



QUALITAS LOAN PARTICIPATION AGREEMENT

1 Introduction

- 1.1 These terms and conditions ("**Loan Participation Agreement**") constitute Qualitas Securities Pty Ltd ACN 136 451 128 ("**Qualitas**", "**we**", "**us**", "**our**") agreement with you ("**you**", "**your**") as a purchaser of a Loan Participation Interest.
- 1.2 The privacy policy at www.peerestate.com/privacy and the user terms and conditions at www.peerestate.com/legal are incorporated by reference in this Loan Participation Agreement and you acknowledge and agree that you have reviewed and agree to these and acknowledge they govern the use of the service provided through the Peer Estate website operated jointly by Peer Estate Finance Pty Ltd (ACN 612 189 705) ("**Peer Estate**") and Qualitas ("**Website**").
- 1.3 Qualitas holds Australian financial services licence 342 242 and is the issuer of all Loan Participation Interests. Peer Estate is an authorised representative under the Australian financial services licence of Qualitas and provides management and day to day administrative and operational advice to Qualitas in relation to the Loan Participation Interests.
- 1.4 Defined terms have the meaning given to them in clause 14.
- 1.5 The Agreement will come into effect upon each of the following occurring:
 - (a) you applying electronically on the Website to acquire a Loan Participation Interest in respect of a Loan Arrangement;
 - (b) you remitting the Loan Participation Purchase Price to us; and
 - (c) us accepting and approving your application to acquire a Loan Participation Interest in respect of a Loan Arrangement, ("**Loan Participation Date**").
- 1.6 The Website facilitates the purchase of contractual interests in Qualitas' rights, benefits, interests and obligations in respect of a Loan under a Loan Arrangement ("**Loan Participation Interest**").
- 1.7 The purchase of a direct Loan Participation Interest will arise when Qualitas is the lender under a Loan Arrangement between Qualitas and the Borrower. In this circumstance, the Loan Participation Interest you would acquire from Qualitas will be a direct contractual right against Qualitas in respect of the loan entered into by Qualitas ("**Direct Participation**").
- 1.8 The purchase of an indirect Loan Participation Interest will arise when the Lender wishes to sell contractual rights under a Loan Arrangement between that Lender and the Borrower (for example an underlying loan between Peer Estate and a borrower). Qualitas will acquire direct contractual rights in respect of that Loan, and offer through the Website a sub participation in that Loan Arrangement. In this circumstance, the Loan Participation Interest you acquire from Qualitas is a contractual right against Qualitas in respect of Qualitas' underlying contractual rights in the Loan Arrangement ("**Indirect Participation**").
- 1.9 You agree that you will not make any contact with any borrower, lender, intermediary, solicitor or valuer concerning an offer or Loan Arrangement that is published on the Website (other than your own solicitor or professional advisers) without Qualitas' prior written consent.
- 1.10 The offer of Loan Participation Interests from Qualitas³ is only made to Australian resident wholesale clients (as that term is defined in the Corporations Act 2001 (Cth)). This does not constitute an offer, invitation, solicitation or recommendation in relation to the subscription, purchase or sale of securities to retail clients (as defined in the Corporations Act 2001 (Cth)).
- 1.11 This Loan Participation Agreement does not constitute a product disclosure statement for the purposes of the

Corporations Act 2001 (Cth) and does not contain all of the information a product disclosure statement is required to contain. The Australian Securities and Investments Commission is not required to be, and has not been, notified of the issue of this Loan Participation Agreement. The Loan Participation Interest is not required to be, and will not be, registered with the Australian Securities and Investments Commission as a managed investment scheme.

- 1.12 Neither the Website nor this Loan Participation Agreement constitutes financial product advice to investors or a recommendation to acquire a Loan Participation Interest. Neither the Website nor this Loan Participation Agreement takes into account the investment objectives, financial situation or particular needs of any investor.
- 1.13 Neither the Website nor this Loan Participation Agreement constitutes an offer, invitation, solicitation or recommendation in relation to the subscription, purchase or sale of Loan Participation Interests or securities in any jurisdiction outside Australia and neither the Website nor this Loan Participation Agreement shall form the basis of any contract or commitment in any jurisdiction.
- 1.14 You should consult with your own legal, tax and financial advisers in relation to the accuracy and completeness of the information presented on the Website and conduct your own due diligence and enquiries in relation to the information prior to acquiring a Loan Participation Interest.
- 1.15 Qualitas has appointed Perpetual Corporate Trust Limited (ABN 99 000 341 533) (AFSL 392 673) ("**Perpetual**") to hold certain assets on behalf of Qualitas. Perpetual's role is limited to holding these assets as agent of Qualitas. Perpetual has no supervisory role in relation to the operation of these assets or Peer Estate and is not responsible for protecting your interests. Perpetual has no liability or responsibility to you for any act done or omission made in accordance with the terms of the Custody Agreement between Perpetual and Qualitas.

2 Eligibility

- 2.1 To be eligible to apply for and acquire a Loan Participation Interest, you must:
 - (a) be an individual resident in Australia who is at least 18 years old (or a duly incorporated company resident in Australia or such other entity or structure acceptable to Qualitas) with a bank account at an authorised deposit taking institution; and
 - (b) be a wholesale client (as that term is defined in the Corporations Act); and
 - (c) satisfy all of our identification, know your customer and anti-money laundering requirements in order to enable us to comply with all laws, regulations, rules and regulatory guidance applicable to Qualitas, their business or the Website ("**Applicable Law**").
- 2.2 We reserve the right, in our sole discretion, to refuse to accept or approve your application to acquire a Loan Participation Interest. If we have received your Loan Participation Purchase Price and we refuse or reject your application we will promptly refund your Loan Participation Purchase Price to you.

Offers

- 3.1 Qualitas may make an offer to sell to you a Loan Participation Interest in relation to a Loan Arrangement through the Website from time to time ("**Offer**").
- 3.2 We may withdraw an Offer from the Website at any time before it is fully funded. If we withdraw an Offer from the Website in the circumstances where we are no longer proceeding with the Offer we will refund to you any Loan



Participation Purchase Price we have received from you.

4 Loan Participations

4.1 On and from the Loan Participation Date, we grant to you, and you assume from us, by way of participation on the terms of this Loan Participation Agreement, a Loan Participation Interest equal to your Participation Proportion in Qualitas' rights, benefits, interests and obligations in respect of a Loan under a Loan Arrangement.

4.2 The purchase price for your Loan Participation Interest will equal your Loan Participation Purchase Price.

4.3 Subject to your compliance with your obligations under this Loan Participation Agreement, if Qualitas receives or recovers any Money Owing (whether by payment, set-off or otherwise) on account of:

- (a) principal (whether by way of prepayment or repayment);
- (b) interest (including on overdue amounts) which has accrued or been capitalised after the Loan Participation Date; and
- (c) any other obligation in connection with that loan but excluding any amount on account of Fees,

we will pay to you, subject to clauses 4.4 and 8.1, an amount equal to your Participation Proportion of the Money Owing that has been received ("**Participation Proportion Recovered**") within 2 Business Days after its receipt until you have received an aggregate amount equal to:

- (d) the Loan Participation Purchase Price; plus
- (e) your Participation Proportion of Money Owing on account of interest (including on overdue amounts) which would have accrued or been capitalised after the Loan Participation Date if the applicable interest payable under the Loan Arrangement was the Participation Interest Rate, ("**Repayment Amount**").

4.4 Your Participation Interest Rate that is payable pursuant to clause 4.3(e) may be less than the interest rate or return that is paid or payable to Qualitas under the Loan Arrangement. If so, this differential will be applied in payment of the Management Fee under clause 4.5.

4.5 You agree that Qualitas will be entitled to a management fee equal to the amount (if any) by which the Participation Proportion Recovered exceeds your Repayment Amount, payable out of the Participation Proportion Recovered after you have received your Repayment Amount.

4.6 We have no further obligation or liability to you under or in connection with this Loan Participation Agreement on and from the date that all Money Owing recovered by us has been fully and finally distributed in accordance with clause 4.3 and we are satisfied that no additional amounts will be received in respect of the Money Owing (and we may confirm that this agreement has expired by written notice to you at any time after such date).

5 Status of Loan Participation Interest

5.1 The Loan Participation Interests acquired by, and the sub-participation granted to, you under this Loan Participation Agreement gives you a right to share in the financial effects of the Loan Arrangement but without granting any direct rights in your favour against a Relevant Payer or their respective assets.

5.2 You agree that your relationship with Qualitas is that of debtor and creditor, but only to the extent of your entitlements under clause 4.3.

5.3 Except as expressly provided in this document, nothing in this Loan Participation Agreement:

- (a) operates as an assignment of, or the creation of any Security Interest over or legal or beneficial interest in, any Loan Arrangement, Loan Document, Power or Money Owing received or recovered by Qualitas;

(b) results in you acquiring any Power enforceable against, or the benefit of any obligations owed by, the Relevant Payer;

(c) results in you acquiring any voting rights, however described, that are attributable under or in connection with the Loan Documents; or

(d) gives you any right of enforcement of the Loan Documents.

5.4 We are not in partnership or joint venture with each other and nothing in this Loan Participation Agreement should be deemed to create or constitute any such relationship.

5.5 Except as expressly provided in this Loan Participation Agreement, we are not acting as your agent, fiduciary or trustee, including in relation to any money received by or owed to Qualitas in respect of any Loan Document or in connection with the exercise of, or the failure to exercise, any Power.

5.6 You will not be entitled to be subrogated to or substituted in respect of any of Qualitas' rights or claims, including in connection with a Loan Document in any circumstance.

5.7 Except as expressly provided in this Loan Participation Agreement, we are under no obligation to:

- (a) investigate or enquire as to the occurrence or otherwise of any Default; or
- (b) exercise any Power or right of set-off we may have against a Relevant Payer.

6 Exercise of Powers and Information

6.1 You acknowledge and agree that any and all decisions we make relating to or in connection with the Loan Arrangements (including without limitation, the exercise of any Power, decisions to provide any release or waiver to a Relevant Payer, or to change the terms and conditions of the Loan Arrangements or Loan Documents) may be made by Qualitas alone and without consultation with you except that we are not entitled to amend this Loan Participation Agreement, the Loan Arrangement or grant a waiver or release of or under a Loan Document, if the amendment, waiver or release would decrease the amounts you are entitled to be repaid under clause 4.3 or change your Participation Interest Rate without your prior consent.

6.2 Other than as provided in paragraph 6.3 below, we have no duty or responsibility either initially or on a continuing basis to monitor compliance with any document or agreement or to do any inspections or provide you with any credit or other information relating to the Borrower, any Obligor or any other person.

6.3 We agree, to the extent that we are lawfully able to do so without breaching any duty of confidentiality or other obligation owed to any person to promptly provide you with:

- (a) updates from time to time in respect of the Loan Arrangement, the Borrower and the Lender (if applicable);
- (b) notice of any Default promptly after becoming actually aware of it, provided we are not to be regarded as being actually aware of the occurrence of a Default unless Qualitas has received notice from the Borrower stating that a Default has occurred and describing the same;
- (c) at your request, reasonable information regarding any Costs and Expenses incurred by Qualitas;

6.4 Nothing in this document obliges us to:

- (a) disclose any information if disclosure would constitute a breach of any law or duty of confidentiality; or
- (b) review or check the accuracy or completeness of any notice, document or information we receive or forward to you.

Limit on Financier's obligations

7.1 You agree that you have no recourse to Qualitas (or any of its directors, officers, employees, agents or



successors) (“**Protected Persons**”) and no Protected Person will have any liability to you:

- (a) if the Relevant Payer fails to perform its obligations under any Loan Arrangement;
- (b) if any recitals, statements, representations or warranties contained in any Loan Document or in any certificate or other document referred to or provided for in, or received under, this document or any Loan Document provided by or on behalf of a Relevant Payer are or become untrue, incorrect or misleading; or
- (c) in connection with value, validity, effectiveness, genuineness, enforceability or sufficiency of any Loan Arrangement or any other document referred to or provided for in, or received under, any Loan Arrangement.

7.2 We are under no obligation to pay or indemnify you in respect of, and will not be liable to reimburse or otherwise be responsible for, any Loss directly or indirectly sustained or incurred by you in connection with your participation in respect of the Loan Arrangement (except to the extent of any Loss caused by our fraud, wilful default or gross negligence in performing our obligations under this document).

8 Expenses and indemnity

8.1 You agree and acknowledge that Qualitas may withhold from your Repayment Amount an amount equal to your Participation Proportion of any Costs and Expenses incurred by Qualitas which are not recovered by Qualitas from the Relevant Payers.

8.2 You indemnify us, and must pay to us on demand amounts equal to any Loss which we suffer, incur or are liable for under or in connection with a breach by you of your obligations under this Loan Participation Agreement.

8.3 The indemnity in clause 8.2 is a separate, irrevocable, unconditional and continuing obligation, independent of your other obligations under this Loan Participation Agreement and survives the termination of the Loan Participation Agreement.

9 Receipts and recoveries

9.1 Where Qualitas’ obligation to make a payment to you under this Loan Participation Agreement arises as a result of us having received an amount from another person, we are not obliged to make that payment until we have established that we have actually received that amount and the account on which it has been received.

9.2 Any calculation, determination, designation, application, allocation or attribution made in respect of any amount by Qualitas, for the purposes of this agreement, will be conclusive in the absence of manifest error.

9.3 If any amount of Money Owning received or recovered by Qualitas in connection with any Loan Document is not attributable to any particular obligation, amount, account, facility, tranche or limit, the moneys will be attributed and applied by us towards such obligations of the Relevant Payers as we determine.

9.4 If we apply any amount in or towards satisfaction of a person’s obligations under the Loan Arrangements and we are, as a result of the application or any payment to Qualitas giving rise to the application, obliged by any law, rule or regulation to make any payment to any other person, then you must, upon demand by Qualitas, repay to us a corresponding portion of any amount paid to you as a result of the application.

10 Representations and warranties

- 10.1 You represent and warrant to Qualitas:
- (a) (**registration**) if you are a company, you are properly registered and incorporated as a corporation and validly exists in its jurisdiction of incorporation;
 - (b) (**power and authority**) you have the power, right and necessary corporate authority to carry on your current and contemplated business, and to enter into, and exercise its rights and observe and

perform its obligations under, this Loan Participation Agreement;

- (c) (**wholesale client**) you are a wholesale client (as that term is defined in the Corporations Act);
- (d) (**binding obligations**) this document imposes on you legal, valid and binding obligations, and subject to any necessary stamping and registration, is enforceable in accordance with its terms subject to laws generally affecting creditors’ rights and to principles of equity; and
- (e) (**transaction permitted**) the execution, delivery and performance of your obligations under this Loan Participation Agreement does not and will not violate, breach, or result in a contravention of:
 - (i) any law or regulation or any consent, authorisation, registration, filing, certificate, permit, licence, approval, authority or exemption of, from or required by, a Public Authority;
 - (ii) your constitution or other constituent documents (if applicable); or
 - (iii) any Security Interest or document which is binding upon your or any of your assets.

10.2 The representations and warranties given in this document survive the entry into of this Loan Participation Agreement.

Termination

11.1 We may terminate this Loan Participation Agreement by notice in writing to you at any time in the event that:

- (a) you are in material breach of any term of this this Loan Participation Agreement; and/or
- (b) you have suffered an Insolvency Event;
- (c) we suspect that you have used the Website, or intend to use the Website, for the purpose of an illegal activity.

11.2 Following termination of this Loan Participation Agreement pursuant to clause 11.1:

- (a) you are not entitled to prematurely withdraw or receive any prepayments under this Loan Participation Agreement except as provided for under the ordinary terms and conditions of this Loan Participation Agreement; and
- (b) we may, where we believe it to be desirable for legal or regulatory reasons or upon giving you at least 30 days’ written notice for any other objective reason, attempt to assign or novate your Loan Participation Interest to alternative investors.

Amendments to this Loan Participation Agreement

12.1 Subject to the provisions of clause 6.1 this clause 12.1, we may amend this Loan Participation Agreement by giving you notice via the Website and your user account.

- 12.2 We will only make changes:
- (a) where we consider that a change will make this Loan Participation Agreement clearer and no less favourable to you; or
 - (b) to introduce new systems or technology; or
 - (c) to introduce new products or services; or
 - (d) to implement changes required by Applicable Law.

12.3 We will give you 30 days’ notice of any change except where we consider that such change is required under Applicable Law.

13 General

13.1 This Loan Participation Agreement is supplied in English and all communications between all or any of us (including any communications or documentation passing between all or any of us before entering into any contract) will be in English.

- 13.2 You must not:
- (a) transfer or otherwise Dispose of your Loan Participation Interest unless we agree in writing (or it otherwise occurs by reason of clause 11.2; or



- (b) create any Security Interest over or in respect of any or all of your Loan Participation Interest without our prior written consent.
- 13.3 We may assign our respective rights and obligations under this Loan Participation Agreement.
- 13.4 You agree not to disclose to any other person any information provided by us in connection with this Loan Participation Agreement or a Loan Document which is not publicly available, except:
- (a) with our prior consent;
 - (b) if required by law, a Public Authority or administrative guideline or policy (even if not having force of law) which the person disclosing the information customarily complies with;
 - (c) in connection with any exercise of a Power or any legal proceeding relating to this document or any Loan Document; or
 - (d) to your auditors, legal advisers or other consultants in confidence.
- 13.5 A provision of this document that is illegal, invalid or unenforceable in a jurisdiction is ineffective in that jurisdiction to the extent of the illegality, invalidity or unenforceability. This does not affect the validity or enforceability of that provision in any other jurisdiction, nor the remainder of this document in any jurisdiction.
- 13.6 This Loan Participation Agreement is governed by the laws of Victoria. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of that place (and any court of appeal) and waives any right to object to an action being brought in those courts, including on the basis of an inconvenient forum or those courts not having jurisdiction.

14 Defined terms

Defined terms have meaning given to them throughout this Loan Participation Agreement and:

"Attorney" means each attorney appointed under any Loan Document.

"Authorised Representative" means, in respect of a party, a director or company secretary, or a person whose title or acting title includes 'manager', 'director', 'executive', 'chief', 'head', 'counsel' or 'president', or a person notified to the other party as being its authorised representative for the purposes of this document.

"Borrower" means the borrower set out in the Offer and the Offer Terms.

"Business Day" means a week day on which banks are open for general banking business in Melbourne.

"Costs and Expenses" means costs or expenses which Qualitas incurs as a result of, or in connection with the Loan Arrangements.

"Default" means an 'Event of Default' (however described) as specified in the Loan Documents.

"Dispose" means, in relation to your Loan Participation Interest, to:

- (a) sell, assign, convey or otherwise dispose of any legal, beneficial or equitable interest or right in all or any part of your Loan Participation Interest (including by way of gift or the provision of any warrant, option or right of first refusal); or
- (b) enter into an agreement in respect of the voting or any other rights in respect of all or any part of your Loan Participation Interest;

or to agree to do any of these things.

"Dollars" and **A\$** mean the lawful currency of Australia.

"Fees" means any fee, commission or other amount that is payable by the Relevant Payer to Qualitas in connection with the Loan under the Loan Documents,

but excludes principal, interest or default or overdue interest.

"Insolvency Event" means the occurrence of any of the following events in relation to any person:

- (a) the person becomes insolvent as defined in the Corporations Act, states that it is insolvent or is presumed to be insolvent under an Applicable Law;
- (b) the person is wound up, dissolved or declared bankrupt;
- (c) the person becomes an insolvent under administration as defined in the Corporations Act;
- (d) a liquidator, provisional liquidator, Controller, administrator, trustee for creditors, trustee in bankruptcy or other similar person is appointed to, or takes possession or control of, any or all of the person's assets or undertaking;
- (e) the person enters into or becomes subject to:
 - (i) any arrangement or composition with one or more of its creditors or any assignment for the benefit of one or more of its creditors; or
 - (ii) any re-organisation, moratorium, deed of company arrangement or other administration involving one or more of its creditors;
- (f) an application or order is made (and, in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken which is preparatory to or could result in any of (b), (c), (d) or (e) above;
- (g) the person is taken, under section 459F(1) of the Corporations Act, to have failed to comply with a statutory demand;
- (h) the person suspends payment of its debts, ceases or threatens to cease to carry on all or a material part of its business or becomes unable to pay its debts when they fall due; or
- (i) anything occurs under the law of any jurisdiction which has a substantially similar effect to any of the other paragraphs of this definition,

unless the event occurs as part of a solvent reconstruction, amalgamation, merger or consolidation that has been approved in writing by us.

"Lender" means, in respect of an Indirect Participation, the lender or provider of funds to a Borrower in respect of a Loan Agreement pursuant to which Qualitas sub-participates (and which may include, for the avoidance of doubt, Peer Estate).

"Loan Agreement" means:

- (a) in respect of a Direct Participation, the Loan Agreement between Qualitas and the Borrower and any other Obligor; or
- (b) in respect of an Indirect Participation, the Loan Agreement between the Lender and the Borrower and any other Obligor.

"Loan Arrangement" means:

- (a) in respect of a Direct Participation, the loan or facility the subject of the Loan Agreement and Loan Documents between Qualitas and the Borrower and any other Obligor; or



- (b) in respect of an Indirect Participation, the participation arrangement between Qualitas and the Lender in relation to the loan or facility the subject of the Loan Agreement and Loan Documents, or where the context requires, the underlying Loan Agreement and Loan Documents between the Lender and the Borrower and any other Obligors.

“Loan Commitment” means:

- (a) in respect of a Direct Participation, the aggregate commitment or facility limit that exists under the Loan Arrangement between Qualitas and the Borrower; or
- (b) in respect of an Indirect Participation, the aggregate amount of Qualitas’ participation in and commitment to the Loan Arrangement between the Lender and the Borrower.

“Loan” means the cash advance or other loan facility provided pursuant to a Loan Agreement by:

- (a) in respect of a Direct Participation, Qualitas to the Borrower; or
- (b) in respect of an Indirect Participation, the Lender to the Borrower,

as set out in the Offer Terms.

“Loan Participation Purchase Price” means the purchase price you need to pay Qualitas in respect of your Loan Participation Interest as indicated by you on the Website and agreed by us pursuant to clause 1.5 as part of the application acceptance process.

“Loan Document” means the Loan Agreement, any document evidencing any Security and each other ‘Loan Document’ (however so described’) in the Loan Agreement.

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

“Management Fee” means the management fee payable to Qualitas under clause 4.5.

“Money Owing” means all money due and payable to Qualitas under or in respect of the Loan Arrangement or otherwise under a Loan Document (whether on account of principal, interest, fees or otherwise) but, for the avoidance of doubt, excludes any Fees.

“Obligor” means the Borrower and each other party who provides a Security Interest or guarantee in favour of Qualitas or the Lender (as the case may be) to support the Borrower’s obligations under the Loan Agreement.

“Offer Terms” means the terms of the Offer as contained on the Website and pursuant to which you acquired a Loan Participation Interest.

“Participation Interest Rate” means the interest rate that applies to your Loan Participation Interest as set out in the Offer Terms.

“Public Authority” means:

- (a) a government or government department;
- (b) a governmental, semi-governmental, regulatory or judicial entity or authority; or
- (c) a person (whether autonomous or not) who is charged with the administration of a law.

“Receiver” means a receiver or receiver and manager appointed under any Loan Document.

“Relevant Payer” means:

- (a) in respect of a Direct Participation, the Borrower or any other Obligor;
- (b) in respect of an Indirect Participation, the Lender, the Borrower or any other Obligor.

“Participation Proportion” means, at any time, the proportion which your Loan Participation Purchase Price bears to the Loan Commitment, expressed as a percentage.

“Power” means:

- (a) in respect of a Direct Participation, any right, power, discretion or remedy of Qualitas, a Receiver or any Attorney under any Loan Document or Applicable Law; or
- (b) in respect of an Indirect Participation, any right, power, discretion or remedy of Qualitas under any Loan Arrangement.

“Property” means the real property as disclosed in the Offer Terms owned by the Borrower or an Obligor which secures or relates to the Loan Arrangement and which is the subject of a Security.

“Security” mean any Security Interest granted by the Borrower or any Obligor in favour of Qualitas or the Lender (as applicable) in relation to the Loan Agreement.

“Security Interest” means an interest or power:

- (a) reserved in or over any interest in any asset including, but not limited to, any retention of title; or
- (b) created or otherwise arising in or over any interest in any asset under a bill of sale, mortgage, charge (whether fixed or floating), hypothecation, lien, pledge, caveat, trust or power,

by way of, or having similar commercial effect to, security for the payment of a debt or any other monetary obligation or the performance of any other obligation and includes, but is not limited to, any agreement to grant or create any of the above. It also includes a security interest within the meaning of s 12 of the PPSA.

15 Interpretation

In this document, unless the context requires otherwise:

- (a) the singular includes the plural and vice versa;
- (b) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (c) headings are for convenience and do not affect interpretation;
- (d) a reference to any document or agreement includes a reference to that document or agreement as amended, novated, supplemented, varied or replaced from time to time;
- (e) a reference to “\$”, “A\$” or “dollar” is a reference to Australian currency;
- (f) a reference to a time is a reference to Australian Eastern Standard Time or Australian Eastern Daylight Time, whichever is appropriate;
- (g) a reference to a party includes its executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns; and



- (h) a reference to any legislation or to any provision of any legislation includes:
 - (i) any modification or re-enactment of the legislation;
 - (ii) any legislative provision substituted for, and all legislation, statutory instruments and regulations issued under, the legislation or provision; and
 - (iii) where relevant, corresponding legislation in any Australian State or Territory.

16 Payments, set-off and GST

16.1 Payment requirements

All payments under this Loan Participation Agreement must be made:

- (a) to an account nominated by the party to whom the amount is owed or as that party otherwise directs; and
- (b) in A\$, in immediately available funds and in full without, subject to clause 16.4, set-off, counterclaim or, subject to clause 16.2, deduction or withholding.

16.2 Deduction or withholding

(a) All payments by Qualitas under this document will be made net of any deduction or withholding required to be made from such payments by any law, regulation or practice. If any such deduction or withholding is required to be made, Qualitas must:

- (i) make that deduction or withholding and pay to the appropriate Public Authority an amount equal to the full amount deducted and/or withheld as required; and
- (ii) give you the original receipt (or copy thereof certified by an Authorised Representative of Qualitas) for the payment.

You bear the risk of such deduction or withholding and the obligation of Qualitas to pay an amount net of such deduction or withholding and to account to the relevant Public Authority for the amount of such deduction or withholding will satisfy our obligation to make the original payment to you.

16.3 Failure to remit

We are not:

- (a) responsible for any Loss arising out of our failure owing to causes outside its control (such as, but not limited to, the imposition of foreign exchange restrictions) to remit to you any amount due to it under this document; or
- (b) liable to remit to you any amount greater than the relevant Participation Proportion of any amount of Money Owing it receives or recovers.

16.4 Permitted set-off

We may (but are not obliged to) set off any amount due and payable by you under this document against any such amounts due and payable to you under this document.

16.5 GST

(a) In this clause:

- (i) terms defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) apply;
- (ii) reference to a person includes the representative member of any GST group of which the relevant person is a member;
- (iii) a **Finance Supply** means a supply made or to be made by a party under or in connection with this document where the consideration for the supply is not stated to include an amount in respect of GST on the supply; and

(iv) **GST Amount** means the amount of any GST payable on a Finance Supply.

- (b) All Finance Supply amounts have been calculated without regard to GST. If GST is or will be imposed on any Finance Supply, the payment to the supplier for that supply will be increased by the GST Amount. Each recipient of a Finance Supply indemnifies the supplier against, and must pay to the supplier on demand amounts equal to, any Loss arising as a result of or in connection with the supplier failing to receive the increased payment amount.
- (c) If a party (**Payer**) is liable under a Loan Document to reimburse or indemnify the other party for any Loss, the reimbursement or indemnity amount will be increased to the full GST inclusive amount less any input tax credit to which the other party determines it is entitled with respect to that Loss, plus any increase amount for GST payable under clause 16.5(b). To the extent that the other party is not entitled to an input tax credit for the GST payable on any supply acquired by or expenditure incurred by the other party directly or indirectly in connection with this document, the Payer must reimburse the other party for the amount of that GST.
- (d) A recipient of a Finance Supply is not obliged to pay any GST Amount pursuant to this clause until the supplier issues a tax invoice to the recipient.
- (e) If it is determined on reasonable grounds that the amount of GST paid or payable to the Commissioner of Taxation by the supplier in connection with a Finance Supply differs for any reason from the GST amount paid or payable to the supplier by the recipient pursuant to clause 16.5(b), the amount of the difference must be paid by, refunded to or credited to (as applicable), the recipient promptly, and the supplier must issue an adjustment note to the recipient.

17 Notices

17.1

Except as otherwise expressly provided in this Loan Participation Agreement, any communication in writing may be given by post to the last known postal address that we hold for you or you hold for us, or email to the email address last notified by you to us or by us to you.

17.2

Communications sent:

- (a) by post will be treated as received by you three Business Days after posting; and
- (b) by email they will be treated as received immediately upon sending, so long as we do not receive notice of non-transmission or non-receipt.

17.3

We may also (where allowed to do so by Applicable Law) communicate with you by posting information or notices in your user account or on the Website, in which case the information will be treated as received by you when it is posted by us.

17.4

Any communication given to us shall be deemed to have been received only on actual receipt by us.