necessary to protect our legitimate business interests).
- (b) In the event that we effect a Rescheduling Event:
  - (i) the Authorised Direct Debit Instruction will be added to reflect the Rescheduled Repayment Amount and any related fees;
  - (ii) you acknowledge and agree that the Rescheduling Event is made without prejudice to, and does not constitute a waiver of, our rights under this Agreement in respect of the relevant Event of Default; and
  - (iii) you may incur a Repayment Rescheduling Fee.

#### **14.6 Rescheduling following a further Draw under the Line of Credit Facility**

When any Draw (other than an Application Draw) is provided under the Line of Credit Facility:

- (a) you agree that we'll adjust (in the case of all Draws) the Repayments Table so that the Amount Owing (taking into account the relevant Draw) will be repaid over a 12-month period from the date of the relevant Draw in equal instalments;
- (b) the Lender will provide an updated Repayments Table which will be available to the Borrower by logging into your Customer Dashboard and clicking on the "Current Loan Information" (or something similar) button and selecting the menu item from the dropdown box entitled "Current Repayments Schedule" (or something similar); and
- (c) the Authorised Direct Debit Instruction will be adjusted to reflect the Rescheduled Repayment Amount, and the Borrower irrevocably consents to this adjustment.

#### **14.7 Final repayment**

- (a) In relation to a Term Loan Facility or a Line of Credit Facility, on the Final Repayment Date:
  - (i) you must repay to us any Amount Owing for that Loan; and
  - (ii) the Available Facility for that Facility will reduce permanently to zero and, if paragraph 14.7(a)(i) is satisfied, the Amount Owing will also be reduced to zero.
- (b) In relation to a Moula Pay Facility, if it is cancelled at any time in accordance with clause 11.2:
  - (i) your repayment obligations will remain as set out in your Moula Pay Repayment Schedule(s); and
  - (ii) the Available Facility will reduce permanently to zero.

### **15. Voluntary Prepayment**

#### **15.1 How you may prepay**

You may prepay all or any part of the Amount Owing at any time in accordance with this clause 15. Other than any applicable Interest due, there are no other fees or costs associated with making a Voluntary Prepayment (other than any fees imposed on you by your own bank).

## 15.2 How you calculate the amount for full prepayment

At any time, you may calculate the amount of a Voluntary Prepayment necessary to repay the Amount Owing in full, by either:

- (a) logging into your Customer Dashboard and using the functionality under the “Loan Repayment Options / Repay Full Loan Amount” section to determine Voluntary Prepayment amounts required to repay the Amount Owing in full; or
- (b) contacting [support@moula.com.au](mailto:support@moula.com.au) to confirm the Amount Owing to be repaid, and confirming a Voluntary Prepayment date. Where you’ve made all repayments in accordance with the dates and amounts set out in your Repayments Table, the Amount Owing on any day is equal to:
  - (i) the Scheduled Principal Owing corresponding to that date; plus
  - (ii) the Scheduled Interest for the relevant period. No other fees, interest or other amounts will be payable. Before the start of the Loan, you can calculate the amount you would need to pay at any point during the term to repay the Loan in full using the Repayments Table (providing that all repayments are paid when due).

## 15.3 How you can make Voluntary Prepayments

You may make Voluntary Prepayments to us by way of electronic transfer of immediately available funds to our Lender Bank Account and specifying your Loan ID as the reference in the transfer.

## 15.4 You must tell us about any Voluntary Prepayment

You must tell us about any Voluntary Prepayment by either:

- (a) clicking the relevant notification button in the “Loan Repayment Options” section in the Customer Dashboard once you’ve logged in to your account; or
- (b) sending an email to [support@moula.com.au](mailto:support@moula.com.au), providing details of your Loan ID and amount of prepayment.

We’ll use the notification to identify payments received, and on receipt we may amend or cancel the next direct debit, as necessary. If you don’t tell us about a Voluntary Prepayment in accordance with this clause, then that may result in an overpayment of the Amount Owing. We’ll return any overpayment in excess of the Amount Owing to you as soon as reasonably practical.

## 15.5 Effect of Voluntary Prepayment

- (a) If we receive a full Voluntary Prepayment of the Amount Owing, there will be no further amounts payable by you to us and the remaining scheduled repayments pursuant to the Letter of Offer will no longer be applicable, and the Authorised Direct Debit Instruction will be cancelled.
- (b) If we receive a partial Voluntary Prepayment, we’ll apply any amount received to reduce the Amount Owing as instructed by you through the Customer Dashboard. If your Facility is a Moula Pay Facility, we’ll apply the amount we receive to reduce the Amount Owing at our discretion while giving consideration to the manner that most effectively reduces the interest owed by you.
- (c) Where we apply a Voluntary Prepayment amount to reduce the principal amount of the Loan then outstanding to us:
  - (i) we’ll adjust the Repayment Amount and the Repayments Table to reflect the reduced Amount Owing;
  - (ii) we’ll provide an updated Repayments Table which will be available to you if you log into your Customer Dashboard; and
  - (iii) the Authorised Direct Debit Instruction will be adjusted to reflect the amended Repayment Amount.



- (d) You acknowledge that Voluntary Prepayments may take more than one Business Day to be received by us into our Lender Bank Account, and we'll only apply the Voluntary Prepayment against the Amount Owing in accordance with clause 15.6(b), when we actually receive that Voluntary Prepayment.

## **16. Our liability in relation to your Facility**

### **16.1 We aren't liable for the things that you buy**

To the extent permitted by law, we aren't liable for the goods and/or services that you purchase with the money that we've lent to you under one of our Facilities. In particular, to the extent permitted by law, in relation to a Moula Pay Facility, we do not sell or otherwise provide you with, and aren't liable for, a Merchant's goods and/or services or for a Merchant's decision to wholly or partially reject your Moula Pay Facility.

### **16.2 We aren't liable if our services are interrupted**

To the extent permitted by law, we aren't liable for any loss or damage of whatever nature as a result of our services not being available, including any deficiencies in our Customer Dashboard, except to the extent that such liability is as a result of our gross negligence, fraud or wilful default. To the extent that we are liable for any loss (whether relating to an interruption or cessation in our services or otherwise), we aren't liable for indirect or consequential loss or damage, including loss of turnover or profits, missed orders or other loss or damage due to a delay to your operations.

# Interest and fees

## 17. Interest

### 17.1 Payment and rate

- (a) With respect to a Term Loan Facility and Line of Credit Facility, each Repayment Amount (greater than nil) comprises an Interest component. You must pay Interest to us on the principal component of the Amount Owing, pursuant to this clause 17, at the applicable Interest Rate until such Amount Owing is paid in full.
- (b) With respect to a Moula Pay Facility, each Moula Pay Payment Authorisation will have its own Moula Pay Repayment Schedule (which will be recalculated in the event of a Voluntary Prepayment), which will set out the principal and Interest components of your repayment obligations in relation to each Loan under your Moula Pay Facility. Each Moula Pay Repayment Schedule is accessible through the Customer Dashboard, including at the time of Moula Pay Payment Authorisation. Moula Pay Repayment Schedules may include periods that do not incur Interest and/or do not require a repayment.
- (c) You must pay any applicable Scheduled Interest to us on the Repayment Dates. You authorise repayments of Scheduled Interest to be debited from your Registered Borrower Bank Account and paid to the Lender Bank Account under the Authorised Direct Debit Instruction.
- (d) With respect to a Line of Credit Facility, if you request a Draw (other than an Application Draw), the Current Interest Amount is payable on the date of the relevant Draw. The Current Interest Amount is payable by you on the date of that Draw even if the Lender does not deduct it from the proceeds of the Draw (or deducts an incorrect amount).
- (e) If you fail to make a payment of any of the Amount Owing payable by you, in the way required, when due, then you are liable to us for Late Repayment Additional Interest on a daily basis, in addition to Scheduled Interest, until such money is paid in full.

### 17.2 Calculation of Scheduled Interest

- (a) With respect to the Term Loan Facility and the Line of Credit Facility, you must pay Scheduled Interest to us fortnightly in arrears on the Repayment Dates. Scheduled Interest comprises part of the Repayment Amount. Scheduled Interest is calculated as follows:
  - (i) on the Scheduled Principal Owing at the start of each fortnight; multiplied by
  - (ii) the Interest Rate for 14 days.
- (b) With respect to the Moula Pay Facility, in a period where Interest applies, Interest accrues daily and you must pay Scheduled Interest to us monthly in arrears, on the Repayment Dates. Scheduled Interest comprises part of the Repayment Amount. Scheduled Interest is calculated as follows:
  - (i) on the Scheduled Principal Owing at the start of each day; multiplied by
  - (ii) the Interest Rate for that day.
- (c) For the avoidance of doubt, Scheduled Interest and Interest due on a Voluntary Prepayment is due and payable on the date of the prepayment.

### 17.3 Calculation of Late Payment Additional Interest

You must pay Late Repayment Additional Interest to us daily in arrears. Late Repayment Additional Interest is calculated, subject to the Grace Period, as follows:

- (a) on any day, the sum of that part of the Amount Owing which is due and payable (including without limitation any capitalised interest amounts); multiplied by
- (b) the Interest Rate for 1 day.

### 17.4 Payment and Notification of Late Repayment Additional Interest

- (a) You must pay Late Repayment Additional Interest amounts to our Bank Account by electronic transfer of immediately available funds, or via direct debit authorisation, using your Loan ID as reference (unless we agree other arrangements with you); and
- (b) You must notify us by email (at [support@moula.com.au](mailto:support@moula.com.au)) that the payment has been made.

### 17.5 Capitalisation of interest

We may capitalise, upon a daily basis, any part of any interest which becomes due and owing under this Agreement and which is not paid on its due date, and interest will be payable in accordance with this Agreement upon capitalised interest.

### 17.6 Capitalisation of fees

We may capitalise, upon a daily basis, any part of any fee which becomes due and owing under this Agreement and which is not paid on its due date, and interest will be payable in accordance with this Agreement upon any capitalised fee.

# General matters

## 18. Your promises to us

### 18.1 When you make your promises

We are relying on your promises in order to provide each Facility that we provide to you. You make the promises in this clause 18 when you sign the Letter of Offer, and again on each day until you have paid us the Amount Owing in full.

### 18.2 Your general promises

You promise that:

- (a) you have the power and authority necessary to enter into, execute and perform this Agreement;
- (b) you have taken all corporate and other action necessary to authorise the making of this Agreement and the execution and performance of it;
- (c) each Finance Document constitutes a legal, valid and binding obligation on you, enforceable in accordance with its terms;
- (d) if you are:
  - (i) a company, you are solvent and there are no reasonable grounds to suspect that you are unable to pay your debts as and when they fall due and no Insolvency Event subsists; or
  - (ii) a natural person, you aren't Bankrupt and there are no reasonable grounds to suspect that you are unable to pay your debts as and when they become due and payable;
- (e) at all times, a valid business bank account in your name will be made available to us for the purposes of any repayments under the Loan, and a valid and duly authorised Authorised Direct Debit Instruction will be available to us for any repayments under the Loan for the duration of the Loan while there is an Amount Owing by you to us;
- (f) the bank account provided to us for the purposes of receiving the Loan proceeds is the same account used for the Loan repayments via the Authorised Direct Debit Instruction; and
- (g) where you are a company, the person signing this Agreement is authorised to do so in accordance with a duly passed resolution of the company or under the company's constitution or under a duly executed power of attorney.

### 18.3 Promises relating to a Partnership

If you enter into this Agreement as a partner (whether as a natural person or corporate person) of a Partnership (**Partner**), in addition to the other promises you make under this clause 18 you also promise to us that, in relation to that Partnership and you in your capacity as Partner:

- (a) you have the right to be indemnified by each other partner of that Partnership for all liabilities you incur under the Finance Documents, and this right has not been limited in any way, and you have no liability which may be set off against that right of indemnity;
- (b) we have the benefit of your rights of indemnity against the other partners of the Partnership to satisfy your liabilities under this Agreement;
- (c) this Agreement does not conflict with the operation or terms of the Partnership;
- (d) it has full and valid power and authority under the Partnership, and all necessary resolutions, consents, approvals and procedures have been obtained or duly satisfied, to enter into this Agreement and to carry out the transactions contemplated by this Agreement;
- (e) it enters into this Agreement and the transactions contemplated by this Agreement for the benefit of all of the partners of the Partnership;

- (f) the Partnership has not been terminated;
- (g) no meeting has been called to remove it as a partner of the Partnership; and
- (h) the constituent documents of the Partnership comply with all applicable laws.

#### **18.4 Trust representations and warranties**

If you enter into this Agreement as a trustee (whether as a natural person or corporate person) of a Trust (**Trustee**), in addition to the other promises you make under this clause 18 you also promise to us that, in relation to that Trust and you in your capacity as Trustee:

- (a) the Finance Documents and each obligation you incur under this Agreement binds you in your own capacity and as trustee of the Trust; and
- (b) we have recourse to your assets when seeking to recover the Amount Owing, whether the assets are owned by you beneficially or held by you as trustee;
- (c) you have the right to be indemnified out of, and a lien over, the assets of the Trust for all liabilities you incur under the Finance Documents, and this right has not been limited in any way, and you have no liability which may be set off against that right of indemnity;
- (d) we have the benefit of your rights of indemnity against, and lien over, the assets of the Trust, and have recourse to the assets of the Trust to satisfy your liabilities under the Finance Documents;
- (e) none of the Finance Documents conflicts with the operation or terms of the Trust;
- (f) you have full and valid power and authority under the Trust, and all necessary resolutions, consents, approvals and procedures have been obtained or duly satisfied, to enter into this Agreement and to carry out the transactions contemplated by this Agreement;
- (g) you enter into the Finance Documents and the transactions contemplated by the Finance Documents for the proper administration of the Trust and for the benefit of all of the beneficiaries of the Trust;
- (h) the Trust has not been terminated and no beneficiary is presently entitled to any of the assets of the Trust;
- (i) you are the sole trustee of the Trust and no meeting has been called to remove you as trustee;
- (j) no property of the Trust has been re-settled or set aside or transferred to any other trust; and
- (k) the constituent documents of the Trust comply with all applicable laws.

### **19. Things you agree to do**

We are relying on your agreement to do, or to not do, certain things, as set out in the Finance Documents in order to provide each Facility that we provide to you.

#### **19.1 General**

You, and each other Obligor must not, without first obtaining our prior written consent:

- (a) (**Security Interest**) create or permit to exist a Security Interest, other than a Permitted Security Interest, over any of its, his or her assets or attempt or agree to do so;
- (b) (**disposals of assets**) sell or otherwise dispose of an asset or attempt or agree to do so, other than a Permitted Disposal;
- (c) (**incur Debt**) incur any Debt (including by giving a Guarantee) other than:
  - (i) Debt incurred under this Agreement;
  - (ii) Debt owed to trade creditors on account of services provided to you in the ordinary course of its ordinary business; and
  - (iii) Debt to which we consent in writing (unless the consent was conditional and any of the conditions aren't complied with); or



- (d) **(financial accommodation)** lend or provide financial accommodation to any person.
- (e) **(fraud)** not permit, negligently or recklessly allow the Facility to be used in connection with fraud or for an illegal purpose.

## 19.2 Partnership undertakings

If you enter into this Agreement as a partner of a Partnership (**Partner**), in addition to the other agreements you make under this clause 19 and in relation to you in your capacity as Partner you also agree that you must, unless we otherwise consent in writing:

- (a) not resign, retire or do anything to allow you to be removed or replaced as a Partner;
- (b) not amend or revoke any of the terms of the Partnership;
- (c) observe your obligations as a Partner under the constituent documents of the Partnership and at law;
- (d) not do anything, or permit or omit anything, which breaches the constituent documents of the Partnership;
- (e) ensure that:
  - (i) you have the right to be indemnified by each other partner of the Partnership for all liabilities incurred by you under this Agreement; and
  - (ii) there is no restriction or limitation on or derogation from your right of indemnity (whether or not arising under the terms of the Partnership); and
- (f) not create or allow to exist any Security Interest over the assets of the Partnership (except for Permitted Security Interests).

## 19.3 Trust undertakings

If you enter into this Agreement as a trustee (whether as a natural person or corporate person) of a Trust (**Trustee**), in addition to the other agreements you make under this clause 19 and in relation to you in your capacity as Trustee you also agree that you must, unless we otherwise consent in writing:

- (a) not resign, retire or do anything to allow it to be removed or replaced as Trustee or appoint or allow a new or additional trustee of the Trust to be appointed;
- (b) maintain complete and correct records in relation to the Trust;
- (c) not vest, distribute or advance any property of the Trust;
- (d) not re-settle, set aside or transfer any property of the Trust;
- (e) not amend or revoke any of the terms of the Trust;
- (f) not acquire property intended to be subject to the terms of the Trust other than in its name;
- (g) not permit a beneficiary of the Trust to use or possess the property of the Trust;
- (h) observe its obligations as Trustee under the constituent documents of the Trust and at law;
- (i) not do anything, or permit or omit anything, which breaches the Trust;
- (j) not exercise a power, or allow a power to be exercised, to change the vesting date of the Trust or provide for the Trust to be terminated early (and you must notify us of any event which might cause the capital of the Trust to vest or to be distributed to a beneficiary, as soon as it becomes aware of the event);
- (k) not do anything or permit anything to be done in relation to the Trust which could restrict or impair its ability to observe its obligations under this Agreement;
- (l) if a unit trust, not issue any further units in the Trust;
- (m) ensure that:
  - (i) it has the right to be indemnified out of the assets of the Trust for all liabilities incurred by it under this Agreement;

- (ii) there is no restriction or limitation on or derogation from its right of subrogation or indemnity (whether or not arising under the terms of the Trust); and
  - (iii) its lien over any property of the Trust at all times has priority over the rights and interests of the beneficiaries of the Trust;
- (n) not create or allow to exist any Security Interest over the assets of the Trust or its right of indemnity out of the assets of the Trust (except for Permitted Security Interests);
- (o) not delegate any powers conferred upon it by law or under the Trust;
- (p) not do anything which results in the assets of the Trust being re-settled or mixed with other property; and
- (q) promptly give us copies of all material documents and notices received by it from any beneficiary of the Trust or which it gives to a beneficiary or manager of the Trust.

## **20. Default**

### **20.1 General Events of Default**

It is an Event of Default if any of the following occurs without our prior written consent:

- (a) you fail to make a payment of any of the Amount Owed payable by you, in the way required, when due, and this amount is not paid within 5 Business Days of a notice from us;
- (b) an Obligor breaches a warranty or representation in the Finance Documents in any material respect and if that breach is capable of remedy, it does not remedy the breach within 10 Business Days of a notice from us requesting its remedy;
- (c) a statement, representation or warranty made by or on behalf of an Obligor in connection with this Agreement (including without limitation as part of the application process for the Loan), is untrue, incorrect or misleading in any material respect and if that breach is capable of remedy, it does not remedy the breach within 10 Business Days of a notice from us requesting its remedy;
- (d) an Obligor does not comply with any other obligation under this Agreement and, if that default is capable of remedy, it does not remedy the default within 10 Business Days of a notice from us requesting its remedy;
- (e) an Obligor fails to satisfy within the time stipulated anything which we made a condition of waiving an Event of Default or waiving compliance with an undertaking in this Agreement;
- (f) an Insolvency Event occurs with respect to:
  - (i) the Borrower;
  - (ii) any Guarantor; or
  - (iii) if you enter into this Agreement as a trustee of a Trust, that Trust;
- (g) execution takes place or is attempted or an order to execute a judgment (however described) is made against an Obligor or any of its assets, or if you enter into this Agreement as a trustee of a Trust, any of the assets of that Trust, and is not stayed or withdrawn within 10 Business Days;
- (h) any judgment, which is reasonably likely to have an adverse impact on the ability of an Obligor to perform its obligations under the Finance Documents or on our remedies, Security or rights under the Finance Documents, is obtained against an Obligor and is not satisfied or stayed within 10 Business Days;
- (i) any Security Interest is enforced against any of:
  - (i) the Obligor's assets; or
  - (ii) if you enter into this Agreement as a trustee of a Trust, any of that Trust's assets;
- (j) you stop or threaten to stop carrying on your business or a material part of it or substantially change the nature of your business without our consent;

- (k) there is a change (from that prevailing at the date of this Agreement) in the persons who Control, or one or more persons acquire Control of, you or an entity of which you are a Subsidiary, and this occurs without our prior written consent (which will not be unreasonably withheld);
- (l) your constituent documents or the constituent documents of any Trust or any Partnership document of which you are a trustee or partner (as applicable) are changed in any way and in a manner which is reasonably likely to have an adverse impact on the ability of an Obligor to perform its obligations under the Finance Documents or on our remedies, Security or rights under the Finance Documents, and this occurs without our prior consent (which will not be unreasonably withheld);
- (m) an Obligor that is a natural person dies or becomes subject to a permanent physical or mental incapacity; or
- (n) this Agreement is terminated for cause.

## **20.2 Partnership Events of Default**

If you are a Partnership, it is also an Event of Default if any of the following occurs without our prior written consent (which will not be unreasonably withheld):

- (a) the Partner who executed this Agreement on behalf of the Partnership ceases to be Partner of the Partnership or any step is taken to remove that partner as a partner of the Partnership;
- (b) the partners of the Partnership resolve to dissolve the Partnership, or the Partnership is dissolved under the terms of the Partnership or applicable law, or any action, notice or application is made for dissolution of the Partnership;
- (c) the Partnership is held or is conceded by the partners not to have been constituted or to have been imperfectly constituted;
- (d) you cease to be entitled to be indemnified by the other partners of the Partnership in respect of all of its obligations and liabilities under this Agreement or such right of indemnity is reduced or restricted.

## **20.3 Trust Events of Default**

If you enter into this Agreement as, or are expressed in this Agreement to be, the trustee of a Trust (**Trustee**), then, in relation to that Trust and you in your capacity as Trustee, it is also an Event of Default if any of the following occurs without our prior written consent:

- (a) the Trustee ceases to be the trustee of the Trust or any step is taken to appoint a new or additional trustee of the Trust;
- (b) the beneficiaries of the Trust resolve to wind up the Trust, or the Trustee is required to wind up the Trust under the terms of the Trust or applicable law, or the winding up of the Trust commences or any action, notice or application is made for a winding up of the Trust;
- (c) the Trust is held or is conceded by the Trustee not to have been constituted or to have been imperfectly constituted;
- (d) you fail to perform and observe your obligations under the constituent documents of the Trust or at law and do so in a manner or in circumstances that can be reasonably expected to have an adverse effect on your ability to perform your obligations under this agreement, except that where it is possible for the relevant breach to be rectified so as to avoid any material adverse consequences to your ability to perform your obligations under this Agreement that rectification must take place within 10 Business Days of the breach in order for the Event of Default to be avoided and treated as not having occurred;
- (e) the Trustee ceases to be authorised under the terms of the Trust to hold the property of the Trust in its name and to perform its obligations under this Agreement; or
- (f) the Trustee ceases to be entitled to be indemnified out of, or have a lien over, the assets of the Trust in respect of all of its obligations and liabilities under this Agreement or such right of indemnity is reduced or restricted.

## **20.4 Notification of Event of Default**

You must immediately tell us if you become aware of an Event of Default under this clause 20.

## **20.5 Immediate repayment**

In addition to any other rights provided by law or in equity, if an Event of Default occurs, we may at any time by notice to you do any or all of the following:

- (a) impose the Late Repayment Additional Interest in accordance with clause 17, any related Direct Debit Dishonour Fees and Repayment Rescheduling Fees;
- (b) declare that the Amount Owing by you to us in relation to this Agreement is immediately due and payable; and
- (c) require you to pay all Amounts Owing as directed by us.

You must immediately pay to us the Amount Owing in the event of a demand under clause 20.5(c)

# **21. Repayment**

## **21.1 Repayment**

Except as expressly provided otherwise under this Agreement, all repayments of an Obligor under this Agreement must be made:

- (a) by 4:00pm on the due date (or if not a Business Day, on the next Business Day);
- (b) to us by payment to the Lender Bank Account or as we otherwise direct;
- (c) in Australian dollars, in immediately available funds and in full without set-off, counterclaim or tax deduction; and
- (d) if no date for payment is specified in this Agreement, on demand by us.

## **21.2 GST**

The amounts set out in this Agreement have been calculated without regard to GST. If GST is or becomes payable in respect of a supply made by us under or in connection with the Amount Owing or this Agreement, the payment for that supply will be increased by the amount necessary so that we actually receive what we would have been entitled to receive if there had not been GST in respect of that supply. You indemnify us against any loss due to it failing to receive the amount of the increase in payment.

# **22. Credit and credit reporting information**

## **22.1 Interpretation**

Terms used in this clause 22 have the same meaning as in the Privacy Act 1988 (Cth), as amended from time to time.

## **22.2 Consents**

Each Obligor consents and authorises us to:

- (a) obtain credit reporting information about each Obligor from a credit reporting body for a commercial credit related purpose, being either for assessing any application made by each Obligor for commercial credit from time to time, or for collecting repayments that are overdue in relation to commercial credit owed by each Obligor.
- (b) collect from or disclose to other credit providers information relating to each Obligor's credit worthiness to:
  - (i) assess an application by you for credit;
  - (ii) notify other credit providers of a default by you;
  - (iii) collect overdue repayments;

- (iv) exchange information with other credit providers as to the status of your credit arrangements where you are in default with other credit providers;
  - (v) assess your credit worthiness; and
  - (vi) provide a reference to another credit provider or to receive a reference from another credit provider in relation to assessing an application by you for credit.
- (c) disclose to each Guarantor, or a person who is considering becoming a guarantor, credit related information about you for the purposes of them deciding whether to act as a guarantor;
- (d) providing each Guarantor with information about the guarantee; and/or
- (e) share information relating to your creditworthiness with debt collectors or legal firms in order to recover money which is due and payable by you.

Additional information about how we collect, store, use and share your personal information is set out in our Privacy Policy, which is available on our website and the terms of which are incorporated in these General Terms.

Our Credit Reporting Policy, available on our website, is also incorporated in these General Terms.

### **23. Anti-money laundering, counter-terrorism financing and sanctions**

- (a) Each Obligor agrees that we may delay, block or refuse to process any transaction without incurring any liability if we suspect that:
- (i) the transaction may breach any law or regulation in Australia or any other country;
  - (ii) the transaction involves any person (natural, corporate or governmental) that is itself sanctioned or is connected, directly or indirectly, to any person that is sanctioned under economic and trade sanctions imposed by the United States of America, the European Union or any country; or
  - (iii) the transaction may directly or indirectly involve the proceeds of, or be applied for the purposes of, conduct which is unlawful in Australia or any other country.
- (b) Notwithstanding any other provision of this Agreement to the contrary, each Obligor agrees to provide any information and documents that are within its possession, custody or control as reasonably required by us in order for us to comply with the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) and any other anti-money laundering or counter-terrorism financing laws or regulations including without limitation, any laws or regulations imposing “know your customer” or other identification checks or procedures, that apply to us, in any jurisdiction in connection with this Agreement (**AML/CTF Laws**).
- (c) If we form the view that, in our reasonable opinion, we are required to disclose information obtained in connection with this Agreement to any person in order to comply with any AML/CTF Laws, the parties agree that, to the extent permitted by law, such disclosure will not breach any duty of confidentiality owed by us to any other party to this document.
- (d) Each Obligor represents and warrants in favour of us that each Obligor is not acting as trustee, agent or on behalf of another person in entering into this Agreement, except to the extent expressly provided in the Finance Documents or disclosed in writing to us before the date of this Agreement.
- (e) Each Obligor agrees to exercise its rights and perform its obligations under this Agreement in accordance with all applicable laws or regulations relating to anti-money laundering, counter-terrorism financing or economic and trade sanctions.



## **24. Guarantee and indemnity**

### **24.1 Warranty**

Each Guarantor warrants that:

- (a) it, he or she is solvent and there are no reasonable grounds to suspect that it is unable to pay its debts as and when they fall due;
- (b) it, he or she has the power and authority necessary to enter into, execute and perform this Agreement;
- (c) it, he or she has taken all corporate and other action necessary to authorise the making of this Agreement and the execution and performance of it; and
- (d) each Finance Document constitutes a legal, valid and binding obligation on it, enforceable in accordance with its terms.

### **24.2 Guarantor as trustee**

If a Guarantor enters into this Agreement as trustee of a Trust:

- (a) it incurs each obligation and liability of the Guarantor under the Finance Documents to which it is a party and each obligation it incurs under those documents binds it in its personal capacity and as trustee of the Trust; and
- (b) we have recourse to the Guarantor's assets to satisfy the Guaranteed Money, whether the assets are owned by it beneficially or held by it as trustee and whether or not the Guarantor is indemnified from the assets of the Trust in respect of the Guaranteed Money.

### **24.3 Consideration**

Each Guarantor acknowledges entering document in return for us agreeing to provide the Loan at the Guarantor's request and for other valuable consideration.

### **24.4 We rely on the guarantee and indemnity**

Each Guarantor acknowledges that we rely on the guarantee and indemnity given in this clause 24.

### **24.5 Guarantee**

Each Guarantor irrevocably and unconditionally guarantees to us:

- (a) the payment of the Amount Owing in accordance with the Finance Documents; and
- (b) the performance by the Borrower and each of the other Guarantors of all their other obligations under the Finance Documents.

### **24.6 Non-payment or non-performance**

If you do not:

- (a) pay any Amount Owing (or money which would be Amount Owing if its payment was enforceable, valid and not illegal) in accordance with the Finance Documents, each Guarantor must pay that money on demand as if it was the principal obligor; or
- (b) perform any of its other obligations under a Finance Document, each Guarantor must perform, or procure the performance of, those obligations (without the need for demand by us) in accordance with the Finance Documents.

### **24.7 Indemnity**

Each Guarantor indemnifies us against, and must pay to us on demand amounts equal to, any of our Losses as a result of or in connection with:

- (a) any obligation or liability of, or obligation or liability guaranteed by, the Guarantor under this clause 24 (or which would be such an obligation or liability if enforceable) being or becoming unenforceable against the Guarantor;

- (b) an Obligor failing, or being unable, to pay any Amount Owing or to perform any of its other obligations in accordance with the Finance Documents;
- (c) any Amount Owing (or money which would be Amount Owing if it were recoverable) not being recoverable from an Obligor; or
- (d) an Insolvency Event in respect of any Obligor (but only to the extent that Loss relates to the Amount Owing),

in each case, for any reason and whether or not we knew or ought to have known anything about those matters.

#### **24.8 Immediate recourse**

Each Guarantor waives any right it may have to require us to proceed against, or enforce any other rights or claim payment from, any other person before claiming from that Guarantor under the guarantee and indemnity given in this clause 24. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

#### **24.9 Continuing obligations**

The Guarantee and Indemnity:

- (a) extends to the present and future balance of all the Amount Owing (including in respect of any contingent liability of the Borrower in connection with the Finance Documents) as varied from time to time, including as a result of:
  - (i) any Draw;
  - (ii) any amendment to, or waiver under, any Finance Document; or
  - (iii) the provision of new or further accommodation to the Borrower,and whether or not with the consent of or notice to the Guarantors;
- (b) is not wholly or partially discharged by the payment of any Amount Owing, the waiver by us of a condition precedent to the provision of financial accommodation, the settlement of any account or anything else; and
- (c) continues until all Amount Owing has been paid in full and the Guarantors have completely performed its obligations under the Finance Documents.

#### **24.10 Liability not affected**

Each Guarantor's liability under the Finance Documents is not adversely affected by anything which would otherwise reduce or discharge that liability (whether or not any Obligor or we are aware of it or consents to it and despite any legal rule to the contrary), including without limitation:

- (a) any time, waiver, concession, forbearance or consent granted to, or composition with, any Obligor or other person;
- (b) any opening of further accounts in connection with, or any increase in, change or replacement of the type, amount or terms of, financial accommodation provided to any person;
- (c) any transaction or agreement, or variation, novation or assignment of a transaction or agreement (including any Finance Document), between us and another Obligor or another person;
- (d) an Insolvency Event in respect of an Obligor or another person;
- (e) any judgment or order being obtained or made against, or the conduct of any proceedings by, an Obligor or another person;
- (f) an Obligor's obligation or a Finance Document (or any provision of a Finance Document), being unenforceable, released (where the release is in accordance with clause 24.10), waived, novated, or enforced or impossible to perform;

- (g) the whole or partial discharge or release of the Guarantee and Indemnity or any Security Interest granted by an Obligor to us (where the release is in accordance with clause 24.10);
- (h) the Amount Owing not being recoverable from the Borrower or another Guarantor or the liability to us of an Obligor or any other person ceasing or reducing (otherwise as permitted or contemplated under clause 24.10);
- (i) any Finance Document not being executed by, or binding or enforceable against, any Obligor;
- (j) the exercise or non-exercise of any Power (including any right to terminate a contract);
- (k) any set-off, combination of accounts or counterclaim;
- (l) any property the subject of a Security Interest granted by an Obligor in favour of us being destroyed, forfeited, extinguished, surrendered or resumed;
- (m) any waiver of or failure to satisfy a condition or condition precedent under a Finance Document (and any such waiver or failure will be disregarded in determining a Guarantor's liability under this Guarantee and Indemnity or whether an amount is part of the Amount Owing);
- (n) any default, misrepresentation, negligence, breach of contract or misconduct by any person other than us;
- (o) any acquiescence, delay, waiver, mistake, failure to give notice or other action or inaction of any kind (whether or not prejudicial to the Obligor) by us or any other person; or
- (p) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of an Obligor or any other person.

#### **24.11 Principal and independent obligation**

The guarantee, indemnity and other obligations of a Guarantor in this clause 24 is:

- (a) a principal and independent obligation and is not ancillary, collateral or limited by reference to any other obligation; and
- (b) is in addition to, and not prejudiced by, any other guarantee now or later held by us.

#### **24.12 Deferral of certain rights**

Until we've received all the Amount Owing and is satisfied that it will not have to repay any money received by it, the Guarantor may not (either directly or indirectly) without our prior written consent:

- (a) claim, exercise or attempt to exercise a right of set-off, counterclaim or any other right or raise any defence:
  - (i) against the Borrower; or
  - (ii) against another Obligor; or
  - (iii) which an Obligor may have against us,

which might reduce or discharge the Guarantor's liability under the Guarantee and Indemnity;

- (b) Until we've received all the Amount Owing and is satisfied that it will not have to repay any money received by it, the Guarantor may not (either directly or indirectly) without our prior written consent:
  - (i) the Guarantor must promptly pay that money to us; and
  - (ii) the Guarantor will, until that money is paid in accordance with clause 24.12(b)(i) above, hold that money on trust for us; or

- (c) unless we've given a direction to do so (in which case the Guarantor must do so in accordance with the direction as trustee for us):
  - (i) prove, claim or exercise voting rights in the Borrower's Liquidation, or otherwise claim or receive the benefit of any distribution, dividend or payment arising out of the Borrower's Liquidation on any account; or
  - (ii) demand, or accept payment of, any money owed to the Guarantor by the Borrower, and any such money it receives;
  - (iii) must be paid promptly to us; and
  - (iv) will, until that money is paid, be held on trust for us.

#### **24.13 Prove in Liquidation**

Each Guarantor irrevocably authorises us to prove in the Liquidation of the Borrower for all money that the Guarantor can claim against an Obligor on any account. We need only account to the Guarantor for dividends it receives in excess of the Amount Owing, without interest.

#### **24.14 Variations and replacements**

Each Guarantor acknowledges that the Finance Documents may be varied or replaced from time to time. Each Guarantor confirms that the Amount Owing includes any amount payable under any Finance Document which is relevant to the Amount Owing as varied or replaced, except where a variation or replacement increases the Loan Amount or Facility Amount (which we agree will require the consent of each Guarantor) and in all cases provided that the variation is reasonably necessary to protect our legitimate business interests. Each Guarantor confirms that this applies regardless of:

- (a) how a Finance Document is varied or replaced;
- (b) the reasons for the variation or replacement; and
- (c) whether the Amount Owing decreases or increases or a Finance Document is otherwise more onerous as a result of the variation or replacement.

#### **24.15 Notice of enforcement**

Prior to taking any enforcement action against a Guarantor, we agree to provide each Guarantor with at least 5 Business Days' notice of any Event of Default arising in relation to the Borrower:

- (a) under clause 20.1(a) which has been subsisting for at least 30 calendar days;
- (b) under clause 20.1(g), 20.1(h) or 20.1(i).

#### **24.16 Multiple guarantors**

We and each Guarantor agree that:

- (a) where security has been granted by the Borrower, we'll obtain each Guarantor's consent before releasing or discharging that security; and
- (b) where there are multiple Guarantors, we'll obtain each Guarantor's consent before releasing or discharging a Guarantor from liability.

## **25. Security interest**

If an Event of Default occurs, each Guarantor and each Borrower acknowledges and agrees that it will be deemed on the date of that Event of Default to have charged in favour of us, all its legal and beneficial interest in all its present and after acquired real and personal property as security for the performance of its obligations under any Finance Document (including without limitation in relation to the Guarantor, its obligations under the guarantee and indemnity in clause 24), and consents to us at any time after such an Event of Default (whether or not that Event of Default is remedied):

- (a) lodging at any time any financing statement on the PPSR; and
- (b) lodging, registering and maintaining any caveat against dealing any interest in land the Guarantor and/or Borrower may have from time to time.

## **26. How we'll communicate**

### **26.1 Notices**

Any notice given under or in connection with this Agreement:

- (a) may be given by personal service, post or email;
- (b) must be in writing, legible and in English addressed (depending on the manner in which it is given) to the address set out in the Letter of Offer or to any other address last notified by the party to the sender by notice given in accordance with this clause 26.1;
- (c) in the case of a company, must be signed by an officer or authorised representative of the sender or in accordance with section 127 of the Corporations Act;
- (d) in the case of a sole trader, must be signed by the sole trader;
- (e) in the case of a Partnership, must be signed by a partner authorised to bind the Partnership;
- (f) in the case of a corporate trustee, must be signed by an officer or authorised representative of the sender or in accordance with section 127 of the Corporations Act; and
- (g) in the case of a trustee who is a natural person, must be signed by that person; and
- (h) is deemed to be given by the sender and received by the addressee:
  - (i) if delivered in person, when delivered to the addressee;
  - (ii) if posted, 2 Business Days (or 6, if addressed outside Australia) after the date of posting to the addressee whether delivered or not;
  - (iii) if sent by email, on the date and time at which it enters the addressee's information system (as shown in a confirmation of delivery report from the sender's information system, which indicates that the email was sent to the email address of the addressee notified for the purposes of this clause 26.1), but if the delivery or receipt is on a day which is not a Business Day or is after 4.00 pm (addressee's time), it is deemed to have been received at 9.00 am on the next Business Day.

### **26.2 Service of process**

Without preventing any other mode of service, any document in an action or process may be served on any Obligor by being delivered to or left for that party at its address set out in the Letter of Offer (as varied by any notice given by that party to us after the date of this Agreement).



## **27. General**

### **27.1 Powers**

Powers under this Agreement are cumulative and do not limit or exclude Powers under law. Full or partial exercise of a Power does not prevent a further exercise of that or any other Power. No failure or delay in exercising a Power operates as a waiver or representation. Unless expressly provided in this Agreement, no Power merges in, limits or excludes any other Power or judgment which we (or anyone claiming through it) may have or obtain.

### **27.2 Further assurances**

Each Obligor must promptly execute all documents and do all other things reasonably necessary or desirable to give effect to the arrangements recorded in the Finance Documents.

### **27.3 Variation**

A provision of this Agreement can only be varied by a later written document executed by or on behalf of all parties.

### **27.4 Assignment**

An Obligor cannot assign, novate or otherwise transfer any of your rights or obligations under the Finance Documents without our prior written consent. We may at any time assign, transfer, novate or otherwise deal with all or any of our rights and/or obligations, under the Finance Documents to any person without the consent of, or notice to, you, any other Obligor or any other person. We may disclose any information or document to any person to effect any such assignment, transfer, novation or dealing, unless stated otherwise under clause 27.5 below. Each Obligor agree to help us effect any such assignment, transfer, novation or dealing, including by signing any document or providing consents.

### **27.5 Confidentiality**

Each party agrees not to disclose to any other person the existence or contents of any Finance Document, or any information provided by another party in connection with a Finance Document which is not publicly available, except:

- (a) with the prior consent of the party providing the information (not to be unreasonably withheld or delayed);
- (b) if required by law, a Government Agency or administrative guideline or policy (even if not having force of law) which the person disclosing the information customarily complies with (except that this paragraph does not require us to disclose any information of the kind referred to in section 275(1) of the PPSA);
- (c) in connection with any exercise of a Power or any legal proceeding relating to any Finance Document;
- (d) to the disclosing party's auditors, legal advisers or other consultants in confidence;
- (e) to the disclosing party's Related Body, subject to the Related Body's undertaking to observe this clause 27.5;
- (f) in the case of us, as permitted under this clause 27.5;
- (g) to any stock exchange, provided that you may not disclose information relating to pricing or fees concerning a Facility without our prior written consent;
- (h) to any rating agency to the extent required by them and provided that the recipient agrees to keep such information confidential; or
- (i) as expressly permitted or required under a Finance Document.

**27.6 Set off**

An Obligor may not (either directly or indirectly) claim, exercise or attempt to exercise a right of set off or counterclaim against us or any other right which may have the effect of reducing the Amount Owing.

**27.7 Severability**

A term or part of a term of this Agreement that is illegal or unenforceable may be severed from this Agreement and the remaining terms or parts of the terms of this Agreement continue in force.

**27.8 Legal expenses**

Each party must pay its own legal costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this Agreement. You must pay our costs and expenses in connection with enforcing the Finance Documents, or exercising, enforcing or protecting any of our rights, powers, discretions or remedies under the Finance Documents or applicable law, or preparing or attempting to do so.

**27.9 Notices or demands as evidence**

A notice or certificate from or demand by us stating that an Event of Default has occurred, or that a specified sum of money is owing or payable under a Finance Document or stating any other fact or determination relevant to our rights or obligations or your rights or obligations under a Finance Document, is taken to be correct unless proved incorrect.

**27.10 Governing law and jurisdiction**

- (a) The laws applicable in Victoria govern this Agreement.
- (b) Each party submits to the non-exclusive jurisdiction of the courts of Victoria and any courts competent to hear appeals from those courts.

**27.11 Indemnity**

You indemnify and will continue to indemnify us for any Loss we may suffer in relation to the Loan or the Finance Documents, except that you don't have to pay, reimburse or indemnify us to the extent our fraud, negligence or wilful misconduct (or of our officers, employees, contractors, agents or External Administrators we appoint) contributed to the relevant Loss being incurred.

**27.12 Application of funds**

We may apply any amount received to reduce the Amount Owing in any order, and to satisfy whatever part of the Amount Owing, as we see fit, without us telling you.

**27.13 Third Party Commissions**

Where your business was referred to us for a loan, we may pay a commission to the third party that made the referral. The commission payment will be made directly from us to that third party or their authorised representative.

# Meanings of words and interpretation

## 1. Meanings of words

The meanings of some words used in this document are set out below.

**AEST** means Australian Eastern Standard Time.

**Agreement** means this agreement and includes all schedules and annexures.

**Amount Owing** means, at any time, the principal amount of the Loan(s) drawn under your Facility or Facilities and then outstanding, as well as all money (in any currency) that an Obligor is liable at any time (presently or contingently) to pay to or for the account of us (whether alone or not and in any capacity) under or in connection with a Finance Document (including by way of principal, interest, fees, costs, charges, expenses, duties, indemnities, guarantee obligations or damages and money which a person would be liable to pay but for an Insolvency Event in respect of that person).

**Application Draw** means a Draw you request as part of the successful application for the Loan which you request be provided on or about the date of execution of this document.

**Authorised Direct Debit Instruction** means a direct debit instruction provided by you to us in relation to your Registered Borrower Bank Account for the payment of the Repayment Amounts and such other amounts expressly authorised for direct debit under this Agreement.

**Availability Period** means the period commencing on the date of this Agreement and ending:

- (a) if in relation to a Line of Credit Facility, 6 months later; or
- (b) if in relation to a Moula Pay Facility, on the Moula Pay Facility Cancellation Date.

**Available Facility** means:

- (a) if in relation to a Line of Credit Facility, at any time, the Facility Amount less the Amount Owing at that time; or
- (b) if in relation to a Moula Pay Facility, at any time, the Moula Pay Facility Limit less:
  - (i) the Amount Owing at that time; and
  - (ii) the total amount of Merchant Payment Requests received pending a Moula Pay Payment Authorisation at that time.

**Bankrupt** means, in respect of a natural person, any of the following occurring:

- (a) the person is unable to pay its debts when they fall due, the person stops or suspends payment to all or a class of creditors generally or the Borrower enters into any assignment, arrangement or composition with any creditors;
- (b) the person has committed an act of bankruptcy within the meaning of section 40 of the *Bankruptcy Act 1966* (Cth),
- (c) the person is or becomes bankrupt within the meaning of section 5 of the *Bankruptcy Act 1966* (Cth);
- (d) the person has signed an authority under Part X of the *Bankruptcy Act 1966* (Cth); the person has a bankruptcy notice issued against it;
- (e) a sequestration order is made in respect of the estate of the individual within the meaning of the *Bankruptcy Act 1966* (Cth);
- (f) a receiver or a trustee for creditors or in bankruptcy is appointed to any of the person's property or the person enters into any kind of bankruptcy administration;
- (g) the person dies, is imprisoned or becomes incapable of managing its own affairs; or
- (h) an analogous or equivalent event to any listed above occurs in any jurisdiction.

**Baseline 3 Month Revenue Average** means your total revenue earned in the ordinary course of your ordinary business for the 3 months prior to the successful application for the Loan, divided by 3.

**Borrower** means the entity specified in clause 2.2 of the Letter of Offer.

**Business** means your business in connection with the Business Purpose.

**Business Day** means a day on which banks are open for general banking business in Melbourne, Victoria, excluding Saturdays and Sundays.

**Business Purpose** means the business purpose specified in:

- (a) clause 2.4 of the Letter of Offer (in the case of a Term Loan Facility); or
- (b) clause 2.5 of the Letter of Offer (in the case of a Line of Credit Facility); or
- (c) clause 2.6 of the Letter of Offer (in the case of a Moula Pay Facility).

**Business Purpose Declaration** means the following declaration that you sign electronically as part of the Loan application process:

*I/We declare that the credit I/we are applying for through Moula Money Pty Ltd ACN 164 875 325 (Moula) is to be applied wholly or predominantly (more than 50%) for business purposes (namely, for working capital for the business). I/We have not been induced by Moula or any of its associates to make this declaration falsely. I/We understand that if I/we have made this declaration falsely that Moula will not accept liability for any claim I/we might have as a consumer against Moula under the National Consumer Credit Code or another Australian Consumer Law. By entering your name and the date below, you are agreeing to the above declaration.*

**Control:**

- (a) has the meaning given in section 50AA of the Corporations Act; and
- (b) in respect of an 'entity' (as defined in the Corporations Act) also includes the direct or indirect power to directly or indirectly direct the management or policies of the entity or control the membership or voting of the board of directors or other governing body of the entity (whether or not the power has statutory, legal or equitable force or arises by means of statutory, legal or equitable rights or trusts, agreements, arrangements, understandings, practices, the ownership of any interest in marketable securities, bonds or instruments of the entity or otherwise).

**Corporations Act** means *Corporations Act 2001* (Cth).

**Current 3 Month Revenue Average** means, in relation to each Draw, the amount of interest that has accrued (up to and including the date that the Draw is to be provided) on the Amount Owing but has not yet been paid (even if the interest is not yet payable).

**Customer Dashboard** means the web portal where Moula customers can manage their Facility

**Current Interest Amount** has the meaning given to that term in clause 8.4.

**Debt** means any present or future actual or contingent debt or other monetary liability in respect of money borrowed or raised or any financial accommodation.

**Direct Debit Dishonour Fee** means the amount specified in clause 2.7 of the Letter of Offer.

**Draw** means a provision of financial accommodation under a Line of Credit Facility.

**Draw Request** means a request you make during the Availability Period, in relation to a Draw, by logging into the Customer Dashboard and selecting the option to draw more funds in relation to the Line of Credit Facility.

**Event of Default** means any of the events specified in clauses 20.1, 20.2 and 20.3.

**External Administrator** means an administrator, receiver, receiver and manager, trustee, provisional liquidator, liquidator, inspector or any other person (however described) holding or appointed to an analogous office or acting or purporting to act in an analogous capacity.

**Facility** means the amount specified in:

- (a) clause 2.5 of the Letter of Offer (in the case of a Line of Credit Facility); or
- (b) clause 2.6 of the Letter of Offer (in the case of a Moula Pay Facility).

**Final Repayment Date** means:

- (a) in relation to a Term Loan Facility, the date specified in clause 2.4 of the Letter of Offer; or
- (b) in the case of a Line of Credit Facility, the date that is 12 months after the date of the last Draw under this Agreement,

being the final date on which the Amount Owing must be repaid in full.

**Finance Documents** means:

- (a) the Letter of Offer;
- (b) this Agreement;
- (c) a request for a Draw;
- (d) in relation to a Moula Pay Facility, a Merchant Payment Request, Moula Pay Payment Authorisation and a Moula Pay Repayment Schedule;
- (e) a document that you and we agree is a 'Finance Document'; and
- (f) a document entered into for the purpose of amending or novating, any document referred to in a paragraph above.

**Government Agency** means any government or governmental, semi-governmental, administrative, public, regulatory or judicial entity, body, department, commission, agency or authority.

**GST** has the meaning given in the GST Act.

**Guarantee** means a guarantee, indemnity, letter of credit, legally binding letter of comfort or other obligation of any kind:

- (a) to provide funds (whether by the advance or payment of money, the purchase of or subscription for shares or other securities, the purchase of assets or services, or otherwise) for the payment or discharge of;
- (b) to indemnify any person against the consequences of default in the payment of; or
- (c) to be responsible for,

an obligation or monetary liability of another person or the assumption of any responsibility or obligation in respect of the solvency or financial condition of another person.

**Guarantor** means each entity specified in clause 2.3 of the Letter of Offer.

**Insolvency Event** means, in relation to a person:

- (a) an order is made or a resolution is effectively passed for the Liquidation of the person except for the purposes of a solvent reconstruction or amalgamation;
- (b) the person is unable to pay its debts when due;
- (c) the person is taken to have failed to have complied with a statutory demand under section 459F of the Corporations Act or its equivalent in any other jurisdiction;
- (d) the person is presumed by a court to be insolvent under section 459C of the Corporations Act or its equivalent in any other jurisdiction;
- (e) an External Administrator is appointed to the person or any of its assets or any step is taken to do so or the person requests such appointment; or
- (f) the occurrence of any event that has a substantially similar effect to any of the above events under the law of any applicable jurisdiction.

**Interest** means the interest payable on the Amount Owing calculated in accordance with clause 17.

**Interest Rate** means the interest rate specified in:

- (a) clause 2.4 of the Letter of Offer (in the case of a Term Loan Facility);
- (b) clause 2.5 of the Letter of Offer (in the case of a Line of Credit Facility); and
- (c) clause 2.6 of the Letter of Offer (in the case of a Moula Pay Facility).

**Letter of Offer** means the offer letter titled ‘Letter of Offer’ provided by us to you and signed by you (and any guarantors) in relation to your Facility or Facilities (as applicable).

**Late Repayment Additional Interest** means interest payable on any Amount Owing which is due and payable by you but unpaid, at the Interest Rate, in accordance with clause 17.

**Lender Bank Account** means the Lender Bank Account specified in clause 2.1 of the Letter of Offer.

**Line of Credit Facility** means the facility described as the “Line of Credit Facility” in the Letter of Offer.

**Liquidation** includes winding up, liquidation, provisional liquidation, bankruptcy, dissolution, deregistration, voluntary administration, deed administration, receivership, assignment for the benefit of creditors, arrangement or compromise with creditors or any analogous or equivalent procedure in any jurisdiction.

**Loan** means the financial accommodation that we provide to you under and in accordance with the Finance Documents.

**Loan Amount** means, in relation to a Term Loan Facility, the principal amount specified in clause 2.4 of the Letter of Offer.

**Loan ID** means the reference number we assign to you on successful application of a Loan, and available in your Customer Dashboard.

**Loss** means a loss, claim, action, damage, liability, cost, charge, expense, penalty, compensation, fine or outgoing suffered, paid or incurred.

**Merchant** means a merchant who has agreed to accept payment for goods and/or services from customers using their Moula Pay Facility.

**Merchant Disbursement** means an amount we pay to the Merchant (in accordance with the terms of the Finance Documents) in relation to goods and/or services supplied or to be supplied to you by the Merchant and paid for with a Moula Pay Facility.

**Minimum Utilisation Test Date** means the date 2 months after the date of this Agreement.

**Moula, us or we** means Moula Money Pty Ltd ACN 164 875 325 and its wholly owned subsidiary, Moula Funding Pty Ltd ACN 607 734 154. If we assign or transfer our rights or obligations under the Finance Documents, then it also includes the assignee or transferee.

**Moula ID** means the reference number we assign to you on successful application of a Facility, and specified in clause 2.2 of the Letter of Offer.

**Moula Pay Facility** means the facility described as the “Moula Pay Facility” in the Letter of Offer.

**Moula Pay Facility Cancellation Date** means the date on which the Moula Pay Facility is no longer available following a request by an Obligor under clause 11.2(a) or determined by Moula in accordance with clause 11.2(b).

**Moula Pay Facility Limit** means the maximum amount you’ll be able to borrow at any one time under your Moula Pay Facility.

**Moula Pay Payment Authorisation** means, following a Merchant Payment Request, your confirmation that you agree to the Moula Pay Repayment Schedule for the Loan the subject of that Merchant Payment Request.

**Merchant Payment Request** means the request made by a Merchant to be paid a Merchant Disbursement in relation to your Moula Pay Facility.

**Moula Pay Repayment Schedule** means the schedule setting out the details of your repayment obligations (including any Interest) to us in relation to a Moula Pay Payment Authorisation, accessible via your Customer Dashboard.

**Net Draw Amount** means an amount of a Draw from which the Current Interest Amount has been deducted (as a netting) and applied in payment of accrued Interest owed by you to us in relation to that Line of Credit Facility.

**Obligor** means each Borrower and each Guarantor.

**Partnership** means each partnership of which you are or becomes a partner, including any partnership specified in this Agreement.

**Payment Rescheduling Fee** means the fee applicable in relation to requests being made to us to move a scheduled direct debit or rescheduled dishonoured direct debit, capped at the amount specified in clause 2.7 of the Letter of Offer.

**Permitted Disposal** means a sale or other disposal by an Obligor:

- (a) of stock-in-trade in the ordinary course of its ordinary business and on arm's length terms; or
  - (b) to which we've given our prior written consent,
- except where an Event of Default subsists and we've notified each Obligor that no further Permitted Disposals may be made.

**Permitted Security Interest** means:

- (a) a Security Interest that has been perfected prior to the date of this Agreement through registration on the PPSR in accordance with the PPSA;
- (b) a Security Interest to which we've consented in writing (unless the consent was conditional and any of the conditions aren't complied with);
- (c) a deemed security interest under section 12(3) of the PPSA which does not secure payment or performance of an obligation;
- (d) a Security Interest taken in personal property (as defined in the PPSA) by a seller to the extent that it secures the obligation to pay all or part of the purchase price of that property, where that property is purchased in the ordinary course of the buyer's ordinary business and the purchase price is paid within 60 days of supply; and
- (e) a lien or charge arising by operation of law in the ordinary course of ordinary business (unless the lien or charge secures overdue debts).

**Power** means any of our rights, powers, discretions or remedies under the Finance Documents or applicable law.

**PPSA** means the *Personal Property Securities Act 2009* (Cth).

**PPS Law** means:

- (a) the PPSA and any regulation made at any time under the PPSA, including the PPS Regulations (each as amended from time to time); and
- (b) any amendment made at any time to any other legislation as a consequence of a law or regulation referred to in paragraph (a).

**PPSR** means the Personal Property Securities Register.

**PPS Regulations** means the Personal Property Securities Regulations 2010 (Cth).

**Promotional Term** means the rules as set by a Merchant that determine the minimum payment amount, when interest will accrue and when repayments will be required, on a Loan that results from a Moula Pay Payment Authorisation.

**Registered Borrower Bank Account** means the bank account in your name related to the Business, as registered with us as part of the Loan application process.

**Registered Merchant Bank Account** means the bank account provided to Moula (or its Related Body) by a Merchant for the purpose of receiving Merchant Disbursements.



**Related Body** means, regardless of any body's trustee or other capacity:

- (a) a body corporate which would be related under section 50 of the Corporations Act on the basis that the term 'subsidiary' in that section had the meaning given in this document; or
- (b) an entity which Controls, is Controlled by, or is under common Control with, that body.

**Related Party** means you and your staff and

- (a) if you are not an individual, the trustee, directors, shareholders or any person in control of you or your business and any Related Body; and
- (b) if you are an individual or sole-proprietor, a member of your immediate family.

**Repayment Amount** means each amount specified in the Repayments Table as amended (if applicable) under any one or more of clauses 14.5, 14.6 and 15.6.

**Repayment Date** means each of the dates in the "Date to" column of the Repayments Table.

**Repayment Rescheduling Fee** means the fee applicable in relation to requests being made to us to move a scheduled direct debit or rescheduled dishonoured direct debit, capped at the amount specified in clause 2.7 of the Letter of Offer.

**Repayments Table** means, the latest of:

- (a) if in relation to a Term Loan Facility or Line of Credit Facility, the table in clause 3 of the Letter of Offer setting out the repayments to be made by you over the period from the date the Loan is provided to the Repayment Date to fully amortise the Loan and pay all interest owing to us;
- (b) if in relation to a Moula Pay Facility, the Moula Pay Repayment Schedule for each Loan that is available to you via your Customer Dashboard;
- (c) after a prepayment by you, a revised table that we provide to you (including without limitation through the Customer Dashboard) so as to amortise the Amount Owing and pay all interest owing to us over the remainder period to the Repayment Date(s); and
- (d) if in relation to a Draw, other than any Application Draw, a revised table that we provide to you in the Customer Dashboard under clause (c).

**Rescheduled Repayment Amount** means, where a Repayment Amount is not paid on a scheduled Repayment Date for any reason and that Event of Default is not remedied within 3 Business Days, the sum of the missed Repayment Amount and any fees incurred under this Agreement as a consequence of the Event of Default.

**Rescheduling Event** means, where a Repayment Amount is not paid on a scheduled Repayment Date for any reason and that Event of Default is not remedied within 3 Business Days, our adjustment of the date(s) and amount(s) on which the Repayment Amounts are required to be paid by you.

**Scheduled Interest** means the interest payable on any date as set out in the "Scheduled Interest" column of the Repayments Table.

**Scheduled Principal Owing** means, for any date, the applicable amount in the "Loan Amount (Start of Fortnight)" column 4 of the Repayments Table.

**Security Interest** means any:

- (a) "security interest" as defined in the PPS Law;
- (b) security for payment of money, performance of obligations or protection against default (including a mortgage, bill of sale, charge, lien, pledge, trust, power or title retention arrangement, right of set-off, assignment of income, garnishee order or monetary claim and flawed deposit arrangements); and
- (c) thing or preferential interest or arrangement of any kind giving a person priority or preference over claims of other persons or creditors with respect to any property or asset, and includes any agreement to create any of them or allow them to exist.

**Subsidiary** has the meaning given in the Corporations Act.

**Term Loan Facility** means the facility described as the “Term Loan Facility” in the Letter of Offer.

**Trust** means each trust of which you are or become trustee, including any trust specified in this Agreement.

**Voluntary Prepayment** means a payment made in accordance with clause 11.

## **2. Rules for interpreting this document**

In this Agreement, unless the context indicates a contrary intention:

- (a) **(documents)** a reference to this Agreement or another document includes any document which varies, supplements, replaces, assigns or novates this Agreement or that other document;
- (b) **(references)** a reference to a party, clause, paragraph, schedule or annexure is a reference to a party, clause, paragraph, schedule or annexure to or of this Agreement;
- (c) **(headings)** clause headings and the table of contents are inserted for convenience only and do not affect interpretation of this Agreement;
- (d) **(person)** a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown and any other organisation or legal entity and their personal representatives, successors, substitutes (including persons taking by novation) and permitted assigns;
- (e) **(party)** a reference to a party to a document includes that party’s personal representatives, executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;
- (f) **(including)** including and includes aren’t words of limitation, and a list of examples is not limited to those items or to items of a similar kind;
- (g) **(corresponding meanings)** a word that is derived from a defined word has a corresponding meaning;
- (h) **(singular)** the singular includes the plural and vice-versa;
- (i) **(rules of construction)** neither this Agreement nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting;
- (j) **(legislation)** a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it;
- (k) **(time and date)** a reference to a time or date in connection with the performance of an obligation by a party is a reference to the time and date in Victoria, Australia, even if the obligation is to be performed elsewhere;
- (l) **(business day)** unless stated otherwise, anything (other than making a payment) required to be done on or by a day which is not a Business Day, must be done on or by the next Business Day;
- (m) **(Australian currency)** a reference to dollars or \$ is to Australian currency;
- (n) **(multiple Obligors)** an agreement, representation, warranty or indemnity by two or more Borrowers or two or more Guarantors binds them jointly and severally; and
- (o) **(one loan)** an agreement by us to loan moneys under this Agreement to two or more Borrowers is for the benefit of them jointly.

# Contact

Our friendly customer service team is available via phone and email from 8am to 7pm AEST, Monday to Friday.

 **1300 88 58 93**

 **support@moula.com.au**

 **moula.com.au**



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