

# Terms of Service

By registering to use the Website, [www.unlock.marketlend.com.au](http://www.unlock.marketlend.com.au) and any related Website address you agree to be bound by these Terms of Service, or any terms provided to you from time to time either in your capacity as an Account Holder or user of the Website.

As an Account Holder, you have obligations consisting of but not limited to the Terms of Service located herein including the attached Schedules.

We direct you to review your Credit Terms and any other documentation provided to you during your application to create an UnLock account.

You consent to abide by our Privacy Policy and agree to any other terms and conditions brought specifically to your attention from time to time.

## 1 Introduction

- 1.1 If there is a conflict between these Terms of Service and any Credit Agreement you have with the Account Provider, the terms of that Credit Agreement shall prevail.
- 1.2 These Terms of Service consist of:
  - a. Clauses 1 to 17; and
  - b. Definitions; and
  - c. The Schedules.
- 1.3 Any reference to “you” means you or the corporate entity or trust you are authorised to represent or you as an Account Holder. Your agreement to these Terms of Service and the Account Provider’s Privacy Policy, is on your behalf, and on behalf of any authorised entity you represent to us.
- 1.4 Marketlend Pty Ltd is special purpose company, wholly owned subsidiary of Tyndall Capital Pty Ltd (Tyndall).
- 1.5 UnLock is a payment gateway owned and run by Tyndall.
- 1.6 The Websites [www.unlock.marketlend.com.au](http://www.unlock.marketlend.com.au), [www.marketlend.com.au](http://www.marketlend.com.au) and [www.marketlend.co.nz](http://www.marketlend.co.nz) are operated by Tyndall. Any reference to Marketlend includes and is not limited to Tyndall.

## 2 UnLock Services

- 2.1 Through the Website (by any other means) our key role is to perform administrative functions and purchase supplies or services on behalf of Account Holders as governed by the Credit Terms. Other roles include the coordination and facilitation of payment and collection of sums due under or in connection with such Credit Terms (including certain limited actions upon an Account Holder’s default as set out in these Terms of Service or any Credit Agreement). Please note that our roles are not limited to the roles set out above.
- 2.2 We do not:
  - a. Provide any advice or express any opinion to prospective Account Holders on the question of whether to enter into any Credit Agreement or the interpretation of any Credit



Agreement;

- b. Make any representation or give any opinion as to the accuracy of the online credit check of our credit referencing parties.
- c. Whilst through the Website, we do make available certain information, we make no representation that such information is complete, accurate and not misleading.

2.3 All of our fees are in payment for our role in supplying the services set out herein. They are not for dealing with any analysis of the Information provided by Account Holders which we carry out as part of our free Account Holder due diligence and which is always undertaken on a no-fee, no-liability basis.

### **3 Lawful purposes**

- 3.1 You agree to use UnLock only for lawful purposes, and in a manner that does not infringe the rights of or restrict or inhibit the use and enjoyment of UnLock or the Website by any third party. This includes conduct which is unlawful or which may harass or cause distress or inconvenience to any person, the transmission of obscene or offensive content or disruption to the Account Provider.
- 3.2 You must not post or transmit via the Website any unlawful, defamatory, obscene, offensive or scandalous material, or any material that constitutes or encourages conduct that would contravene any law.
- 3.3 All Information provided on the Website is confidential other than if the information is available in the public arena. This Information is only made available to Account Holders for the provision of financial accommodation.
- 3.4 Any use of this Information for other purposes, or release of this Information to a person or entity that you are not in managing control of, is a contravention of these Terms of Service. The Account Provider or its representatives will consider such breach as severe, and you will be liable for any damage suffered by the Account Provider or its clients.
- 3.5 You agree, as a user of UnLock, that the Account Provider, either in its own right or as the manager directing a trust, has the right to set off any funds deposited by you against any legal costs, damages or any other cost incurred as a result of a breach of these terms.
- 3.6 The Account Provider reserves the right, at its sole discretion, to restrict or remove users of UnLock or any person's access to the Website at any time.

### **4 Disclaimer:**

- 4.1 Your use of UnLock does not:
  - a. Reduce any obligation You owe to the Account Provider or its related entities or the trustee for the Account Provider in provision of funds by the Account Provider.
- 4.2 The Account Provider is not a substitute for independent professional advice and you should obtain any appropriate professional advice relevant to your circumstances when using UnLock.

## 5 Consent and Content

- 5.1 If you use UnLock as a payment gateway, you may receive Information including but not limited to emails, correspondence, short message signals, notices or disclosure documents from us. Your participation where you provide any contact details means you consent to receiving Information. This consent is not withdrawn unless you advise us that you do not consent to receiving Information. We do accept Information, on the Website provided by a person or people making such postings, however, we are not responsible for Information provided by the person or people who made such postings. We do not endorse, support, or guarantee the truthfulness, accuracy, or reliability of any the comments posted on the Website or endorse any of the opinions expressed.
- 5.2 We take reasonable care in linking to other websites but we have no direct control over the content presented in those websites or the availability of those websites.
- 5.3 We make no representation that the material on any linked websites does not infringe the Intellectual Property rights or any other rights of any person. We do not authorise the reproduction of such material.
- 5.4 We do not endorse or recommend any links to external websites, or third-party content, including products and services offered by, from or through those websites or their content.
- 5.5 We reserve the right to restrict the Information sent by one participant including any communication to another within a forty-eight hour period when we determine necessary at our sole discretion.

## 6 Opening an UnLock Account

- 6.1 You will need to register with us to create a user account before you are able to request that the Account Provider pay for supplies or services on your behalf.
- 6.2 We will need:
- a. your correct and current e-mail address;
  - b. your current home address;
  - c. your mobile or home phone number;
  - d. your full name (including middles names);
  - e. your correct date of birth; and/or
  - f. other relevant personal information.
- 6.3 You agree to notify us within 14 days of any change in the above information details.
- 6.4 When you register, you will need to choose a username and provide an email, mobile telephone number and address.
- 6.5 Before being accepted as a user of UnLock, you will be verified via the Account Provider's verification process.



- 6.6 Account Holders will need to provide two forms of photographic identity documents, such as a valid driver's licence or a valid passport or both and may also be asked for a voice sample, which will be used as your digital signature to access certain aspects of the Website and other facilities of UnLock. Please be aware that due to Anti-Money laundering policies, all identification documents need to be re-submitted every two years.

## 7 Verification and Unauthorised Use

- 7.1 We verify your identity through a third-party service provider, and you agree to permit your information to be provided to this third-party for the purposes of identification. This verification is for your protection and regulatory purposes. Any data collected in the process is protected and held by the service provider.
- 7.2 We accept no liability whatsoever for any activity on your account by anyone using your personal information.
- 7.3 If you suspect that there has been unauthorised use of your account of any kind whatsoever, you must notify us of this immediately following the notification procedure set out in these terms.
- 7.4 You agree that you will not in any way change or attempt to change or avoid the login procedure used on our Website. In our absolute discretion, and for your protection, we will have the right to refuse to act on your instructions where we suspect that access has or is being gained by persons unauthorised to do so, or we suspect other illegal or fraudulent activity.

## 8 Becoming an UnLock Account Holder

- 8.1 Account Holder pre-conditions:
- a. The Account Holder must be a business which is operating and is registered as a limited liability company, or limited liability partnership or sole trader with an Australian Business Number;
  - b. The Account Holder must comply with basic credit and fraud risk criteria which will include obtaining a minimum score from our Credit Checking Agency;
  - c. The Account Holder agrees that the details that it submits to us about its business may be published on the Website.
- 8.2 Before you become an Account Holder, we will perform an identification verification process. A credit and financial check will then be performed. Only once this process has accepted you, will you become an UnLock Account Holder.
- 8.3 Once you have become an Account Holder you will be contacted by the Account Provider advising you of your Credit Terms.

## 9 Account Holder Checks

- 9.1 As part of the registration process, we and certain people authorised to act on our behalf, will check your identity using third-party credit checking services, or other authorised third parties. Providing the information and documents we ask for is a pre-condition to using the service.

- 9.2 Having registered with us and applying for financial accommodation through us, using third-party services, we will undertake identity verification, credit checks and fraud checks on you and in case of a body corporate or trust, the body corporate or trust.
- 9.3 You warrant to us that all information submitted by them in the course of the application and credit allocation process was at the time of its submission, and is at the time a Credit Agreement is entered into, true, accurate and is not misleading. If any information changes so that this is no longer the case, you must immediately update the information so that it complies with the warranty in this clause. Such updates will be made available to the other interested parties.

## 10 Account Holders Obligations

- 10.1 As an Account Holder, you are required to repay the Account Provider for all monies paid by the Account Provider for supplies and services on your behalf and the applicable fees and charges payable within the period specified in your Credit Terms. If, at any time, funds advanced on your behalf by the Account Provider or to you, are funds that were illegitimately obtained by you or your company or you are in breach or have acted contrary to the Terms of Service or Credit Terms signed by you at the time of application, we have the right to direct debit your or your company's banks accounts for the amounts in part or whole of those funds.
- 10.2 As an Account Holder, you agree to grant security to the Account Provider or its assigns in the form of personal property security interest. The type of interest is determinable by us. At your cost, you will from time to time, at the written request of the Account Provider execute any deed, dealing, assurance or other document which the Account Provider will in its absolute discretion require you to execute and do all such other acts, matters and things as the Account Provider does consider reasonable for the purpose of preserving, perfecting or protecting the Charge and the Mortgage or more effectively securing the powers, remedies, rights, declarations and authorities of the Account Provider under the charge and or the Mortgage.
- 10.3 As an Account Holder, on settlement you will be notified:
- a. the interest rate, and the funds available to your account;
  - b. the payments required monthly, weekly or daily depending on the Account Provider's discretion;
  - c. the payments consisting of capital, interest or both.
- 10.4 As an Account Holder, you agree to make timely payments for interest charged on the funds advanced on your behalf by the Account Provider. If, at any time, we consider the likelihood of repayment on a due date is reduced due to you or your business' cash-flow historically or you or your business, as an Account Holder, failing to provide sufficient information to enable the Account Provider or its related parties to determine the likelihood of repayment on the due date, you, as authorised representative of the business agree we have the right to direct debit your or your business' banks accounts for the amounts in part or whole of those funds on a regularly periodical basis, including daily, weekly, monthly or bi monthly or 90 days or immediately.

## 11 Security

- 11.1 We coordinate the development and management of UnLock, however some interactions with UnLock occur on systems under the control of the Account Provider's appointed third-parties.



- 11.2 The Account Provider's appointed third-party is responsible for the security of information while it is collected by, stored on or passing through the UnLock ([www.unlock.marketlend.com.au](http://www.unlock.marketlend.com.au)) system.
- 11.3 We strive to protect comments and information you provide on the Website. We will use all reasonable endeavours to ensure that your comments and information are not compromised. However, we cannot guarantee that no harmful code will enter the Website. You should be aware of the risks associated with using Websites.
- 11.4 We recommend that you use appropriate and up-to-date firewall and anti-virus software to protect your computer systems.

## 12 Privacy

- 12.1 By submitting data to us, you give the Account Provider consent to use your sensitive personal data. We will use this data to carry out a complex credit and finance checking process. The results of this check will be available to you via a Dropbox link or otherwise.
- 12.2 We will only use and disclose your personal information to a person, body or other appointed third party:
  - a. to provide you with a service that you have requested;
  - b. as authorised by law, for example, if a law enforcement authority or court order lawfully directs us to disclose the information of a user;
- 12.3 For more information about how we protect your privacy and personal information, please see our Privacy Policy.
- 12.4 In agreeing to these Terms of Service and by accessing and using the UnLock Website, you are agreeing to our Privacy Policy.

## 13 Termination

- 13.1 If you no longer want to be an Account Holder you can let us know and we will end your involvement as soon as any current Credit Terms are repaid and/or come to an end.
- 13.2 We may, in our absolute discretion, terminate any involvement with UnLock if:
  - a. You breach these Terms of Service, or any other agreement with the Account Provider;
  - b. You breach any Credit Terms;
  - c. We suspect that you have committed fraud, been involved in money laundering or other criminal activities;
  - d. You use the Website in any of the following ways:
    - i In any way that causes, or is likely to cause, the Website or access to it to be interrupted or damaged in any way or cause disruption to an Account Holders or prospective Account Holder's business operations;
    - ii For fraudulent purposes or in connection with criminal offences;
    - iii To send, use or reuse any material that is:
      - illegal, offensive, abusive, indecent, defamatory, obscene or menacing; or

- in breach of copyright, trademark, confidence, privacy or any other right or is otherwise injurious to third parties, or objectionable; or
  - consists of or contain software viruses, political campaigning, commercial solicitation, chain letters, mass mailing or any “spam”;
- iv You disclose confidential information provided to you by the Account Provider;
- v You disparage, defame, make comments or opinions that may damage the reputation of the Account Provider or be imputed to damage or negatively affect the Account Provider.

## 14 General

- 14.1 These Terms of Service are governed by the laws of the New South Wales, Australia and you agree to submit to the exclusive jurisdiction of the courts of the New South Wales.
- 14.2 If any of these Terms of Service are held to be invalid, unenforceable or illegal for any reason, the remaining Terms of Service will continue in full force.
- 14.3 We will endeavour to facilitate uninterrupted access to the Website. Access to the Website may be suspended, restricted or terminated at any time.
- 14.4 These Terms of Service do not negate any other terms or conditions that apply to your use of any related Website of Tyndall Capital.
- 14.5 You warrant and represent that you have taken all reasonable precautions to ensure that any data you upload to the Website is not infected with any virus or anything else which may have a destructive effect on any part of the Website.
- 14.6 We may revise these Terms of Service from time to time.
- 14.7 Please contact us if you have any questions, problems or feedback regarding our Website at [compliance@tyndallcapital.com](mailto:compliance@tyndallcapital.com)

## 15 Fees and Provisions

- 15.1 UnLock provides you with a payment gateway whereupon the Account Provider will pay for supplies or services on behalf of the Account Holder, in exchange for providing our UnLock Services, the Account Provider will be paid an administration fee and from time to time may levy other charges.
- 15.2 The administration fee is payable to us by the Account Holder on settlement and it forms part of the Credit Terms agreement and/or any other agreements with the Account Provider.
- 15.3 The Account Provider will charge the Account Holder, an application fee upon the filing of an application for the Account Holder’s use of and access to the Platform
- 15.4 The Account Provider reserves the right to increase or waive its fees at its sole discretion.
- 15.5 Late fees are payable on outstanding invoices issued to Account Holders. These fees are charged either when the outstanding amount is paid, if the account is brought up to date or on a monthly cycle every 25th of the month or at the discretion of the Account Provider. Late fees are A\$25 per day or 26% per annum whichever is the greater but are adjustable at the discretion of the Account Provider. A dishonour fee is incurred when a direct debit payment fails, on the first occasion, it is A\$25 and A\$100 for any occasion thereafter.



- 15.6 The Account Provider may elect that any monies paid or due by any Account Holder can be used for any losses incurred by any Account Holder at that time or in the future.
- 15.7 If an Account Holder pays all fees and charges on time and no losses are suffered by the Account Provider in any way due to the Account Holder, at the end of all the credit exposures of the Account Holder, any monies paid in excess of fees and charges specific to that Account Holder will be credited to the Account Holder and set off against the amount payable for the payout of all credit exposures. For avoidance of doubt, it is only the monies paid by the specific Account Holder that will be set off on the payout of all credit exposures.
- 15.8 The Account Provider may elect at any time to determine a liquidated loss on an Account and its Account Holder is liable for the liquidated loss.
- 15.9 Any withdrawal of funds must abide by our anti-money laundering and identification policies and procedures.

## **16 Limitation of Liability**

- 16.1 Any guidance that we make available on the Website or in any other marketing materials, are for guidance purposes only and are not guaranteed.
- 16.2 To the extent permitted by law, you agree that the Account Provider or its related entities not liable for any damage arising out of or in connection with the use of this Website.
- 16.3 This includes without limitation, direct loss, loss of business or profits (whether or not the loss of such profits was foreseeable, arose in the normal course of things or you have advised the Account Provider of the possibility of such potential loss) damage caused to your computer, computer software, data, systems and programs and the data or to You or any other direct or indirect consequential and incidental damages.

## **17 Waiver**

- 17.1 Nothing in these Terms of Service is to be construed as a waiver of the Account Provider's rights. If a clause is determined null or void or unenforceable it is to be severed from the Terms of Service and the Terms of Service will need to be read as if the clause was not included. No single or partial exercise of any right or remedy provided under these terms or by law shall preclude or restrict the further exercise of any such right or remedy.



## Definitions

**Account** means a Limit provided in compliance with the Credit terms as advised to you by the Credit Provider from time to time

**Account Holder** means any person who uses UnLock or the Website to have supplies or services paid for by an entity managed by the Account Provider and defined as the Account Holder.

**Account Provider** means Marketlend and Tyndall.

**Application** means the document or website that you entered Information into which was headed "UnLock Account Application" and located at [www.unlock.marketlend.com.au](http://www.unlock.marketlend.com.au) or its related website address.

**Business** means any company, sole trader, or trust that has made an application to be an Account Holder and had or has, a listing on the Marketlend marketplace located [here](#).

**Credit Agreement** means the Credit Terms between You and Marketlend including any amendments made from time to time.

**Credit Provider** means Marketlend, Tyndall or an entity nominated by Marketlend.

**Credit Terms** means the Credit Terms Agreement between You and Marketlend including any amendments made from time to time.

**Event of Default** means:

- there is a breach by the Account Holder of any of these Terms of Service or any other agreement with the Account Provider, or
- any monies payable to the Account Provider become overdue, or in our opinion you will be unable to meet your payments as they fall due; or
- where the Account Provider ascertains that the Account Holder has made any false, inaccurate or misleading statement having, in the Account Provider's opinion, having a material effect on the provision of any monies by the Account Provider previously or in the future to the Account Holder or in relation to making of any agreement or security or any related or collateral document; or
- if the authority or the power of the Account Holder to perform their obligations under any agreement with the Account Provider or any security is revoked or so amended that the Account Holder is unable to fully and duly perform and observe those obligations or is the Account Holder is a natural person, the Account Holder dies or become incapable to not managing his or her own affairs; or
- you (being a company) are or become
- an externally-administered body corporate;
- subject to control by a Controller; or
- insolvent; or
- you (being an individual) commit an act of bankruptcy or are or become an insolvent under administration.

**Information** means documentation including but not limited to emails, correspondence, short message signals, notices or disclosure documents.

**Intellectual Property** includes the full benefit of any rights in any copyright, trade mark, registered design, patent, trade and business names, inventions, knowhow, improvements, discoveries,



confidential processes and information and includes artistic works, images, designs, motifs and photographs and any adaption or concept relating to it.

**Law** means any Commonwealth or Australian state legislation regulation and the general laws and includes in particular the Competition and Consumer Act 2010 (Cth) and regulations as amended and the Personal Property Securities Act 2009 (Cth) and regulations as amended.

**Limit** means the amount of financial accommodation granted to you by the Account Provider from time to time and advised in writing.

**Marketlend** means Marketlend Pty Ltd together with its successors and assigns.

**Member** means any person registered on Marketlend's website or an Account Holder who has made a Trade Credit Account application to Marketlend regardless of its status.

**Mortgage** means a legal agreement by which Marketlend lends money at interest in exchange for the grant of a Security in the debtor's or any other security provider's property, with the condition that any assignment by way of a Security will be reassigned or released upon the payment of the debt.

**PMSI** means a security interest taken in collateral, to the extent that it secures all of part thereof, of the purchase price as defined in Section 14 of the PPSA.

**Privacy Policy** means the policy named Tyndall Capital Privacy Policy available on [www.unlock.marketlend.com.au](http://www.unlock.marketlend.com.au), [www.marketlend.com.au](http://www.marketlend.com.au) or upon request at [compliance@tyndallcapital.com](mailto:compliance@tyndallcapital.com)

**Receiver** means a receiver, receiver and manager or other controller appointed by the Account Provider under any Transaction Document and any person who derives a right directly or indirectly from any such person.

**Schedules** means Schedules 7, 8 and 9 of the Credit Terms.

**Security** means a mortgage, charge, pledge, lien, security interest, title retention, preferential rights, trust arrangement, contractual right to set off and any other encumbrance, security agreement or arrangement in favour of any person including a PMSI.

**Seller** means where reference is made in here, the Account Holder. Where reference is made in the general security deed at paragraph 1 of that deed, all assets of the Account Holder.

**UnLock Services** means the payment for supplies or services by the Account Provider on behalf of the Account Holder.

**Term** means the period where financial accommodation is made available to the Account Holder notified by the Account Provider.

**Terms of Service** means this document, being the terms of service published on the Website Marketlend Platform including any amendments made from time to time.

**Transaction Document** means all documents comprising the Credit Terms and any Security or Guarantee granted to the Credit Provider in connection with the provision of any credit or loan by the Credit Provider.

**Trustee** means any trustee of a trust where an interest is held by the Credit Provider including Australian Executors Trustees Limited.

**Tyndall** means Tyndall Capital Pty Ltd ACN 154 750 268.

**UnLock** means a payment gateway whereupon the Account Provider will pay for supplies or services on behalf of the Account Holder on the basis of the Account Holder repaying the Account Provider all monies paid, fees and charges within a period agreed between the Account Provider and the Account Holder.

**Us** means the Account Provider, Marketlend or Tyndall.



**Website** means [www.unlock.marketlend.com.au](http://www.unlock.marketlend.com.au), [www.marketlend.com.au](http://www.marketlend.com.au) and its related website pages.

**You** refers to you as the Account Holder or the corporate entity or trust you are authorised to represent.

## Schedule 7: Receivers: appointment and Powers

### Chapter 1: Appointment of Receiver

If any Event of Default occurs then, during the period it subsists, the Account Provider may:

1. appoint any person or persons to be a receiver or receiver and manager of the Collateral;
2. terminate the appointment of any Receiver; and
3. in case of the removal, retirement or death of any Receiver, appoint another person or persons in the place of that Receiver.

### Chapter 2: Joint Receivers

If more than one person is appointed as a Receiver, the Account Provider may at its option specify whether the appointment and the powers of each appointee will be joint or joint and several. If no specification is made, the appointment and the powers of each appointee will be joint and several.

### Chapter 3: Remuneration of Receiver

The Account Provider may fix the rate of remuneration of each Receiver, which will not exceed the standard hourly rate from time to time charged by the firm of which that Receiver is a member for work of the level carried out by that Receiver.

### Chapter 4: Agent of Grantor

Each Receiver will be the agent of the Account Holder which granted the Charge (**Grantor**). The Grantor will be solely responsible for all acts and omissions by, and the remuneration of, each Receiver.

### Chapter 5: Powers of Receiver

Without the need for any consent from the Grantor or any other person, each Receiver will have all of the following powers:

1. (**Section 420**) all of the powers granted to a receiver of property of a corporation under section 420 of the Corporations Act;
2. (**Dispose**) whether or not in possession, to dispose of the Collateral in such manner and on such terms as the Receiver thinks fit;
3. (**Borrow or raise money**) to borrow or raise from the Account Provider or any other person any money which may be required for any purposes and, if the Receiver thinks fit, to secure any money borrowed or raised by the grant of any Security over the Collateral (whether in the name of the Grantor or otherwise) so that the Security ranks in priority to, *pari passu* with or after this deed. The Account Provider will not be bound to inquire as to the necessity or propriety of any Financial Liability nor be responsible for the misapplication or non-application of any money so borrowed or raised;
4. (**Lease**) whether or not the Receiver has taken possession, to lease or licence the Collateral in the name of the Grantor or otherwise, for any period and on any terms or to vary or terminate a lease or licence;

5. **(Collection)** collect the charged debts forming part of the Collateral;
6. **(Engage)** to engage consultants, contractors, professional advisors, agents and employees (including any person associated with a firm or company in which the Receiver is a member or in which the Receiver is interested and that person may charge for his or her services as if independently retained at a salary or remuneration determined by the Receiver) and the Receiver may act on any advice given by any person so engaged;
7. **(Conduct works)** to repair, renew, replace, renovate or clean the Collateral, to erect any new buildings or make any improvements to any land forming part of the Collateral and to demolish, alter, rebuild or extend any existing buildings on the Collateral;
8. **(Invest proceeds against contingencies)** if any of the secured money is contingent, to invest, deposit or hold the Collateral in a form or mode of investment for the time being as the Receiver thinks fit, with like power to vary, transpose or re-invest the investments or deposits from time to time until that part of the secured money ceases to be contingent;
9. **(Perform contracts)** to perform, observe, carry out, enforce specific performance of, exercise or refrain from exercising, the Grantor's rights and powers under, obtain the benefit of, and vary or rescind all contracts and rights forming part of the Collateral or entered into in the exercise of any power;
10. **(Take proceedings)** to institute, conduct or defend any proceedings in law or bankruptcy and to submit to arbitration, mediation or conciliation, in the name of the Grantor or otherwise and on any terms, any proceeding, claim, question or dispute in connection with the Collateral or otherwise;
11. **(Compromise)** to make any settlement, arrangement or compromise regarding any action, proceeding or dispute arising in connection with the Collateral, to grant to any person involved time or other indulgence and to execute all related releases or discharges as the Receiver thinks expedient in the interests of the Account Provider;
12. **(Appeal)** to appeal against or to enforce any judgment or order in respect of the Collateral;
13. **(Bankrupt debtors and wind up bodies corporate)** to make debtors bankrupt and to wind up bodies corporate and to do all things in connection with any bankruptcy or winding up which the Receiver thinks necessary for the recovery or protection of the Collateral or for the security or other benefit of the Account Provider;
14. **(Delegate)** with the Account Provider's prior approval, to delegate to any person, for any time, any of the powers including this power of delegation;
15. **(File)** to file all certificates, registrations and other documents and to take any and all action on behalf of the Grantor which the Receiver believes is necessary to protect, preserve or improve any or all of the Collateral and the rights of the Grantor and the Account Provider in respect of any agreement for sale and to obtain for the Account Provider all of the benefits of this deed and any other Finance Document;
16. **(Operate bank accounts)** to open or operate any bank account in the name of the Grantor (whether alone or jointly with any other person) to the exclusion of the Grantor and to deposit or withdraw any money standing to the credit of that



account and to sign and endorse or to authorise others to sign and endorse in the name of the Grantor cheques, promissory notes, bills of exchange and other negotiable instruments;

17. **(Do all other things)** to do all things the law allows an owner of any interest in the Collateral, or any Receiver of the Collateral, to do; and
18. **(Do all things as are expedient)** to do all other acts and things without limitation as the Receiver thinks expedient, and any further powers as the Account Provider confers on a Receiver by notice in writing to that Receiver.

**Chapter 6: Indemnity**

The Account Provider may give any indemnities to any Receiver concerning the performance of that Receiver's duties as are permitted by law. If the Account provider is obliged to pay any money under any indemnity, that money will become part of the secured money.

## Schedule 8: The Account Provider's Powers

### Chapter 1: Exercise of Power

If any Event of Default occurs then, during the period it subsists, the Account Provider may without notice and whether or not a Receiver has been appointed:

1. exercise all or any of the powers conferred on a Receiver, or which would be conferred on a Receiver if appointed, as if those powers had been expressly conferred on the Account Provider;
2. exercise all other powers; and
3. appoint an agent or agents (whether severally, jointly or jointly and severally) and delegate the Powers (or any of them) to the agent or agents (in which case Schedule 8, Chapter 1.; Chapter 3.; and Chapter 6.; will apply as if the agent or agents were each appointed as a Receiver).

### Chapter 2: Act jointly

Marketlend and each Receiver may exercise any of the powers in conjunction with the exercise of similar powers by the holder of any other Security over the Collateral or by any receiver or receiver and manager appointed by that other holder and may enter into and give effect to agreements and arrangements with that other holder, receiver or receiver and manager as Marketlend or the relevant Receiver thinks fit.

### Chapter 3: Power of attorney

1. In consideration of Marketlend entering into the Credit Terms, the Grantor irrevocably appoints Marketlend and each of its directors, company secretaries and attorneys from time to time, authorised officers of Marketlend and each Receiver, severally, as an attorney of the Grantor with power at any time an Event of Default has occurred and is subsisting:
  - a. to do all acts which ought to be done by the Grantor under the Credit Terms;
  - b. to do all acts to exercise or give effect to any power;
  - c. to demand, sue for, recover and receive the Collateral from any person, in the name of the Grantor or in the name of Marketlend or the relevant Receiver or any other attorney appointed under this Chapter 3.;
  - d. to take further action and to execute further instruments which are, or are in the opinion of Marketlend the relevant Receiver or any other attorney appointed under this Schedule 8, Chapter 3.; necessary or desirable to secure more satisfactorily the performance of the Obligations or the payment of the secured money or to sell or otherwise deal with the Collateral; and
  - e. to appoint (and remove at will) at any time any person as a substitute for an attorney.

### Chapter 4: The Grantor:

1. agrees that each attorney may exercise powers under this power of attorney notwithstanding that the exercise may or will involve or result in a conflict between the duty of that attorney to the Grantor and either the interests of that attorney or a Related Party of that attorney or another duty of that attorney; and

2. ratifies and confirms now and for the future all actions undertaken by or on behalf of any attorney under this power of attorney, including any action which may or will involve or result in a conflict of the type referred to in clause 5.1 or in respect of which that attorney has a personal interest.

For the purposes of this clause 5 a **Related Party** of any attorney is any Related Body Corporate of that attorney or, in the case of any attorney that is an individual, any person that is related to or has any personal or professional relationship, of any nature, with that attorney.

3. The Grantor declares that this power of attorney will continue in force until all actions taken under it have been completed, despite the discharge of this deed.
4. The Grantor will do anything requested by Marketlend acting reasonably, to enable Marketlend to register this power of attorney in the manner and within any time limits prescribed by law to ensure the efficacy of this power of attorney.

#### **Chapter 5: Marketlend may make good any default**

If the Grantor defaults in satisfying any of the Obligations, Marketlend may, without prejudice to any other Power, do all things and pay all money necessary or expedient in the opinion of Marketlend to make good or to attempt to make good that default to the satisfaction of Marketlend. The Grantor will take all steps which Marketlend acting reasonably, requests to facilitate the exercise by Marketlend of its rights under this Chapter 4:. Marketlend will not be a mortgagee or secured party in possession simply as a result of the exercise of its rights under this Schedule 8, Chapter 4:.

#### **Chapter 6: Notice for exercise of powers**

1. The powers may be exercised by Marketlend and any Receiver at any time during the period any Event of Default subsists, without any notice, demand or lapse of time being necessary unless required by a law which cannot be excluded.
2. Subject to clause 10, if required by any law which cannot be excluded, one day is fixed as the period for which:
3. default must continue in the satisfaction of the whole or any part of the Obligations or in the payment of any part of the secured money before Marketlend may give any notice or demand as required by any law affecting the powers; and
4. default in the satisfaction of the whole or any part of the Obligations or in the payment of any part of the secured money must continue after the giving of any notice or demand before any power may be exercised.
5. If any law which cannot be excluded provides that a specific period of notice or lapse of time is mandatorily required before any power may be exercised by Marketlend or any Receiver, that period of notice must be given or time must elapse before that power may be exercised.

#### **Chapter 7: Exclusion of PPSA provisions**

1. To the extent permitted by law, and in respect of each Security created by the Credit Terms:
  - i. the parties contract out of sections 95, 121(4), 125, 130, 132(3)(d), 132(4), 142 and 143 of the PPSA (to the extent, if any, mentioned in section 115(1) of the PPSA);



- ii. The Grantor waives its rights to receive any information under section 275 of the PPSA and agrees not to make any request under that section; and
- iii. The Grantor irrevocably and unconditionally waives its right to receive any notice of any verification statement in respect of any financing statement or financing change statement relating to this deed.

## Schedule 9: Application of money

### Chapter 8: Priority of payments

All money received by the Account Provider or by any Receiver as a result of the exercise of the powers and all other proceeds of enforcement under this deed will be applied in the following order (unless, in the case of any money received which represents the proceeds of any insurance claim, the Credit Terms permit or require that money to be applied in another manner):

1. **(Incidental to exercise of powers)** in payment of all costs incurred in or incidental to the exercise or attempted exercise of any of the powers;
2. **(Outgoings)** in payment of any other outgoings as any Receiver or Marketlend thinks fit;
3. **(Payment of Security having priority)** in payment of all amounts secured by the prior Security and any other Security of which Marketlend is aware which have priority to this deed, in the order of their priority;
4. **(Payment of secured money)** in payment of the balance of the secured money then owing or contingently or prospectively owing, whether or not due and payable;
5. **(Subsequent Security)** if Marketlend determines to do so, in payment of all amounts secured by any subsequent Securities of which Marketlend is aware in the order of their priority; and
6. **(Surplus)** the surplus (if any) belongs to the **Grantor** but does not carry interest. Marketlend or relevant Receiver, as applicable, will pay this amount to the **Grantor** by paying this amount into an account in the name of the **Grantor**.

### Chapter 9: Money received

In applying any money towards satisfaction of the secured money in the manner contemplated by Schedule 9, Chapter 1:, the **Grantor** will be credited only with as much of the money available for that purpose as is actually received by **Marketlend** or any Receiver and is not required to be disgorged. Any credit will date from the time of receipt.

### Chapter 10: Application of money

Marketlend and each Receiver has an absolute discretion to apply any money received as a result of the exercise of any power or which is the proceeds of enforcement of this deed (and which is to be applied in payment of the secured money) in reduction of any part or parts of the secured money, whenever and on whatever account it became secured, despite any principle or presumption of law to the contrary or any direction given at the time of receipt and without the need to communicate its election to any person.

### Chapter 11: Reliance on certificate

In making any payment to the holder of any other Security as contemplated by Schedule 9, Chapter 1:Schedule 9:Marketlend and each Receiver may rely on a certificate from that holder as to the amount secured by the relevant Security and is not bound to inquire as to the accuracy of the certificate or whether the amount referred to is validly secured by the Security.