# NIUM – Security Trust Deed

Dated

NIUM Pty Limited (ACN 601 384 025) (“**Company**”)

Global Loan Agency Services Australia Nominees Pty Ltd (ACN 608 945 008) (“**Security Trustee**”)

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ANM

# NIUM – Security Trust Deed
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# NIUM – Security Trust Deed

## Details

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| **Parties** | **Company** and **Security Trustee** | |
| **Company** | Name | **NIUM Pty Limited** |
| | ACN | 601 384 025 |
| | Address | Level 4<br>152 Elizabeth Street<br>Melbourne VIC 3000 |
| | Email | legalnotices@nium.com |
| | Attention | Legal Team |
| **Security Trustee** | Name | **Global Loan Agency Services Australia Nominees Pty Limited** |
| | ACN | 608 945 008 |
| | Address | Level 23, Governor Phillip Tower<br>1 Farrer Place<br>Sydney NSW 2000 |
| | Email | apac@glas.agency |
| | Attention | Transaction Management Group (NIUM) |
| **Date of deed** | See Signing page | |

# NIUM – Security Trust Deed

# General terms

## 1 Interpretation

### 1.1 Definitions

These meanings apply unless the contrary intention appears:

**ADI** means an authorised deposit taking institution (within the meaning of the Banking Act).

**AFCA** means the Australian Financial Complaints Authority (or any replacement dispute resolution system satisfying the requirements of section 912A(2) of the Corporations Act).

**Affected Customer** means:

(a) where an Event of Default of the type described in clause 12.1(a) ("Events of Default") occurs, the Customer or Customers to which the judgement or determination of the court, tribunal or AFCA giving rise to the Event of Default relates; and

(b) where the Event of Default of the type described in clause 12.1(b) ("Events of Default") occurs, all Customers.

**Authorised Officer** means:

(a) in the case of the Security Trustee, a director or company secretary of the Security Trustee, or any person who purports to be a "director", "chief", "counsel", "executive", "head", "president", "attorney" or "manager" (or a person performing, or purporting to perform, the functions of any of them) of the Security Trustee; and

(b) in the case of the Company, a director or secretary of the Company or any person from time to time nominated by the Company as an Authorised Officer by a notice to the Security Trustee and in respect of which:

  (i) the identity of that person has been verified to the Security Trustee's satisfaction in order to manage the Security Trustee's anti-money laundering, counter-terrorism financing or economic and trade sanctions risk or to comply with any laws or regulations in Australia or any other country; and

  (ii) the Security Trustee has not received notice of revocation of the appointment.

**Bank Guarantee** means a bond or bank guarantee which:

(a) is unconditional, irrevocable and payable on demand;

(b) is issued by an ADI;

(c) is payable in Australian dollars;

(d) specifies a location in Sydney or Melbourne (or any other place that the Security Trustee approves) where demand is to be given and payment made on any Business Day;

(e) is governed by and to be construed according to the laws applying in any state or territory of Australia; and

(f) is otherwise in a form acceptable to the Security Trustee (acting reasonably).

**Banking Act** means the *Banking Act 1959* (Cth).

**Beneficiary** means:

(a) each Customer; and

(b) the Security Trustee.

**Business Day** means a day (other than a Saturday or Sunday) on which banks are open for general business in Sydney and Melbourne.

**Company** means the person so described in the Details.

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

**Costs** includes costs, charges and expenses, including those reasonably incurred in connection with advisers and any properly incurred legal costs on a full indemnity basis.

**Customer** means, at any time, each person whose name is entered in the records maintained by the Company as being a Product holder at that time.

**Details** means the section of this deed headed "Details".

**Electronic Money Balance** means, in respect of any Customer at any time, the amount of funds held by that Customer in the Product at that time.

**Event of Default** means any of the events specified in clause 12.1 ("Events of Default").

**Exemption** means the exemption published by the Reserve Bank of Australia under section 25 of the *Payment System (Regulations) Act 1998* (Cth) on 4 March 2004 for the holders of stored value in respect of Purchased Payment Facilities.

**FX Date** means, in respect of any Performance Bond Proceeds, the date on which the demand on the Performance Bond was made by the Security Trustee which gave rise to those Performance Bond Proceeds.

**Indirect Tax** means any goods and services tax, consumption tax, value added tax or any tax of a similar nature.

**Insolvency Event** means, in respect of a person, each of the following events:

(a) the person is or states that it is insolvent within the meaning of section 95A(2) of the Corporations Act;

(b) an order of a court in a competent jurisdiction is made that the person be wound up;

(c) a liquidator, provisional liquidator or administrator is appointed to the person;

(d) except to reconstruct or amalgamate while solvent, the person enters into, or resolves to enter into, a scheme of arrangement, deed of company arrangement or composition with, or an assignment for the benefit of, all or any class of its creditors; or

(e) except to reconstruct or amalgamate while solvent, the person resolves to wind itself up, or otherwise dissolve itself, or gives notice of an intention to do so or is otherwise wound up or dissolved.

**Issuer** means the ADI that has issued the Performance Bond.

**Liabilities** means claims, actions, damages, losses, liabilities, costs, fees, charges and expenses (including properly incurred legal expenses and disbursements on a full indemnity basis).

**Party** means a party to this deed.

**Performance Bond** means the Bank Guarantee(s) provided by the Company to the Security Trustee under and in accordance with clause 10 ("Performance Bond").

**Performance Bond Proceeds** has the meaning it has in clause 13.1 ("Distribution").

**Power** means a power, right, authority, discretion or remedy which is conferred on the Security Trustee under or in connection with any Transaction Document or by any law in connection with any Transaction Document.

**Product** means each of the products issued by the Company in Australia which is a Purchased Payment Facility, being at the date of this deed each of the products issued by the Company in Australia other than the remittance product described in the "Instarem Terms & Conditions" (which at the date of this deed can be located at https://www.instarem.com/terms-policies/terms-conditions-australia/), and excludingany other product notified by the Company to the Security Trustee as not being a Product for the purposes of this deed.

**Purchased Payment Facility** has the meaning it has in the *Payment Systems (Regulation) Act 1998* (Cth).

**Record Date** has the meaning it has in clause 13.2 ("Record Date").

**Related Body Corporate** has the meaning it has in the Corporations Act.

**Related Entity** has the meaning it has in the Corporations Act.

**Required Amount** means, at any time, the sum of the following amounts:

(a) the aggregate Electronic Money Balances of the Customers at that time; and

(b) A$2,000,000 (or such other amount agreed between the Security Trustee and the Company from time to time), being an amount to account for all amounts, debt and monetary liabilities payable by the Company to the Security Trustee under this deed, including the Costs related to the enforcement of the Performance Bond and the distribution of the proceeds to the Customers.

**Security Trustee** means the party so described in the Details.

**Security Trustee Fee Letter** means any fee letter (however so described) between the Company and the Security Trustee from time to time.

**Taxes** means taxes, levies, imposts, charges and duties (including stamp and transaction duties) imposed by any authority together with any related interest, penalties, fines and expenses in connection with them, except if imposed on, or calculated having regard to, the net income of a Beneficiary.

**Termination Date** has the meaning given to it in clause 3.3 ("Trust duration").

**Transaction Document** means:

(a) this deed;

(b) the Security Trustee Fee Letter;

(c) the Performance Bond; and

(d) any other document which the Company and the Security Trustee agree is a Transaction Document for the purposes of this deed.

**Trust** means the trust established under this deed.

**Trust Fund** means the amount held by the Security Trustee under clause 3.1 ("Declaration of trust") together with any other property which the Security Trustee acquires to hold on the trusts of this deed including the Performance Bond which is given in its favour after the date of this deed in its capacity as trustee of the Trust and any property which represents the proceeds of any demand on the Performance Bond.

**Wilful Default** means, in respect of the Security Trustee, any intentional failure to comply with or intentional breach by the Security Trustee of any of its obligations under this deed or any other Transaction Document, other than a failure or breach which:

(a) arises as a result of a breach of a Transaction Document by a person other than the Security Trustee and (subject to any provisions of the Transaction Documents which limit its liability in respect of the acts and omissions thereof) its agents and delegates;

(b) is caused by the failure of another person to act where that act is a precondition to the act of the first person;

(c) is in accordance with a lawful court order or direction or otherwise required by law;

(d) is in accordance with an instruction or direction in accordance with the provisions of the Transaction Documents; or

(e) is caused by any failure by the Security Trustee to act due to lack of instructions or lack of proper or clear instructions in accordance with the provisions of the Transaction Documents.

## 1.2 References to certain general terms

Unless the contrary intention appears, in this deed:

(a) a reference to a group of persons is a reference to any two or more of them jointly and to each of them individually;

(b) an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them individually;

(c) an agreement, representation or warranty by two or more persons binds them jointly and each of them individually but an agreement, representation or warranty by any Beneficiary binds the Beneficiary individually only;

(d) a reference to any thing (including an amount) is a reference to the whole and each part of it;

(e) a reference to a document (including this deed) includes any variation or replacement of it;

(f) the word "law" includes common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them);

(g) a reference to Australian dollars, dollars, $ or A$ is a reference to the lawful currency of Australia;

(h) a reference to a time of day is a reference to Sydney time;

(i) the word "person" includes an individual, a firm, a body corporate, an unincorporated association and an authority;

(j) a reference to a particular person includes the person's executors, administrators, successors, permitted substitutes (including persons taking by novation) and permitted assigns;

(k) the words "including", "for example" or "such as" when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind;

(l) a reference to "know your customer checks" means any "know your customer" obligations or other identification checks or procedures in connection with any law; and

(m) a reference to the "face value" of a Bank Guarantee at any time is the maximum amount that remains available for payment by the Issuer in respect of that Bank Guarantee at that time.

## 1.3 Number

The singular includes the plural and vice versa.

## 1.4 Headings

Headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this deed.

## 1.5 Business Day

Subject to clause 14.4 ("Business Days"), where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next Business Day.

# 2 Benefit and burden of deed

## 2.1 Customers bound

(a) In order to receive the rights and benefits of this deed, each Customer (and any person claiming through or under a Customer) agrees to be bound by, and is taken to have notice of, this deed and the other Transaction Documents.

(b) It is a fundamental condition of receiving any of the rights or benefits conferred on a Customer under the Transaction Documents that the Customer must perform all of the obligations and comply with all restrictions and limitations applicable to it under this deed and the other Transaction Documents.

(c) The Security Trustee is under no obligation to any Customer that has not satisfied the requirements in paragraphs (a) and (b) above.

## 2.2 Limit on Customers' rights to take action

All of the rights against the Company and the Issuer in connection with the Transaction Documents (including the Performance Bond) are held by the Security Trustee for the Customers. Accordingly, subject to clause 2.3 ("Customer's right to take action"):

(a) no Customer is entitled to directly enforce any rights, powers or remedies in connection with the Transaction Documents directly against the Company or the Issuer; and

(b) the rights, powers and remedies of the Security Trustee in connection with the Transaction Documents are exercisable and enforceable by the Security Trustee only. No Customer may exercise any of them (whether in its own name or the Security Trustee's name).

## 2.3 Customer's right to take action

No Customer is entitled to proceed directly against the Company or the Issuer to enforce any right or remedy under or in respect of the Transaction Documents (including the Performance Bond) unless expressly entitled to do so under this deed or, the Security Trustee, having become bound to proceed pursuant to clause 12.3 ("Consequences of Event of Default"), fails to do so within 20 Business Days from the date that the Security Trustee is notified by a Customer of the failure, and such failure is continuing.

# 3 Declaration of trust

## 3.1 Declaration of trust

The Security Trustee declares that it holds the sum of A$10 and will hold the Trust Fund on trust at any time for itself and any person who, at any time prior to the determination of the trust under clause 3.3 ("Trust duration"), is a Beneficiary at that time.

## 3.2 Trust name

The Trust established under this deed is to be known as the "NIUM – Performance Bond Trust".

### 3.3 Trust duration

The Trust begins on the date of this deed and, unless ended earlier, ends on the earlier of:

(a) the day before the eightieth anniversary of the date of this deed;

(b) the date on which the Security Trustee receives a legal opinion addressed to the Security Trustee from reputable legal counsel to the Company (or, in the case of paragraph (i) below, a certified copy of the authority or evidence that the Company is listed as an "ADI" on the website of the Australian Prudential Regulation Authority) confirming that either:

(i) the Company has been granted an authority to carry on banking business under sub-section 9(3) of the Banking Act by the Australian Prudential Regulation Authority;

(ii) the Company may lawfully provide a Purchased Payment Facility in Australia without relying on the Exemption;

(iii) the Company does not provide a Purchased Payment Facility in Australia; or

(iv) the Company has entered into another arrangement on which it can rely on the Exemption,

(such date "**Termination Date**").

The Security Trustee is entitled to rely on any legal opinion (or, in the case of paragraph 3.3(b)(i) above, a certified copy of the authority or evidence that the Company is listed as an "ADI" on the website of the Australian Prudential Regulation Authority) delivered to it under paragraph (b) above without being responsible for loss or damage occasioned by so doing if the Security Trustee has not been guilty of fraud or Wilful Default or gross negligence in doing so.

### 3.4 Perpetuity period

The perpetuity period applying to the Trust is the period of 80 years beginning on the date of this deed.

### 3.5 Safe custody of this document

The Security Trustee will hold its counterparts of this deed in safe custody for itself and the Customers.

### 3.6 Fees

The Company will pay the Security Trustee the fees in the amounts and at the times set out in the Security Trustee Fee Letter.

## 4 Scope of relationships

### 4.1 Extent of authority and obligations

The Security Trustee may:

(a) take the benefit of the Performance Bond;

(b) take action on any Beneficiary's behalf in accordance with this deed; and

(c) exercise its Powers, rights and discretions reasonably incidental to them.

To the maximum extent permitted by law, the Security Trustee has no obligations, duties or responsibilities except those expressly set out in the Transaction Documents.

### 4.2 Acceptance by the Security Trustee

The Security Trustee agrees to act as the Security Trustee of the Beneficiaries in connection with the Transaction Documents in accordance with this deed.

### 4.3 Binding nature of relationship

In order to receive the rights and benefits of this deed, each Beneficiary agrees:

(a) to be bound by anything properly done or properly not done by the Security Trustee in accordance with the Transaction Documents, whether or not on instructions, and whether or not the Beneficiary gave an instruction or approved of the thing done or not done; and

(b) to ratify anything properly done or properly not done by the Security Trustee in accordance with the Transaction Documents.

### 4.4 Excluded roles and duties

The appointment as Security Trustee does not mean that the Security Trustee:

(a) is a trustee for the benefit of;

(b) is a partner of; or

(c) has a fiduciary duty to, or other fiduciary relationship with,

any Beneficiary or any other person, except as expressly set out in any Transaction Document.

### 4.5 Exercise of rights and compliance with obligations

The Security Trustee has all the powers of a natural person or corporation in connection with the exercise of its rights and compliance with its obligations under the Transaction Documents.

Subject to clauses 4.6 (“Security Trustee’s duties to Beneficiaries”) and 5 (“How and when the Security Trustee acts”), the Security Trustee may exercise its rights and comply with its obligations under the Transaction Documents in any manner it thinks fit.

### 4.6 Security Trustee’s duties to Beneficiaries

The Security Trustee agrees to exercise its rights and comply with its obligations under the Transaction Documents reasonably, in each case having regard to:

(a) the interests of the Beneficiaries as a whole; and

(b) its fiduciary obligations as trustee of the Trust.

However if at any time there is a conflict between a duty the Security Trustee owes to a Beneficiary, or class of Beneficiary, and a duty the Security Trustee owes to another Beneficiary, or class of Beneficiary, the Security Trustee must give priority to the duties according to the order in which moneys are to be distributed to the relevant Beneficiaries, or classes of Beneficiary, under clause 13 (“Distribution of payments”) at that time.

## 4.7 Individual responsibility of Beneficiaries

In order to receive the rights and benefits of this deed, each Beneficiary is taken to have acknowledged that the Beneficiary has made and will continue to make its own independent appraisal and investigation of all risks arising under or in connection with any Transaction Document including but not limited to:

(a) the financial condition, status and affairs of the Company and the Issuer;

(b) taking or not taking action under any Transaction Document;

(c) the creditworthiness of the Company and the Issuer and the value or sufficiency of the Performance Bond or the Product; and

(d) the value, legality, validity, priority, effectiveness, genuineness, adequacy or enforceability or sufficiency of any document or agreement or any transactions including any transaction contemplated by a Transaction Document or any other agreement, arrangement or document,

without relying on the Security Trustee (in whatever capacities) or any of its Related Entities or on any representation made by any of them.

## 4.8 Security Trustee in capacity of a Beneficiary

If the Security Trustee (or any of its employees, agents or contractors) is also a Beneficiary other than in its capacity as Security Trustee, then in that capacity it:

(a) has the same rights and obligations under the Transaction Documents as the other Beneficiaries; and

(b) may exercise those rights and agrees to comply with those obligations independently from its role as Security Trustee as if it were not the Security Trustee.

## 4.9 Dealing in different capacities

The Security Trustee may:

(a) engage in any kind of banking, trust or other business with the Company, the Issuer or the Beneficiaries or any of their Related Entities; and

(b) accept fees and other consideration from the Company, the Issuer or any of their Related Entities for services in connection with the Transaction Documents or any other arrangement,

as if it were not the Security Trustee and without having to notify the Beneficiaries or account to the Beneficiaries for any income it derives in doing so.

The Beneficiaries release the Security Trustee from any obligation they might otherwise have to the Beneficiaries in relation to these matters.

## 4.10 Right to appoint agents, delegates

The Security Trustee may:

(a) instead of acting personally, employ an agent or contractor to do any act required or permitted to be done under the Transaction Documents;

(b) delegate its Powers under this deed or in relation to the Transaction Documents, either wholly or partially or subject to any limitations or restrictions, to any person as it thinks fit, proper or appropriate in its absolute discretion;

(c) from time to time execute such powers of attorney or other instruments as it thinks proper;

(d) revoke any delegation given under this clause 4.10, from time to time; and

(e) act notwithstanding the existence of any conflict of interest,

without being responsible for loss or damage occasioned by so doing if the Security Trustee has not been guilty of fraud or Wilful Default or gross negligence in doing so.

No person dealing with the Security Trustee, or any person to whom the execution of such Powers referred to in this clause 4.10 has been delegated, is bound to enquire whether such delegation remains in force.

### 4.11 Security Trustee may rely on communications and opinions

In relation to any Transaction Document, the Security Trustee may rely:

(a) on any communication or document it believes to be genuine and correct and to have been signed or sent by the appropriate person;

(b) on the opinion, certificate or advice of or information obtained from, any agent or contractor appointed by it under clause 4.10 ("Right to appoint agents, delegates"); or

(c) as to legal, accounting, taxation or other professional matters, on opinions and statements of any legal, accounting, taxation or professional advisers used by it.

The Security Trustee is not responsible for any loss occasioned by so doing if the Security Trustee has not been guilty of fraud or Wilful Default or gross negligence in so acting.

## 5 How and when the Security Trustee acts

### 5.1 Instructions

In order to receive the rights and benefits of this deed, and in exercising (or refraining from exercising) any right or Power, giving any consent, approval or agreement or making any determination (including in relation to any amendments, variation or waiver) under this deed, each Beneficiary irrevocably authorises the Security Trustee to act in accordance with this deed without seeking further instructions from the Beneficiaries.

### 5.2 Security Trustee's rights in connection with instructions

Subject to clause 4.6 ("Security Trustee's duties to Beneficiaries") and this clause 5, the Security Trustee may do anything it considers necessary or desirable to give effect to its rights and Powers conferred upon it under this deed (including signing and delivering documents).

### 5.3 No need to act

(a) If at any time the Security Trustee is unsure how to act (or there is any dispute or ambiguity) in relation to any matter connected with the Transaction Documents (including, for the avoidance of doubt, whether an Event of Default has occurred or is continuing), the Security Trustee may (but need not) do one or both of the following:

(i) obtain and rely on advice from any adviser referred to in clauses 4.11(b) and 4.11(c) ("Security Trustee may rely on communications and opinions"); or

(ii) apply to a court for any direction or order the Security Trustee considers appropriate and comply with any such directions or orders.

(b) The Security Trustee may (but need not) refuse to do anything in relation to such matters and will not be liable to the Company or the Customers for so refusing to act or acting in accordance with clause 5.3(a).

### 5.4 Act in compliance with applicable law

The Security Trustee may do anything (or refrain from doing anything) that, in its reasonable opinion, is necessary to comply with any applicable law or a directive or request (whether or not having the force of law) with which responsible financiers or professional trustees generally comply in carrying on their business.

### 5.5 Deemed authority

As between the Company on the one hand, and the Security Trustee and the Beneficiaries on the other hand, all action taken by the Security Trustee under any Transaction Document is deemed to be authorised by the Beneficiaries.

### 5.6 Force majeure

Despite any other provision of the Transaction Documents, the Security Trustee need not act for so long as it is unable to act due to any cause beyond its control (including war, riot, natural disaster, labour dispute, pandemic or law taking effect after the date of this deed). The Security Trustee agrees to notify the Company promptly after it determines that it is unable to act.

### 5.7 No responsibility for force majeure

The Security Trustee has no responsibility or liability for any loss or expense suffered or incurred by any party as a result of its not acting for so long as it is unable to act in accordance with clause 5.6 ("Force majeure").

## 6 Security Trustee's obligations to give notices and copies

### 6.1 Security Trustee's obligations

The Security Trustee agrees to notify the Affected Customers once a demand on the Performance Bond has been made in accordance with clause 12.3(c) ("Consequence of Event of Default").

## 6.2 Awareness of certain events

The Security Trustee is taken not to be aware of or received notice of an Event of Default or any other matter or thing until an Authorised Officer of the Security Trustee who is responsible for the administration of the transactions contemplated by the Transaction Documents has actual knowledge of that Event of Default, matter or thing.

## 6.3 Assuming compliance

Until it becomes aware in accordance with clause 6.2 ("Awareness of certain events"), the Security Trustee may assume that no Event of Default has occurred and that the Company is observing all its obligations in connection with the Transaction Documents and need not inquire whether that is, in fact, the case.

## 6.4 Limit on disclosure obligations

Despite anything else in the Transaction Documents, the Security Trustee is not obliged to disclose information or provide documents relating to the Company or the Customers or any other person if the Security Trustee reasonably believes that to do so would constitute a breach of law or duty of confidentiality.

## 6.5 No further obligations

The Beneficiaries agree that the Security Trustee has no obligations, other than those in clause 6.1 ("Security Trustee's obligations") either initially or on a continuing basis:

(a) to keep itself informed, or to inform a Beneficiary, about the performance or observance by the Company of its obligations under the Transaction Documents or any other document or agreement;

(b) to provide a Beneficiary with any information or documents with respect to the Company (whether coming into its possession before or after accommodation is provided under the Transaction Documents);

(c) to inspect the properties or books of the Company or to assess or keep under review the business, operations, financial condition, creditworthiness or status of affairs of the Company;

(d) to identify Customers other than by reviewing the records of the Company most recently provided by the Company to the Security Trustee pursuant to clause 11.1 ("Customer records");

(e) to review or check the adequacy, accuracy or completeness of any documents or information exchanged pursuant to clause 3.3(b) ("Trust duration"), clause 10.1 ("Performance Bond"), clause 10.2 ("Reduction in Required Amount"), clause 10.3 ("Expiry of Performance Bond") or clause 11.1 ("Customer records"); or

(f) to communicate with or provide information to the Beneficiaries other than as set out in clause 12.2 ("Alleged Event of Default") and clause 12.3 ("Consequences of Event of Default").

## 6.6 Know your customer checks

Nothing in the Transaction Documents obliges the Security Trustee to carry out:

(a) any know your customer checks in relation to any person; or

(b) any check on the extent to which any transaction contemplated by the Transaction Documents might be unlawful for any Beneficiary.

In order to receive the rights and benefits of this deed, each Beneficiary must give to the Security Trustee any document or other evidence that the Security Trustee requests and which is reasonably required to enable it to comply with any know your customer checks and which is not already available to the Security Trustee.

# 7 Liability of Security Trustee

## 7.1 Limitations of liability of Security Trustee to Beneficiaries

(a) To the extent permitted by law, each Beneficiary releases the Security Trustee and its Related Bodies Corporate, and their officers, personnel, agents, attorneys and delegates of any kind (including any contemplated under clause 4.10 ("Right to appoint agents, delegates"), from liability of any type to it under or in connection with any Transaction Document (or any other document to which the Security Trustee is a party or under which it may have rights or benefits as Security Trustee) or any related transaction or past or future conduct (including omissions), except to the extent that the Beneficiary suffers a Liability as a result of fraud, gross negligence or Wilful Default by the Security Trustee or an, Related Body Corporate, officer, employee, agent, attorney or (subject to clause 4.10 ("Right to appoint agents, delegates")) delegate (as the case may be).

(b) Without limiting paragraph (a), neither the Security Trustee nor any of its Related Bodies Corporate or their directors, officers, personnel, agents, attorneys or delegates is responsible to the Beneficiaries for, nor will be liable in respect of any of the following, whether before or after the date of this deed:

(i) anything referred to in clause 4.7 ("Individual responsibility of Beneficiaries");

(ii) if it acts (or refrains from taking any action) in accordance with this deed; and

(iii) any other action taken or not taken by it or them under any Transaction Documents except in the case of its or its own fraud, gross negligence or Wilful Default.

(c) This clause 7.1 does not limit, and is not limited by, clause 4.7 ("Individual responsibility of Beneficiaries").

(d) The Security Trustee holds the benefit of this clause 7.1 on trust for its officers, personnel, agents, attorneys and delegates as well as for itself.

(e) Without prejudice to paragraph (a) above, paragraph (f) below or any other provision of any Transaction Document excluding or limiting the liability or responsibility of the Security Trustee and to the extent permitted by law, each Beneficiary releases the Security Trustee from any liability for:

(i) any Liability to any person, any diminution in value, or any liability whatsoever arising as a result of taking or not taking any action under or in connection with any Transaction Document, unless directly caused by its fraud, gross negligence or Wilful Default;

(ii) exercising, or not exercising, any right, power, authority or discretion given to it by, or in connection with, any Transaction Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Transaction Document, other than by reason of its fraud, gross negligence or Wilful Default; or

(iii) without limiting paragraphs (i) and (ii) above, any Liability to any person, any diminution in value or any liability whatsoever (including, for negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Security Trustee) arising as a result of:

(A) any act, event or circumstance not reasonably within its control; or

(B) the general risks of investment in, or the holding of assets in, any jurisdiction,

including (in each case and without limitation) such damages, costs, losses to any person, any diminution in value or any liability arising as a result of: nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions or the value of assets; breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution; or strikes or industrial action.

(f) Neither the Company nor any Beneficiary (other than the Security Trustee) may take any proceedings against any director, officer, personnel, agent, attorney or delegate of the Security Trustee in respect of any claim it might have against the Security Trustee or in respect of any act or omission of any kind by that officer, employee or Security Trustee in relation to any Transaction Document and any director, officer, personnel, agent, attorney or delegate of the Security Trustee may rely on this clause.

(g) The Security Trustee will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Transaction Documents to be paid by the Security Trustee if the Security Trustee has taken all necessary steps on its part as soon as reasonably practicable to pay that amount.

(h) Without prejudice to any provision of any Transaction Document excluding or limiting the Security Trustee's liability, to the extent permitted by law, any Liability of the Security Trustee arising under or in connection with any Transaction Document (or any other document to which the Security Trustee is a party or under which it may have rights or benefits as Security Trustee) or any related transaction or part or future conduct (including omissions) shall be limited to the amount of actual loss which has been suffered (as determined by reference to the date of default of the Security Trustee or, if later, the date on which the loss arises as a result of such default) but without reference to any special conditions or circumstances known to the Security Trustee at any time which increase the amount of that loss. In no event shall the Security Trustee be liable for any loss of profits, goodwill, reputation, business opportunity or anticipated saving, or for special, punitive, indirect or consequential damages, whether or not the Security Trustee has been advised of the possibility of such loss or damages.

### 7.2 Security Trustee limitation of liability to non-Beneficiaries

(a) The Security Trustee enters into and performs the Transaction Documents and the transactions they contemplate only as the trustee of the Trust, except where expressly stated otherwise. This applies also in respect of any past and future conduct (including omissions) relating to this agreement or those transactions.

(b) Under and in connection with the Transaction Documents and those transactions and conduct:

(i) the Security Trustee's liability and the liability of its officers, personnel, agents, attorneys and delegates of any kind (including for negligence) to the Company is limited to the extent it can be satisfied out of the Trust Fund. The Security Trustee need not pay any such liability out of other assets;

(ii) the Company may only do the following with respect to the Security Trustee (but any resulting liability remains subject to the limitations in this clause 7.2):

(A) prove and participate in, and otherwise benefit from, any form of insolvency administration of the Security Trustee but only with respect to Trust Fund;

(B) exercise rights and remedies with respect to the Trust Fund, including set-off;

(C) enforce its security (if any) and exercise contractual rights; and

(D) bring any proceedings against the Security Trustee seeking relief or orders that are not inconsistent with the limitations in this clause 7.2,

and may not:

(E) bring other proceedings against the Security Trustee;

(F) take any steps to have the Security Trustee placed in any form of insolvency administration or to have a receiver or receiver and manager appointed; or

(G) seek by any means (including set-off) to have a liability of the Security Trustee to the Company (including for negligence) satisfied out of any assets of the Security Trustee other than the Trust Fund.

(c) Paragraphs (a) and (b) apply despite any other provision in the Transaction Documents but do not apply with respect to any liability of the Security Trustee to the Company (including for negligence) to the extent that the Security Trustee has no right or power to have Trust assets applied towards satisfaction of that liability, or its right or power to do so is subject to a deduction, reduction, limit or requirement to make good, in either case because the Security Trustee's behaviour was beyond power or improper in relation to the Trust.

(d) The limitation in paragraph (b)(i) is to be disregarded for the purposes (but only for the purposes) of the rights and remedies described in paragraph (b)(ii), and interpreting the Transaction Documents and any security for them, including determining the following:

(i) whether amounts are to be regarded as payable (and for this purpose damages or other amounts will be regarded as a payable if they would have been owed had a suit or action barred under paragraph (b)(ii) been brought);

(ii) the calculation of amounts owing; or

(iii) whether a breach or default has occurred,

but any resulting liability will be subject to the limitations in this clause 7.2.

### 7.3 No supervision

Except as expressly set out in the Transaction Documents, the Security Trustee has no obligation to supervise, monitor or investigate the performance of any party to a Transaction Document, or any other person.

### 7.4 Illegality

No provision of this deed or any other Transaction Document requires the Security Trustee to do anything which is illegal.

### 7.5 Paramount

The provisions of clauses 7.1 ("Limitations of liability of Security Trustee to Beneficiaries") to 7.5 ("Paramount") (inclusive):

(a) are paramount and apply regardless of any other provision of this deed or any other instrument, even a provision which seeks to apply regardless of any other provision;

(b) survive and endure beyond any termination of this deed for any reason; and

are not severable from this deed.

## 8 Funding of Security Trustee

### 8.1 Liability must be limited and must be indemnified

Despite any other provision of the Transaction Documents, the Security Trustee is not obliged to do or not do anything in connection with the Transaction Documents (including enter into any transaction, provide any consent or incur any liability) unless:

(a) the Security Trustee's liability is limited in a manner which is consistent with clause 7 ("Liability of Security Trustee"); and

(b) it is indemnified to its satisfaction against any liability or loss arising from, and any costs and expenses properly incurred in connection with, doing or not doing that thing.

Notwithstanding any other provision of this deed to the contrary, the Security Trustee need not, and may omit to, do anything if it would or might in its reasonable opinion constitute a breach of any law or regulation or a breach of fiduciary duty or duty of confidentiality.

For the avoidance of doubt, the Security Trustee is not obliged to use its own funds in performing obligations under any Transaction Document (including this deed).

### 8.2 Indemnity out of Trust Fund

Subject to clause 8.4 ("Exceptions to indemnities"), the Security Trustee is and will be indemnified out of any money from time to time received or recovered by the Security Trustee under the Transaction Documents or otherwise forming part of the Trust Fund in respect of all claims, demands, actions, damages, losses, liabilities, Costs and Taxes incurred by or payable by it:

(a) in the exercise, protection or defence of any Powers or in performing any of its obligations, duties or responsibilities under the Transaction Documents; or

(b) otherwise in relation to the Transaction Documents.

The Security Trustee may, from time to time, retain and pay out of any moneys recovered from the Transaction Documents an amount to satisfy such indemnity. It will promptly notify the Company after doing so.

### 8.3 Company to indemnify for Trust Fund short fall

Subject to clause 8.4 ("Exceptions to indemnities"), if there are insufficient moneys available for the Security Trustee to promptly satisfy its indemnity under clause 8.2 ("Indemnity out of Trust Fund"), the Company:

(a) indemnifies the Security Trustee against that amount; and

(b) must pay that amount to the Security Trustee within 10 Business Days of demand from the Security Trustee.

The indemnity in clause 8.3(a) is in addition to, and without prejudice to, any right of indemnity available to the Security Trustee in law or equity or in any other Transaction Document.

### 8.4 Exceptions to indemnities

The indemnities in clauses 8.2 ("Indemnity out of Trust Fund"), 8.3 ("Company to indemnify for Trust Fund short fall") and 15.5 ("Indemnity to the Security Trustee") do not apply to the extent of any loss of the Security Trustee as a result of the Security Trustee's fraud, gross negligence or Wilful Default.

### 8.5 No obligation to take action

The Security Trustee is not required to exercise any right or take any action in its capacity as Security Trustee in connection with the Transaction Documents if:

(a) the Security Trustee reasonably believes (including where it is relying on advice taken in accordance with clause 4.11(c) ("Security Trustee may rely on communications and opinions")) that the Trust Fund will not be sufficient to reimburse the Security Trustee for its Costs, charges or expenses in relation to that action; and

(b) the Security Trustee has requested the Company to pay to the Security Trustee an amount at least equal to the amount the Security Trustee reasonably determines (or has been advised in accordance with clause 4.11(c) ("Security Trustee may rely on communications and opinions")) would be the Company's liability under clause 8.3 ("Company to indemnify for Trust Fund short fall") and the Company has not done so.

# 9 Change of Security Trustee

## 9.1 Retirement

The Security Trustee may retire by giving the Company at least 90 days' notice of its intention to do so.

## 9.2 Removal

If the Security Trustee breaches any material obligation under a Transaction Document and has not corrected the breach within 20 Business Days or the Security Trustee suffers an Insolvency Event, the Company may immediately remove the Security Trustee as trustee under this deed by giving the Security Trustee written notice.

## 9.3 When retirement or removal takes effect

Despite clauses 9.1 ("Retirement") and 9.2 ("Removal"), the retirement or removal of the Security Trustee only takes effect when:

(a) a successor has been appointed;

(b) the successor Security Trustee has obtained title to, or obtained the benefit of, the Performance Bond in its capacity as Security Trustee; and

(c) the new Security Trustee and each other party to the Transaction Documents have the same rights and obligations among themselves as they would have had if the new Security Trustee had been party to the Transaction Documents at the dates of those documents.

## 9.4 Appointment of successor

(a) If the appointment of the Security Trustee is terminated by resignation, removal or otherwise, the Company may appoint a successor Security Trustee which is a reputable and experienced bank or financial institution or professional trustee company (or a Related Entity of any of them).

(b) If a successor Security Trustee is not appointed by the Company within 90 days after notice of retirement or removal is given, the retiring Security Trustee may appoint a reputable and experienced bank or financial institution or professional trustee company (or a Related Entity of either of them) as its successor.

(c) Each Beneficiary and the Company is bound by any appointment of a Security Trustee made under this clause 9.4.

(d) The retiring Security Trustee, each Beneficiary and the Company must do all things necessary, including executing any deeds of appointment or vesting, to ensure that the appointment of any successor Security Trustee is properly and promptly effected and to ensure that all assets and property of the Trust Fund is vested in the successor Security Trustee.

(e) Each Beneficiary, for consideration received, appoints the Security Trustee and each director, secretary or other officer of the Security Trustee severally as its attorney, in their respective names and on their respective behalf, to do all things and execute, sign, seal and deliver (conditionally or unconditionally in the attorneys discretion) all documents, deeds and instruments necessary or desirable for:

(i) the appointment of a successor Security Trustee under this clause 9.4; and

(ii) the vesting in that successor Security Trustee of all of the Trust Fund or any part of it.

This power may be delegated or a sub-power may be given, and any delegate or sub-attorney may be removed, by the attorney appointing it.

### 9.5 Discharge of further obligations

When the retirement or removal of the Security Trustee takes effect, the retiring Security Trustee is discharged from any further obligation under the Transaction Documents (this discharge does not prejudice any accrued right or obligation).

### 9.6 Costs of removal and replacement

The Company must indemnify the Security Trustee for the reasonable Costs of the resignation, removal and replacement of the Security Trustee under this clause 9, except if the Security Trustee:

(a) resigns or retires pursuant to clause 9.1 ("Retirement"), the Security Trustee will bear its own Costs; or

(b) is removed pursuant to clause 9.2 ("Removal"), the Costs of the resignation, removal and replacement of the Security Trustee will be borne by the Security Trustee.

## 10 Performance Bond

### 10.1 Performance Bond

The Company must ensure that, at all times during the period from the date of this deed until the Termination Date, the Security Trustee holds one or more Bank Guarantees with an aggregate face value of not less than the Required Amount.

### 10.2 Reduction in Required Amount

If, at any time, the face value of the Performance Bond is greater than the Required Amount then:

(a) at the Company's request, the Security Trustee must as soon as reasonably practicable and in any event within 1 Business Days of receipt of such request, permit the Company to reduce the amount of the Performance Bond to the Required Amount; and

(b) for the purposes of facilitating that reduction, the Security Trustee will either:

(i) accept and agree any amendment to any Bank Guarantee comprising the Performance Bond issued by the Issuer;

(ii) exchange any Bank Guarantee comprising the Performance Bond for one or more Bank Guarantees; or

(iii) surrender to the Company one or more Bank Guarantees comprising the Performance Bond, in each case, such that the Bank Guarantees held and retained by the Security Trustee following such amendment, exchange or surrender shall have an aggregate face value of not less than the Required Amount.

## 10.3 Expiry of Performance Bond

(a) The Bank Guarantee(s) initially provided by the Company to the Security Trustee as the Performance Bond must have an expiry date no earlier than 3 months after the date of this deed.

(b) If the expiry date for the Bank Guarantee will occur before the date by which the Security Trustee is required to return any part of the Performance Bond to the Company in accordance with clause 10.5 ("Return of Performance Bond"), the Company must not later than 5 Business Days prior to the expiry date:

(i) procure the extension of the expiry date under the Bank Guarantee by 3 months; or

(ii) procure the issue to the Security Trustee of a replacement Bank Guarantee(s) which:

(A) has a term of least 3 months;

(B) have an aggregate face value of not less than the Required Amount; and

(C) otherwise is in a form and on terms that satisfies the requirements of this deed for the Bank Guarantee that it replaces.

## 10.4 Certification of Required Amount

(a) The Company will provide to the Security Trustee, within 5 Business Days of the commencement of each calendar month, a certificate signed by an Authorised Officer of the Company certifying the Required Amount. The Security Trustee is entitled to rely on the certificate for all purposes and need not inquire whether, in fact, the certificate is correct.

(b) The Required Amount will be calculated by the Company as follows:

(i) for Electronic Money Balances in Australian dollars, that amount in Australian dollars; and

(ii) for Electronic Money Balances in any other currency, that amount converted into Australian dollars at the exchange rate determined by the Company (acting reasonably).

## 10.5 Return of Performance Bond

The Security Trustee must return any Bank Guarantees then comprising the Performance Bond held by the Security Trustee to the Company within 5 Business Days of the Termination Date.

# 11 Customer records and information

## 11.1 Customer records

The Company must provide to the Security Trustee:

(a) together with each certification delivered under clause 10.4 ("Certification of Required Amount"); and

(b) within 5 Business Days of any request made by the Security Trustee,

details of each Customer (in an electronic form to be agreed between the Company and the Security Trustee) which must include the name, the email address and Electronic Money Balance of each Customer.

## 11.2 Other information

The Company must provide to the Security Trustee:

(a) promptly upon becoming aware of its occurrence, notice of any Event of Default; and

(b) promptly upon request, such information regarding the Company, the Customers and the Product as the Security Trustee may reasonably request as is necessary in relation to the obligations, rights and Powers of the Security Trustee under the Transaction Documents.

# 12 Events of Default

## 12.1 Events of Default

Each of the following is an Event of Default:

(a) (**breach of obligations**) the Company being found by any court or tribunal in Australia or AFCA to be in breach of any obligation to any Customer in respect of the Product which breach is not remedied within 10 Business Days following receipt by the Company of the final non-appealable judgement or determination of the court, tribunal or AFCA; or

(b) (**insolvency**) an Insolvency Event in respect of the Company occurs.

## 12.2 Alleged Event of Default

If a Customer contacts the Security Trustee alleging a breach by the Company of its obligations to the Customer in respect of the Product, the Security Trustee must:

(a) notify the Company of the alleged breach, including the contact details of the Customer (being name, email and telephone number) and the details of the alleged breach;

(b) advise the Customer to make a complaint using the Company's complaints resolution process as set out in the Product terms; and

(c) advise the Customer of its right to make a complaint with AFCA. At the date of this deed, the details for AFCA are:

Online: www.afca.org.au

Email: info@afca.org.au

Phone: 1800 931 678 (free call)

Mail: Australian Financial Complaints Authority
GPO Box 3, Melbourne VIC 3001

No Customer is entitled to contact the Security Trustee to allege that an Insolvency Event in respect of the Company has occurred.

### 12.3 Consequences of Event of Default

(a) If an Event of Default has occurred, the Security Trustee must make a demand on the Performance Bond.

(b) The amount of a demand by the Security Trustee under clause 12.3(a) is to be:

(i) where the Event of Default giving rise to the demand is an Event of Default of the type described in clause 12.1(a) ("Events of Default"), the amount of money set out in the judgement or determination of the court, tribunal or AFCA giving rise to the Event of Default; and

(ii) where the Event of Default giving rise to the demand is an Event of Default of the type described in clause 12.1(b) ("Events of Default"), the maximum amount available to be called under the Performance Bond at that time.

(c) Once the demand has been given and payment by the Issuer to the Security Trustee has been made, the Security Trustee must notify the Affected Customers and advise them to contact the Security Trustee. The notice must be given by the following means:

(i) prepaid post (airmail, if posted from a place outside Australia) or delivery to the address or emailed to the email address, as the case may be, of the Affected Customers' as shown in the records maintained by the Company, on the basis of such details set out in the records most recently provided by the Company to the Security Trustee pursuant to clause 11.1 ("Customer records") prior to the notice given under this clause; and

(ii) (if the Affected Customers cannot readily be contacted under paragraph (i) above) an advertisement published in the *Australian Financial Review* or *The Australian* (or such other Australian newspaper) setting out that the Affected Customers should contact the Security Trustee and the contact details of the Security Trustee.

## 13 Distribution of payments

### 13.1 Distribution

Subject to clauses 13.2 ("Record Date") and 13.3 ("Determination of Electronic Money Balance"), the Security Trustee agrees to distribute any amount paid to or recovered by it under the Performance Bond (such amount the "**Performance Bond Proceeds**") as follows:

(a) ***first**,* to itself, for its Costs and other amounts due to it in its capacity as Security Trustee (but not amounts due to it for the account of any other Beneficiary or in any other capacity);

(b) ***secondly***, pari passu and rateably, to each Affected Customer identified in accordance with clause 13.2 ("Record Date") in satisfaction of its Electronic Money Balance; and

(c) ***thirdly***, in payment of the surplus, if any, without interest to the Company. The Security Trustee may pay the surplus to the credit of an account in the name of the Company in the books of any bank carrying on business within Australia and having done so is under no further liability in respect of that surplus.

### 13.2 Record Date

Payments under clause 13.1 ("Distribution") shall be made to each Affected Customer identified by the Security Trustee by close of business in Sydney on the first Business Day which is 6 calendar months after date on which the demand on the Performance Bond was made by the Security Trustee which gave rise to the relevant Performance Bond Proceeds (the "**Record Date**"). For this purpose, the Security Trustee's obligation to identify Affected Customers is limited to collating the records provided to the Security Trustee pursuant to clause 12.3(c)(i) ("Consequences of Event of Default"), together with any responses received by the Security Trustee pursuant to clause 12.3(c)(ii) ("Consequences of Event of Default"). Subject to clause 6.6(b) ("Know your customer checks"), clause 18.24 ("AML & Sanctions") and confirmation of respective Affected Customer account details, payment to Affected Customers so identified shall be made in Australian dollars pursuant to clause 13.1 ("Distribution") as soon as reasonably practicable following the Record Date.

### 13.3 Determination of Electronic Money Balance

To determine the Electronic Money Balance of a Customer on any date for the purposes of this deed:

(a) the records maintained by the Company will be conclusive proof of the Electronic Money Balance of a Customer (absent manifest error); and

(b) amounts in a currency other than Australian dollars must be exchanged into Australian dollars at the rate of exchange determined by the Security Trustee (acting reasonably). For the purposes of payments of Performance Bond Proceeds under clause 13.1 ("Distribution"), the exchange rate determined by the Security Trustee as at the FX Date for those Performance Bond Proceeds shall be used.

## 14 Payments

### 14.1 Payments to the Security Trustee

(a) Payments due to the Security Trustee shall be made to such account:

(i) in the case of Australian dollars, in Australia; or

(ii) in the case of any other currency, in the principal financial centre of the country of that currency,

with such bank as the Security Trustee specifies.

(b) The Company satisfies a payment obligation to the Security Trustee only when the Security Trustee or the person to whom it has directed payment receives the amount.

### 14.2 Clawback

Where an amount is to be paid to the Security Trustee under the Transaction Documents for another party, the Security Trustee is not obliged to pay that amount to that other party (or to enter into or perform any related exchange contract) until it has been able to establish to its satisfaction that it has actually received that amount.

If the Security Trustee pays an amount to another party and it proves to be the case that the Security Trustee had not actually received that amount, then the party to whom that amount (or the proceeds of any related exchange contract) was paid by the Security Trustee shall on demand refund the same to the Security Trustee together with interest on that amount from the date of payment to the date of receipt by the Security Trustee, calculated by the Security Trustee to reflect its cost of funds.

### 14.3 No set-off by Company or Customers

Except as expressly provided in a Transaction Document, all payments to be made by the Company or a Customer under the Transaction Documents shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

### 14.4 Business Days

Except as expressly provided in a Transaction Document, any payment which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).

### 14.5 Currency of account

(a) Subject to clauses 14.5(b) to 14.5(d) below, Australian dollars is the currency of account and payment for any sum due from the Company under any Transaction Document.

(b) Payment of any sum due and payable but unpaid by the Company under the Transaction Documents or a part of that sum, shall be made in the currency in which that sum is denominated on its due date.

(c) Each payment in respect of Costs or Taxes shall be made in the currency in which the Costs or Taxes are incurred.

(d) Any amount expressed to be payable in a currency other than Australian dollars shall be paid in that other currency.

## 15 Taxes, costs and Indemnities

### 15.1 Withholding tax

The Security Trustee shall make all payments to be made by it to any other Beneficiary under or in connection with the Transaction Documents without any deduction or withholding for or on account of Tax unless such deduction or withholding is required by law.

### 15.2 Stamp duties and Taxes

The Company shall:

(a) pay; and

(b) within three Business Days of demand, indemnify the Security Trustee against any cost, expense, loss or liability that the Security Trustee incurs in relation to,

all stamp duty, registration or other similar Tax payable in respect of any Transaction Document.

### 15.3 Indirect Tax

(a) All payments to be made by the Company under or in connection with any Transaction Document have been calculated without regard to Indirect Tax. If all or part of any such payment is the consideration for a taxable supply or chargeable with Indirect Tax then, when the Company makes the payment:

(i) it must pay to the Security Trustee an additional amount equal to that payment (or part) multiplied by the appropriate rate of Indirect Tax; and

(ii) the Security Trustee will promptly provide to the Company a tax invoice complying with the relevant law relating to that Indirect Tax.

(b) Where a Transaction Document requires the Company to reimburse the Security Trustee for any costs or expenses, the Company shall also at the same time pay and indemnify the Security Trustee against all Indirect Tax incurred by the Security Trustee in respect of the costs or expenses save to the extent that the Security Trustee is entitled to repayment or credit in respect of the Indirect Tax. The Security Trustee will promptly provide to the Company a tax invoice complying with the relevant law relating to that Indirect Tax.

### 15.4 Costs and expenses

The Company agrees to pay or reimburse:

(a) the Security Trustee's reasonable Costs in connection with:

(i) the negotiation, preparation, execution and registration of and payment of Taxes on any Transaction Document; and

(ii) giving and considering consents, waivers, variations, discharges and releases and producing title documents,

subject to such caps as are agreed between the Company and the Security Trustee for legal costs;

(b) the Security Trustee's Costs incurred in connection with:

(i) the enforcement of, or the exercise or preservation of any rights under, any Transaction Document (or attempting to or preparing to do any of those things); and

(ii) any proceedings instituted by or against the Security Trustee as a consequence of taking or holding the Performance Bond;

(c) Taxes and fees (including registration fees) and fines and penalties in respect of Taxes and fees paid, or that the Security Trustee reasonably believes are payable, in connection with any Transaction Document or a payment or receipt or any other transaction contemplated by any Transaction Document. However, the Company need not pay a fine or penalty in connection with Taxes or fees to the extent that it has placed the Security Trustee in sufficient cleared funds for the Security Trustee to be able to pay the Taxes or fees by the due date.

The Company agrees to pay amounts due under this clause on demand from the Security Trustee.

### 15.5 Indemnity to the Security Trustee

The Company shall, within 3 Business Days of demand, indemnify the Security Trustee against any Cost, loss or liability incurred by it as a result of:

(a) preserving or enforcing any Transaction Document or making any demand under a Performance Bond;

(b) exercising any rights or remedies under or in connection with any Security whether arising under the Transaction Documents or at law; or

(c) acting or relying on any notice, request or instruction given in accordance with the Transaction Documents which it reasonably believes to be genuine, correct and appropriately authorised; or

(d) the occurrence of any Event of Default.

### 15.6 Payment of third-party losses

The Company agrees to pay (without double counting) an amount equal to any liability or loss and any Costs of the kind referred to in clause 15.5 (“Indemnity to the Security Trustee”) suffered or incurred by any employee, attorney, officer, agent or contractor of the Security Trustee.

### 15.7 Security Trustee's management time

Any amount payable to the Security Trustee under clause 15.5 (“Indemnity to the Security Trustee”) shall include the cost of utilising the Security Trustee's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Security Trustee may notify to the Company, and is in addition to any fee paid or payable to the Security Trustee under clause 3.6 (“Fees”).

## 16 Notices and other communications

### 16.1 Form – all communications

Unless expressly stated otherwise, all notices, certificates, consents, approvals, waivers and other communications in connection with this deed must be in writing, signed by the sender (if an individual) or an Authorised Officer of the sender and marked for the attention of the person identified in the Details or, if the recipient has notified otherwise, then marked for attention in the way last notified.

### 16.2 Form - communications sent by email

Communications sent by email need not be marked for attention in the way stated in clause 16.1 ("Form - all communications"). However, the email must state the first and last name of the sender.

Communications sent by email are taken to be signed by the named sender.

### 16.3 Delivery

Communications must be:

(a) left at the address set out or referred to in the Details;

(b) sent by prepaid ordinary post (airmail, if appropriate) to the address set out or referred to in the Details; or

(c) sent by email to the address set out in the Details.

However, if the intended recipient has notified a changed address, then communications must be to that address or number.

### 16.4 When effective

Communications take effect from the time they are received or taken to be received under clause 16.5 ("When taken to be received") (whichever happens first) unless a later time is specified.

### 16.5 When taken to be received

Communications are taken to be received:

(a) if sent by post, 3 days after posting (or seven days after posting if sent from one country to another); or

(b) if sent by email:

(i) when the sender receives an automated message confirming delivery; or

(ii) 4 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered,

whichever happens first.

### 16.6 Receipt outside business hours

Despite clauses 16.4 ("When effective") and 16.5 ("When taken to be received"), if communications are received or taken to be received under clause 16.5 ("When taken to be received") after 5.00 pm in the place of receipt or on a non-Business Day, they are taken to be received at 9.00 am on the next Business Day and take effect from that time unless a later time is specified.

## 17 Amendments and waivers

(a) Any term of this deed or a Transaction Document may be amended or waived only in writing with the consent of the Security Trustee and the Company and any such amendment or waiver will be binding on all Beneficiaries and the Company. The Security Trustee is under no obligation to consult with any Beneficiary as to the terms or outcome of such amendment or waiver.

(b) The Security Trustee and the Company may effect, on behalf of any Beneficiary, any amendment or waiver permitted by this clause 17 (including by signing any documents in connection with the amendment or waiver).

# 18 General

## 18.1 Application to Transaction Documents

If anything in this clause 18.1 is inconsistent with a provision in another Transaction Document, then the provision in the other Transaction Document prevails for the purposes of that Transaction Document.

## 18.2 Prompt performance

Subject to clause 18.16 (“Time of the essence”):

(a) if a Transaction Document specifies when the Company agrees to perform an obligation, the Company agrees to perform it by the time specified; and

(b) the Company agrees to perform all other obligations promptly.

## 18.3 Consents

Despite the terms of any other Transaction Document, to be binding or effective a consent, waiver or approval given by the Security Trustee must be in writing signed by a director, secretary or Authorised Officer of the Security Trustee.

## 18.4 Reinstatement of rights

Under law relating to insolvency, a person may claim that a transaction (including a payment) in connection with the Transaction Documents is void or voidable. If a claim is made and upheld, conceded or compromised, then:

(a) each Beneficiary is immediately entitled as against the Company to the rights to which it was entitled immediately before the transaction; and

(b) on request from the Security Trustee, the Company agrees to do anything (including signing any document) to restore the rights to the Beneficiaries held by it from the Company immediately before the transaction.

The Company’s obligations under this clause are continuing obligations, independent of the Company’s other obligations under the Transaction Documents and continue after this deed ends.

## 18.5 Certificates

The Security Trustee may give the Company a certificate about an amount payable or other matter in connection with any Transaction Document. The certificate is sufficient evidence of the amount or matter, unless it is proved to be incorrect.

## 18.6 Set-off

If an Event of Default subsists, the Security Trustee may set off any amount owing by the Security Trustee to the Company (whether or not due for payment) against any amount due for payment by the Company to the Security Trustee under or in connection with any Transaction Document.

The Security Trustee may do anything necessary to effect any set-off under this clause (including varying the date for payment of any amount owing by the Security Trustee to the Company and making currency exchanges). This clause applies despite any other agreement between the Security Trustee and the Company.

## 18.7 Discretion in exercising rights

The Security Trustee may exercise a right or remedy or give or refuse its consent under or in connection with any Transaction Document in any way it considers appropriate (including by imposing conditions).

## 18.8 Partial exercising of rights

If the Security Trustee does not exercise a right or remedy under or in connection with any Transaction Document fully or at a given time, it may still exercise it later.

## 18.9 No liability for loss

The Security Trustee is not liable for loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising, a right or remedy under or in connection with any Transaction Document.

## 18.10 Conflict of interest

The Security Trustee may exercise its rights and remedies under or in connection with any Transaction Document even if this involves a conflict of duty or the Security Trustee has a personal interest in their exercise.

## 18.11 Remedies cumulative

The rights and remedies of the Security Trustee under or in connection with any Transaction Document are in addition to other rights and remedies given by law independently of the Transaction Document.

## 18.12 Indemnities

Any indemnity in any Transaction Document is a continuing obligation, independent of any other obligations under that Transaction Document and continues after the Transaction Document ends. It is not necessary for the Security Trustee to incur expense or make payment before enforcing a right of indemnity under a Transaction Document.

## 18.13 Rights and obligations are unaffected

Rights given to the Security Trustee under or in connection with any Transaction Document and the Company's liabilities under it are not affected by anything which might otherwise affect them at law.

### 18.14 Inconsistent law

To the extent permitted by law, each Transaction Document prevails to the extent it is inconsistent with any law.

### 18.15 Supervening legislation

Any present or future legislation which operates to vary the obligations of the Company in connection with a Transaction Document with the result that the Security Trustee's rights, powers or remedies are adversely affected (including by way of delay or postponement) is excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.

### 18.16 Time of the essence

Time is of the essence in any Transaction Document in respect of an obligation to pay money.

### 18.17 Confidentiality

(a) In acting as Security Trustee, the Security Trustee shall be regarded as acting through its division or department responsible for performing the role of Security Trustee which shall be treated as a separate entity from any of its other divisions or departments.

(b) If information is received by another division or department of the Security Trustee, or by the Security Trustee as agent or trustee for anyone else, or by its Related Bodies Corporate, then even if that information is relevant to or would benefit the Beneficiaries or a former Security Trustee:

(i) it may be treated as confidential to the Security Trustee or that Related Body Corporate;

(ii) the Security Trustee or that Related Body Corporate may use that information to its or anyone else's benefit; and

(iii) the Security Trustee shall not be deemed to have notice of it, and is irrevocably released from any obligation or duty to disclose it to the Beneficiaries or a former Security Trustee.

(c) The Security Trustee may disclose to any other Beneficiary any information it reasonably believes it has received as Security Trustee (but is not obliged to do so unless expressly required under a Transaction Document).

### 18.18 Company to bear cost

Except as otherwise expressly provided in a Transaction Document, anything which must be done by the Company under any Transaction Document, whether or not at the request of the Security Trustee, is to be done at the cost of the Company.

### 18.19 Prohibition and enforceability

Any provision of, or the application of any provision of, any Transaction Document or any Power which is prohibited in any jurisdiction is, in that jurisdiction, ineffective only to the extent of that prohibition.

Any provision of, or the application of any provision of, any Transaction Document which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction.

### 18.20 No notice required unless mandatory

Before exercising a right under or in connection with Transaction Documents or conferred by law (including a right to sell or make demand under a Performance Bond), the Security Trustee need not give the Company any notice or demand or allow a lapse of time that is required by law unless the notice, demand or lapse of time cannot be excluded.

### 18.21 Counterparts

This deed may consist of a number of copies, each signed by one or more parties to the deed. If so, the signed copies are treated as making up the one document.

### 18.22 Governing law

Each Transaction Document is governed by the law in force in New South Wales and the Company and each Beneficiary submit to the exclusive jurisdiction of the courts of that place.

### 18.23 Serving documents

Without preventing any other method of service, any document in a court action may be served on a party by being delivered to or left at that party's address for service of notices under clause 16.3 ("Delivery").

### 18.24 AML & Sanctions

(a) Notwithstanding any other provisions of a Transaction Document to the contrary, the Security Trustee is not obliged to do or omit to do anything if it would, or might in its reasonable opinion, constitute a breach of any law or regulation, including without limitation the *Charter of the United Nations Act 1948* (Cth), the *Charter of the United Nations (Dealing and Assets) Regulations 2008* (Cth), the *Banking (Foreign Exchange) Regulations 1959* (Cth) and any other applicable sanctions legislation.

(b) Notwithstanding any other provision of this deed, each party agrees to provide any information and documents that are within its possession, custody or control reasonably required by the Security Trustee (**Information Recipient**) to comply with the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) and any other applicable anti-money laundering or counter-terrorism financing laws of any country including, without limitation, any applicable laws imposing "know your customer" or other identification checks or procedures that the Information Recipient is required to comply with under the laws of any country in respect of the Transaction Documents (**AML/CTF Laws**).

(c) If the Security Trustee forms the view that, in its reasonable opinion, it is required to disclose information obtained under or in relation to the Transaction Documents to any person in order to comply with its obligations under the AML/CTF Laws, the parties agree that, to the extent permitted by law, such disclosure will not be a breach of any obligation or duty owed by the Security Trustee to the other parties to this deed, whether contractual or at law, and release the Security Trustee from any claim that they would otherwise have in respect of such disclosure.

(d) The Company agrees to exercise its rights and perform its obligations under the Transaction Documents in accordance with all applicable laws or regulations relating to anti-money laundering, counter-terrorism financing or economic and trade sanctions.

## 18.25 Consideration

Each party acknowledges entering into this deed and incurring obligations and giving rights under this deed for valuable consideration.

**EXECUTED** as a deed

# NIUM – Security Trust Deed

## Signing page

**DATED:**

**COMPANY**

**EXECUTED** by **NIUM PTY LIMITED** in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by authority of its directors:

DocuSigned by:

Vinoth Manoharan

1B5F73E2F5C145B...

..............................................................

Signature of director

VINOTH MANOHARAN

..............................................................

Name of director (block letters)

DocuSigned by:

Pratik Gandhi

DA0E7857D3BD434...

..............................................................

Signature of director

PRATIK GANDHI

..............................................................

Name of director (block letters)

**SECURITY TRUSTEE**

| | | |
|---|---|---|
| **SIGNED, SEALED AND DELIVERED** by | ) | |
| | ) | |
| as attorney for **GLOBAL LOAN AGENCY SERVICES AUSTRALIA NOMINEES PTY LTD** (ACN 608 945 008) under power of attorney dated 2 February 2022 in the presence of: | ) | |
| Taylor Zhao (Sep 6, 2023 16:49 GMT+10) | ) | Mark Satchel |
| ............................................................ | ) | ............................................................ |
| Signature of witness | ) | By executing this document the attorney states that the attorney has received no notice of revocation of the power of attorney |
| Taylor Zhao | ) | |
| ............................................................ | ) | |
| Name of witness (block letters) | ) | |