



**Government  
of South Australia**

TRS20D2601

Hon Stephen Mullighan MP  
Member for Lee  
Unit 1, 62 Semaphore Road  
SEMAPHORE SA 5019

[lee@parliament.sa.gov.au](mailto:lee@parliament.sa.gov.au)

**Treasurer**

Level 8

State Administration Centre

200 Victoria Square

Adelaide SA 5000

GPO Box 2264

Adelaide SA 5001

DX 56203 Victoria Square

Tel 08 8226 1866

[treasurer.dtf@sa.gov.au](mailto:treasurer.dtf@sa.gov.au)

  
Dear Mr Mullighan

### **APPLICATION UNDER THE *FREEDOM OF INFORMATION ACT 1991***

I refer to your application made under the *Freedom of Information Act 1991* (the Act), dated 5 August 2020.

Your application seeks access to:

*"All minutes, briefings and correspondence titled 'Concessional Bushfire Loans Scheme' as described on the Objective document management system, between 9 April and 5 August 2020."*

The prescribed legislative timeframe to determine this application has expired and is deemed as refused access to documents relevant to your application. I refer to my letter dated 18 August 2020 where I sought additional time to make my determination.

The purpose of this letter is to advise you of my determination. An extensive search was conducted within this office. A total of 15 documents were identified as answering the terms of your application.

I grant you access in full to 11 documents; copies of which are enclosed.  
I grant you access in part to 4 documents; copies of which are enclosed.

#### **Documents Released in Full**

Documents 1, 4, 5, 6, 7, 9, 10, 11, 12, 13 and 15

#### **Documents Released in Part**

Documents 2, 3, 8 and 14

Document 2 is released in part as it contains deliberations of Cabinet. I therefore determine this information exempt, pursuant to clause 1(1)(e).

Document 3 is released in part as it contains confidential business affairs of Bodyearth Pty Ltd relating to their loss of income following the bushfire disaster. I therefore determine Document 3 is exempt in part, pursuant to clause 7(1)(c) and clause 13(1)(b).

Document 8 is released in part as it contains the bank details for Stanley Law Pty Ltd. I therefore determine this information exempt, pursuant to clause 7(1)(c).

Document 14 is released in part as it contains sensitive information relating to the financial situation of businesses who lost income due to the bushfire disaster. I therefore determine this information exempt, pursuant to clause 7(1)(c) and clause 13(b).

## **Exemptions**

### **Clause 1 – Cabinet Documents**

(1) *A document is an exempt document—*

- (a) *if it is a document that has been specifically prepared for submission to Cabinet (whether or not it has been so submitted); or*
- (b) *if it is a preliminary draft of a document referred to in paragraph (a); or*
- (c) *if it is a document that is a copy of or part of, or contains an extract from, a document referred to in paragraph (a) or (b).*
- (e) *if it contains matter the disclosure of which would disclose information concerning any deliberation or decision of Cabinet; or*
- (f) *if it is a briefing paper specifically prepared for the use of a Minister in relation to a matter submitted, or proposed to be submitted to Cabinet.*

### **7 – Documents affecting business affairs concerning**

(1) *A document is an exempt document—*

(b) *if it contains matter—*

- (i) *consisting of information (other than trade secrets) that has a commercial value to any agency or any other person; and*
- (ii) *the disclosure of which—*
  - (A) *could reasonably be expected to have an adverse effect on those affairs or to prejudice the future supply of such information to the Government or to an agency; and*
  - (B) *would, on balance, be contrary to the public interest; or*

(c) *if it contains matter—*

- (i) *consisting of information (other than trade secrets or information referred to in paragraph (b)) concerning the business, professional, commercial or financial affairs of any agency or any other person; and*
- (ii) *the disclosure of which—*
  - (A) *could reasonably be expected to have an adverse effect on those affairs or to prejudice the future supply of such information to the Government or to an agency; and*  
*would, on balance, be contrary to the public interest.*

### **Clause 13 – Documents containing confidential material**

- (1) *A document is an exempt document*
  - (a) *if it contains matter the disclosure of which would found an action for breach of confidence; or*
  - (b) *if it contains matter obtained in confidence the disclosure of which*
    - (i) *might reasonably be expected to prejudice the future supply of such information to the Government or to an agency; and*
    - (ii) *would, on balance, be contrary to the public interest.*
  
- (2) *A document that is a contract entered into by the Crown or an agency after the commencement of this subclause is not an exempt document by virtue of subclause unless—*
  - (a) *it contains matter the disclosure of which would, under a term of the contract, constitute a breach of the contract or found an action for breach of confidence; and*
  
  - (b) *that term of the contract has been approved by—*
    - (i) *in the case of a contract entered into by the Crown—a Minister; or*
    - (ii) *in the case of a contract entered into by a State Government agency—the responsible Minister for the agency; or*
    - (iii) *in the case of a contract entered into by an agency that is not a State Government agency—the agency.*

Please note, in compliance with Premier and Cabinet Circular PC045 - *Disclosure Logs for Non-Personal Information Released through Freedom of Information* (PC045), the Department of Treasury and Finance is now required to publish a log of all non-personal information released under the Act.

In accordance with this Circular, any non-personal information determined for release as part of this application, may be published on the DTF website. A copy of PC045 can be found at the following address: <https://dpc.sa.gov.au/resources-and-publications/premier-and-cabinet-circulars>. Please visit the website for further information.

If you require any further information, please contact Vicky Cathro on 8226 9769.

Yours sincerely



**Hon Rob Lucas MLC**  
*Principal Officer*

20 January 2021

Att.

Schedule of Documents

TRS20D2601 - Concessional Bushfire Loan Schemes

Doc. No.	Date	Description of Document	# of pages	Determination Recommendation	Exemption Clause	Reason
1	29/06/2020	Briefing to Treasurer from General Manager, SAFA	2	Released in full	1(1)(e) - Contains information concerning deliberation or decision of Cabinet or Cabinet committee	
2		Attachment 2 to Document 1	2	Released in part	7(1)(c)(i)(ii)(A)(B) - Contains information concerning the business, professional, commercial or financial affairs of any agency or person & contrary to public interest	
3		Attachment 3 to Document 1	2	Released in part	13(1)(b)(i)(ii) - Contains matter obtained in confidence, disclosure would affect future supply of information & contrary to public interest	
4		Attachment 1 to Document 1	14	Released in full		
5	13/05/2020	Briefing to Treasurer from Acting General Manager, SAFA	2	Released in full		
6		Attachment 1 to Document 5	2	Released in full		
7	12/05/2020	Briefing to Treasurer from Acting General Manager, SAFA	2	Released in full		
8		Attachment 1 to Document 7	2	Released in part	7(1)(c)(i)(ii)(A)(B) - Contains information concerning the business, professional, commercial or financial affairs of any agency or person & contrary to public interest	

**Schedule of Documents**

<b>Doc. No.</b>	<b>Date</b>	<b>Description of Document</b>	<b># of pages</b>	<b>Determination Recommendation</b>	<b>Exemption Clause</b>	<b>Reason</b>
9	22/06/2020	Briefing to Treasurer from General Manager, SAFA	2	Released in full		
10		Attachment 1 to Document 9	4	Released in full		
11	18/06/2020	Briefing to Treasurer from General Manager, SAFA	2	Released in full		
12		Attachment 1 to Document 11	14	Released in full		
13	29/06/2020	Briefing to Treasurer from General Manager, SAFA	3	Released in full		
14		Attachment 3 to Document 13	3	Released in part	7(1)(c)(i)(ii)(A)(B) - Contains information concerning the business, professional, commercial or financial affairs of any agency or person & contrary to public interest	
15		Attachment 1 to Document 13	14	Released in full	13(1)(b)(i)(ii) - Contains matter obtained in confidence, disclosure would affect future supply of information & contrary to public interest	

**RELEASE**

MINUTE

30/6/2020  
T20/042  
The 2002175



Government  
of South Australia  
Department of Treasury  
and Finance

MINUTES forming ENCLOSURE

File SAF20/0883

Doc No A1466962

To The Treasurer

**CONCESSIONAL BUSHFIRE LOANS SCHEME – LOAN TO BODYEARTH PTY LTD**

Timing: ROUTINE

**Recommendations/Issues:** It is recommended that you:

- note that you approved a loan of up to \$30,000 to Bodyearth Pty Ltd, trading as 'Kangaroo Island Trails', from the Concessional Bushfire Loans Scheme (CBLS or Scheme) on 12 May 2020 (minute attached);
- note that the loan funds are to assist the borrower with working capital following the December 2019 bushfire that caused tour cancellations resulting in a loss of revenue;
- note that the Crown Solicitor's Office (CSO) has prepared a Facility Agreement to reflect the terms mandated by the Australian Government for working capital loans approved from the Scheme; and
- execute the two attached copies of the Facility Agreement, which have been executed by Bodyearth Pty Ltd.

Noted and Approved/Not-Approved

*Rob Lucas*

Hon Rob Lucas MLC  
Treasurer

31/7/20

**Key Points:**

- On 5 April 2020 you approved administrative arrangements for the Concessional Bushfire Loans Scheme. On 12 May 2020 you approved two loans, including a \$30,000 unsecured five year loan for Bodyearth Pty Ltd, trading as 'Kangaroo Island Trails' – both minutes are attached.
- Bodyearth Pty Ltd is a gourmet food and wine, scenic and wildlife tour business operating from Kangaroo Island. During the December 2019 bushfires the company experienced tour cancellations amounting to \$30,523 in lost income.



- The \$30,000 loan approved from the Scheme will assist the business with working capital whilst trading conditions return to normal. Forecast profits are sufficient for the business to service this loan.
- Under instruction from SAFA the Crown Solicitor's Office has prepared a Facility Agreement (Agreement) to reflect the terms for working capital loans to be made under the Scheme.
- The terms of the Agreement are consistent with the terms for loans to be made from the Scheme as mandated by the Australian Government. The Agreement provides that the \$30,000 loan be available for drawdown in a single Instalment upon execution. Under the Agreement, loan repayments will commence from the second anniversary, whereby the loan is repayable in equal payments of principal and interest amortising to zero at the five year term. Interest is re-set annually in July to be equivalent to 50% of the 10-year Commonwealth Bond Rate averaged over the preceding quarter.
- On 5 April 2020 you noted that loans provided under the Scheme are concessional, with resulting budget impacts being brought to account through the application of AASB9 as these loans are made. The concession booked would usually recognise the price discount, being the difference between the interest rate charged for these loans compared to the rate that would be charged commercially. The discount is initially recognised in full as an expense and then wound back, so that over time, there is no real cost. It is currently proposed that the price concession of the CBLs loans of \$50,000 or less is not recorded as the price concession is immaterial compared to the administrative effort to account for it (note that the price concession of loans above \$50,000 will be recognised).
- Additionally, there is a cost to the State in advancing credit during the initial two year interest free period whilst no loan repayments are made. The average cost of funds on the Treasurer's borrowings is currently 1.76% per annum, so the actual cost to make this loan is \$1,056. It is proposed that this cost will be recognised in the State's accounts. Note that 50% of this cost will be charged to the Commonwealth under the agreed cost sharing arrangements for administration of the Scheme.
- It is proposed that you now execute the Facility Agreement in duplicate where indicated, which has been executed by Bodyearth Pty Ltd.




Anna Hughes  
GENERAL MANAGER, SAFA

29 June 2020

Contact Officer:	Rindal Chiltonho/ Rebecca Wigglesworth
Telephone:	8226 5813/ 8207 2291
Email address:	rindal.chiltonho@sa.gov.au

**Attachments:**

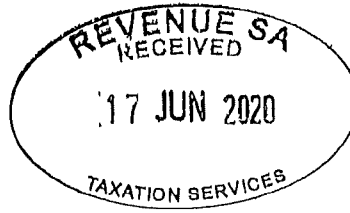
1. Two copies of the Facility Agreement
2. Minute dated 5 April 2020
3. Minute dated 12 May 2020

<b>Supported / Not Supported</b>

David Reynolds CHIEF EXECUTIVE Department of Treasury and Finance
1 Jun 2020



BUSHFIRE WORKING CAPITAL LOAN

FACILITY AGREEMENT



Dated:



BETWEEN:

THE TREASURER

AND

BODYEARTH PTY LTD



Government  
of South Australia

CROWN SOLICITOR

Level 17, 10 Franklin Street, Adelaide SA 5000

**THE SCHEDULE**

1. **BORROWER**  
BODYEARTH PTY LTD (ACN 143 844 544) whose registered office is situated at 12 Russel Road West, Lake Eacham, Queensland, 4884
2. **BORROWER'S AUTHORISED OFFICER**  
Kylie-Jane Tull, Director
3. **BORROWER ADDRESS FOR NOTICES**  
Attention: Kylie-Jane Tull  
Address: 12 Russel Road West, Lake Eacham, Queensland, 4884
4. **BUSINESS & BUSINESS PREMISES**  
Business: The operations and undertakings of the Borrower, as carried on by the Borrower as at the Commencement Date, of gourmet food, wine, scenic and wildlife tour adventure operator, trading as 'Kangaroo Island Trails'  
Business Premises: 1 Bay Terrace, Penneshaw, SA 5222
5. **AVAILABILITY PERIOD**  
60 days
6. **FACILITY LIMIT**  
THIRTY THOUSAND DOLLARS (\$30,000.00)
7. **BASE RATE**  
A rate of fifty percent (50%) of the 10-year Commonwealth bond rate averaged from 1 April to 30 June of the Financial Year preceding the relevant Rate Set Date
8. **RATE SET DATE**  
Each 1 July during the Term
9. **INTEREST AND PAYMENT COMMENCEMENT DATE**  
The second anniversary of the Commencement Date
10. **PREPAYMENT MINIMUM**  
TEN THOUSAND DOLLARS (\$10,000)
11. **PRECONDITIONS TO DRAWDOWN**  
Not used
12. **APPROVED PURPOSE**  
The payment of Working Capital Expenses of the Business properly and reasonably incurred by the Borrower.



venture within the meaning of Australian Accounting Standard 131.

**Event of Default** means the occurrence of any of the events listed in clause 11.1.

**Facility** means the facility provided by the Treasurer under this Agreement whereby the Borrower may, during the Availability Period, request an Advance of money for the Approved Purpose.

**Facility Limit** means the amount specified in the Schedule.

**Financial Indebtedness** means any indebtedness in respect of:

- (a) money borrowed, raised or owing under any form of agreement with any banks or financial institutions;
- (b) receivables sold or discounted;
- (c) any finance lease or operating lease.

**Financial Year** means each period from 1 July to the following 30 June.

**Funding Period** means the period commencing on the Interest and Payment Commencement Date and ending on the Repayment Date.

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

**GST** means the tax imposed by the GST Law.

**GST Law** has the same meaning attributed in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

**GST Liability** has the meaning given to it in clause 12.4(a).

**Insolvency Event** means any of the following events:

- (a) the administration, liquidation, dissolution or management of the Borrower or its assets under any Insolvency Law;
- (b) the appointment of a receiver, receiver and manager, manager, trustee, administrator, controller or any similar person in respect of the Borrower or its assets or undertaking under any Insolvency Law;
- (c) the Borrower enters into or takes any action to enter into an arrangement or compromise with, or assignment for the benefit of all or any class of its creditors or members or a moratorium involving any of them; or
- (d) the Borrower becomes or admits in writing that it is, or pursuant to any Insolvency Law is deemed to be insolvent.

**Insolvency Law** means any Law relating to insolvency, sequestration, liquidation or bankruptcy (including any Law relating to the avoidance of conveyances in fraud of creditors or of preferences and any Law under which a liquidator or trustee in bankruptcy may set aside or avoid transactions) and any provision of any agreement, arrangement or scheme, formal or informal, relating to the administration of any of the assets of any person.

**Insurances** mean such insurances necessary to cover all risks associated with the Business.

**Interest and Payment Commencement Date** means the

date specified in the Schedule.

**Interest Period** for has the meaning given in clause 6.2(a).

**Law** means principles of law and equity established by decisions of courts, or by any legislation of the Commonwealth of Australia or of any State or Territory of the Commonwealth or of any other relevant jurisdiction, or of any local, municipal, or shire authority now or in the future in force, and any rule, regulation, by-law, statutory instrument, order or other action now or in the future made under any such legislation or pursuant to any court decision, including any policy or notice issued or published by a Government Agency relating to any Tax legislation.

**Material Adverse Effect** means any change that has had, or is reasonably likely to have, an effect that is or will be materially adverse to:

- (a) the ability of the Borrower to perform its obligations under this Agreement;
- (b) the Business;
- (c) the interests of the Treasurer under this Agreement; or
- (d) the assets or financial condition of the Borrower.

**Modified Business Day Convention** means if anything is required by this Agreement to be undertaken on or by a day which is not a Business Day (including the making of any payment) then it must be undertaken on or by the following Business Day unless the day falls in the next month in which case it must be undertaken on or by the preceding Business Day.

**Obligations** means at any time the aggregate of the following amounts:

- (a) the Advance;
- (b) unpaid interest; and
- (c) all liabilities of the Borrower to the Treasurer under or by reason of this Agreement.

**Overdue Rate** means the daily interest rate being an aggregate of 2% per annum and the rate percent per annum determined by the Treasurer to be that which expresses as a percentage per annum the cost to the Treasurer of funding, on a daily basis for the period of the default, any amount due and unpaid under this Agreement.

**Period End Date** means the following dates:

- (a) the Interest and Payment Commencement Date; and
- (b) each 1 April, 1 July, 1 October and 1 January following the Interest and Payment Commencement Date during the Term up to and including the Repayment Date.

**Potential Event of Default** means any event, which with the giving of notice, lapse of time, fulfilment of any condition or any determination is likely to constitute an Event of Default.

**PPS Law** means each of the provisions of:

- (a) the *Personal Property Securities Act 2009 (Cth)*; and
- (b) any regulations made at any time under the *Personal Property Securities Act 2009 (Cth)*.

**PPS Lease** means a 'PPS Lease' as defined under the PPS Law.

**Prepayment Minimum** means the amount specified in the

Schedule.

**Program** means the program established by the Government of the State known as the 'Concessional Bushfire Loans Program'.

**Quarter** means each period of three (3) months ending on 30 June, 30 September, 31 December and 31 March.

**Rate Set Date** means each date specified in the Schedule.

**Related Body Corporate** has the same meaning as defined in the Corporations Act.

**Repayment Date** means the fifth (5<sup>th</sup>) anniversary of the Commencement Date, or such later date as may be extended with the written approval of the Treasurer.

**Significant Business Restructure** means, at the relevant time:

- (a) a Change of Control of the Borrower;
- (b) the sale of all of the Borrower's Business being conducted at that time, or a sale of a portion of that Business which the Treasurer determines is a significant portion of the Borrower's Business;
- (c) a significant restructure, reduction or transformation of the Borrower's Business being conducted at that time, which the Treasurer determines is likely to be materially adverse to the performance of the Borrower's obligations, or the interests of the Treasurer, under this Agreement; or
- (d) a relocation of all of the Borrower's Business being conducted at that time at the Business Premises out of the State of South Australia, or a relocation of a part of that Business out of the State of South Australia which the Treasurer determines is the relocation of a significant part.

**State** means the State of South Australia.

**Tax** means any and all present and future taxes, levies, imposts, deductions, charges, fees, compulsory loans and withholdings levied by any Government Agency, together with interest, penalties and expenses in connection with them.

**Term** means the period commencing on the Commencement Date and ending on the Termination Date.

**Termination Date** means the earlier of:

- (a) the Repayment Date; or
- (b) the date on which the Facility is terminated, in accordance with this Agreement.

**Treasurer's Representative** has the meaning given to it in clause 15.1.

**Trust** means any trust in respect of which the Borrower is Trustee.

**Trust Deed** in respect of a Trust, means the trust deed establishing the Trust.

**Working Capital Expenses** means the essential expenses payable by the Borrower while the Business returns to its normal level of trading including payments:

- (a) to third party creditors of the Borrower;
- (b) in respect of goods and services necessary to carry-on

the Business;

- (c) to the Borrower's employees; or
- (d) to meet the scheduled servicing requirements for any loans or debts owing to financial institutions, including the Bank provided that the obligation to make those loan or debt repayments were in existence at the date of this Agreement, and those loans or debts are not being restructured or refinanced with the Advance,

and does not include:

- (e) payment of any loans from or payment of any debts owing to the Borrower's directors, officers or shareholders or any relative or associate of the Borrower.

## 1.2 Interpretation

The following rules apply in the interpretation of this Agreement unless the context requires otherwise:

- (a) the singular number includes the plural number and vice versa;
- (b) any gender includes all genders;
- (c) references to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them;
- (d) references to the whole of a matter or thing include a part of the matter or thing;
- (e) derivatives of words or phrases defined in this Agreement have a corresponding meaning;
- (f) a reference to an agreement or other document includes a reference to that agreement or document as varied, novated, supplemented or replaced at any time;
- (g) a reference to writing includes any mode of reproducing words in a visible form, and includes telex, e-mail or facsimile transmission;
- (h) a reference to a person includes a reference to the persons, successors, substitutes (including, without limitation, persons taking by novation) and assigns;
- (i) an agreement undertaking representation or warranty on the part of or in favour of two or more persons binds or is for the benefit of them jointly and severally;
- (j) headings are for convenience only and do not affect interpretation;
- (k) any reference to dollars, unless otherwise specified, is a reference to Australian dollars;
- (l) references to parties, clauses, schedules, exhibits or annexures are references to parties, clauses, schedules, exhibits and annexures to or of this Agreement unless it is expressly stated otherwise, and a reference to this Agreement includes any schedule, exhibit or annexure to this Agreement;
- (m) all accounting terms used have the meaning given to those terms under applicable Accounting Principles;
- (n) mentioning anything after the words include, includes or including does not limit what else might be included;
- (o) no provision or expression is to be construed against a party on the basis that the party (or its advisers) was responsible for the drafting of this document; and

(p) a reference to any statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing them, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute.

### 1.3 Trusts

Unless the context requires otherwise, a reference to a transaction, asset, act or liability of any nature of the Borrower includes its transactions, assets, acts or liabilities as trustee (if applicable) and in its own right. Where a Borrower that is a trustee incurs an obligation, it incurs that obligation in its capacity as trustee, and in its own right.

## 2. THE FACILITY

### 2.1 Facility

Subject to the terms of this Agreement, and in reliance upon the representations and warranties made by the Borrower in this Agreement, the Treasurer agrees to make the Facility available to the Borrower during the Term.

### 2.2 Purpose of the Facility

Unless otherwise approved in writing by the Treasurer, the Borrower must only use the Advance for the Approved Purpose. For the avoidance of doubt, the Borrower must not use the Advance for any purpose other than the Approved Purpose and must not use the Advance to refinance any Financial Indebtedness.

### 2.3 Facility Limit

The Treasurer will not be obliged to make the Advance under the Facility, if to do so would cause the applicable Facility Limit to be exceeded.

### 2.4 Termination of Facility

On the Termination Date the Facility is cancelled and terminated and the Facility Limit is reduced to zero.

### 2.5 Information on application of the Advance

The Borrower will provide to the Treasurer any information that the Treasurer requires concerning how the Advance has been, or will be applied and will do so in writing within five (5) Business Days of being requested to do so. For this purpose the Borrower agrees to provide the Treasurer with access to any of the Borrower's books and records so as to verify any such information and consents to the Treasurer obtaining copies of such records. For the purpose of this clause a reference to the Treasurer includes a reference to any agent or adviser to the Treasurer.

## 3. CONDITIONS PRECEDENT

### 3.1 Preconditions to Facility

The obligation of the Treasurer to provide the Advance to the Borrower is subject to the Treasurer receiving, in all things to the Treasurer's complete satisfaction evidence all Insurances required by this Agreement are in full force and effect.

### 3.2 Preconditions to Drawdowns under the Facility

The obligation of the Treasurer to provide the Advance to the Borrower is subject to the following condition precedents:

(a) the Treasurer being satisfied that no Event of Default or Potential Event of Default is subsisting, both at the date

of the Drawdown Notice and at the Drawdown Date, or will result from the making of the Drawdown;

(b) the Treasurer being satisfied that the Borrower's representations and warranties set out in clause 9 remain true and correct in every particular, both at the date of the Drawdown Notice and at the Drawdown Date, and also immediately after making of the Drawdown;

(c) the Treasurer is satisfied that the Advance will be applied to the Approved Purpose;

(d) receipt of a valid Drawdown Notice; and

(e) the condition precedents to Drawdowns specified in the Schedule (if any).

### 3.3 Preconditions to Drawdowns under the Facility

The conditions precedent in this clause 3 are for the benefit of the Treasurer only, and may be waived or deferred at any time by the Treasurer in writing (and on such conditions as the Treasurer deems fit).

## 4. DRAWDOWNS

### 4.1 Notice

The Borrower may request the Advance under the Facility by one Drawdown on any Business Day during the Availability Period by delivering a Drawdown Notice to the Treasurer in accordance with this clause 4.

### 4.2 Contents of Drawdown Notice

The Drawdown Notice must be in the form specified in the Annexure to this Agreement and:

(a) contain a certification that the Drawdown will be applied towards the Approved Purpose;

(b) specify the amount of the Advance which shall not exceed the Facility Limit;

(c) specify payment instructions, which must be to an account of the Borrower with an ADI; and

(d) specify the proposed Drawdown Date which must be a Business Day during the Availability Period.

### 4.3 Requirements of Drawdown Notice

The Drawdown Notice must be received by the Treasurer not less than five (5) Business Days (or such shorter time as the Treasurer may agree) before the proposed Drawdown Date, must be signed for the Borrower by a duly authorised person and will be irrevocable once received by the Treasurer.

### 4.4 Making of Advance

Subject to the terms of this Agreement the Treasurer will make the Advance to the Borrower in accordance with the payment instructions specified in the Drawdown Notice for the Advance.

## 5. CANCELLATION OR REDUCTION OF FACILITY

### 5.1 Automatic cancellation of Facility and reduction of Facility Limit

If the Facility Limit has not been fully drawn down by the Borrower upon the expiry of the Availability Period, then the Facility will be automatically cancelled and the Facility Limit will be reduced to zero, effective as of the day of expiry of the Availability Period, and the Treasurer will have no obligation

to provide the Advance to the Borrower.

### 5.2 Automatic reduction of Facility Limit

If the Advance (in whole or part) under the Facility is repaid or prepaid the Facility Limit will be automatically reduced by the amount of the Advance repaid or prepaid and is not available to be re-drawn by the Borrower under the Facility.

## 6. PRINCIPAL AND INTEREST PAYMENTS

### 6.1 Interest & Payment Free Period

The parties acknowledge and agree that notwithstanding anything to the contrary in this Agreement:

- (a) Interest shall not accrue on the Advance prior to the Interest and Payment Commencement Date; and
- (b) the Borrower is not required to make payments of principal or interest prior to the Interest and Payment Commencement Date.

### 6.2 Interest Period

- (a) Subject to clause 6.2(b), each interest period for the Advance under the Facility (Interest Period) will be a duration of three (3) months, commencing on a Period End Date and ending on the next Period End Date.
- (b) The Interest Period for an Advance under the Facility is subject to adjustment as follows:
  - (i) the first Interest Period for the Advance will commence on the Interest and Payment Commencement Date and end on the first Period End Date that follows;
  - (ii) where the Interest Period would otherwise end after the Repayment Date of the Advance it will be adjusted to coincide with the Repayment Date for the Advance;
  - (iii) where the Interest Period would otherwise end after the Termination Date it will be adjusted to coincide with the Termination Date; and
  - (iv) where the first or last day of the Interest Period is not a Business Day it will be adjusted in accordance with the Modified Business Day Convention.

### 6.3 Interest Rate

- (a) The Borrower must pay the Treasurer interest on the outstanding balance of the Advance, which interest will accrue from and including the Interest and Payment Commencement Date until the Advance is repaid in full.
- (b) Interest is payable, and will accrue from day to day on the outstanding balance, for the Advance, and for each Interest Period of an Advance, at a rate equal to the Base Rate.
- (c) The Base Rate will be revised and reset on each Rate Set Date.

### 6.4 Calculation of interest

Payments in the nature of interest under this Agreement will:

- (a) accrue from day to day;
- (b) be computed from and including the day when the money on which interest is to be payable was provided,

until, but excluding, the day when that money is paid or repaid;

- (c) If payable by reference to specific periods, be computed from and including the first day of the period, until, but excluding the last day of the period; and
- (d) be calculated on the basis of a year of 365 days (except in the case of a leap year, which will be on the basis of a year of 366 days) and for the actual number of days elapsed.

### 6.5 Principal and Interest Payments

- (a) The Borrower must:

- (i) repay the Advance; and
- (ii) pay the accrued interest on the Advance,

by paying to the Treasurer equal instalments of principal and interest in respect of each Interest Period over the Funding Period for the Advance, which instalments must be paid for each such Interest Period on the last day of the Interest Period.

- (b) For the purposes of clause 6.5(a), the Treasurer will as soon as practicable following each Rate Set Date, provide to the Borrower a statement of:
  - (i) the Base Rate determined to apply to the Advance;
  - (ii) the amount of the instalment of principal and interest required to be paid in respect of each Interest Period over the next Financial Year of the Funding Period; and
  - (iii) the amount of the Advance that would be outstanding at the commencement of each Interest Period over the next Financial Year of the Funding Period.
- (c) The repayment of any portion of the Advance under the Facility is not available to be re-drawn by the Borrower.

### 6.6 Repayment of Advances and Obligations

The Borrower must repay the Advance, together with all other amounts which form part of the Obligations, to the Treasurer on the Termination Date.

### 6.7 Capitalisation of interest

The Treasurer may capitalise any part of any interest, which becomes due for payment under this Agreement by the Borrower and is not paid, at the times determined by the Treasurer, and if no determination is made, will be deemed to have been capitalised quarterly, and interest shall be payable in accordance with clause 6.8 on that capitalised amount.

### 6.8 Interest on overdue amounts

- (a) The Borrower will pay to the Treasurer interest on amounts due and payable by it under this Agreement but unpaid (including any interest payable under this clause) for the period the amount remains unpaid.
- (b) Such interest will accrue before and (as a separate and independent obligation but without duplication) after any court judgement at a rate of interest equivalent to the Overdue Rate.
- (c) Interest payable on any unpaid amount will be paid on

demand and if not so paid will itself be deemed to be capitalised quarterly and bear interest in accordance with this clause as if it was an unpaid amount.

#### 6.9 Treasurer's determination and calculation

- (a) The Treasurer's determination as to the instalments of principal and interest, the rate of interest and calculation as to an amount of interest, at any time will be conclusive and binding on the Borrower in the absence of manifest error.
- (b) Where any amount of interest payable by the Borrower under this Agreement is required to be calculated for the purpose of payment or capitalisation, the Treasurer will notify the Borrower of the amount of interest calculated to be payable or capitalised, as soon as practicable after it has been calculated by the Treasurer. Failure to do so will not affect the obligations of the Borrower in any way.

### 7. VOLUNTARY PREPAYMENTS

#### 7.1 Voluntary Prepayment of Advances

- (a) Subject to this clause 7.1, the Borrower may, upon giving the Treasurer not less than five (5) Business Days prior written notice, prepay the Advance in whole or part. Such notice of prepayment must specify:
  - (i) the prepayment date, which must be the last day of an Interest Period; and
  - (ii) the amount of the Advance to be prepaid.
- (b) Unless the Borrower is prepaying the whole of the Advance or as otherwise agreed by the Treasurer, the amount of the Advance to be prepaid must be at least equal to the Prepayment Minimum and in a whole multiple of the Prepayment Minimum.
- (c) The Borrower, must, together with any amount to be prepaid under this clause 7.1 pay to the Treasurer on the date of prepayment any unpaid interest accrued on the amount to be prepaid.
- (d) If the Borrower is prepaying the whole amount of the Advance under this clause 7.1, then together with the amount being prepaid the Borrower must pay to the Treasurer the balance of all amounts which form part of the Obligations.
- (e) If in a notice of prepayment given under clause 7.1(a), the Borrower is prepaying part of the Advance, then the amount of the equal instalments of principal and interest to be paid by the Borrower with respect to that Advance under clause 6.5 will be adjusted for the balance of the Funding Period of the Advance to take account of the reduction in the amount of the Advance, with effect on and from the date of the Treasurer's receipt of the amount to be prepaid.
- (f) For the purposes of clause 7.1(e), the Treasurer will, as soon as practicable following receipt of the amount prepaid, provide to the Borrower a revised statement of:
  - (i) the Base Rate applying to the Advance;
  - (ii) the adjusted amount of the equal instalment of principal and interest required to be paid in respect of each Interest Period over the remaining balance of the Funding Period of the Advance; and
  - (iii) the amount of the Advance, after taking account of the amount prepaid, that is then outstanding and

that would be outstanding at the commencement of each Interest Period over the remaining balance of the Funding Period of the Advance.

- (g) Any notice of prepayment given by the Borrower is irrevocable once received by the Treasurer and the Borrower will be bound to prepay in accordance with the prepayment notice.
- (h) The Borrower must not prepay the Advance except in accordance with this clause 7.1.

#### 7.2 No Re-draw Capability

The prepayment of any portion of the Advance under the Facility is not available to be re-drawn by the Borrower.

### 8. PAYMENTS

- (a) The Borrower will make all payments required under this Agreement without set-off, counter claim, deduction or withholding.
- (b) If a payment becomes due on a day that is not a Business Day, the date for payment will be adjusted in accordance with the Modified Business Day Convention.
- (c) Unless otherwise advised by the Treasurer, all payments by the Borrower under this Agreement will be made to the following account of the Treasurer:

Bank:	Commonwealth Bank of Australia
Name:	DTF Industry Assistance
BSB No:	065 266
Account No:	10000223

### 9. REPRESENTATIONS AND WARRANTIES

#### 9.1 Representations and Warranties by the Borrower

The Borrower represents and warrants to the Treasurer that:

- (a) all information provided by the Borrower in the Application and any further information or documentation subsequently provided, is true and correct in all material respects and is not misleading, and there are no material facts known to the Borrower relating to the Borrower which could or might affect the willingness of the Treasurer to enter into an agreement with the Borrower in terms similar to the terms of this Agreement which have not been disclosed to the Treasurer;
- (b) it is a body corporate duly constituted under applicable Laws with the power to enter into and observe its obligations under this Agreement;
- (c) all Authorisations required to be obtained by it:
  - (i) in connection with the execution, delivery and performance of its obligations under this Agreement; and
  - (ii) as a consequence of the entry into and performance by it of, and the validity of, this Agreement, have been obtained and are valid and subsisting;
- (d) this Agreement constitutes its valid and legally binding obligations, enforceable in accordance with their respective terms;
- (e) it is not in default of its obligations to the Bank as at the date of this Agreement under the Bank Facility



Documents and will not be as at the Commencement Date, and nothing in the terms of this Agreement will cause it to be in default;

- (f) its entry into and performance of its obligations under this Agreement do not and will not contravene or result in any breach of any Law, its constituent documents, or any indenture, mortgage, a Trust Deed, agreement or other instrument or arrangement by which the Borrower or any of its assets are bound;
- (g) the Advance provided to it by the Treasurer under the Facility will be applied only and wholly towards the Approved Purpose, unless otherwise agreed with the Treasurer;
- (h) no Event of Default or Potential Event of Default exists;
- (i) to the best of its knowledge, information and belief, there is no Insolvency Event currently threatened or proposed in respect of the Borrower or any Trust;
- (j) the most recent Accounts of the Borrower give a true and fair view of the state of affairs as at the dates to which those accounts relate and the results of its operations for the accounting periods ended on those dates, and that there has been no Material Adverse Effect in the condition of the Borrower since the provision of those statements;
- (k) no litigation, arbitration, Tax claim, dispute or administrative proceeding is current or pending, or to its knowledge, threatened against or affecting the Borrower or any property of the Borrower, the adverse determination of which is likely to cause a Material Adverse Effect;
- (l) in respect of any Trust for which it is trustee:
  - (i) it is the present and only trustee of the Trust, and that no action has been taken or proposed to remove it as trustee of the Trust;
  - (ii) it has an unrestricted right to be indemnified out of the assets of the Trust in respect of and against all losses, costs, expenses, claims, damages, charges, liabilities and related expenses, sustained or incurred as a consequence of this Agreement;
  - (iii) no vesting date has been determined under the provisions of the Trust Deed for the Trust;
  - (iv) it has the power, without restriction or condition, to enter into and perform its obligations under this Agreement both personally and in its capacity as trustee of the Trust and has taken the necessary corporate action to authorise the entry into and performance of this Agreement both personally and in its capacity as trustee of the Trust; and
  - (v) it is not in material default under the Trust Deed for the Trust, or under any law, indenture, mortgage, agreement or other instrument or arrangement by which it is bound.

## 9.2 Reliance on Representations and Warranties

The Borrower acknowledges that the Treasurer enters into this Agreement in reliance upon the representations and warranties made by the Borrower under this clause 9.

## 9.3 Survival of Representations and Warranties

Each of the representations and warranties in clause 9.1 will survive the execution of this Agreement and will be deemed to have been repeated by the Borrower at each time the Borrower

submits a Drawdown Notice to the Treasurer and on the Drawdown Date as if then repeated by reference to the then existing circumstances.

## 9.4 Notification

The Borrower must notify the Treasurer immediately upon becoming aware of a breach of a representation or warranty set out in this Agreement.

## 10. UNDERTAKINGS OF THE BORROWER

### 10.1 Duration

The undertakings in this clause 10 will remain in force from and after the date of this Agreement and for so long as any Obligation is or may be outstanding under this Agreement.

### 10.2 Financial Information

(a) As soon as practicable, and in any event not later than sixty (60) days after the completion of each Financial Year, the Borrower will provide the Treasurer with a copy of its Accounts, together with the Accounts for any Trust, for that Financial Year, each to be certified by the Authorised Officer of the Borrower, as giving a true and fair view of its financial condition and prepared in accordance with applicable Laws and applicable Accounting Principles.

(b) The Borrower will provide the Treasurer, as soon as practicable, such further information regarding the financial condition and business operations of the Borrower, and any Trust, as the Treasurer may from time to time reasonably require.

### 10.3 Insurance Requirements

The Borrower will effect and maintain the Insurances, and on request by the Treasurer provide proof, acceptable to the Treasurer, of the currency of the Insurances.

### 10.4 General Undertakings

The Borrower must:

- (a) not, without the Treasurer's prior written consent, undertake a Significant Business Restructure;
- (b) immediately notify the Treasurer of the occurrence of any Event of Default or Potential Event of Default;
- (c) as soon as practicable notify the Treasurer in writing of any change in Authorised Officers;
- (d) comply in all material respects with all applicable Laws;
- (e) in respect of persons employed by the Borrower:
  - (i) maintain its registration under all relevant compulsory workers' compensation insurance schemes required by Law and duly pay or cause to be paid all levies required to be paid thereunder; and
  - (ii) otherwise comply with the provisions of the *Return to Work Act 2014 (SA)* and any other appropriate Law relating to compulsory workers compensation insurance or rehabilitation and compensation of workers;
- (f) make all accounts, records and other documentation relating to the Business and affairs of the Borrower available to the Treasurer when requested by the Treasurer;

- (g) provide such information in relation to the Borrower or the Business as the Treasurer reasonably requires at any time; and
- (h) as soon as practicable, and in any event not later than sixty (60) days after the completion of each Financial Year, provide an annual compliance certificate in form and substance reasonably required by the Treasurer.

#### 10.5 Trustee Undertakings

The Borrower will, in respect of any Trust for which it is trustee, ensure that:

- (a) the vesting date of the Trust will not be determined;
- (b) the Borrower will remain the only Trustee of the Trust;
- (c) the Borrower will not:
  - (i) do anything which could restrict the Borrower's ability to be indemnified out of the assets of the Trust;
  - (ii) breach its obligations as trustee of the Trust;
  - (iii) effect or facilitate termination or variation of the Trust Deed without the prior consent of the Treasurer;
  - (iv) do or suffer anything which could restrict, limit or impair its ability to observe its obligations under this Agreement; or
  - (v) retire as trustee of the Trust; and
- (d) any successor of the Borrower as trustee of the Trust executes any documents required by the Treasurer to ensure that this Agreement is binding on each successor.

### 11. EVENTS OF DEFAULT

#### 11.1 Events of Default

Each of the following is an Event of Default:

- (a) the Borrower does not pay at or before the due date any amount payable by it under this Agreement, and such default is not remedied within five (5) Business Days of the Treasurer notifying the Borrower of the non payment;
- (b) the Borrower defaults in fully performing, observing and fulfilling any provision of this Agreement, and such default is not remedied within fifteen (15) Business Days of the Treasurer notifying the Borrower of such default, provided always that the Treasurer shall not be required to provide the Borrower with notice of any default that the Treasurer considers to be incapable of remedy;
- (c) any representation, warranty or statement made, repeated or deemed to be made or repeated by the Borrower in this Agreement is proved to be untrue in any material respect when made, repeated or deemed to be made or repeated;
- (d) an Insolvency Event occurs; or
- (e) a Bank Facility Document becomes enforceable or is enforced; or
- (f) any event or series of events (whether related or not) occurs which has a Material Adverse Effect.

#### 11.2 Consequences of an Event of Default

At any time after an Event of Default occurs, the Treasurer may

at the Treasurer's option by way of written notice to the Borrower:

- (a) declare that an Event of Default has occurred; and/or
- (b) declare that its obligation to provide the Advance, or that any other obligations of the Treasurer under the Facility, are terminated, cancelled or suspended; and/or
- (c) declare the Advance immediately due and re-payable, whereupon the Advance will, and all other amounts which form part of the Obligations, become immediately due and payable by the Borrower to the Treasurer.

### 12. COSTS, EXPENSES, DUTIES AND TAXES

#### 12.1 Costs and Expenses

In addition to any other amounts payable by the Borrower to the Treasurer under this Agreement, the Borrower will, upon the Treasurer's demand, reimburse the Treasurer for, and keep it indemnified against:

- (a) all costs and expenses (including legal fees, costs and disbursements on a solicitor/client basis) in connection with any exercise, enforcement or preservation, or any attempted exercise, enforcement or preservation of any rights of the Treasurer; and
- (b) any present or future Tax, rate, levy, impost, deduction, withholding, charge and duty (including fines and penalties) that are payable or assessed in relation to this Agreement and any document or transaction contemplated thereunder.

#### 12.2 Preparation Costs

Each party will pay its own costs and expenses in connection with the negotiation, preparation and execution of this Agreement.

#### 12.3 Taxes and Duties

- (a) The Borrower will pay all stamp, loan transaction, registration and similar Taxes, including fines and penalties which may be payable to or determined to be payable in connection with the execution, delivery, registration, performance or enforcement of this Agreement or any payment, receipt or other transaction contemplated by this Agreement.
- (b) The Borrower will indemnify and keep indemnified the Treasurer against any loss or liability incurred or suffered by it as a result of the delay or failure of the Borrower to pay any such Taxes and duties.

#### 12.4 GST

- (a) Without limiting any other provision of this Agreement, if the Treasurer is or becomes liable to pay GST in respect of any supply it makes under, in accordance with, or pursuant to an enforcement of, this Agreement, whether or not that supply is made to or for the benefit of the Borrower (GST Liability), then:
  - (i) to the extent that an amount is payable by the Borrower to the Treasurer under this Agreement for that supply, that amount will be increased by the full amount of the GST Liability; and
  - (ii) otherwise, the Borrower will indemnify and keep the Treasurer indemnified for the full amount of the GST Liability.

- (b) If requested to do so by the Borrower, the Treasurer will use reasonable endeavours to assist or enable the Borrower to claim any applicable input tax credit in respect of any GST paid by the Borrower in relation to any supply made by the Treasurer under, in accordance with, or pursuant to an enforcement of this Agreement.

### 13. SET-OFF

- (a) The Borrower authorises the Treasurer, at any time after an Event of Default has occurred and is continuing, to apply without prior notice any credit balance or deposit (whether or not then due) to which the Borrower is at any time entitled on any account from the Treasurer or the Crown, whether or not in connection with this Agreement, in or towards satisfaction of any sum then due and unpaid from the Borrower to the Treasurer.
- (b) The Borrower authorises the Treasurer, at any time after an Event of Default has occurred and is continuing, to set-off without prior notice any amount owing (whether present or future, actual, contingent or prospective and on any account whatever) by the Treasurer or the Crown, whether or not in connection with this Agreement, against any liability (whether present or future, actual, contingent or prospective) of the Borrower under this Agreement.
- (c) The Treasurer will not be obliged to exercise any of its rights under this clause 13, which will be without prejudice and in addition to any right of set-off, combination of accounts, lien or other right to which the Treasurer is at any time otherwise entitled (whether by operation of Law, contract or otherwise).

### 14. ASSIGNMENTS

#### 14.1 Successors and Assigns

This Agreement is binding on and for the benefit of each party to this Agreement and their respective successors and permitted assigns.

#### 14.2 Assignments by the Borrower

The Borrower must not assign, novate or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the Treasurer.

#### 14.3 Assignments by the Treasurer

The Treasurer may assign, novate or otherwise transfer any of its rights or obligations under this Agreement at any time to the Treasurer, a minister or other statutory authority of the Crown. In such circumstances the Borrower will perform all such acts and execute all such agreements, assurances and other documents and instruments as the Treasurer may reasonably require to effect such assignment, novation or transfer.

### 15. TREASURER'S REPRESENTATIVES

#### 15.1 Appointment

The Treasurer appoints the person from time to time holding the position in the South Australian Government Financing Authority of "General Manager" or "Director Commercial Operations" as the Treasurer's representative for the purposes of administration of this Agreement, which appointment the Treasurer may vary or revoke at will by notice in writing to the Borrower ("*Treasurer's Representative*").

### 15.2 Authority

Subject to this Agreement, the Treasurer's Representative has authority to:

- (a) exercise all powers and functions of the Treasurer under this Agreement, other than the power to amend or vary this Agreement; and
- (b) bind the Treasurer in relation to any matter arising out of or in connection with this Agreement.

### 15.3 No Limitation

Nothing in this clause 15 shall prevent the Treasurer from exercising any of the Treasurer's powers or rights under this Agreement.

### 16. AUTHORISED OFFICERS

#### 16.1 Authorised Officers to Communicate

All notices, communications and dealings between the Treasurer and the Borrower connected in any way with this Agreement will be signed, conducted and undertaken by, and where necessary, be addressed and sent to, the respective Authorised Officers of the Treasurer or of the Borrower, as relevant.

#### 16.2 List of Authorised Officers

The Treasurer and the Borrower will from time to time notify the other, of the names of all persons authorised to act on their behalf and to give and accept instructions, notices or other communications (both oral and written) on their behalf for the purposes of this Agreement.

#### 16.3 Assumptions

The Treasurer and the Borrower will each be entitled to assume as to the other ("**Other Party**") (and is not obliged to make any inquiries) where it reasonably believed it to be the case:

- (a) the genuineness and authenticity of any instructions given or purportedly given by or on behalf of the Other Party in respect of this Agreement;
- (b) if the Other Party has not given a notice of revocation of authority of all such persons previously authorised, that the person giving the instructions is authorised by the Other Party to do so; and
- (c) that any persons claiming to be a person, details of whom have been given to it in accordance with clause 16.2, is in fact that person.

### 17. NOTICES

Any communication under or in connection with this Agreement must be:

- (a) in writing and addressed as shown in this paragraph (a) (or as otherwise notified in writing by that party to the other party from time to time);

#### The Treasurer

South Australian Government Financing Authority  
Attention: General Manager, SAFA  
Address: 5<sup>th</sup> Floor, State Administration Centre  
200 Victoria Square, Adelaide, SA, 5000

#### The Borrower

As specified in the Schedule.

- (b) signed by the party or a solicitor acting for that party;
- (c) delivered or posted by prepaid post to the address of the addressee shown in paragraph (a) of this clause 17; and
- (d) will be taken to be given or made when delivered, received or left at the address of the recipient shown in paragraph (a) of this clause 17, but if delivery or receipt is not on a Business Day, or is later than 4 pm (Adelaide time), it will be taken to have been given or made at the commencement of the next Business Day.

## 18. AUDITOR-GENERAL

### 18.1 Public Finance and Audit Act, 1987 (SA)

The Borrower acknowledges the provisions of the *Public Finance and Audit Act, 1987 (SA)*, as well as the Treasurer's Instructions made under that Act.

### 18.2 Auditor-General

The Borrower agrees that nothing contained in this Agreement or any action taken pursuant to this Agreement limits the rights and responsibilities of the Auditor-General under the *Public Finance and Audit Act, 1987 (SA)*.

### 18.3 Assistance to Auditor-General

The Borrower must, without charge, provide the Auditor-General with such assistance (including the provision of information) as he or she may reasonably require in connection with any carrying out of his or her functions under the *Public Finance and Audit Act, 1987 (SA)*.

## 19. CONTRACT DISCLOSURE

The Borrower agrees to the disclosure of this Agreement and/or information in relation to this Agreement, in either printed or electronic form and either generally to the public or to a particular person as a result of a specific request, in accordance with the requirements of Department of the Premier and Cabinet Circular PC027 issued by the Government of South Australia.

## 20. CONTINUING OBLIGATION

This Agreement constitutes a continuing obligation regardless of any settlement of account, intervening payment, express or implied revocation or any other matter or thing, until a final discharge thereof has been given to the Borrower.

## 21. APPLICATION OF PAYMENTS AND CREDITS

Despite any other provision in this Agreement, as against the Borrower the Treasurer has an absolute discretion to apply any payment or credit received by it under this Agreement in reduction of any part or parts of the Obligations, whenever and on whatever account, notwithstanding 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.

## 22. SETTLEMENT CONDITIONAL

Any settlement or discharge between the Treasurer and the Borrower is conditional on whether there is a reasonable likelihood that any security or payment given or made by the Borrower or any other person in relation to the Obligations, will be avoided, repaid or reduced by virtue of any Insolvency

Law. If there is such a reasonable likelihood, then if such security or payment is so avoided, repaid or reduced, the Treasurer is entitled to recover the value or amount of such security or payment avoided, repaid or reduced from the Borrower subsequently as if such settlement or discharge had not occurred.

## 23. FURTHER ASSURANCE

The Borrower agrees, on demand by the Treasurer, and at the entire cost and expense of the Borrower, to perform all such acts and execute all such agreements, assurances and other documents and instruments as the Treasurer reasonably requires to perfect or preserve the rights, benefits and powers afforded, created, or intended to be afforded or created, by this Agreement, including by reason of any variation, suspension, cancellation or termination, or extension, renewal or replacement, of this Agreement.

## 24. REMEDIES CUMULATIVE

The rights and remedies conferred by this Agreement on the Treasurer are cumulative and in addition to all other rights or remedies available to the Treasurer by Law.

## 25. WAIVER

### 25.1 No Waivers

Failure by the Treasurer to exercise or enforce, or a delay by the Treasurer in exercising or enforcing, or the partial exercise or enforcement by the Treasurer of any right, power or remedy provided by Law or under this Agreement will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement of that or any other right, power or remedy provided by Law or under this Agreement.

### 25.2 Written Waivers

Any waiver, approval or consent given by the Treasurer under this Agreement will only be effective and binding if it is given in writing.

### 25.3 No Waiver of other Breaches

No waiver of a breach of any term of this Agreement will operate as a waiver of another breach of that term or of a breach of any other term of this Agreement.

## 26. CONSENTS AND APPROVALS

Any consent or approval referred to in, or required under, this Agreement from the Treasurer may be given or withheld, or may be given subject to any conditions as that party (in the Treasurer's absolute discretion) thinks fit, unless this Agreement expressly provides otherwise.

## 27. DETERMINATIONS AND CERTIFICATES

Any certificate or determination of the Treasurer certifying or determining the amount payable by the Borrower, or stating any other act, matter or thing relating to this Agreement, is conclusive and binding on the Borrower in the absence of manifest error on the face of the certificate or determination.

## 28. MORATORIUM LEGISLATION

To the fullest extent permitted by Law, the provisions of all Laws which at any time operate directly or indirectly to lessen or affect in favour of the Borrower any obligation under this

Agreement, or to delay or otherwise prevent or prejudicially affect the exercise by the Treasurer of any power or right under this Agreement or otherwise, are expressly waived, negated and excluded.

29. AMENDMENT

This Agreement can only be amended, supplemented, replaced or novated by another written agreement executed by the Treasurer and the Borrower that is expressed to amend, supplement, replace or novate this Agreement.

30. GOVERNING LAW

30.1 Governing Law

This Agreement shall be governed by and construed in accordance with the Laws of the State of South Australia.

30.2 Jurisdiction

- (a) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of South Australia and courts of appeal from them for determining any dispute concerning this Agreement. Each party waives any right it has to object to an action being brought in those courts, to claim that the action has been brought in an inconvenient forum, or to claim that those courts do not have jurisdiction.
- (b) The parties agree that none of them will institute or attempt to institute any proceedings in relation to any dispute or any matter or thing arising out of or in connection with this Agreement other than in a court of South Australia or, in respect of any proceedings in a Federal court, in the Adelaide registry of the relevant Federal court. A party will not, without the consent of all other parties, request that proceedings instituted in a Federal court in South Australia be heard outside South Australia.

31. ATTORNEYS

Each person who executes this agreement on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

32. COUNTERPARTS

This Agreement may be executed in any number of counterparts, all of which will all be taken to constitute one instrument.

EXECUTED by the parties as an Agreement:

THE COMMON SEAL of THE TREASURER )  
was affixed in the presence of: )

*Rachael Colegate*  
.....  
Witness  
*Rachael Colegate*  
.....  
Print Name

EXECUTED by BODYEARTH PTY LTD )  
(ACN 143 844 544) in accordance with s127 )  
of the Corporations Act 2001 (Cth) )

..... *K. Jull* .....  
Director  
Kylie-Jane Tull

..... *Philip Wayne Tull* .....  
Director / Secretary  
Philip Wayne Tull



**ANNEXURE - DRAWDOWN NOTICE**

To: Treasurer of South Australia  
Attention: South Australian Government Financing Authority (SAFA)  
Level 5, State Administration Centre,  
200 Victoria Square, Adelaide, SA, 5000  
General Manager

Facsimile: (08) 8115 1363

BODYEARTH PTY LTD (Borrower) hereby irrevocably provides the Treasurer with a Drawdown Notice pursuant to clause 4 of the Loan Agreement dated [ ] between the Treasurer and the Borrower (Agreement).

Unless the context otherwise requires, terms defined in the Agreement have the same meanings where used herein.

**1. The following particulars in relation to the proposed Advance are given:**

- (a) Proposed Drawdown Date (being a Business Day) is:
- (b) The amount of the Advance being requested is:
- (c) Particulars of the bank account into which the proposed Advance is to be paid:
  - Bank: [ ]
  - Account Name: [ ]
  - BSB No: [ ]
  - Account No: [ ]

**2. Representations and Warranties**

The Borrower represents and warrants as at the date of this Drawdown Notice that:

- (a) the proposed Drawdown will only be applied towards the Approved Purpose as defined in the Agreement and for no other purpose;
- (b) all the representations and warranties set out in the Agreement are true and correct and not misleading and are repeated as at the date of this notice; and
- (c) that no event which with the giving of notice, the lapse of time or the making of any determination would be likely to become an Event of Default, has occurred or is continuing.

**3. Attachments**

The Borrower provides the following:

[ ]

DATED the            day of            20 .

EXECUTED by BODYEARTH PTY LTD )  
(ACN 143 844 544) in accordance with Section 127(1) of the )  
Corporations Act 2001 )

Director:  
Kylie-Jane Tull

Director/Secretary:  
Phillip Wayne Tull

MINUTE

15/5/2020  
T20/042  
TR520D/531



Government of South Australia  
Department of Treasury and Finance

MINUTES forming ENCLOSURE

File SAF20/0760

Doc No A1425667

To The Treasurer

CONCESSIONAL BUSHFIRE LOANS SCHEME – LOAN TO ANJA PTY LTD

Timing: ROUTINE

**Recommendations/Issues:** It is recommended that you:

- note that you approved a loan of up to \$50,000 to Anja Pty Ltd as trustee for the Andrew Tolley Family Trust from the Concessional Bushfire Loans Scheme (CBLS) on 5 April 2020 (minute attached);
- note that the loan funds are to assist the borrower with working capital following the December 2019 bushfire that caused smoke and fire damage to its vineyards in Woodside;
- note that the Crown Solicitor's Office (CSO) has prepared a Facility Agreement to reflect the terms mandated by the Australian Government for working capital loans approved from the Scheme; and
- execute the two attached copies of the Facility Agreement, which have been executed by Anja Pty Ltd.

Noted and Approved/Not-Approved

*Rob Lucas*  
Hon Rob Lucas MLC  
Treasurer

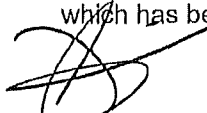
25/5/20

Key Points:

- On 5 April 2020, you approved administrative arrangements for the Concessional Bushfire Loans Scheme (CBLS) and approved the first three loans - minute attached. Anja Pty Ltd as trustee for the Andrew Tolley Family Trust was awarded a \$50,000 unsecured loan for a total term of five years.



- Anja Pty Ltd is a primary producer with a grape growing business operating a 28.27ha vineyard in Woodside SA. The business suffered lost earnings of over \$300,000 as grapes were damaged by fire and smoke during the December 2019 bushfires.
- The \$50,000 loan approved from the Scheme will assist the business with working capital whilst trading conditions return to normal. Financial Statements provided for FY2019 and management accounts year-to-date support the business' ability to service a loan from its revenue.
- Under instruction from SAFA, the Crown Solicitor's Office has prepared a Facility Agreement (Agreement) to reflect the terms for working capital loans to be made under the Scheme.
- The terms of the Agreement are consistent with the terms for loans to be made from the Scheme as mandated by the Australian Government. The Agreement provides that the \$50,000 loan be available for drawdown by the borrower in a single instalment upon execution. Under the Agreement, loan repayments will commence from the second anniversary and the loan is repayable by equal payments of principal and interest amortising to zero at maturity. The interest rate will re-set annually at 1 July to be the equivalent of 50% of the 10-year Commonwealth Bond Rate averaged over the preceding 12-months.
- On 5 April 2020 you noted that loans entered into under the Scheme are concessional, with resulting impacts on the State's accounts arising through application of AASB9. Budget impacts of loans from the Scheme will be brought to account through the budget process later this year.
- It is proposed that you now execute the facility agreement in duplicate where indicated, which has been executed by Anja Pty Ltd.

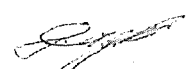
  
Tim Burfield  
Acting General Manager, SAFA

13 May 2020

Contact Officer:	Rindal Chilonho/ Rebecca Wigglesworth
Telephone:	0226 5813/ 0207 2201
Email address:	rindal.chilonho@sa.gov.au

**Attachments:**

1. Two copies of the Facility Agreement to be executed by the Treasurer where indicated.
2. Minute dated 5 April 2020.

<p><b>Supported / Not Supported</b></p> <p> <b>David Reynolds</b> <b>CHIEF EXECUTIVE</b> Department of Treasury and Finance Date.....14/5/20.....</p>
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**BUSHFIRE WORKING CAPITAL LOAN**

**FACILITY AGREEMENT**

**Dated:**

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**BETWEEN:**

**THE TREASURER**

**AND**

**ANJA PTY LTD**



**Government  
of South Australia**

**CROWN SOLICITOR**

**Level 17, 10 Franklin Street, Adelaide SA 5000**

---

**THE SCHEDULE**

**1. BORROWER**

ANJA PTY LTD (ACN 008 075 607) whose registered office is situated at 13 Greenhill Road, Wayville, SA 5034, in its own right as trustee of the Andrew Tolley Family Trust

**2. BORROWER'S AUTHORISED OFFICER**

Mr Andrew Tolley, Director

**3. BORROWER ADDRESS FOR NOTICES**

Attention: Mr Andrew Tolley

Address: 15 Shergis Avenue, Vale Park, SA 5081

**4. BUSINESS & BUSINESS PREMISES**

Business: The operations and undertakings of the Borrower, as carried on by the Borrower as at the Commencement Date, of a 28.27ha vineyard and primary production grape growing business operating

Business Premises: 72 Drummond Road, Woodside, SA 5244

**5. AVAILABILITY PERIOD**

60 days

**6. FACILITY LIMIT**

FIFTY THOUSAND DOLLARS (\$50,000.00)

**7. BASE RATE**

A rate of fifty percent (50%) of the 10-year Commonwealth bond rate averaged from 1 April to 30 June of the Financial Year preceding the relevant Rate Set Date

**8. RATE SET DATE**

Each 1 July during the Term

**9. INTEREST AND PAYMENT COMMENCEMENT DATE**

The second anniversary of the Commencement Date

**10. PREPAYMENT MINIMUM**

TEN THOUSAND DOLLARS (\$10,000.00)

**11. PRECONDITIONS TO DRAWDOWN**

Not used

**12. APPROVED PURPOSE**

The payment of Working Capital Expenses of the Business properly and reasonably incurred by the Borrower.

under this Agreement or otherwise, are expressly waived, negatived and excluded.

29. **AMENDMENT**

This Agreement can only be amended, supplemented, replaced or novated by another written agreement executed by the Treasurer and the Borrower that is expressed to amend, supplement, replace or novate this Agreement.

30. **GOVERNING LAW**

30.1 **Governing Law**

This Agreement shall be governed by and construed in accordance with the Laws of the State of South Australia.

30.2 **Jurisdiction**

- (a) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of South Australia and courts of appeal from them for determining any dispute concerning this Agreement. Each party waives any right it has to object to an action being brought in those courts, to claim that the action has been brought in an inconvenient forum, or to claim that those courts do not have jurisdiction.
- (b) The parties agree that none of them will institute or attempt to institute any proceedings in relation to any dispute or any matter or thing arising out of or in connection with this Agreement other than in a court of South Australia or, in respect of any proceedings in a Federal court, in the Adelaide registry of the relevant Federal court. A party will not, without the consent of all other parties, request that proceedings instituted in a Federal court in South Australia be heard outside South Australia.

31. **ATTORNEYS**

Each person who executes this agreement on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

**COUNTERPARTS**

This Agreement may be executed in any number of counterparts, all of which will all be taken to constitute one instrument.

EXECUTED by the parties as an Agreement:

**THE COMMON SEAL** of **THE TREASURER**. )

was affixed in the presence of: )

*Rachael Colegate*  
.....  
Witness

*Rachael Colegate*  
.....  
Print Name

EXECUTED by **ANJA PTY LTD (ACN 008 075 607)** )  
In accordance with s127 of the Corporations Act 2001 )  
(Cth), in its own right and in its capacity as trustee of )  
the Andrew Tolley Family Trust )

*Andrew Leonard Tolley*  
.....  
Director

*ANDREW LEONARD TOLLEY*  
.....  
Print Name:

*Janine Tolley*  
.....  
Director/Secretary

*Janine Tolley*  
.....  
Print Name



MINUTE

13/05/2020  
12.1.042  
R2001450



Government  
of South Australia  
Department of Treasury  
and Finance

MINUTES forming ENCLOSURE

File SAF20/0758

Doc No A1425664

To The Treasurer

**CONCESSIONAL BUSHFIRE LOANS SCHEME – LOAN TO STANLEY LAW PTY LTD**

Timing: ROUTINE

**Recommendations/Issues:** It is recommended that you:

- note that you approved a loan of up to \$30,000 to Stanley Law Pty Ltd from the Concessional Bushfire Loans Scheme (CBLs) on 5 April 2020 (minute attached);
- note that the loan funds are to assist the borrower with working capital following the December 2019 bushfire that destroyed its premises in Cudlee Creek;
- note that the Crown Solicitor's Office (CSO) has prepared a Facility Agreement to reflect the terms mandated by the Australian Government for working capital loans approved from the Scheme; and
- execute the two attached copies of the Facility Agreement, which have been executed by Stanley Law Pty Ltd.

Noted and Approved/Not-Approved

*Rob Lucas*

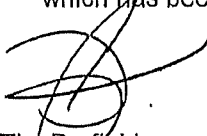
Hon Rob Lucas MLC  
Treasurer


16/5/20

**Key Points:**

- On 5 April 2020, you approved administrative arrangements for the Concessional Bushfire Loans Scheme (CBLs) and approved the first three loans - minute attached. Stanley Law Pty Ltd was awarded a \$30,000 unsecured loan for a total term of five years.

- Stanley Law Pty Ltd is a law firm with a sole Director that operates from premises in Cudlee Creek (and a shop-front in Adelaide). The Cudlee Creek property suffered 90% damage during the December 2019 bushfires and the firm suffered a demonstrable deterioration in working capital due to a loss of income, primarily as the sole Director was unable to service clients whilst dealing with the property damage and necessary repairs.
- The \$30,000 loan approved from the Scheme will assist the firm with working capital whilst trading conditions return to normal.
- Stanley Law Pty Ltd applied for a loan of \$40,000 from the Scheme, however following due-diligence and discussion with the applicant, SAFA recommended that a loan of \$30,000 be made based on its assessment of the applicant's circumstances - the applicant was agreeable to this recommendation.
- Under instruction from SAFA, the Crown Solicitor's Office has prepared a Facility Agreement (Agreement) to reflect the terms for working capital loans to be made under the Scheme.
- The terms of the Agreement are consistent with the terms for loans to be made from the Scheme as mandated by the Australian Government. The Agreement provides that the \$30,000 loan be available for drawdown by the borrower in a single instalment upon execution. Under the Agreement, loan repayments will commence from the second anniversary and the loan is repayable by equal payments of principal and interest amortising to zero at maturity. The interest rate will re-set annually at 1 July to be the equivalent of 50% of the 10-year Commonwealth Bond Rate averaged over the preceding 12-months.
- On 5 April 2020 you noted that loans entered into under the Scheme are concessional, with resulting impacts on the State's accounts arising through application of AASB9. Budget impacts of loans from the Scheme will be brought to account through the budget process later this year.
- It is proposed that you now execute the attached Agreement in duplicate where indicated, which has been executed by Stanley Law Pty Ltd.

  
Tim Burfield  
Acting General Manager, SAFA  
12 May 2020

<u>Supported / Not Supported</u>	
	
David Reynolds CHIEF EXECUTIVE	
Contact Officer:	Rindal Chiltonho/ Rebecca Wigglesworth
Telephone:	8228 6813/ 8207 2291
Email address:	rindal.chiltonho@sa.gov.au

Department of Treasury and Finance

Date: 12.5.20

**Attachments:**

1. Two copies of the Facility Agreement to be executed by the Treasurer where indicated.
2. Minute dated 5 April 2020.

MINUTE

23/06/2020  
720/1042  
720 02052



MINUTES forming ENCLOSURE

File SAF20/0759

Doc No A1465504

To The Treasurer

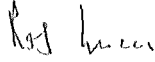
**CONCESSIONAL BUSHFIRE LOANS SCHEME – LOAN TO ESKADALE PTY LTD**

Timing: HIGH – for execution of Facility Agreement with Security

Recommendations/Issues: It is recommended that you:

- note that you approved a loan of up to \$500,000 to Eskadale Pty Ltd as trustee for Deahl Family Trust T/A "Lonely Tree Vineyards" from the Concessional Bushfire Loans Scheme (CBLs or Scheme) on 5 April 2020 (minute attached);
- note that the loan funds are to assist the borrower with costs of re-establishing burnt-out crops, making vineyard repairs and crop management, following the December 2019 bushfire that destroyed its vineyard crops in Adelaide Hills;
- note that the Crown Solicitor's Office (CSO) has prepared a Facility Agreement to reflect the terms mandated by the Australian Government for bushfire recovery loans approved from the Scheme;
- note that security has been negotiated with the company and the CSO has prepared the mortgage forms for submission to the Land Titles Office (LTO);
- note that mortgage registration fees at the LTO will increase on 1 July 2020, and the borrower has submitted the payment required to register the mortgage in the form of a money order for the LTO to occur in June 2020. Prompt execution of this Facility Agreement is therefore requested in order to permit the CSO to lodge the mortgage documents before 30 June 2020; and
- execute the two attached copies of the Facility Agreement, which have been executed by Eskadale Pty Ltd, and note that upon execution, CSO will lodge the first ranking mortgage with the LTO on your behalf.

Noted and Approved/Not Approved

  
Hon Rob Lucas MLC  
Treasurer

23/06/2020



**Key Points:**

- On 5 April 2020 you approved administrative arrangements for the Concessional Bushfire Loans Scheme and you approved three loans, including a \$500,000 secured ten year loan for Eskadale Pty Ltd as trustee for Deahl Family Trust – minute attached.
- Eskadale Pty Ltd, as trustee for Deahl Family Trust T/A "Lonely Tree Vineyards", is a grape growing business operating in the Adelaide Hills area. During the December 2019 bushfires the company suffered damage to its vineyard including a crop loss of approximately \$466,000.
- The \$500,000 loan approved from the Scheme will assist the business with the costs of replacing its crops, making vineyard repairs and crop management, whilst trading conditions return to normal. Forecast profits are sufficient for the business to service this loan.
- Under instruction from SAFA the Crown Solicitor's Office (CSO) has prepared a Facility Agreement (Agreement) to reflect the terms for bushfire recovery loans to be made under the Scheme.
- The terms of the Agreement are consistent with the terms for loans to be made from the Scheme as mandated by the Australian Government. The Agreement provides that the \$500,000 loan be available for drawdown in a single instalment upon execution. Under the Agreement, loan repayments will commence from the second anniversary and the loan is repayable by equal payments of principal and interest, with the interest rate re-setting annually at 1 July to be equivalent to 50% of the 10-year Commonwealth Bond Rate averaged over the preceding quarter.
- The Bushfire Recovery Loan (Loan) will be fully secured by a first ranking mortgage over the property of Eskadale Pty Ltd. The CSO has prepared the mortgage forms for submission to the LTO, and SAFA has witnessed signing of these mortgage forms by the borrower.
- On 5 April 2020, you noted that loans provided under the Scheme are concessional, with resulting impacts on the State's accounts arising through application of AASB9. Budget impacts of loans from the Scheme will be brought to account through the budget process later this year.
- It is proposed that you now execute the Facility Agreement in duplicate where indicated, which has been executed by Eskadale Pty Ltd, and note that upon execution the CSO will lodge the first ranking mortgage with the LTO on your behalf.



Anna Hughes  
GENERAL MANAGER, SAFA


22 June 2020

**Attachments:**

1. Two copies of the Facility Agreement to be executed by the Treasurer where indicated.
2. Minute dated 5 April 2020

Contact Officer:	Rindal Chilonho/ Rebecca Wigglesworth
Telephone:	8226 5813/ 8207 2291
Email address:	rindal.chilonho@sa.gov.au

Supported/Not Supported



**David Reynolds**  
**CHIEF EXECUTIVE**  
Department of Treasury and Finance  
Date...../...../.....

**BUSHFIRE RECOVERY LOAN**

**FACILITY AGREEMENT**

**Dated:**

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**BETWEEN:**

**THE TREASURER**

**AND**

**ESKADALE PTY LTD**



**Government  
of South Australia**

**CROWN SOLICITOR**

**Level 17, 10 Franklin Street, Adelaide SA 5000**

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**SCHEDULE 1 – FACILITY RELATED TERMS**

**1. BORROWER**

ESKADALE PTY LTD (ACN 074 483 122) in its own right and in its capacity as trustee of the Deahl Family Trust, trading as "Lonely Tree Vineyards" whose registered office is situated at 101 West Fyans Street, Newtown, Victoria, 3220

**2. BORROWER ADDRESS FOR NOTICES**

Attention: Mr David Deahl, Director

Address: 19 St. Elmo Crescent, Highton, Victoria 3216

**3. BORROWER'S AUTHORISED OFFICER**

Mr David Deahl, Director

**4. BUSINESS & BUSINESS PREMISES**

Business: The operations and undertakings of the Borrower, as carried on by the Borrower as at the Commencement Date, of a vineyard.

Business Premises: 38 Mount Torrens Road, Lobethal SA

**5. AVAILABILITY PERIOD**

60 days

**6. FACILITY LIMIT**

FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00)

**7. BASE RATE**

A rate of fifty percent (50%) of the 10-year Commonwealth bond rate averaged from 1 April to 30 June of the Financial Year preceding the relevant Rate Set Date

**8. RATE SET DATE**

Each 1 July during the Term

**9. INTEREST PAYMENT AND COMMENCEMENT DATE**

The second anniversary of the Commencement Date

**10. PREPAYMENT MINIMUM**

FIFTY THOUSAND DOLLARS (\$50,000.00)

**11. PRECONDITIONS TO FACILITY**

Not used

**12. PRECONDITIONS TO DRAWDOWN**

Not used

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THE COMMON SEAL of THE TREASURER )  
was affixed in the presence of: )

*R Colegate*  
.....  
Witness

*Rachael Colegate*  
.....  
Print Name



**ANNEXURE - DRAWDOWN NOTICE**

To: Treasurer of South Australia  
 Attention: South Australian Government Financing Authority (SAFA)  
 Level 5, State Administration Centre,  
 200 Victoria Square, Adelaide, SA, 5000  
 General Manager  
 Facsimile: (08) 8115 1363

ESKADALE PTY LTD (Borrower) hereby irrevocably provides the Treasurer with a Drawdown Notice pursuant to clause 4 of the Loan Agreement dated [ ] between the Treasurer and the Borrower (Agreement).

Unless the context otherwise requires, terms defined in the Agreement have the same meanings where used herein.

**1. The following particulars in relation to the proposed Advance are given:**

- (a) Proposed Drawdown Date (being a Business Day) is:
- (b) The relevant Performance Milestone for which the proposed Advance is being requested is:
- (c) The amount of the Advance in respect of the Performance Milestone being requested is:
- (d) Particulars of the bank account into which the proceeds of the proposed Advance is to be paid:

Bank: [ ]  
 Account Name: [ ]  
 BSB No: [ ]  
 Account No: [ ]

**2. Representations and Warranties**

The Borrower represents and warrants as at the date of this Drawdown Notice that:

- (a) the proposed Drawdown will only be applied towards the Approved Purpose as defined in the Agreement and for no other purpose;
- (b) all the representations and warranties set out in the Agreement are true and correct and not misleading and are repeated as at the date of this notice; and
- (c) that no event which with the giving of notice, the lapse of time or the making of any determination would be likely to become an Event of Default, has occurred or is continuing.

**3. Attachments**

The Borrower provides the following:

[ Evidence in support of achievement of Performance Milestone ]

DATED the          day of                  20 .


EXECUTED by ESKADALE PTY LTD )  
 (ACN 074 483 122) in accordance with )  
 Section 127(1) of the Corporations Act 2001 )

Director: Director / Secretary:

Print Name: Print Name

MINUTE

19/6/2020  
720/1042  
2002035



Government  
of South Australia  
Department of Treasury  
and Finance

MINUTES forming ENCLOSURE

File SAF20/0882

Doc No A1458637

To The Treasurer

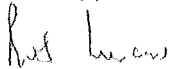
CONCESSIONAL BUSHFIRE LOANS SCHEME – LOAN TO LOBETHAL FREIGHTLINES  
PTY LTD

Timing: ROUTINE

**Recommendations/Issues:** It is recommended that you:

- note that you approved a loan of up to \$50,000 to Lobethal Freightlines Pty Ltd as trustee for The Schultz Trading Trust from the Concessional Bushfire Loans Scheme (CBLs or Scheme) on 12 May 2020 (minute attached);
- note that the loan funds are to assist the borrower with working capital following the December 2019 bushfire that destroyed two of its semi-trailers in the Adelaide Hills;
- note that the Crown Solicitor's Office (CSO) has prepared a Facility Agreement to reflect the terms mandated by the Australian Government for working capital loans approved from the Scheme; and
- execute the two attached copies of the Facility Agreement, which have been executed by Lobethal Freightlines Pty Ltd.

Noted and Approved/Not-Approved

  
Hon Rob Lucas MLC  
Treasurer

28/6/20

**Key Points:**

- On 5 April 2020 you approved administrative arrangements for the Concessional Bushfire Loans Scheme. On 12 May 2020 you approved two loans, including a \$50,000 unsecured five year loan for Lobethal Freightlines Pty Ltd as trustee for The Schultz Trading Trust – both minutes are attached.

- Lobethal Freightlines Pty Ltd is a general transport company operating in the Adelaide Hills, Barossa, Adelaide and surrounding areas. During the December 2019 bushfires the company lost two semi-trailers valued at \$151,277 causing a loss of income for the business.
- The \$50,000 loan approved from the Scheme will assist the business with working capital whilst trading conditions return to normal. Forecast profits are sufficient for the business to service this loan.
- Under instruction from SAFA the Crown Solicitor's Office has prepared a Facility Agreement (Agreement) to reflect the terms for working capital loans to be made under the Scheme.
- The terms of the Agreement are consistent with the terms for loans to be made from the Scheme as mandated by the Australian Government. The Agreement provides that the \$50,000 loan be available for drawdown in a single instalment upon execution. Under the Agreement, loan repayments will commence from the second anniversary and the loan is repayable by equal payments of principal and interest equivalent to 50% of the 10-year Commonwealth Bond Rate averaged over the preceding 12 months.
- On 5 April 2020 you noted that loans provided under the Scheme are concessional, with resulting impacts on the State's accounts arising through application of AASB9. Budget impacts of loans from the Scheme will be brought to account through the budget process later this year.
- It is proposed that you now execute the Facility Agreement in duplicate where indicated, which has been executed by Lobethal Freightlines Pty Ltd.




Anna Hughes  
GENERAL MANAGER, SAFA

18 June 2020

Contact Officer:	Rindal Chiltonho/ Rebecca Wigglesworth
Telephone:	0220 5813/ 0207 2291
Email address:	rindal.chiltonho@sa.gov.au

**Attachments:**

1. Two copies of the Facility Agreement
2. Minute dated 5 April 2020
3. Minute dated 12 May 2020

Supported / Not Supported

David Reynolds CHIEF EXECUTIVE
Department of Treasury and Finance
Date... 18/6/20...

**BUSHFIRE WORKING CAPITAL LOAN**

**FACILITY AGREEMENT**

**Dated:**

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**BETWEEN:**

**THE TREASURER**

**AND**

**LOBETHAL FREIGHTLINES PTY LTD**



**Government  
of South Australia**

**CROWN SOLICITOR**

**Level 17, 10 Franklin Street, Adelaide SA 5000**

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**THE SCHEDULE**

1. **BORROWER**  
LOBETHAL FREIGHTLINES PTY LTD (ACN 119 991 105), in its own right and in its capacity as trustee of the Schultz Trading Trust, whose registered office is situated at 195 North Terrace, Adelaide, SA 5000
  2. **BORROWER'S AUTHORISED OFFICER**  
Phillip Schultz, Director
  3. **BORROWER ADDRESS FOR NOTICES**  
Attention: Phillip Schultz  
Address: Lot 6, Gumeracha Road, Lobethal, SA 5241
  4. **BUSINESS & BUSINESS PREMISES**  
Business: The operations and undertakings of the Borrower, as carried on by the Borrower as at the Commencement Date, of a transport business providing transport in the Adelaide Hills, Barossa, Adelaide and surrounding areas.  
Business Premises: Lot 6, Gumeracha Road, Lobethal, SA 5241
  5. **AVAILABILITY PERIOD**  
60 days
  6. **FACILITY LIMIT**  
FIFTY THOUSAND DOLLARS (\$50,000.00)
  7. **BASE RATE**  
A rate of fifty percent (50%) of the 10-year Commonwealth bond rate averaged from 1 April to 30 June of the Financial Year preceding the relevant Rate Set Date
  8. **RATE SET DATE**  
Each 1 July during the Term
  9. **INTEREST AND PAYMENT COMMENCEMENT DATE**  
The second anniversary of the Commencement Date
  10. **PREPAYMENT MINIMUM**  
TEN THOUSAND DOLLARS (\$10,000)
  11. **PRECONDITIONS TO DRAWDOWN**  
Not used
  12. **APPROVED PURPOSE**  
The payment of Working Capital Expenses of the Business properly and reasonably incurred by the Borrower.
-

**LOAN AGREEMENT**

THIS AGREEMENT is made  
the                      day of                      2020

**BETWEEN:**

**THE TREASURER** a body corporate under the *Administrative Arrangements Act 1994 (SA)* of State Administration Centre, 200 Victoria Square, Adelaide, 5000, South Australia (**Treasurer**)

**AND**

**THE BORROWER NAMED IN THE SCHEDULE (Borrower)**

**BACKGROUND**

- A. The Government of the State has established the Program.
- B. The Borrower has applied for financial assistance from the Treasurer under the Program.
- C. The Treasurer has determined to make a loan available to the Borrower under the Program on the terms of this Agreement.

**1. DEFINITIONS AND INTERPRETATION****1.1 Definitions**

In this Agreement unless the contrary intention appears:

**Accounting Principles** means the applicable accounting standards and practices required by Law.

**Accounts** mean statements of financial performance, statements of financial position and cash-flow statements together with any statements, reports (including officers' and auditors' reports) and notes attached to or to be read with any of them.

**ADI** means a deposit taking institution authorised under the *Banking Act 1959 (Cth)* to carry on banking business in Australia.

**Advance** means the principal amount of an advance of money by the Treasurer to the Borrower under the Facility, or the principal outstanding from time to time, as the context requires, including any amount capitalised and added to such advance under this Agreement.

**Agreement** means this agreement, and includes the schedules to this agreement, which form part of, and will be read and construed as one with this agreement.

**Application** means the application submitted by the Borrower, or the Borrower's agent, in respect of the loan to be provided pursuant to this Agreement.

**Approved Purpose** means the purposes specified in the Schedule.

**Associate** has the same meaning as "associate" in the Corporations Act and includes a person deemed to be an associate of a designated body within the meaning of section 12 of the Corporations Act.

**Authorisations** include any authorisation, permit, consent, approval, resolution, licence, exemption, permission, recording,

filling or registration required by any Government Agency or Law.

**Authorised Officer** in the case of the Borrower means that person specified in the Schedule and in the case of the Treasurer includes the Treasurer's Representative, as may be updated from time to time in accordance with clause 16.2.

**Availability Period** means the period specified in the Schedule, which will commence on (and include) the Commencement Date and end on (and include) the last day of that period or such other extended period as the Treasurer approves in writing.

**Bank** means any ADI which provides Financial Indebtedness to the Borrower under Bank Facility Documents.

**Bank Facility Documents** means any funding and security documents pursuant to which a Bank provides Financial Indebtedness to the Borrower.

**Base Rate** means, on each Rate Set Date, the rate of interest specified in the Schedule.

**Business** means the Borrower's business described in the Schedule.

**Business Day** means any day (except Saturday or Sunday) on which banks are open for business in Adelaide.

**Business Premises** means the premises at which the Borrower conducts the Business as specified in the Schedule.

**Change of Control** of the Borrower means where, at any time, any person, alone or together with any Associate or Associates, ceases to, or commences to, directly or indirectly have Control of the Borrower.

**Commencement Date** means the date of this Agreement.

**Control** means:

- (a) control, or having the capacity to control, the composition of the board, or decision making, directly or indirectly, in relation to the financial and operating policies;
- (b) being in a position to cast, or control the casting of, more than 20% of the maximum numbers of votes that may be cast at a general meeting; or
- (c) having a relevant interest, as defined in section 608 of the Corporations Act, in more than 20% of the securities, as defined in the Corporations Act,

of an Entity (whether alone or together with an Associate).

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

**Crown** means the Crown in right of the State of South Australia, including the Treasurer.

**Drawdown** means the drawdown of the Advance by the Borrower under the Facility upon the terms and conditions of this Agreement.

**Drawdown Date** means the Business Day on which the Drawdown is made or is proposed to be made in a Drawdown Notice.

**Drawdown Notice** means a notice, in the form set out in the Annexure to this Agreement, from the Borrower to the Treasurer requesting a Drawdown under clause 4.1.

**Entity** has the meaning given in section 64A of the Corporations Act, but is also deemed to include a joint



venture within the meaning of Australian Accounting Standard 131.

**Event of Default** means the occurrence of any of the events listed in clause 11.1.

**Facility** means the facility provided by the Treasurer under this Agreement whereby the Borrower may, during the Availability Period, request an Advance of money for the Approved Purpose.

**Facility Limit** means the amount specified in the Schedule.

**Financial Indebtedness** means any indebtedness in respect of:

- (a) money borrowed, raised or owing under any form of agreement with any banks or financial institutions;
- (b) receivables sold or discounted;
- (c) any finance lease or operating lease.

**Financial Year** means each period from 1 July to the following 30 June.

**Funding Period** means the period commencing on the Interest and Payment Commencement Date and ending on the Repayment Date.

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

**GST** means the tax imposed by the GST Law.

**GST Law** has the same meaning attributed in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

**GST Liability** has the meaning given to it in clause 12.4(a).

**Insolvency Event** means any of the following events:

- (a) the administration, liquidation, dissolution or management of the Borrower or its assets under any Insolvency Law;
- (b) the appointment of a receiver, receiver and manager, manager, trustee, administrator, controller or any similar person in respect of the Borrower or its assets or undertaking under any Insolvency Law;
- (c) the Borrower enters into or takes any action to enter into an arrangement or compromise with, or assignment for the benefit of all or any class of its creditors or members or a moratorium involving any of them; or
- (d) the Borrower becomes or admits in writing that it is, or pursuant to any Insolvency Law is deemed to be insolvent.

**Insolvency Law** means any Law relating to insolvency, sequestration, liquidation or bankruptcy (including any Law relating to the avoidance of conveyances in fraud of creditors or of preferences and any Law under which a liquidator or trustee in bankruptcy may set aside or avoid transactions) and any provision of any agreement, arrangement or scheme, formal or informal, relating to the administration of any of the assets of any person.

**Insurances** mean such insurances necessary to cover all risks associated with the Business.

**Interest and Payment Commencement Date** means the

date specified in the Schedule.

**Interest Period** for has the meaning given in clause 6.2(a).

**Law** means principles of law and equity established by decisions of courts, or by any legislation of the Commonwealth of Australia or of any State or Territory of the Commonwealth or of any other relevant jurisdiction, or of any local, municipal, or shire authority now or in the future in force, and any rule, regulation, by-law, statutory instrument, order or other action now or in the future made under any such legislation or pursuant to any court decision, including any policy or notice issued or published by a Government Agency relating to any Tax legislation.

**Material Adverse Effect** means any change that has had, or is reasonably likely to have, an effect that is or will be materially adverse to:

- (a) the ability of the Borrower to perform its obligations under this Agreement;
- (b) the Business;
- (c) the interests of the Treasurer under this Agreement; or
- (d) the assets or financial condition of the Borrower.

**Modified Business Day Convention** means if anything is required by this Agreement to be undertaken on or by a day which is not a Business Day (including the making of any payment) then it must be undertaken on or by the following Business Day unless the day falls in the next month in which case it must be undertaken on or by the preceding Business Day.

**Obligations** means at any time the aggregate of the following amounts:

- (a) the Advance;
- (b) unpaid interest; and
- (c) all liabilities of the Borrower to the Treasurer under or by reason of this Agreement.

**Overdue Rate** means the daily interest rate being an aggregate of 2% per annum and the rate percent per annum determined by the Treasurer to be that which expresses as a percentage per annum the cost to the Treasurer of funding, on a daily basis for the period of the default, any amount due and unpaid under this Agreement.

**Period End Date** means the following dates:

- (a) the Interest and Payment Commencement Date; and
- (b) each 1 April, 1 July, 1 October and 1 January following the Interest and Payment Commencement Date during the Term up to and including the Repayment Date.

**Potential Event of Default** means any event, which with the giving of notice, lapse of time, fulfilment of any condition or any determination is likely to constitute an Event of Default.

**PPS Law** means each of the provisions of:

- (a) the *Personal Property Securities Act 2009 (Cth)*; and
- (b) any regulations made at any time under the *Personal Property Securities Act 2009 (Cth)*.

**PPS Lease** means a 'PPS Lease' as defined under the PPS Law.

**Repayment Minimum** means the amount specified in the

Schedule.

**Program** means the program established by the Government of the State known as the 'Concessional Bushfire Loans Program'.

**Quarter** means each period of three (3) months ending on 30 June, 30 September, 31 December and 31 March.

**Rate Set Date** means each date specified in the Schedule.

**Related Body Corporate** has the same meaning as defined in the Corporations Act.

**Repayment Date** means the fifth (5<sup>th</sup>) anniversary of the Commencement Date, or such later date as may be extended with the written approval of the Treasurer.

**Significant Business Restructure** means, at the relevant time:

- (a) a Change of Control of the Borrower;
- (b) the sale of all of the Borrower's Business being conducted at that time, or a sale of a portion of that Business which the Treasurer determines is a significant portion of the Borrower's Business;
- (c) a significant restructure, reduction or transformation of the Borrower's Business being conducted at that time, which the Treasurer determines is likely to be materially adverse to the performance of the Borrower's obligations, or the interests of the Treasurer, under this Agreement; or
- (d) a relocation of all of the Borrower's Business being conducted at that time at the Business Premises out of the State of South Australia, or a relocation of a part of that Business out of the State of South Australia which the Treasurer determines is the relocation of a significant part.

**State** means the State of South Australia.

**Tax** means any and all present and future taxes, levies, imposts, deductions, charges, fees, compulsory loans and withholdings levied by any Government Agency, together with interest, penalties and expenses in connection with them.

**Term** means the period commencing on the Commencement Date and ending on the Termination Date.

**Termination Date** means the earlier of:

- (a) the Repayment Date; or
- (b) the date on which the Facility is terminated in accordance with this Agreement.

**Treasurer's Representative** has the meaning given to it in clause 15.1.

**Trust** means any trust in respect of which the Borrower is Trustee.

**Trust Deed** In respect of a Trust, means the trust deed establishing the Trust.

**Working Capital Expenses** means the essential expenses payable by the Borrower while the Business returns to its normal level of trading including payments:

- (a) to third party creditors of the Borrower;
- (b) in respect of goods and services necessary to carry-on

the Business;

- (c) to the Borrower's employees; or
- (d) to meet the scheduled servicing requirements for any loans or debts owing to financial institutions, including the Bank provided that the obligation to make those loan or debt repayments were in existence at the date of this Agreement, and those loans or debts are not being restructured or refinanced with the Advance,

and does not include:

- (e) payment of any loans from or payment of any debts owing to the Borrower's directors, officers or shareholders or any relative or associate of the Borrower.

## 1.2 Interpretation

The following rules apply in the interpretation of this Agreement unless the context requires otherwise:

- (a) the singular number includes the plural number and vice versa;
- (b) any gender includes all genders;
- (c) references to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them;
- (d) references to the whole of a matter or thing include a part of the matter or thing;
- (e) derivatives of words or phrases defined in this Agreement have a corresponding meaning;
- (f) a reference to an agreement or other document includes a reference to that agreement or document as varied, novated, supplemented or replaced at any time;
- (g) a reference to writing includes any mode of reproducing words in a visible form, and includes telex, e-mail or facsimile transmission;
- (h) a reference to a person includes a reference to the persons, successors, substitutes (including, without limitation, persons taking by novation) and assigns;
- (i) an agreement undertaking representation or warranty on the part of or in favour of two or more persons binds or is for the benefit of them jointly and severally;
- (j) headings are for convenience only and do not affect interpretation;
- (k) any reference to dollars, unless otherwise specified, is a reference to Australian dollars;
- (l) references to parties, clauses, schedules, exhibits or annexures are references to parties, clauses, schedules exhibits and annexures to or of this Agreement unless it is expressly stated otherwise, and a reference to this Agreement includes any schedule, exhibit or annexure to this Agreement;
- (m) all accounting terms used have the meaning given to those terms under applicable Accounting Principles;
- (n) mentioning anything after the words include, includes or including does not limit what else might be included;
- (o) no provision or expression is to be construed against a party on the basis that the party (or its advisers) was responsible for the drafting of this document; and

- (p) a reference to any statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing them, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute.

### 1.3 Trusts

Unless the context requires otherwise, a reference to a transaction, asset, act or liability of any nature of the Borrower includes its transactions, assets, acts or liabilities as trustee (if applicable) and in its own right. Where a Borrower that is a trustee incurs an obligation, it incurs that obligation in its capacity as trustee, and in its own right.

## 2. THE FACILITY

### 2.1 Facility

Subject to the terms of this Agreement, and in reliance upon the representations and warranties made by the Borrower in this Agreement, the Treasurer agrees to make the Facility available to the Borrower during the Term.

### 2.2 Purpose of the Facility

Unless otherwise approved in writing by the Treasurer, the Borrower must only use the Advance for the Approved Purpose. For the avoidance of doubt, the Borrower must not use the Advance for any purpose other than the Approved Purpose and must not use the Advance to refinance any Financial Indebtedness.

### 2.3 Facility Limit

The Treasurer will not be obliged to make the Advance under the Facility, if to do so would cause the applicable Facility Limit to be exceeded.

### 2.4 Termination of Facility

On the Termination Date the Facility is cancelled and terminated and the Facility Limit is reduced to zero.

### 2.5 Information on application of the Advance

The Borrower will provide to the Treasurer any information that the Treasurer requires concerning how the Advance has been, or will be applied and will do so in writing within five (5) Business Days of being requested to do so. For this purpose the Borrower agrees to provide the Treasurer with access to any of the Borrower's books and records so as to verify any such information and consents to the Treasurer obtaining copies of such records. For the purpose of this clause a reference to the Treasurer includes a reference to any agent or adviser to the Treasurer.

## 3. CONDITIONS PRECEDENT

### 3.1 Preconditions to Facility

The obligation of the Treasurer to provide the Advance to the Borrower is subject to the Treasurer receiving, in all things to the Treasurer's complete satisfaction evidence all Insurances required by this Agreement are in full force and effect.

### 3.2 Preconditions to Drawdowns under the Facility

The obligation of the Treasurer to provide the Advance to the Borrower is subject to the following condition precedents:

- (a) the Treasurer being satisfied that no Event of Default or Potential Event of Default is subsisting, both at the date

of the Drawdown Notice and at the Drawdown Date, or will result from the making of the Drawdown;

- (b) the Treasurer being satisfied that the Borrower's representations and warranties set out in clause 9 remain true and correct in every particular, both at the date of the Drawdown Notice and at the Drawdown Date, and also immediately after making of the Drawdown;
- (c) the Treasurer is satisfied that the Advance will be applied to the Approved Purpose;
- (d) receipt of a valid Drawdown Notice; and
- (e) the condition precedents to Drawdowns specified in the Schedule (if any).

### 3.3 Preconditions to Drawdowns under the Facility

The conditions precedent in this clause 3 are for the benefit of the Treasurer only, and may be waived or deferred at any time by the Treasurer in writing (and on such conditions as the Treasurer deems fit).

## 4. DRAWDOWNS

### 4.1 Notice

The Borrower may request the Advance under the Facility by one Drawdown on any Business Day during the Availability Period by delivering a Drawdown Notice to the Treasurer in accordance with this clause 4.

### 4.2 Contents of Drawdown Notice

The Drawdown Notice must be in the form specified in the Annexure to this Agreement and:

- (a) contain a certification that the Drawdown will be applied towards the Approved Purpose;
- (b) specify the amount of the Advance which shall not exceed the Facility Limit;
- (c) specify payment instructions, which must be to an account of the Borrower with an ADI; and
- (d) specify the proposed Drawdown Date which must be a Business Day during the Availability Period.

### 4.3 Requirements of Drawdown Notice

The Drawdown Notice must be received by the Treasurer not less than five (5) Business Days (or such shorter time as the Treasurer may agree) before the proposed Drawdown Date, must be signed for the Borrower by a duly authorised person and will be irrevocable once received by the Treasurer.

### 4.4 Making of Advance

Subject to the terms of this Agreement the Treasurer will make the Advance to the Borrower in accordance with the payment instructions specified in the Drawdown Notice for the Advance.

## 5. CANCELLATION OR REDUCTION OF FACILITY

### 5.1 Automatic cancellation of Facility and reduction of Facility Limit

If the Facility Limit has not been fully drawn down by the Borrower upon the expiry of the Availability Period, then the Facility will be automatically cancelled and the Facility Limit will be reduced to zero, effective as of the day of expiry of the Availability Period, and the Treasurer will have no obligation

to provide the Advance to the Borrower.

## 5.2 Automatic reduction of Facility Limit

If the Advance (in whole or part) under the Facility is repaid or prepaid the Facility Limit will be automatically reduced by the amount of the Advance repaid or prepaid and is not available to be re-drawn by the Borrower under the Facility.

## 6. PRINCIPAL AND INTEREST PAYMENTS

### 6.1 Interest & Payment Free Period

The parties acknowledge and agree that notwithstanding anything to the contrary in this Agreement:

- (a) Interest shall not accrue on the Advance prior to the Interest and Payment Commencement Date; and
- (b) the Borrower is not required to make payments of principal or interest prior to the Interest and Payment Commencement Date.

### 6.2 Interest Period

- (a) Subject to clause 6.2(b), each Interest period for the Advance under the Facility (**Interest Period**) will be a duration of three (3) months, commencing on a Period End Date and ending on the next Period End Date.
- (b) The Interest Period for an Advance under the Facility is subject to adjustment as follows:
  - (i) the first Interest Period for the Advance will commence on the Interest and Payment Commencement Date and end on the first Period End Date that follows;
  - (ii) where the Interest Period would otherwise end after the Repayment Date of the Advance it will be adjusted to coincide with the Repayment Date for the Advance;
  - (iii) where the Interest Period would otherwise end after the Termination Date it will be adjusted to coincide with the Termination Date; and
  - (iv) where the first or last day of the Interest Period is not a Business Day it will be adjusted in accordance with the Modified Business Day Convention.

### 6.3 Interest Rate

- (a) The Borrower must pay the Treasurer interest on the outstanding balance of the Advance, which interest will accrue from and including the Interest and Payment Commencement Date until the Advance is repaid in full.
- (b) Interest is payable, and will accrue from day to day on the outstanding balance, for the Advance, and for each Interest Period of an Advance, at a rate equal to the Base Rate.
- (c) The Base Rate will be revised and reset on each Rate Set Date.

### 6.4 Calculation of Interest

Payments in the nature of Interest under this Agreement will:

- (a) accrue from day to day;
- (b) be computed from and including the day when the money on which interest is to be payable was provided,

until, but excluding, the day when that money is paid or repaid;

- (c) if payable by reference to specific periods, be computed from and including the first day of the period, until, but excluding the last day of the period; and
- (d) be calculated on the basis of a year of 365 days (except in the case of a leap year, which will be on the basis of a year of 366 days) and for the actual number of days elapsed.

### 6.5 Principal and Interest Payments

- (a) The Borrower must:
  - (i) repay the Advance; and
  - (ii) pay the accrued interest on the Advance, by paying to the Treasurer equal instalments of principal and interest in respect of each Interest Period over the Funding Period for the Advance, which instalments must be paid for each such Interest Period on the last day of the Interest Period.
- (b) For the purposes of clause 6.5(a), the Treasurer will as soon as practicable following each Rate Set Date, provide to the Borrower a statement of:
  - (i) the Base Rate determined to apply to the Advance;
  - (ii) the amount of the instalment of principal and interest required to be paid in respect of each Interest Period over the next Financial Year of the Funding Period; and
  - (iii) the amount of the Advance that would be outstanding at the commencement of each Interest Period over the next Financial Year of the Funding Period.
- (c) The repayment of any portion of the Advance under the Facility is not available to be re-drawn by the Borrower.

### 6.6 Repayment of Advances and Obligations

The Borrower must repay the Advance, together with all other amounts which form part of the Obligations, to the Treasurer on the Termination Date.

### 6.7 Capitalisation of Interest

The Treasurer may capitalise any part of any interest, which becomes due for payment under this Agreement by the Borrower and is not paid, at the times determined by the Treasurer, and if no determination is made, will be deemed to have been capitalised quarterly, and interest shall be payable in accordance with clause 6.8 on that capitalised amount.

### 6.8 Interest on overdue amounts

- (a) The Borrower will pay to the Treasurer interest on amounts due and payable by it under this Agreement but unpaid (including any interest payable under this clause) for the period the amount remains unpaid.
- (b) Such interest will accrue before and (as a separate and independent obligation but without duplication) after any court judgement at a rate of interest equivalent to the Overdue Rate.
- (c) Interest payable on any unpaid amount will be paid on

demand and if not so paid will itself be deemed to be capitalised quarterly and bear interest in accordance with this clause as if it was an unpaid amount.

#### 6.9 Treasurer's determination and calculation

- (a) The Treasurer's determination as to the instalments of principal and interest, the rate of interest and calculation as to an amount of interest, at any time will be conclusive and binding on the Borrower in the absence of manifest error.
- (b) Where any amount of interest payable by the Borrower under this Agreement is required to be calculated for the purpose of payment or capitalisation, the Treasurer will notify the Borrower of the amount of interest calculated to be payable or capitalised, as soon as practicable after it has been calculated by the Treasurer. Failure to do so will not affect the obligations of the Borrower in any way.

### 7. VOLUNTARY PREPAYMENTS

#### 7.1 Voluntary Prepayment of Advances

- (a) Subject to this clause 7.1, the Borrower may, upon giving the Treasurer not less than five (5) Business Days prior written notice, prepay the Advance in whole or part. Such notice of prepayment must specify:
  - (i) the prepayment date, which must be the last day of an Interest Period; and
  - (ii) the amount of the Advance to be prepaid.
- (b) Unless the Borrower is prepaying the whole of the Advance or as otherwise agreed by the Treasurer, the amount of the Advance to be prepaid must be at least equal to the Prepayment Minimum and in a whole multiple of the Prepayment Minimum.
- (c) The Borrower, must, together with any amount to be prepaid under this clause 7.1 pay to the Treasurer on the date of prepayment any unpaid interest accrued on the amount to be prepaid.
- (d) If the Borrower is prepaying the whole amount of the Advance under this clause 7.1, then together with the amount being prepaid the Borrower must pay to the Treasurer the balance of all amounts which form part of the Obligations.
- (e) If in a notice of prepayment given under clause 7.1(a), the Borrower is prepaying part of the Advance, then the amount of the equal instalments of principal and interest to be paid by the Borrower with respect to that Advance under clause 6.5 will be adjusted for the balance of the Funding Period of the Advance to take account of the reduction in the amount of the Advance, with effect on and from the date of the Treasurer's receipt of the amount to be prepaid.
- (f) For the purposes of clause 7.1(e), the Treasurer will, as soon as practicable following receipt of the amount prepaid, provide to the Borrower a revised statement of:
  - (i) the Base Rate applying to the Advance;
  - (ii) the adjusted amount of the equal instalment of principal and interest required to be paid in respect of each Interest Period over the remaining balance of the Funding Period of the Advance; and
  - (iii) the amount of the Advance, after taking account of the amount prepaid, that is then outstanding and

that would be outstanding at the commencement of each Interest Period over the remaining balance of the Funding Period of the Advance.

- (g) Any notice of prepayment given by the Borrower is irrevocable once received by the Treasurer and the Borrower will be bound to prepay in accordance with the prepayment notice.
- (h) The Borrower must not prepay the Advance except in accordance with this clause 7.1.

#### 7.2 No Re-draw Capability

The prepayment of any portion of the Advance under the Facility is not available to be re-drawn by the Borrower.

### 8. PAYMENTS

- (a) The Borrower will make all payments required under this Agreement without set-off, counter claim, deduction or withholding.
- (b) If a payment becomes due on a day that is not a Business Day, the date for payment will be adjusted in accordance with the Modified Business Day Convention.
- (c) Unless otherwise advised by the Treasurer, all payments by the Borrower under this Agreement will be made to the following account of the Treasurer:

Bank:	Commonwealth Bank of Australia
Name:	Treasury Loans Administered Items
BSB No:	065 266
Account No:	10000231

### 9. REPRESENTATIONS AND WARRANTIES

#### 9.1 Representations and Warranties by the Borrower

The Borrower represents and warrants to the Treasurer that:

- (a) all information provided by the Borrower in the Application and any further information or documentation subsequently provided, is true and correct in all material respects and is not misleading, and there are no material facts known to the Borrower relating to the Borrower which could or might affect the willingness of the Treasurer to enter into an agreement with the Borrower in terms similar to the terms of this Agreement which have not been disclosed to the Treasurer;
- (b) it is a body corporate duly constituted under applicable Laws with the power to enter into and observe its obligations under this Agreement;
- (c) all Authorisations required to be obtained by it:
  - (i) in connection with the execution, delivery and performance of its obligations under this Agreement, and
  - (ii) as a consequence of the entry into and performance by it of, and the validity of, this Agreement, have been obtained and are valid and subsisting;
- (d) this Agreement constitutes its valid and legally binding obligations, enforceable in accordance with their respective terms;
- (e) it is not in default of its obligations to the Bank as at the

date of this Agreement under the Bank Facility Documents and will not be as at the Commencement Date, and nothing in the terms of this Agreement will cause it to be in default;

- (f) its entry into and performance of its obligations under this Agreement do not and will not contravene or result in any breach of any Law, its constituent documents, or any Indenture, mortgage, a Trust Deed, agreement or other instrument or arrangement by which the Borrower or any of its assets are bound;
- (g) the Advance provided to it by the Treasurer under the Facility will be applied only and wholly towards the Approved Purpose, unless otherwise agreed with the Treasurer;
- (h) no Event of Default or Potential Event of Default exists;
- (i) to the best of its knowledge, information and belief, there is no Insolvency Event currently threatened or proposed in respect of the Borrower or any Trust;
- (j) the most recent Accounts of the Borrower give a true and fair view of the state of affairs as at the dates to which those accounts relate and the results of its operations for the accounting periods ended on those dates, and that there has been no Material Adverse Effect in the condition of the Borrower since the provision of those statements;
- (k) no litigation, arbitration, Tax claim, dispute or administrative proceeding is current or pending, or to its knowledge, threatened against or affecting the Borrower or any property of the Borrower, the adverse determination of which is likely to cause a Material Adverse Effect;
- (l) in respect of any Trust for which it is trustee:
  - (i) it is the present and only trustee of the Trust, and that no action has been taken or proposed to remove it as trustee of the Trust;
  - (ii) it has an unrestricted right to be indemnified out of the assets of the Trust in respect of and against all losses, costs, expenses, claims, damages, charges, liabilities and related expenses sustained or incurred as a consequence of this Agreement;
  - (iii) no vesting date has been determined under the provisions of the Trust Deed for the Trust;
  - (iv) it has the power, without restriction or condition, to enter into and perform its obligations under this Agreement both personally and in its capacity as trustee of the Trust and has taken the necessary corporate action to authorise the entry into and performance of this Agreement both personally and in its capacity as trustee of the Trust; and
  - (v) it is not in material default under the Trust Deed for the Trust, or under any law, indenture, mortgage, agreement or other instrument or arrangement by which it is bound.

## 9.2 Reliance on Representations and Warranties

The Borrower acknowledges that the Treasurer enters into this Agreement in reliance upon the representations and warranties made by the Borrower under this clause 9.

## 9.3 Survival of Representations and Warranties

Each of the representations and warranties in clause 9.1 will survive the execution of this Agreement and will be deemed to

have been repeated by the Borrower at each time the Borrower submits a Drawdown Notice to the Treasurer and on the Drawdown Date as if then repeated by reference to the then existing circumstances.

## 9.4 Notification

The Borrower must notify the Treasurer immediately upon becoming aware of a breach of a representation or warranty set out in this Agreement.

## 10. UNDERTAKINGS OF THE BORROWER

### 10.1 Duration

The undertakings in this clause 10 will remain in force from and after the date of this Agreement and for so long as any Obligation is or may be outstanding under this Agreement.

### 10.2 Financial Information

- (a) As soon as practicable, and in any event not later than sixty (60) days after the completion of each Financial Year, the Borrower will provide the Treasurer with a copy of its Accounts, together with the Accounts for any Trust, for that Financial Year, each to be certified by the Authorised Officer of the Borrower, as giving a true and fair view of its financial condition and prepared in accordance with applicable Laws and applicable Accounting Principles.
- (b) The Borrower will provide the Treasurer, as soon as practicable, such further information regarding the financial condition and business operations of the Borrower, and any Trust, as the Treasurer may from time to time reasonably require.

### 10.3 Insurance Requirements

The Borrower will effect and maintain the Insurances, and on request by the Treasurer provide proof, acceptable to the Treasurer, of the currency of the Insurances.

### 10.4 General Undertakings

The Borrower must:

- (a) not, without the Treasurer's prior written consent, undertake a Significant Business Restructure;
- (b) immediately notify the Treasurer of the occurrence of any Event of Default or Potential Event of Default;
- (c) as soon as practicable notify the Treasurer in writing of any change in Authorised Officers;
- (d) comply in all material respects with all applicable Laws;
- (e) in respect of persons employed by the Borrower:
  - (i) maintain its registration under all relevant compulsory workers' compensation Insurance schemes required by Law and duly pay or cause to be paid all levies required to be paid thereunder; and
  - (ii) otherwise comply with the provisions of the *Return to Work Act 2014 (SA)* and any other appropriate Law relating to compulsory workers compensation Insurance or rehabilitation and compensation of workers;
- (f) make all accounts, records and other documentation relating to the Business and affairs of the Borrower available to the Treasurer when requested by the Treasurer;

- (g) provide such information in relation to the Borrower or the Business as the Treasurer reasonably requires at any time; and
- (h) as soon as practicable, and in any event not later than sixty (60) days after the completion of each Financial Year, provide an annual compliance certificate in form and substance reasonably required by the Treasurer.

#### 10.5 Trustee Undertakings

The Borrower will, in respect of any Trust for which it is trustee, ensure that:

- (a) the vesting date of the Trust will not be determined;
- (b) the Borrower will remain the only Trustee of the Trust;
- (c) the Borrower will not:
  - (i) do anything which could restrict the Borrower's ability to be indemnified out of the assets of the Trust;
  - (ii) breach its obligations as trustee of the Trust;
  - (iii) effect or facilitate termination or variation of the Trust Deed without the prior consent of the Treasurer;
  - (iv) do or suffer anything which could restrict, limit or impair its ability to observe its obligations under this Agreement; or
  - (v) retire as trustee of the Trust; and
- (d) any successor of the Borrower as trustee of the Trust executes any documents required by the Treasurer to ensure that this Agreement is binding on each successor.

### 11. EVENTS OF DEFAULT

#### 11.1 Events of Default

Each of the following is an Event of Default:

- (a) the Borrower does not pay at or before the due date any amount payable by it under this Agreement, and such default is not remedied within five (5) Business Days of the Treasurer notifying the Borrower of the non payment;
- (b) the Borrower defaults in fully performing, observing and fulfilling any provision of this Agreement, and such default is not remedied within fifteen (15) Business Days of the Treasurer notifying the Borrower of such default, provided always that the Treasurer shall not be required to provide the Borrower with notice of any default that the Treasurer considers to be incapable of remedy;
- (c) any representation, warranty or statement made, repeated or deemed to be made or repeated by the Borrower in this Agreement is proved to be untrue in any material respect when made, repeated or deemed to be made or repeated;
- (d) an Insolvency Event occurs; or
- (e) a Bank Facility Document becomes enforceable or is enforced; or
- (f) any event or series of events (whether related or not) occurs which has a Material Adverse Effect.

#### 11.2 Consequences of an Event of Default

At any time after an Event of Default occurs, the Treasurer may

at the Treasurer's option by way of written notice to the Borrower:

- (a) declare that an Event of Default has occurred; and/or
- (b) declare that its obligation to provide the Advance, or that any other obligations of the Treasurer under the Facility, are terminated, cancelled or suspended; and/or
- (c) declare the Advance immediately due and re-payable, whereupon the Advance will, and all other amounts which form part of the Obligations, become immediately due and payable by the Borrower to the Treasurer.

### 12. COSTS, EXPENSES, DUTIES AND TAXES

#### 12.1 Costs and Expenses

In addition to any other amounts payable by the Borrower to the Treasurer under this Agreement, the Borrower will, upon the Treasurer's demand, reimburse the Treasurer for, and keep it indemnified against:

- (a) all costs and expenses (including legal fees, costs and disbursements on a solicitor/client basis) in connection with any exercise, enforcement or preservation, or any attempted exercise, enforcement or preservation of any rights of the Treasurer; and
- (b) any present or future Tax, rate, levy, impost, deduction, withholding, charge and duty (including fines and penalties) that are payable or assessed in relation to this Agreement and any document or transaction contemplated thereunder.

#### 12.2 Preparation Costs

Each party will pay its own costs and expenses in connection with the negotiation, preparation and execution of this Agreement.

#### 12.3 Taxes and Duties

- (a) The Borrower will pay all stamp, loan transaction, registration and similar Taxes, including fines and penalties which may be payable to or determined to be payable in connection with the execution, delivery, registration, performance or enforcement of this Agreement or any payment, receipt or other transaction contemplated by this Agreement.
- (b) The Borrower will indemnify and keep indemnified the Treasurer against any loss or liability incurred or suffered by it as a result of the delay or failure of the Borrower to pay any such Taxes and duties.

#### 12.4 GST

- (a) Without limiting any other provision of this Agreement, if the Treasurer is or becomes liable to pay GST in respect of any supply it makes under, in accordance with, or pursuant to an enforcement of, this Agreement, whether or not that supply is made to or for the benefit of the Borrower (**GST Liability**), then:
  - (i) to the extent that an amount is payable by the Borrower to the Treasurer under this Agreement for that supply, that amount will be increased by the full amount of the GST Liability; and
  - (ii) otherwise, the Borrower will indemnify and keep the Treasurer indemnified for the full amount of the GST Liability.

- (b) If requested to do so by the Borrower, the Treasurer will use reasonable endeavours to assist or enable the Borrower to claim any applicable input tax credit in respect of any GST paid by the Borrower in relation to any supply made by the Treasurer under, in accordance with, or pursuant to an enforcement of this Agreement.

### 13. SET-OFF

- (a) The Borrower authorises the Treasurer, at any time after an Event of Default has occurred and is continuing, to apply without prior notice any credit balance or deposit (whether or not then due) to which the Borrower is at any time entitled on any account from the Treasurer or the Crown, whether or not in connection with this Agreement, in or towards satisfaction of any sum then due and unpaid from the Borrower to the Treasurer.
- (b) The Borrower authorises the Treasurer, at any time after an Event of Default has occurred and is continuing, to set-off without prior notice any amount owing (whether present or future, actual, contingent or prospective and on any account whatever) by the Treasurer or the Crown, whether or not in connection with this Agreement, against any liability (whether present or future, actual, contingent or prospective) of the Borrower under this Agreement.
- (c) The Treasurer will not be obliged to exercise any of its rights under this clause 13, which will be without prejudice and in addition to any right of set-off, combination of accounts, lien or other right to which the Treasurer is at any time otherwise entitled (whether by operation of Law, contract or otherwise).

### 14. ASSIGNMENTS

#### 14.1 Successors and Assigns

This Agreement is binding on and for the benefit of each party to this Agreement and their respective successors and permitted assigns.

#### 14.2 Assignments by the Borrower

The Borrower must not assign, novate or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the Treasurer.

#### 14.3 Assignments by the Treasurer

The Treasurer may assign, novate or otherwise transfer any of its rights or obligations under this Agreement at any time to the Treasurer, a minister or other statutory authority of the Crown. In such circumstances the Borrower will perform all such acts and execute all such agreements, assurances and other documents and instruments as the Treasurer may reasonably require to effect such assignment, novation or transfer.

### 15. TREASURER'S REPRESENTATIVES

#### 15.1 Appointment

The Treasurer appoints the person from time to time holding the position in the South Australian Government Financing Authority of "General Manager" or "Director Commercial Operations" as the Treasurer's representative for the purposes of administration of this Agreement, which appointment the Treasurer may vary or revoke at will by notice in writing to the Borrower ("*Treasurer's Representative*").

#### 15.2 Authority

Subject to this Agreement, the Treasurer's Representative has authority to:

- (a) exercise all powers and functions of the Treasurer under this Agreement, other than the power to amend or vary this Agreement; and
- (b) bind the Treasurer in relation to any matter arising out of or in connection with this Agreement.

#### 15.3 No Limitation

Nothing in this clause 15 shall prevent the Treasurer from exercising any of the Treasurer's powers or rights under this Agreement.

### 16. AUTHORISED OFFICERS

#### 16.1 Authorised Officers to Communicate

All notices, communications and dealings between the Treasurer and the Borrower connected in any way with this Agreement will be signed, conducted and undertaken by, and where necessary, be addressed and sent to, the respective Authorised Officers of the Treasurer or of the Borrower, as relevant.

#### 16.2 List of Authorised Officers

The Treasurer and the Borrower will from time to time notify the other, of the names of all persons authorised to act on their behalf and to give and accept instructions, notices or other communications (both oral and written) on their behalf for the purposes of this Agreement.

#### 16.3 Assumptions

The Treasurer and the Borrower will each be entitled to assume as to the other ("**Other Party**") (and is not obliged to make any inquiries) where it reasonably believed it to be the case:

- (a) the genuineness and authenticity of any instructions given or purportedly given by or on behalf of the Other Party in respect of this Agreement;
- (b) if the Other Party has not given a notice of revocation of authority of all such persons previously authorised, that the person giving the instructions is authorised by the Other Party to do so; and
- (c) that any persons claiming to be a person, details of whom have been given to it in accordance with clause 16.2, is in fact that person.

### 17. NOTICES

Any communication under or in connection with this Agreement must be:

- (a) in writing and addressed as shown in this paragraph (a) (or as otherwise notified in writing by that party to the other party from time to time):

#### The Treasurer

South Australian Government Financing Authority  
Attention: General Manager, SAFA  
Address: 5<sup>th</sup> Floor, State Administration Centre  
200 Victoria Square, Adelaide, SA, 5000

#### The Borrower

As specified in the Schedule.



- (b) signed by the party or a solicitor acting for that party;
- (c) delivered or posted by prepaid post to the address of the addressee shown in paragraph (a) of this clause 17; and
- (d) will be taken to be given or made when delivered, received or left at the address of the recipient shown in paragraph (a) of this clause 17; but if delivery or receipt is not on a Business Day, or is later than 4 pm (Adelaide time), it will be taken to have been given or made at the commencement of the next Business Day.

## 18. AUDITOR-GENERAL

### 18.1 Public Finance and Audit Act, 1987 (SA)

The Borrower acknowledges the provisions of the *Public Finance and Audit Act, 1987 (SA)*, as well as the Treasurer's Instructions made under that Act.

### 18.2 Auditor-General

The Borrower agrees that nothing contained in this Agreement or any action taken pursuant to this Agreement limits the rights and responsibilities of the Auditor-General under the *Public Finance and Audit Act, 1987 (SA)*.

### 18.3 Assistance to Auditor-General

The Borrower must, without charge, provide the Auditor-General with such assistance (including the provision of information) as he or she may reasonably require in connection with any carrying out of his or her functions under the *Public Finance and Audit Act, 1987 (SA)*.

## 19. CONTRACT DISCLOSURE

The Borrower agrees to the disclosure of this Agreement and/or information in relation to this Agreement, in either printed or electronic form and either generally to the public or to a particular person as a result of a specific request, in accordance with the requirements of Department of the Premier and Cabinet Circular PC027 issued by the Government of South Australia.

## 20. CONTINUING OBLIGATION

This Agreement constitutes a continuing obligation regardless of any settlement of account, intervening payment, express or implied revocation or any other matter or thing, until a final discharge thereof has been given to the Borrower.

## 21. APPLICATION OF PAYMENTS AND CREDITS

Despite any other provision in this Agreement, as against the Borrower the Treasurer has an absolute discretion to apply any payment or credit received by it under this Agreement in reduction of any part or parts of the Obligations, whenever and on whatever account, notwithstanding 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.

## 22. SETTLEMENT CONDITIONAL

Any settlement or discharge between the Treasurer and the Borrower is conditional on whether there is a reasonable likelihood that any security or payment given or made by the Borrower or any other person in relation to the Obligations, will be avoided, repaid or reduced by virtue of any Insolvency

Law. If there is such a reasonable likelihood, then if such security or payment is so avoided, repaid or reduced, the Treasurer is entitled to recover the value or amount of such security or payment avoided, repaid or reduced from the Borrower subsequently as if such settlement or discharge had not occurred.

## 23. FURTHER ASSURANCE

The Borrower agrees, on demand by the Treasurer, and at the entire cost and expense of the Borrower, to perform all such acts and execute all such agreements, assurances and other documents and instruments as the Treasurer reasonably requires to perfect or preserve the rights, benefits and powers afforded, created, or intended to be afforded or created, by this Agreement, including by reason of any variation, suspension, cancellation or termination, or extension, renewal or replacement, of this Agreement.

## 24. REMEDIES CUMULATIVE

The rights and remedies conferred by this Agreement on the Treasurer are cumulative and in addition to all other rights or remedies available to the Treasurer by Law.

## 25. WAIVER

### 25.1 No Waivers

Failure by the Treasurer to exercise or enforce, or a delay by the Treasurer in exercising or enforcing, or the partial exercise or enforcement by the Treasurer of any right, power or remedy provided by Law or under this Agreement will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement of that or any other right, power or remedy provided by Law or under this Agreement.

### 25.2 Written Waivers

Any waiver, approval or consent given by the Treasurer under this Agreement will only be effective and binding if it is given in writing.

### 25.3 No Waiver of other Breaches

No waiver of a breach of any term of this Agreement will operate as a waiver of another breach of that term or of a breach of any other term of this Agreement.

## 26. CONSENTS AND APPROVALS

Any consent or approval referred to in, or required under, this Agreement from the Treasurer may be given or withheld, or may be given subject to any conditions as that party (in the Treasurer's absolute discretion) thinks fit, unless this Agreement expressly provides otherwise.

## 27. DETERMINATIONS AND CERTIFICATES

Any certificate or determination of the Treasurer certifying or determining the amount payable by the Borrower, or stating any other act, matter or thing relating to this Agreement, is conclusive and binding on the Borrower in the absence of manifest error on the face of the certificate or determination.

## 28. MORATORIUM LEGISLATION

To the fullest extent permitted by Law, the provisions of all Laws which at any time operate directly or indirectly to lessen or affect in favour of the Borrower any obligation under this

Agreement, or to delay or otherwise prevent or prejudicially affect the exercise by the Treasurer of any power or right under this Agreement or otherwise, are expressly waived, negated and excluded.

**29. AMENDMENT**

This Agreement can only be amended, supplemented, replaced or novated by another written agreement executed by the Treasurer and the Borrower that is expressed to amend, supplement, replace or novate this Agreement.

**30. GOVERNING LAW**

**30.1 Governing Law**

This Agreement shall be governed by and construed in accordance with the Laws of the State of South Australia.

**30.2 Jurisdiction**

- (a) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of South Australia and courts of appeal from them for determining any dispute concerning this Agreement. Each party waives any right it has to object to an action being brought in those courts, to claim that the action has been brought in an inconvenient forum, or to claim that those courts do not have jurisdiction.
- (b) The parties agree that none of them will institute or attempt to institute any proceedings in relation to any dispute or any matter or thing arising out of or in connection with this Agreement other than in a court of South Australia or, in respect of any proceedings in a Federal court, in the Adelaide registry of the relevant Federal court. A party will not, without the consent of all other parties, request that proceedings instituted in a Federal court in South Australia be heard outside South Australia.

**31. ATTORNEYS**

Each person who executes this agreement on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

**32. COUNTERPARTS**

This Agreement may be executed in any number of counterparts, all of which will all be taken to constitute one instrument.

EXECUTED by the parties as an Agreement:

THE COMMON SEAL of THE TREASURER )  
was affixed in the presence of: )

*Rachael Colegate*  
.....  
Witness  
*Rachael Colegate*  
.....  
Print Name

EXECUTED by LOBETHAL FREIGHTLINES PTY LTD )  
(ACN 119 991 105), in its own right and in its capacity as )  
trustee of the Schultz Trading Trust, in accordance with )  
s127 of the Corporations Act 2001 (Cth) )

*[Signature]*  
.....  
Sole Director  
*Philip Grant Schultz*  
.....  
Print Name:



**ANNEXURE - DRAWDOWN NOTICE**

To: **Treasurer of South Australia**  
 Attention: **South Australian Government Financing Authority (SAFA)**  
**Level 5, State Administration Centre,**  
**200 Victoria Square, Adelaide, SA, 5000**  
**General Manager**  
 Facsimile: **(08) 8115 1363**

LOBETHAL FREIGHTLINES PTY LTD (**Borrower**) hereby irrevocably provides the Treasurer with a Drawdown Notice pursuant to clause 4 of the Loan Agreement dated [ ] between the Treasurer and the Borrower (**Agreement**).

Unless the context otherwise requires, terms defined in the Agreement have the same meanings where used herein.

**1. The following particulars in relation to the proposed Advance are given:**

- (a) Proposed Drawdown Date (being a Business Day) is:
- (b) The amount of the Advance being requested is:
- (c) Particulars of the bank account into which the proposed Advance is to be paid:  
 Bank: [ ]  
 Account Name: [ ]  
 BSB No: [ ]  
 Account No: [ ]

**2. Representations and Warranties**

The Borrower represents and warrants as at the date of this Drawdown Notice that:

- (a) the proposed Drawdown will only be applied towards the Approved Purpose as defined in the Agreement and for no other purpose;
- (b) all the representations and warranties set out in the Agreement are true and correct and not misleading and are repeated as at the date of this notice; and
- (c) that no event which with the giving of notice, the lapse of time or the making of any determination would be likely to become an Event of Default, has occurred or is continuing.

**3. Attachments**

The Borrower provides the following:

[ ]

**DATED** the        day of        20 .

**EXECUTED** by **LOBETHAL FREIGHTLINES PTY LTD** )  
 (ACN 119 991 105) in its own right and in its capacity as trustee )  
 of the Schultz Trading Trust in accordance with Section 127(1) )  
 of the Corporations Act 2001 )

Director:  
 Print Name:

MINUTE

30/6/2020  
T20/042  
TR52002185



MINUTES forming ENCLOSURE

File SAF20/1008

Doc No A1472795

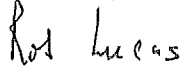
To The Treasurer

CONCESSIONAL BUSHFIRE LOANS SCHEME – LOAN TO PIYHAC PTY LTD

Timing: ROUTINE

**Recommendations/Issues:** It is recommended that you:

- note that you approved a loan of up to \$50,000 to PIYHAC Pty Ltd as trustee for PIYHAC unit trust, trading as Cudlee Creek Restaurant Tavern & Caravan Park, from the Concessional Bushfire Loans Scheme (CBLs or Scheme) on 12 June 2020 (minute attached);
- note that the loan funds are to assist the borrower with working capital following the December 2019 bushfire that caused road closures rendering the business inaccessible and resulting in a loss of peak trading income;
- note that the Crown Solicitor's Office (CSO) has prepared a Facility Agreement to reflect the terms mandated by the Australian Government for working capital loans approved from the Scheme; and
- execute the two attached copies of the Facility Agreement, which have been executed by PIYHAC Pty Ltd.

Noted and Approved/Not-Approved  
  
 Hon Rob Lucas MLC  
 Treasurer  
 3/7/20

**Key Points:**

- On 5 April 2020 you approved administrative arrangements for the Concessional Bushfire Loans Scheme. On 12 June 2020 you approved two loans, including a \$50,000 unsecured five year loan for PIYHAC Pty Ltd as trustee for PIYHAC unit trust, trading as Cudlee Creek Restaurant Tavern & Caravan Park – both minutes are attached.



- PIYHAC Pty Ltd is a restaurant tavern and caravan park business operating from Cudlee Creek, Adelaide Hills. During the December 2019 bushfires the company experienced booking cancellations which led to a decline in peak trading income and increased expenses resulting in a \$53,000 decline in profit for the period December 2019 to March 2020.
- The \$50,000 loan approved from the Scheme will assist the business with its working capital requirements whilst trading conditions return to normal. Forecast profits are sufficient for the business to service this loan.
- Under instruction from SAFA the Crown Solicitor's Office has prepared a Facility Agreement (Agreement) to reflect the terms for working capital loans to be made under the Scheme.
- The terms of the Agreement are consistent with the terms for loans to be made from the Scheme as mandated by the Australian Government. The Agreement provides that the \$50,000 loan be available for drawdown in a single instalment upon execution. Under the Agreement, loan repayments will commence from the second anniversary, whereby the loan is repayable in equal payments of principal and interest amortising to zero at the five year term. Interest is re-set annually in July to be equivalent to 50% of the 10-year Commonwealth Bond Rate averaged over the preceding quarter.
- On 5 April 2020 you noted that loans provided under the Scheme are concessional, with resulting budget impacts being brought to account through the application of AASB9 as these loans are made. The concession booked would usually recognise the price discount, being the difference between the interest rate charged for these loans compared to the rate that would be charged commercially. The discount is initially recognised in full as an expense and then wound back, so that over time, there is no real cost. It is currently proposed that the price concession of the CBLs loans of \$50,000 or less is not recorded as the price concession is immaterial compared to the administrative effort to account for it (note that the price concession of loans above \$50,000 will be recognised).
- Additionally, there is a cost to the State when credit is extended during the initial two year interest free period whilst no loan repayments are made. The average cost of funds on Treasurer's borrowings is currently 1.76% per annum, so the cost of making this loan is therefore \$1,760. It is proposed that this cost will be recognised in the State's accounts. Note that 50% of this cost will be charged to the Commonwealth under the agreed cost sharing arrangements for administration of the Scheme.
- It is proposed that you now execute the Facility Agreement in duplicate where indicated, which has been executed by PIYHAC Pty Ltd.

*Anna Hughes*

Anna Hughes  
GENERAL MANAGER, SAFA

29 June 2020

Contact Officer:	Rindal Chiltonho/ Rebecca Wigglesworth
Telephone:	0226 6613/ 0207 2291
Email address:	rindal.chiltonho@sa.gov.au

*[Signature]*

**David Reynolds**  
**CHIEF EXECUTIVE**

Department of Treasury and Finance  
For official use only - 11 - A1  
Date... 30/1/20...

**Attachments**

1. Two copies of the Facility Agreement
2. Minute dated 5 April 2020
3. Minute dated 12 June 2020

**BUSHFIRE WORKING CAPITAL LOAN**

**FACILITY AGREEMENT**

**Dated:**

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**BETWEEN:**

**THE TREASURER**

**AND**

**PIYHAC PTY LTD**



**Government  
of South Australia**

**CROWN SOLICITOR**

**Level 17, 10 Franklin Street, Adelaide SA 5000**

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**THE SCHEDULE**

**1. BORROWER**

PIYHAC PTY LTD (ACN 139 391 147), in its own right and in its capacity as trustee of the PIYHAC Unit Trust, whose registered office is situated at 'Schulz Hobbs' 83 Greenhill Road, Wayville, SA 5034

**2. BORROWER'S AUTHORISED OFFICER**

Andrew Fischer, Director

**3. BORROWER ADDRESS FOR NOTICES**

Attention: Director

Address: 2121 Gorge Road, Cudlee Creek, SA 5232

**4. BUSINESS & BUSINESS PREMISES**

Business: The operations and undertakings of the Borrower, as carried on by the Borrower as at the Commencement Date, of a business operating a restaurant, tavern and caravan park in Cudlee Creek, SA.

Business Premises: 2121 Gorge Road, Cudlee Creek, SA 5232

**5. AVAILABILITY PERIOD**

60 days

**6. FACILITY LIMIT**

FIFTY THOUSAND DOLLARS (\$50,000.00)

**7. BASE RATE**

A rate of fifty percent (50%) of the 10-year Commonwealth bond rate averaged from 1 April to 30 June of the Financial Year preceding the relevant Rate Set Date

**8. RATE SET DATE**

Each 1 July during the Term

**9. INTEREST AND PAYMENT COMMENCEMENT DATE**

The second anniversary of the Commencement Date

**10. PREPAYMENT MINIMUM**

TEN THOUSAND DOLLARS (\$10,000)

**11. PRECONDITIONS TO DRAWDOWN**

Not used

**12. APPROVED PURPOSE**

The payment of Working Capital Expenses of the Business properly and reasonably incurred by the Borrower.

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venture within the meaning of Australian Accounting Standard 131.

**Event of Default** means the occurrence of any of the events listed in clause 11.1.

**Facility** means the facility provided by the Treasurer under this Agreement whereby the Borrower may, during the Availability Period, request an Advance of money for the Approved Purpose.

**Facility Limit** means the amount specified in the Schedule.

**Financial Indebtedness** means any indebtedness in respect of:

- (a) money borrowed, raised or owing under any form of agreement with any banks or financial institutions;
- (b) receivables sold or discounted;
- (c) any finance lease or operating lease.

**Financial Year** means each period from 1 July to the following 30 June.

**Funding Period** means the period commencing on the Interest and Payment Commencement Date and ending on the Repayment Date.

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

**GST** means the tax imposed by the GST Law.

**GST Law** has the same meaning attributed in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

**GST Liability** has the meaning given to it in clause 12.4(a).

**Insolvency Event** means any of the following events:

- (a) the administration, liquidation, dissolution or management of the Borrower or its assets under any Insolvency Law;
- (b) the appointment of a receiver, receiver and manager, manager, trustee, administrator, controller or any similar person in respect of the Borrower or its assets or undertaking under any Insolvency Law;
- (c) the Borrower enters into or takes any action to enter into an arrangement or compromise with, or assignment for the benefit of all or any class of its creditors or members or a moratorium involving any of them; or
- (d) the Borrower becomes or admits in writing that it is, or pursuant to any Insolvency Law is deemed to be insolvent.

**Insolvency Law** means any Law relating to insolvency, sequestration, liquidation or bankruptcy (including any Law relating to the avoidance of conveyances in fraud of creditors or of preferences and any Law under which a liquidator or trustee in bankruptcy may set aside or avoid transactions) and any provision of any agreement, arrangement or scheme, formal or informal, relating to the administration of any of the assets of any person.

**Insurances** mean such insurances necessary to cover all risks associated with the Business.

**Interest and Payment Commencement Date** means the

date specified in the Schedule.

**Interest Period** for has the meaning given in clause 6.2(a).

**Law** means principles of law and equity established by decisions of courts, or by any legislation of the Commonwealth of Australia or of any State or Territory of the Commonwealth or of any other relevant jurisdiction, or of any local, municipal, or shire authority now or in the future in force, and any rule, regulation, by-law, statutory instrument, order or other action now or in the future made under any such legislation or pursuant to any court decision, including any policy or notice issued or published by a Government Agency relating to any Tax legislation.

**Material Adverse Effect** means any change that has had, or is reasonably likely to have, an effect that is or will be materially adverse to:

- (a) the ability of the Borrower to perform its obligations under this Agreement;
- (b) the Business;
- (c) the interests of the Treasurer under this Agreement; or
- (d) the assets or financial condition of the Borrower.

**Modified Business Day Convention** means if anything is required by this Agreement to be undertaken on or by a day which is not a Business Day (including the making of any payment) then it must be undertaken on or by the following Business Day unless the day falls in the next month in which case it must be undertaken on or by the preceding Business Day.

**Obligations** means at any time the aggregate of the following amounts:

- (a) the Advance;
- (b) unpaid interest; and
- (c) all liabilities of the Borrower to the Treasurer under or by reason of this Agreement.

**Overdue Rate** means the daily interest rate being an aggregate of 2% per annum and the rate percent per annum determined by the Treasurer to be that which expresses as a percentage per annum the cost to the Treasurer of funding, on a daily basis for the period of the default, any amount due and unpaid under this Agreement.

**Period End Date** means the following dates:

- (a) the Interest and Payment Commencement Date; and
- (b) each 1 April, 1 July, 1 October and 1 January following the Interest and Payment Commencement Date during the Term up to and including the Repayment Date.

**Potential Event of Default** means any event, which with the giving of notice, lapse of time, fulfilment of any condition or any determination is likely to constitute an Event of Default.

**PPS Law** means each of the provisions of:

- (a) the *Personal Property Securities Act 2009 (Cth)*; and
- (b) any regulations made at any time under the *Personal Property Securities Act 2009 (Cth)*.

**PPS Lease** means a 'PPS Lease' as defined under the PPS Law.

**Prepayment Minimum** means the amount specified in the

Schedule.

**Program** means the program established by the Government of the State known as the 'Concessional Bushfire Loans Program'.

**Quarter** means each period of three (3) months ending on 30 June, 30 September, 31 December and 31 March.

**Rate Set Date** means each date specified in the Schedule.

**Related Body Corporate** has the same meaning as defined in the Corporations Act.

**Repayment Date** means the fifth (5<sup>th</sup>) anniversary of the Commencement Date, or such later date as may be extended with the written approval of the Treasurer.

**Significant Business Restructure** means, at the relevant time:

- (a) a Change of Control of the Borrower;
- (b) the sale of all of the Borrower's Business being conducted at that time, or a sale of a portion of that Business which the Treasurer determines is a significant portion of the Borrower's Business;
- (c) a significant restructure, reduction or transformation of the Borrower's Business being conducted at that time, which the Treasurer determines is likely to be materially adverse to the performance of the Borrower's obligations, or the interests of the Treasurer, under this Agreement; or
- (d) a relocation of all of the Borrower's Business being conducted at that time at the Business Premises out of the State of South Australia, or a relocation of a part of that Business out of the State of South Australia which the Treasurer determines is the relocation of a significant part.

**State** means the State of South Australia.

**Tax** means any and all present and future taxes, levies, imposts, deductions, charges, fees, compulsory loans and withholdings levied by any Government Agency, together with interest, penalties and expenses in connection with them.

**Term** means the period commencing on the Commencement Date and ending on the Termination Date.

**Termination Date** means the earlier of:

- (a) the Repayment Date; or
- (b) the date on which the Facility is terminated in accordance with this Agreement.

**Treasurer's Representative** has the meaning given to it in clause 15.1.

**Trust** means any trust in respect of which the Borrower is Trustee.

**Trust Deed** in respect of a Trust, means the trust deed establishing the Trust.

**Working Capital Expenses** means the essential expenses payable by the Borrower while the Business returns to its normal level of trading including payments:

- (a) to third party creditors of the Borrower;
- (b) in respect of goods and services necessary to carry-on

the Business;

- (c) to the Borrower's employees; or
- (d) to meet the scheduled servicing requirements for any loans or debts owing to financial institutions, including the Bank provided that the obligation to make those loan or debt repayments were in existence at the date of this Agreement, and those loans or debts are not being restructured or refinanced with the Advance,

and does not include:

- (e) payment of any loans from or payment of any debts owing to the Borrower's directors, officers or shareholders or any relative or associate of the Borrower.

## 1.2 Interpretation

The following rules apply in the interpretation of this Agreement unless the context requires otherwise:

- (a) the singular number includes the plural number and vice versa;
- (b) any gender includes all genders;
- (c) references to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them;
- (d) references to the whole of a matter or thing include a part of the matter or thing;
- (e) derivatives of words or phrases defined in this Agreement have a corresponding meaning;
- (f) a reference to an agreement or other document includes a reference to that agreement or document as varied, novated, supplemented or replaced at any time;
- (g) a reference to writing includes any mode of reproducing words in a visible form, and includes telex, e-mail or facsimile transmission;
- (h) a reference to a person includes a reference to the persons, successors, substitutes (including, without limitation, persons taking by novation) and assigns;
- (i) an agreement undertaking representation or warranty on the part of or in favour of two or more persons binds or is for the benefit of them jointly and severally;
- (j) headings are for convenience only and do not affect interpretation;
- (k) any reference to dollars, unless otherwise specified, is a reference to Australian dollars;
- (l) references to parties, clauses, schedules, exhibits or annexures are references to parties, clauses, schedules exhibits and annexures to or of this Agreement unless it is expressly stated otherwise, and a reference to this Agreement includes any schedule, exhibit or annexure to this Agreement;
- (m) all accounting terms used have the meaning given to those terms under applicable Accounting Principles;
- (n) mentioning anything after the words include, includes or including does not limit what else might be included;
- (o) no provision or expression is to be construed against a party on the basis that the party (or its advisers) was responsible for the drafting of this document; and

- (p) a reference to any statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing them, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute.

### 1.3 Trusts

Unless the context requires otherwise, a reference to a transaction, asset, act or liability of any nature of the Borrower includes its transactions, assets, acts or liabilities as trustee (if applicable) and in its own right. Where a Borrower that is a trustee incurs an obligation, it incurs that obligation in its capacity as trustee, and in its own right.

## 2. THE FACILITY

### 2.1 Facility

Subject to the terms of this Agreement, and in reliance upon the representations and warranties made by the Borrower in this Agreement, the Treasurer agrees to make the Facility available to the Borrower during the Term.

### 2.2 Purpose of the Facility

Unless otherwise approved in writing by the Treasurer, the Borrower must only use the Advance for the Approved Purpose. For the avoidance of doubt, the Borrower must not use the Advance for any purpose other than the Approved Purpose and must not use the Advance to refinance any Financial Indebtedness.

### 2.3 Facility Limit

The Treasurer will not be obliged to make the Advance under the Facility, if to do so would cause the applicable Facility Limit to be exceeded.

### 2.4 Termination of Facility

On the Termination Date the Facility is cancelled and terminated and the Facility Limit is reduced to zero.

### 2.5 Information on application of the Advance

The Borrower will provide to the Treasurer any information that the Treasurer requires concerning how the Advance has been, or will be applied and will do so in writing within five (5) Business Days of being requested to do so. For this purpose the Borrower agrees to provide the Treasurer with access to any of the Borrower's books and records so as to verify any such information and consents to the Treasurer obtaining copies of such records. For the purpose of this clause a reference to the Treasurer includes a reference to any agent or adviser to the Treasurer.

## 3. CONDITIONS PRECEDENT

### 3.1 Preconditions to Facility

The obligation of the Treasurer to provide the Advance to the Borrower is subject to the Treasurer receiving, in all things to the Treasurer's complete satisfaction evidence all Insurances required by this Agreement are in full force and effect.

### 3.2 Preconditions to Drawdowns under the Facility

The obligation of the Treasurer to provide the Advance to the Borrower is subject to the following condition precedents:

- (a) the Treasurer being satisfied that no Event of Default or Potential Event of Default is subsisting, both at the date

of the Drawdown Notice and at the Drawdown Date, or will result from the making of the Drawdown;

- (b) the Treasurer being satisfied that the Borrower's representations and warranties set out in clause 9 remain true and correct in every particular, both at the date of the Drawdown Notice and at the Drawdown Date, and also immediately after making of the Drawdown;
- (c) the Treasurer is satisfied that the Advance will be applied to the Approved Purpose;
- (d) receipt of a valid Drawdown Notice; and
- (e) the condition precedents to Drawdowns specified in the Schedule (if any).

### 3.3 Preconditions to Drawdowns under the Facility

The conditions precedent in this clause 3 are for the benefit of the Treasurer only, and may be waived or deferred at any time by the Treasurer in writing (and on such conditions as the Treasurer deems fit).

## 4. DRAWDOWNS

### 4.1 Notice

The Borrower may request the Advance under the Facility by one Drawdown on any Business Day during the Availability Period by delivering a Drawdown Notice to the Treasurer in accordance with this clause 4.

### 4.2 Contents of Drawdown Notice

The Drawdown Notice must be in the form specified in the Annexure to this Agreement and:

- (a) contain a certification that the Drawdown will be applied towards the Approved Purpose;
- (b) specify the amount of the Advance which shall not exceed the Facility Limit;
- (c) specify payment instructions, which must be to an account of the Borrower with an ADI; and
- (d) specify the proposed Drawdown Date which must be a Business Day during the Availability Period.

### 4.3 Requirements of Drawdown Notice

The Drawdown Notice must be received by the Treasurer not less than five (5) Business Days (or such shorter time as the Treasurer may agree) before the proposed Drawdown Date, must be signed for the Borrower by a duly authorised person and will be irrevocable once received by the Treasurer.

### 4.4 Making of Advance

Subject to the terms of this Agreement the Treasurer will make the Advance to the Borrower in accordance with the payment instructions specified in the Drawdown Notice for the Advance.

## 5. CANCELLATION OR REDUCTION OF FACILITY

### 5.1 Automatic cancellation of Facility and reduction of Facility Limit

If the Facility Limit has not been fully drawn down by the Borrower upon the expiry of the Availability Period, then the Facility will be automatically cancelled and the Facility Limit will be reduced to zero, effective as of the day of expiry of the Availability Period, and the Treasurer will have no obligation

to provide the Advance to the Borrower.

## 5.2 Automatic reduction of Facility Limit

If the Advance (in whole or part) under the Facility is repaid or prepaid the Facility Limit will be automatically reduced by the amount of the Advance repaid or prepaid and is not available to be re-drawn by the Borrower under the Facility.

## 6. PRINCIPAL AND INTEREST PAYMENTS

### 6.1 Interest & Payment Free Period

The parties acknowledge and agree that notwithstanding anything to the contrary in this Agreement:

- (a) interest shall not accrue on the Advance prior to the Interest and Payment Commencement Date; and
- (b) the Borrower is not required to make payments of principal or interest prior to the Interest and Payment Commencement Date.

### 6.2 Interest Period

- (a) Subject to clause 6.2(b), each interest period for the Advance under the Facility (**Interest Period**) will be a duration of three (3) months, commencing on a Period End Date and ending on the next Period End Date.
- (b) The Interest Period for an Advance under the Facility is subject to adjustment as follows:
  - (i) the first Interest Period for the Advance will commence on the Interest and Payment Commencement Date and end on the first Period End Date that follows;
  - (ii) where the Interest Period would otherwise end after the Repayment Date of the Advance it will be adjusted to coincide with the Repayment Date for the Advance;
  - (iii) where the Interest Period would otherwise end after the Termination Date it will be adjusted to coincide with the Termination Date; and
  - (iv) where the first or last day of the Interest Period is not a Business Day it will be adjusted in accordance with the Modified Business Day Convention.

### 6.3 Interest Rate

- (a) The Borrower must pay the Treasurer interest on the outstanding balance of the Advance, which interest will accrue from and including the Interest and Payment Commencement Date until the Advance is repaid in full.
- (b) Interest is payable, and will accrue from day to day on the outstanding balance, for the Advance, and for each Interest Period of an Advance, at a rate equal to the Base Rate.
- (c) The Base Rate will be revised and reset on each Rate Set Date.

### 6.4 Calculation of interest

Payments in the nature of interest under this Agreement will:

- (a) accrue from day to day;
- (b) be computed from and including the day when the money on which interest is to be payable was provided,

until, but excluding, the day when that money is paid or repaid;

- (c) if payable by reference to specific periods, be computed from and including the first day of the period, until, but excluding the last day of the period; and
- (d) be calculated on the basis of a year of 365 days (except in the case of a leap year, which will be on the basis of a year of 366 days) and for the actual number of days elapsed.

### 6.5 Principal and Interest Payments

- (a) The Borrower must:
  - (i) repay the Advance; and
  - (ii) pay the accrued interest on the Advance,
 by paying to the Treasurer equal instalments of principal and interest in respect of each Interest Period over the Funding Period for the Advance, which instalments must be paid for each such Interest Period on the last day of the Interest Period.
- (b) For the purposes of clause 6.5(a), the Treasurer will as soon as practicable following each Rate Set Date, provide to the Borrower a statement of:
  - (i) the Base Rate determined to apply to the Advance;
  - (ii) the amount of the instalment of principal and interest required to be paid in respect of each Interest Period over the next Financial Year of the Funding Period; and
  - (iii) the amount of the Advance that would be outstanding at the commencement of each Interest Period over the next Financial Year of the Funding Period.
- (c) The repayment of any portion of the Advance under the Facility is not available to be re-drawn by the Borrower.

### 6.6 Repayment of Advances and Obligations

The Borrower must repay the Advance, together with all other amounts which form part of the Obligations, to the Treasurer on the Termination Date.

### 6.7 Capitalisation of interest

The Treasurer may capitalise any part of any interest, which becomes due for payment under this Agreement by the Borrower and is not paid, at the times determined by the Treasurer, and if no determination is made, will be deemed to have been capitalised quarterly, and interest shall be payable in accordance with clause 6.8 on that capitalised amount.

### 6.8 Interest on overdue amounts

- (a) The Borrower will pay to the Treasurer interest on amounts due and payable by it under this Agreement but unpaid (including any interest payable under this clause) for the period the amount remains unpaid.
- (b) Such interest will accrue before and (as a separate and independent obligation but without duplication) after any court judgement at a rate of interest equivalent to the Overdue Rate.
- (c) Interest payable on any unpaid amount will be paid on

demand and if not so paid will itself be deemed to be capitalised quarterly and bear interest in accordance with this clause as if it was an unpaid amount.

#### 6.9 Treasurer's determination and calculation

- (a) The Treasurer's determination as to the instalments of principal and interest, the rate of interest and calculation as to an amount of interest, at any time will be conclusive and binding on the Borrower in the absence of manifest error.
- (b) Where any amount of interest payable by the Borrower under this Agreement is required to be calculated for the purpose of payment or capitalisation, the Treasurer will notify the Borrower of the amount of interest calculated to be payable or capitalised, as soon as practicable after it has been calculated by the Treasurer. Failure to do so will not affect the obligations of the Borrower in any way.

### 7. VOLUNTARY PREPAYMENTS

#### 7.1 Voluntary Prepayment of Advances

- (a) Subject to this clause 7.1, the Borrower may, upon giving the Treasurer not less than five (5) Business Days prior written notice, prepay the Advance in whole or part. Such notice of prepayment must specify:
  - (i) the prepayment date, which must be the last day of an Interest Period; and
  - (ii) the amount of the Advance to be prepaid.
- (b) Unless the Borrower is prepaying the whole of the Advance or as otherwise agreed by the Treasurer, the amount of the Advance to be prepaid must be at least equal to the Prepayment Minimum and in a whole multiple of the Prepayment Minimum.
- (c) The Borrower, must, together with any amount to be prepaid under this clause 7.1 pay to the Treasurer on the date of prepayment any unpaid interest accrued on the amount to be prepaid.
- (d) If the Borrower is prepaying the whole amount of the Advance under this clause 7.1, then together with the amount being prepaid the Borrower must pay to the Treasurer the balance of all amounts which form part of the Obligations.
- (e) If in a notice of prepayment given under clause 7.1(a), the Borrower is prepaying part of the Advance, then the amount of the equal instalments of principal and interest to be paid by the Borrower with respect to that Advance under clause 6.5 will be adjusted for the balance of the Funding Period of the Advance to take account of the reduction in the amount of the Advance, with effect on and from the date of the Treasurer's receipt of the amount to be prepaid.
- (f) For the purposes of clause 7.1(e), the Treasurer will, as soon as practicable following receipt of the amount prepaid, provide to the Borrower a revised statement of:
  - (i) the Base Rate applying to the Advance;
  - (ii) the adjusted amount of the equal instalment of principal and interest required to be paid in respect of each Interest Period over the remaining balance of the Funding Period of the Advance; and
  - (iii) the amount of the Advance, after taking account of the amount prepaid, that is then outstanding and

that would be outstanding at the commencement of each Interest Period over the remaining balance of the Funding Period of the Advance.

- (g) Any notice of prepayment given by the Borrower is irrevocable once received by the Treasurer and the Borrower will be bound to prepay in accordance with the prepayment notice.
- (h) The Borrower must not prepay the Advance except in accordance with this clause 7.1.

#### 7.2 No Re-draw Capability

The prepayment of any portion of the Advance under the Facility is not available to be re-drawn by the Borrower.

### 8. PAYMENTS

- (a) The Borrower will make all payments required under this Agreement without set-off, counter claim, deduction or withholding.
- (b) If a payment becomes due on a day that is not a Business Day, the date for payment will be adjusted in accordance with the Modified Business Day Convention.
- (c) Unless otherwise advised by the Treasurer, all payments by the Borrower under this Agreement will be made to the following account of the Treasurer:

Bank:	Commonwealth Bank of Australia
Name:	Treasury Loans Administered Items
BSB No:	065 266
Account No:	10000231

### 9. REPRESENTATIONS AND WARRANTIES

#### 9.1 Representations and Warranties by the Borrower

The Borrower represents and warrants to the Treasurer that:

- (a) all information provided by the Borrower in the Application and any further information or documentation subsequently provided, is true and correct in all material respects and is not misleading, and there are no material facts known to the Borrower relating to the Borrower which could or might affect the willingness of the Treasurer to enter into an agreement with the Borrower in terms similar to the terms of this Agreement which have not been disclosed to the Treasurer;
- (b) it is a body corporate duly constituted under applicable Laws with the power to enter into and observe its obligations under this Agreement;
- (c) all Authorisations required to be obtained by it:
  - (i) in connection with the execution, delivery and performance of its obligations under this Agreement, and
  - (ii) as a consequence of the entry into and performance by it of, and the validity of, this Agreement,
 have been obtained and are valid and subsisting;
- (d) this Agreement constitutes its valid and legally binding obligations, enforceable in accordance with their respective terms;
- (e) it is not in default of its obligations to the Bank as at the

date of this Agreement under the Bank Facility Documents and will not be as at the Commencement Date, and nothing in the terms of this Agreement will cause it to be in default;

- (f) its entry into and performance of its obligations under this Agreement do not and will not contravene or result in any breach of any Law, its constituent documents, or any indenture, mortgage, a Trust Deed, agreement or other instrument or arrangement by which the Borrower or any of its assets are bound;
- (g) the Advance provided to it by the Treasurer under the Facility will be applied only and wholly towards the Approved Purpose, unless otherwise agreed with the Treasurer;
- (h) no Event of Default or Potential Event of Default exists;
- (i) to the best of its knowledge, information and belief, there is no Insolvency Event currently threatened or proposed in respect of the Borrower or any Trust;
- (j) the most recent Accounts of the Borrower give a true and fair view of the state of affairs as at the dates to which those accounts relate and the results of its operations for the accounting periods ended on those dates, and that there has been no Material Adverse Effect in the condition of the Borrower since the provision of those statements;
- (k) no litigation, arbitration, Tax claim, dispute or administrative proceeding is current or pending, or to its knowledge, threatened against or affecting the Borrower or any property of the Borrower, the adverse determination of which is likely to cause a Material Adverse Effect;
- (l) in respect of any Trust for which it is trustee:
  - (i) it is the present and only trustee of the Trust, and that no action has been taken or proposed to remove it as trustee of the Trust;
  - (ii) it has an unrestricted right to be indemnified out of the assets of the Trust in respect of and against all losses, costs, expenses, claims, damages, charges, liabilities and related expenses sustained or incurred as a consequence of this Agreement;
  - (iii) no vesting date has been determined under the provisions of the Trust Deed for the Trust;
  - (iv) it has the power, without restriction or condition, to enter into and perform its obligations under this Agreement both personally and in its capacity as trustee of the Trust and has taken the necessary corporate action to authorise the entry into and performance of this Agreement both personally and in its capacity as trustee of the Trust; and
  - (v) it is not in material default under the Trust Deed for the Trust, or under any law, indenture, mortgage, agreement or other instrument or arrangement by which it is bound.

## 9.2 Reliance on Representations and Warranties

The Borrower acknowledges that the Treasurer enters into this Agreement in reliance upon the representations and warranties made by the Borrower under this clause 9.

## 9.3 Survival of Representations and Warranties

Each of the representations and warranties in clause 9.1 will survive the execution of this Agreement and will be deemed to

have been repeated by the Borrower at each time the Borrower submits a Drawdown Notice to the Treasurer and on the Drawdown Date as if then repeated by reference to the then existing circumstances.

## 9.4 Notification

The Borrower must notify the Treasurer immediately upon becoming aware of a breach of a representation or warranty set out in this Agreement.

## 10. UNDERTAKINGS OF THE BORROWER

### 10.1 Duration

The undertakings in this clause 10 will remain in force from and after the date of this Agreement and for so long as any Obligation is or may be outstanding under this Agreement.

### 10.2 Financial Information

(a) As soon as practicable, and in any event not later than sixty (60) days after the completion of each Financial Year, the Borrower will provide the Treasurer with a copy of its Accounts, together with the Accounts for any Trust, for that Financial Year, each to be certified by the Authorised Officer of the Borrower, as giving a true and fair view of its financial condition and prepared in accordance with applicable Laws and applicable Accounting Principles.

(b) The Borrower will provide the Treasurer, as soon as practicable, such further information regarding the financial condition and business operations of the Borrower, and any Trust, as the Treasurer may from time to time reasonably require.

### 10.3 Insurance Requirements

The Borrower will effect and maintain the Insurances, and on request by the Treasurer provide proof, acceptable to the Treasurer, of the currency of the Insurances.

### 10.4 General Undertakings

The Borrower must:

- (a) not, without the Treasurer's prior written consent, undertake a Significant Business Restructure;
- (b) immediately notify the Treasurer of the occurrence of any Event of Default or Potential Event of Default;
- (c) as soon as practicable notify the Treasurer in writing of any change in Authorised Officers;
- (d) comply in all material respects with all applicable Laws;
- (e) in respect of persons employed by the Borrower:
  - (i) maintain its registration under all relevant compulsory workers' compensation insurance schemes required by Law and duly pay or cause to be paid all levies required to be paid thereunder; and
  - (ii) otherwise comply with the provisions of the *Return to Work Act 2014 (SA)* and any other appropriate Law relating to compulsory workers compensation insurance or rehabilitation and compensation of workers;
- (f) make all accounts, records and other documentation relating to the Business and affairs of the Borrower available to the Treasurer when requested by the Treasurer;

- (g) provide such information in relation to the Borrower or the Business as the Treasurer reasonably requires at any time; and
- (h) as soon as practicable, and in any event not later than sixty (60) days after the completion of each Financial Year, provide an annual compliance certificate in form and substance reasonably required by the Treasurer.

### 10.5 Trustee Undertakings

The Borrower will, in respect of any Trust for which it is trustee, ensure that:

- (a) the vesting date of the Trust will not be determined;
- (b) the Borrower will remain the only Trustee of the Trust;
- (c) the Borrower will not:
- (i) do anything which could restrict the Borrower's ability to be indemnified out of the assets of the Trust;
  - (ii) breach its obligations as trustee of the Trust;
  - (iii) effect or facilitate termination or variation of the Trust Deed without the prior consent of the Treasurer;
  - (iv) do or suffer anything which could restrict, limit or impair its ability to observe its obligations under this Agreement; or
  - (v) retire as trustee of the Trust; and
- (d) any successor of the Borrower as trustee of the Trust executes any documents required by the Treasurer to ensure that this Agreement is binding on each successor.

## 11. EVENTS OF DEFAULT

### 11.1 Events of Default

Each of the following is an Event of Default:

- (a) the Borrower does not pay at or before the due date any amount payable by it under this Agreement, and such default is not remedied within five (5) Business Days of the Treasurer notifying the Borrower of the non payment;
- (b) the Borrower defaults in fully performing, observing and fulfilling any provision of this Agreement, and such default is not remedied within fifteen (15) Business Days of the Treasurer notifying the Borrower of such default, provided always that the Treasurer shall not be required to provide the Borrower with notice of any default that the Treasurer considers to be incapable of remedy;
- (c) any representation, warranty or statement made, repeated or deemed to be made or repeated by the Borrower in this Agreement is proved to be untrue in any material respect when made, repeated or deemed to be made or repeated;
- (d) an insolvency Event occurs; or
- (e) a Bank Facility Document becomes enforceable or is enforced; or
- (f) any event or series of events (whether related or not) occurs which has a Material Adverse Effect.

### 11.2 Consequences of an Event of Default

At any time after an Event of Default occurs, the Treasurer may

at the Treasurer's option by way of written notice to the Borrower:

- (a) declare that an Event of Default has occurred; and/or
- (b) declare that its obligation to provide the Advance, or that any other obligations of the Treasurer under the Facility, are terminated, cancelled or suspended; and/or
- (c) declare the Advance immediately due and re-payable, whereupon the Advance will, and all other amounts which form part of the Obligations, become immediately due and payable by the Borrower to the Treasurer.

## 12. COSTS, EXPENSES, DUTIES AND TAXES

### 12.1 Costs and Expenses

In addition to any other amounts payable by the Borrower to the Treasurer under this Agreement, the Borrower will, upon the Treasurer's demand, reimburse the Treasurer for, and keep it indemnified against:

- (a) all costs and expenses (including legal fees, costs and disbursements on a solicitor/client basis) in connection with any exercise, enforcement or preservation, or any attempted exercise, enforcement or preservation of any rights of the Treasurer; and
- (b) any present or future Tax, rate, levy, impost, deduction, withholding, charge and duty (including fines and penalties) that are payable or assessed in relation to this Agreement and any document or transaction contemplated thereunder.

### 12.2 Preparation Costs

Each party will pay its own costs and expenses in connection with the negotiation, preparation and execution of this Agreement.

### 12.3 Taxes and Duties

- (a) The Borrower will pay all stamp, loan transaction, registration and similar Taxes, including fines and penalties which may be payable to or determined to be payable in connection with the execution, delivery, registration, performance or enforcement of this Agreement or any payment, receipt or other transaction contemplated by this Agreement.
- (b) The Borrower will indemnify and keep indemnified the Treasurer against any loss or liability incurred or suffered by it as a result of the delay or failure of the Borrower to pay any such Taxes and duties.

### 12.4 GST

- (a) Without limiting any other provision of this Agreement, if the Treasurer is or becomes liable to pay GST in respect of any supply it makes under, in accordance with, or pursuant to an enforcement of, this Agreement, whether or not that supply is made to or for the benefit of the Borrower (**GST Liability**), then:
- (i) to the extent that an amount is payable by the Borrower to the Treasurer under this Agreement for that supply, that amount will be increased by the full amount of the GST Liability; and
  - (ii) otherwise, the Borrower will indemnify and keep the Treasurer indemnified for the full amount of the GST Liability.



- (b) If requested to do so by the Borrower, the Treasurer will use reasonable endeavours to assist or enable the Borrower to claim any applicable input tax credit in respect of any GST paid by the Borrower in relation to any supply made by the Treasurer under, in accordance with, or pursuant to an enforcement of this Agreement.

### 13. SET-OFF

- (a) The Borrower authorises the Treasurer, at any time after an Event of Default has occurred and is continuing, to apply without prior notice any credit balance or deposit (whether or not then due) to which the Borrower is at any time entitled on any account from the Treasurer or the Crown, whether or not in connection with this Agreement, in or towards satisfaction of any sum then due and unpaid from the Borrower to the Treasurer.
- (b) The Borrower authorises the Treasurer, at any time after an Event of Default has occurred and is continuing, to set-off without prior notice any amount owing (whether present or future, actual, contingent or prospective and on any account whatever) by the Treasurer or the Crown, whether or not in connection with this Agreement, against any liability (whether present or future, actual, contingent or prospective) of the Borrower under this Agreement.
- (c) The Treasurer will not be obliged to exercise any of its rights under this clause 13, which will be without prejudice and in addition to any right of set-off, combination of accounts, lien or other right to which the Treasurer is at any time otherwise entitled (whether by operation of Law, contract or otherwise).

### 14. ASSIGNMENTS

#### 14.1 Successors and Assigns

This Agreement is binding on and for the benefit of each party to this Agreement and their respective successors and permitted assigns.

#### 14.2 Assignments by the Borrower

The Borrower must not assign, novate or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the Treasurer.

#### 14.3 Assignments by the Treasurer

The Treasurer may assign, novate or otherwise transfer any of its rights or obligations under this Agreement at any time to the Treasurer, a minister or other statutory authority of the Crown. In such circumstances the Borrower will perform all such acts and execute all such agreements, assurances and other documents and instruments as the Treasurer may reasonably require to effect such assignment, novation or transfer.

### 15. TREASURER'S REPRESENTATIVES

#### 15.1 Appointment

The Treasurer appoints the person from time to time holding the position in the South Australian Government Financing Authority of "General Manager" or "Director Commercial Advisory" as the Treasurer's representative for the purposes of administration of this Agreement, which appointment the Treasurer may vary or revoke at will by notice in writing to the Borrower ("*Treasurer's Representative*").

### 15.2 Authority

Subject to this Agreement, the Treasurer's Representative has authority to:

- (a) exercise all powers and functions of the Treasurer under this Agreement, other than the power to amend or vary this Agreement; and
- (b) bind the Treasurer in relation to any matter arising out of or in connection with this Agreement.

### 15.3 No Limitation

Nothing in this clause 15 shall prevent the Treasurer from exercising any of the Treasurer's powers or rights under this Agreement.

### 16. AUTHORISED OFFICERS

#### 16.1 Authorised Officers to Communicate

All notices, communications and dealings between the Treasurer and the Borrower connected in any way with this Agreement will be signed, conducted and undertaken by, and where necessary, be addressed and sent to, the respective Authorised Officers of the Treasurer or of the Borrower, as relevant.

#### 16.2 List of Authorised Officers

The Treasurer and the Borrower will from time to time notify the other, of the names of all persons authorised to act on their behalf and to give and accept instructions, notices or other communications (both oral and written) on their behalf for the purposes of this Agreement.

#### 16.3 Assumptions

The Treasurer and the Borrower will each be entitled to assume as to the other ("*Other Party*") (and is not obliged to make any inquiries) where it reasonably believed it to be the case:

- (a) the genuineness and authenticity of any instructions given or purportedly given by or on behalf of the Other Party in respect of this Agreement;
- (b) if the Other Party has not given a notice of revocation of authority of all such persons previously authorised, that the person giving the instructions is authorised by the Other Party to do so; and
- (c) that any persons claiming to be a person, details of whom have been given to it in accordance with clause 16.2, is in fact that person.

### 17. NOTICES

Any communication under or in connection with this Agreement must be:

- (a) in writing and addressed as shown in this paragraph (a) (or as otherwise notified in writing by that party to the other party from time to time):

#### The Treasurer

South Australian Government Financing Authority  
Attention: General Manager, SAFA  
Address: 5<sup>th</sup> Floor, State Administration Centre  
200 Victoria Square, Adelaide, SA, 5000

#### The Borrower

As specified in the Schedule.

- (b) signed by the party or a solicitor acting for that party;
- (c) delivered or posted by prepaid post to the address of the addressee shown in paragraph (a) of this clause 17; and
- (d) will be taken to be given or made when delivered, received or left at the address of the recipient shown in paragraph (a) of this clause 17, but if delivery or receipt is not on a Business Day, or is later than 4 pm (Adelaide time), it will be taken to have been given or made at the commencement of the next Business Day.

## 18. AUDITOR-GENERAL

### 18.1 Public Finance and Audit Act, 1987 (SA)

The Borrower acknowledges the provisions of the *Public Finance and Audit Act, 1987 (SA)*, as well as the Treasurer's Instructions made under that Act.

### 18.2 Auditor-General

The Borrower agrees that nothing contained in this Agreement or any action taken pursuant to this Agreement limits the rights and responsibilities of the Auditor-General under the *Public Finance and Audit Act, 1987 (SA)*.

### 18.3 Assistance to Auditor-General

The Borrower must, without charge, provide the Auditor-General with such assistance (including the provision of information) as he or she may reasonably require in connection with any carrying out of his or her functions under the *Public Finance and Audit Act, 1987 (SA)*.

## 19. CONTRACT DISCLOSURE

The Borrower agrees to the disclosure of this Agreement and/or information in relation to this Agreement, in either printed or electronic form and either generally to the public or to a particular person as a result of a specific request, in accordance with the requirements of Department of the Premier and Cabinet Circular PC027 issued by the Government of South Australia.

## 20. CONTINUING OBLIGATION

This Agreement constitutes a continuing obligation regardless of any settlement of account, intervening payment, express or implied revocation or any other matter or thing, until a final discharge thereof has been given to the Borrower.

## 21. APPLICATION OF PAYMENTS AND CREDITS

Despite any other provision in this Agreement, as against the Borrower the Treasurer has an absolute discretion to apply any payment or credit received by it under this Agreement in reduction of any part or parts of the Obligations, whenever and on whatever account, notwithstanding 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.

## 22. SETTLEMENT CONDITIONAL

Any settlement or discharge between the Treasurer and the Borrower is conditional on whether there is a reasonable likelihood that any security or payment given or made by the Borrower or any other person in relation to the Obligations, will be avoided, repaid or reduced by virtue of any Insolvency

Law. If there is such a reasonable likelihood, then if such security or payment is so avoided, repaid or reduced, the Treasurer is entitled to recover the value or amount of such security or payment avoided, repaid or reduced from the Borrower subsequently as if such settlement or discharge had not occurred.

## 23. FURTHER ASSURANCE

The Borrower agrees, on demand by the Treasurer, and at the entire cost and expense of the Borrower, to perform all such acts and execute all such agreements, assurances and other documents and instruments as the Treasurer reasonably requires to perfect or preserve the rights, benefits and powers afforded, created, or intended to be afforded or created, by this Agreement, including by reason of any variation, suspension, cancellation or termination, or extension, renewal or replacement, of this Agreement.

## 24. REMEDIES CUMULATIVE

The rights and remedies conferred by this Agreement on the Treasurer are cumulative and in addition to all other rights or remedies available to the Treasurer by Law.

## 25. WAIVER

### 25.1 No Waivers

Failure by the Treasurer to exercise or enforce, or a delay by the Treasurer in exercising or enforcing, or the partial exercise or enforcement by the Treasurer of any right, power or remedy provided by Law or under this Agreement will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement of that or any other right, power or remedy provided by Law or under this Agreement.

### 25.2 Written Waivers

Any waiver, approval or consent given by the Treasurer under this Agreement will only be effective and binding if it is given in writing.

### 25.3 No Waiver of other Breaches

No waiver of a breach of any term of this Agreement will operate as a waiver of another breach of that term or of a breach of any other term of this Agreement.

## 26. CONSENTS AND APPROVALS

Any consent or approval referred to in, or required under, this Agreement from the Treasurer may be given or withheld, or may be given subject to any conditions as that party (in the Treasurer's absolute discretion) thinks fit, unless this Agreement expressly provides otherwise.

## 27. DETERMINATIONS AND CERTIFICATES

Any certificate or determination of the Treasurer certifying or determining the amount payable by the Borrower, or stating any other act, matter or thing relating to this Agreement, is conclusive and binding on the Borrower in the absence of manifest error on the face of the certificate or determination.

## 28. MORATORIUM LEGISLATION

To the fullest extent permitted by Law, the provisions of all Laws which at any time operate directly or indirectly to lessen or affect in favour of the Borrower any obligation under this

Agreement, or to delay or otherwise prevent or prejudicially affect the exercise by the Treasurer of any power or right under this Agreement or otherwise, are expressly waived, negatived and excluded.

**29. AMENDMENT**

This Agreement can only be amended, supplemented, replaced or novated by another written agreement executed by the Treasurer and the Borrower that is expressed to amend, supplement, replace or novate this Agreement.

**30. GOVERNING LAW**

**30.1 Governing Law**

This Agreement shall be governed by and construed in accordance with the Laws of the State of South Australia.

**30.2 Jurisdiction**

- (a) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of South Australia and courts of appeal from them for determining any dispute concerning this Agreement. Each party waives any right it has to object to an action being brought in those courts, to claim that the action has been brought in an inconvenient forum, or to claim that those courts do not have jurisdiction.
- (b) The parties agree that none of them will institute or attempt to institute any proceedings in relation to any dispute or any matter or thing arising out of or in connection with this Agreement other than in a court of South Australia or, in respect of any proceedings in a Federal court, in the Adelaide registry of the relevant Federal court. A party will not, without the consent of all other parties, request that proceedings instituted in a Federal court in South Australia be heard outside South Australia.

**31. ATTORNEYS**

Each person who executes this agreement on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

**32. COUNTERPARTS**

This Agreement may be executed in any number of counterparts, all of which will all be taken to constitute one instrument.

EXECUTED by the parties as an Agreement:

THE COMMON SEAL of THE TREASURER )  
was affixed in the presence of: )

.....  
Witness  
..... Rachael Colegate  
Print Name

EXECUTED by PIYHAC PTY LTD (ACN 139 391 147) )  
in its own right and in its capacity as trustee of the )  
PIYHAC Unit Trust, in accordance with s127 of the )  
Corporations Act 2001 (Cth) )

.....  
Director  
..... Andrew Fesetto  
Print Name:

.....  
Director / Secretary  
..... Andrew Fesetto  
Print Name:



ANNEXURE - DRAWDOWN NOTICE

To: Treasurer of South Australia
Attention: South Australian Government Financing Authority (SAFA)
Level 5, State Administration Centre,
200 Victoria Square, Adelaide, SA, 5000
General Manager
Facsimile: (08) 8115 1363

PIYHAC PTY LTD (ACN 139 391 147) (Borrower) hereby irrevocably provides the Treasurer with a Drawdown Notice pursuant to clause 4 of the Loan Agreement dated [ ] between the Treasurer and the Borrower (Agreement).

Unless the context otherwise requires, terms defined in the Agreement have the same meanings where used herein.

1. The following particulars in relation to the proposed Advance are given:

- (a) Proposed Drawdown Date (being a Business Day) is:
(b) The amount of the Advance being requested is:
(c) Particulars of the bank account into which the proposed Advance is to be paid:
Bank: [ ]
Account Name: [ ]
BSB No: [ ]
Account No: [ ]

2. Representations and Warranties

The Borrower represents and warrants as at the date of this Drawdown Notice that:

- (a) the proposed Drawdown will only be applied towards the Approved Purpose as defined in the Agreement and for no other purpose;
(b) all the representations and warranties set out in the Agreement are true and correct and not misleading and are repeated as at the date of this notice; and
(c) that no event which with the giving of notice, the lapse of time or the making of any determination would be likely to become an Event of Default, has occurred or is continuing.

3. Attachments

The Borrower provides the following:

[ ]

DATED the day of 20

EXECUTED by PIYHAC PTY LTD (ACN 139 391 147)
in its own right and in its capacity as trustee of the
PIYHAC Unit Trust, in accordance with s127 of the
Corporations Act 2001 (Cth)

Handwritten signature of a Director

Director

Director / Secretary

Print Name:

Print Name:

**RELEASE IN PART**

8/03/2020  
72/681  
772/1/2020/608

MINUTES forming ENCLOSURE to

File No SA/20/0373  
Doc No A1395822

To The Treasurer

**BUSHFIRE LOANS SCHEME - ADMINISTRATIVE ARRANGEMENTS AND INITIAL LOAN APPROVAL**

Timing: ROUTINE

**Recommendations/Issues:** It is recommended that you

- note the initial administrative arrangements for the Concessional Bushfire Loans Scheme in the Administered Items for the Department of Treasury and Finance;
- approve the creation of a new line titled 'Advances Granted — Concessional Bushfire Loans' in the Treasury and Finance Administered Items Account;
- approve expenditure authority of \$1.3 million in 2019-20 for the line titled 'Advances Granted — Concessional Bushfire Loans' in the Treasury and Finance Administered Items Account. Note that this amount represents the current value of loan applications under assessment by SAFA;
- authorise SAFA to make payments to recipients under contracts from the scheme from SAFA's DTF Administered Items Account (10000231) when payment conditions have been satisfied and in accordance with SAFA's Policy Manual financial delegations; and
- approve making the following three loans under the scheme:
  1. A \$30,000 unsecured loan to Stanley Law Ply Ltd for a total term of five years.
  2. A \$50,000 unsecured loan to Anja Ply Ltd for a total term of five years.
  3. A \$500,000 secured loan to Eskdale Ply Ltd for a total term of 10 years.

Noted and Approved / Not-Approved

*Rob Lucas*  
Hon Rob Lucas MLC  
Treasurer  
5/4/20

**Key Points:**

- The purpose of this minute is twofold:
  - Firstly, for you to approve administrative arrangements that will allow SAFA to administer the Concessional Bushfire Loans being provided in South Australia; and



- o Secondly, to recommend you approve making the following three loans under the scheme:
  1. A \$30,000 unsecured loan to Stanley Law Pty Ltd for a total term of five years.
  2. A \$50,000 unsecured loan to Anja Pty Ltd for a total term of five years.
  3. A \$500,000 secured loan to Eskdale Pty Ltd for a total term of 10 years.

**Background:**

- On 20 January 2020, the Commonwealth Government announced that state and territory governments would provide concessional loans of up to \$500,000 for eligible small businesses, primary producers, and non-profit organisations under the Disaster Recovery Funding Arrangements (DRFA).
- On [REDACTED] Cabinet approved [REDACTED]
- On 12 February 2020 agreement between governments' was reached on a 50:50 cost and risk sharing arrangement, covering the cost of providing loans, administration costs and default risk (and noting that participating states have also requested this include operating impacts associated with concessional interest rates). [REDACTED]
- The scheme was made public in South Australia on 12 February 2020. At that stage there had been over 100 expressions of interest received by the State for the loans. To date SAFA has received 15 applications for loans under the scheme. Anecdotally, SAFA has been advised by individual businesses enquiring about these loans of their intention to lodge applications in future, but their immediate concern is to exhaust avenues of immediate cash support through available grants, ATO relief etc. Businesses are also still in the process of working out how/ what to do to re-establish and don't have a clear plan to move forward yet.
- Cabinet approved [REDACTED]

**South Australian Loan Terms**

- The Commonwealth is seeking the agreement of all states and territories to provide the concessional bushfire loans under harmonised, consistent terms and eligibility criteria.
- SA's Guidelines are modelled off the NSW Guidelines (NSW was the first jurisdiction to launch the scheme). The Guidelines are also consistent with the Commonwealth's eligibility conditions (distributed on 28 January 2020). Note that the Commonwealth's eligibility conditions are still not settled and there is on-going debate as to whether these loans should refinance commercial debt. Several states, including South Australia, do not support this. South Australia has proposed the alternative that the loans may provide temporary relief for debt servicing obligations when existing financiers have not provided relief.

- Loan applications in South Australia are made on-line through the 'business gateway' website hosted by the Department of Industry and Skills. At 23 March 2020 SAFA had received 16 loan applications. There are a further 11 in the process of being completed on-line, but have not yet been submitted.
- SAFA has completed its assessment of three of the loan applications, which are being recommended for support and are discussed further below. Due diligence is continuing on the remaining applications and when this is completed, SAFA will also make recommendations to you on those.
- Three types of entities are eligible for loans: small business (less than 20 FTE), primary producers (must contribute capital and labour and derive at least 50% of income from the enterprise), and not-for-profit organisations.
- Eligible applicants can apply for loans of up to \$600,000 in total, and there are two types of loan product available:
  - Loan for up to \$50,000 (unsecured, five year term), or
  - Loan for up to \$600,000 (secured, 10 year term).
- All loans have a two-year repayment holiday period, which is also interest free. At the two year anniversary the loan automatically converts to a term loan with equal payments of principal and interest amortising to zero at term. Loans cannot be re-drawn.
- Actual loan amounts recommended to you for approval will be based on SAFA's assessment of the applicant's financial position. SAFA has engaged KPMG to assist with the due-diligence assessments of these loan applications.
- Eligibility criteria for these loans includes the following:
  - Entities can demonstrate a direct causal link between the bushfire and significant damage to their assets and/ or a significant loss of income;
  - Must be located in the Local Government Areas (LGA) of Kangaroo Island, Adelaide Hills, Mid Murray, Mount Barker, Murray Bridge, Kingston and Yorke Peninsula, or operate at least sometimes on a regular basis in the area, or have plant and equipment situated in the area that was damaged;
  - Must demonstrate the business has reasonable prospects of long-term viability and the intention to re-establish or continue trading in the same LGA;
  - Can demonstrate the capacity to repay the loan.

Applicants requesting loans over \$50,000 must also be able to provide adequate security, including real collateral such as property or other assets sufficient to secure the loan obligations to the satisfaction of SAFA.

Note that the initial versions of the Commonwealth's criteria included that entities must have no reasonable prospect of obtaining commercial finance, or if it can be obtained it would place the entity in financial difficulty, however this condition has been removed in revised guidelines.

- A concessional rate of interest will apply to these loans, which is equal to 50% of the 10-year Commonwealth Bond Rate averaged over the 12-months ending 30 June each year. The rate for the 2019-20 financial year is 0.82%.



- SAFA has instructed the Crown Solicitor's Office (CSO) to prepare loan agreement templates to incorporate the above terms with a view to achieving a balance between providing protection for the state without placing onerous obligations on recipients, or being too restrictive to their future business operations.

#### Administrative Arrangements

- SAFA is now seeking your approval for various administrative arrangements that will allow it to administer the loans consistent with other industry assistance, and to properly authorise payments from the scheme that will allow SAFA to pay recipients, capture and process transactions in SAFA's systems and ensure transactions are recorded correctly in the Budget Papers and Financial Statements under Administered Items of the Department of Treasury and Finance (DTF AI).
- The provision of loans at concessional rates, which are lower than commercial interest rates, has a negative impact on the general government net operating balance, net lending and net debt position.
- Note the budget impacts associated with granting concessional loans will be determined once final terms, interest rates, value and number of loans are available. The budget impacts will be updated in the budget process.
- Note that within SAFA, the loan transactions will be managed through established practices that exist for 'Treasurer's Loans', including utilising its treasury and loan management system, Findur, and its DTF Administered Items Account (10000231), to calculate, process and record transactions. Established practices are compliant with the *Public Finance and Audit Act 1987*.
- Specifically, it is requested that you:
  - Approve the establishment of a new line within DTF AI titled 'Advances Granted – Concessional Bushfire Loans' to record loans from the scheme and approve expenditure authority of \$1.30 million for this new line in 2019-20, being the total amount requested for loan applications received under the loan scheme to date.
  - Approve the requisite financial authorisations for the new line within DTF AI titled 'Advances Granted – Concessional Bushfire Loans' in accordance with Treasurer's Instruction 8 Financial Authorisations and in order to provide SAFA the funds to enable loan payments to be made to recipients.
  - Note that future financial authorisations will be addressed as part of the existing annual financial authorisations process.
- It is also recommended that you authorise SAFA to make payments to recipients under these loan contracts from SAFA's DTF Administered Items Account (10000231) when payment conditions have been satisfied and in accordance with SAFA's Policy Manual financial delegations.
- Your approvals requested herein will have no budget impact. Operating impacts associated with the recognition of concessional loan arrangements under accounting standards will be addressed in the budget process.

**Recommended Loans**

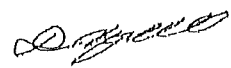
- SAFA has completed due-diligence on three applications for loans under the scheme:
  - o A \$30,000 unsecured loan to Stanley Law Pty Ltd for a total term of five years. This company is a law firm with a sole Director that operates from premises in Cudlee Creek (and has a shop-front in Adelaide). The Cudlee Creek property suffered 90% damage and the firm suffered a demonstrable deterioration in working capital due to a loss of income, primarily as the sole Director was unable to service clients whilst dealing with the property damage and necessary repairs. The applicant originally requested \$40,000 however SAFA considers that a loan of \$30,000 is more appropriate based on an assessment of the applicant's circumstances - the applicant is agreeable to this recommendation.
  - o A \$50,000 unsecured loan to Anja Pty Ltd as trustee for the Andrew Tolley Family Trust for a total term of five years. This company is a Primary Producer by the definition used in the scheme guidelines. The Applicant is a grape growing business operating a 28,27ha vineyard. Employees are the two directors, Andrew and Janine Tolley. The business has suffered lost earnings of over \$300,000, which far exceeds the value of the loan sought. The business has the capacity to service the loan.
  - o A \$500,000 secured loan to Eskdale Pty Ltd as trustee for Deahl Family Trust T/A "Lonely Tree Vineyards" for a total term of 10 years. The Applicant is a grape growing business operating a 37ha property. Employees are the two directors, David and Ruth Deahl. The grapes are sold to winemakers while management of the vineyard is outsourced. The Applicant has suffered total crop loss with a value of at least \$466,000 for FY2020. Together with the cost to repair vines and vineyard management costs, the Applicant's cash flows have declined by at least \$500,000 due to the bushfires. Historic business earnings support the applicant's capacity to service the loan from business revenue at circa \$82,500 p.a. on a \$500,000 loan. SAFA will obtain a first registered mortgage over the property, which is currently unencumbered with a capital value of \$1.46 million. The applicant has no existing finance debt.

SAFA's summary of each of these loans is attached, along with the corresponding due diligence report prepared by KPMG.

- SAFA will continue to work with its advisors, KPMG, to finalise due diligence on other applications received under the scheme and prepare appropriate recommendations to you in due course.
- Should you agree to make these three loans available from the scheme, SAFA will finalise the terms of the loan documentation with these applicants, with assistance from the CSO, and forward the loan documents to you for execution. Note that the CSO will register the mortgage security for the loan with Eskdale Pty Ltd on your behalf consistent with current practices.

  
 Jim Burfield  
 Acting General Manager, SAFA

29 March 2020

<b>Supported / Not Supported</b>	
	
David Reynolds CHIEF EXECUTIVE OFFICER	Rebecca Wigglesworth 0207 2201
Department of Treasury and Finance	
Date: 30.3.20	

Attachments:

1. SAFA summary Stanley Law Pty Ltd and KPMG Concessional Bushfire Loan Scheme - Application Review.
2. SAFA summary Eskdale Pty Ltd and KPMG Concessional Bushfire Loan Scheme - Application Review.
3. SAFA summary Anja Pty Ltd and KPMG Concessional Bushfire Loan Scheme - Application Review.

MINUTE

*6/5/2020*  
*12/5/20*  
*2020*



MINUTES forming ENCLOSURE

File SAF20/0320

Doc No A1418078

To: The Treasurer

**BUSHFIRE LOANS SCHEME – LOAN APPROVALS**

Timing: ROUTINE

Recommendations/Issues: It is recommended that you:

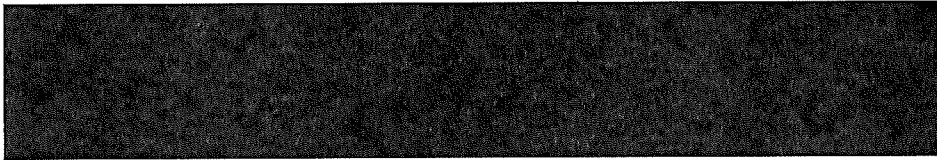
- note that on 5 April 2020 you approved administrative arrangements for the Bushfire Loans Scheme and approved the first three loans; and
- approve making the following two loans under the Scheme, which are recommended by SAFA following due diligence having been undertaken by KPMG;
  1. A \$30,000 unsecured loan to Bodyearth Ply Ltd for a total term of five years.
  2. A \$50,000 unsecured loan to Lobethal Freightlines Ply Ltd for a total term of five years.

Noted and Approved/Not-Approved  
*Rob Lucas*  
Hon Rob Lucas MLC  
Treasurer  
12/5/20

**Key Points:**

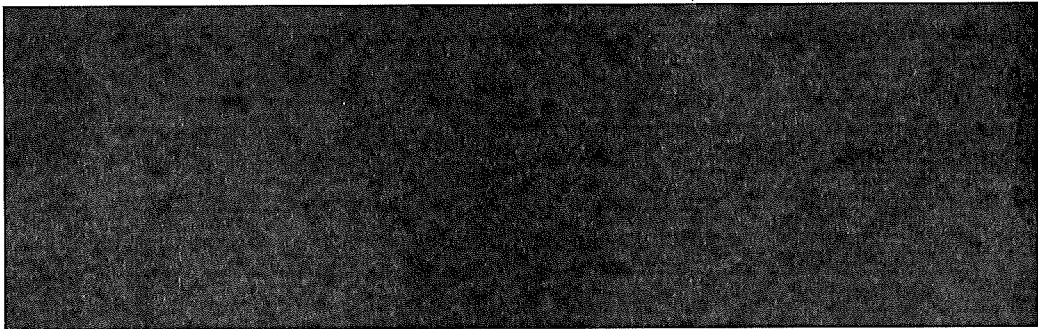
- On 5 April 2020 you approved administrative arrangements for the Bushfire Loans Scheme and approved the first three loans - minute attached.
- Due diligence has been completed on a further two applications for loans under the Scheme, being:
  1. A \$30,000 unsecured loan to Bodyearth Ply Ltd for a total term of five years. This company, trading as 'Kangaroo Island Trails', is a gourmet food and wine and scenic and wildlife tour adventure operator, with a sole Director and four casual employees operating from premises in Penneshaw, Kangaroo Island.





clause 7(1)(c)

- 2. A \$50,000 unsecured loan to Lobethal Freightlines Ltd as trustee for the Schultz Trading Trust for a total term of five years. This company is a general transport company providing transport in the Adelaide Hills, Barossa, Adelaide and surrounding areas. The company operates with ten full time and one casual employee.



clause 7(1)(c)

clause 13(1)(b)

SAFA's summary of each of these loans is attached, along with the corresponding due diligence report prepared by KPMG.

- SAFA recommends you approve making the following two loans under the Scheme:
  1. A \$30,000 unsecured loan to Bodyearth Pty Ltd for a total term of five years.
  2. A \$50,000 unsecured loan to Lobethal Freightlines Pty Ltd for a total term of five years.
- To date there have been a total of eighteen applications under the Scheme. SAFA will continue to work with its advisors, KPMG, to finalise due diligence on these applications and will prepare appropriate recommendations to you in due course.
- Should you agree to make these two loans available from the Scheme, SAFA will finalise the terms of the loan documentation with these applicants, with assistance from the Crown Solicitor's Office, and forward the loan documents to you for execution in due course.

Tim Burfield  
Acting General Manager, SAFA

5 May 2020

Contact Officer	Rhidal Ohlonho/ Rebecca Wigglesworth
Telephone	0220 6019/ 0207 2201
Email address	rhidal.ohlonho@sa.gov.au

Supported / Not Supported

**David Reynolds**  
**CHIEF EXECUTIVE**  
 Department of Treasury and Finance  
 Date: 5/5/20

**BUSHFIRE WORKING CAPITAL LOAN**

**FACILITY AGREEMENT**

Dated:

---

**BETWEEN:**

**THE TREASURER**

**AND**

**STANLEY LAW PTY LTD**



Government  
of South Australia

**GROWN SOLICITOR**

Level 17, 10 Franklin Street, Adelaide SA 5000

---

**THE SCHEDULE**

1. **BORROWER**  
STANLEY LAW PTY LTD (ACN 619 827 333) whose registered office is situated at Level 13, 40 Creek Street, Brisbane, Queensland, 4000
  2. **BORROWER'S AUTHORISED OFFICER**  
Karen Stanley, Director
  3. **BORROWER ADDRESS FOR NOTICES**  
Attention: Karen Stanley  
Address: 396 Cudlee Creek Road, Cudlee Creek, SA 5232
  4. **BUSINESS & BUSINESS PREMISES**  
Business: The operations and undertakings of the Borrower, as carried on by the Borrower as at the Commencement Date, of a law firm  
Business Premises: 396 Cudlee Creek Road, Cudlee Creek, SA 5232 and 1/19 Market Street, Adelaide, South Australia 5000
  5. **AVAILABILITY PERIOD**  
60 days
  6. **FACILITY LIMIT**  
THIRTY THOUSAND DOLLARS (\$30,000.00)
  7. **BASE RATE**  
A rate of fifty percent (50%) of the 10-year Commonwealth bond rate averaged from 1 April to 30 June of the Financial Year preceding the relevant Rate Set Date
  8. **RATE SET DATE**  
Each 1 July during the Term
  9. **INTEREST AND PAYMENT COMMENCEMENT DATE**  
The second anniversary of the Commencement Date
  10. **PREPAYMENT MINIMUM**  
TEN THOUSAND DOLLARS (\$10,000)
  11. **PRECONDITIONS TO DRAWDOWN**  
Not used
  12. **APPROVED PURPOSE**  
The payment of Working Capital Expenses of the Business properly and reasonably incurred by the Borrower.
-

**LOAN AGREEMENT**

THIS AGREEMENT is made  
the                      day of    2020

BETWEEN:

THE TREASURER a body corporate under the *Administrative Arrangements Act 1994 (SA)* of State Administration Centre, 200 Victoria Square, Adelaide, 5000, South Australia (Treasurer)

AND

THE BORROWER NAMED IN THE SCHEDULE (Borrower)

**BACKGROUND**

- A. The Government of the State has established the Program.
- B. The Borrower has applied for financial assistance from the Treasurer under the Program.
- C. The Treasurer has determined to make a loan available to the Borrower under the Program on the terms of this Agreement.

**1. DEFINITIONS AND INTERPRETATION****1.1 Definitions**

In this Agreement unless the contrary intention appears:

**Accounting Principles** means the applicable accounting standards and practices required by Law.

**Accounts** mean statements of financial performance, statements of financial position and cash-flow statements together with any statements, reports (including officers' and auditors' reports) and notes attached to or to be read with any of them.

**ADI** means a deposit taking institution authorised under the *Banking Act 1959 (Cth)* to carry on banking business in Australia.

**Advance** means the principal amount of an advance of money by the Treasurer to the Borrower under the Facility, or the principal outstanding from time to time, as the context requires, including any amount capitalised and added to such advance under this Agreement.

**Agreement** means this agreement, and includes the schedules to this agreement, which form part of, and will be read and construed as one with this agreement.

**Application** means the application submitted by the Borrower, or the Borrower's agent, in respect of the loan to be provided pursuant to this Agreement.

**Approved Purpose** means the purposes specified in the Schedule.

**Associate** has the same meaning as "associate" in the Corporations Act and includes a person deemed to be an associate of a designated body within the meaning of section 12 of the Corporations Act.

**Authorisations** include any authorisation, permit, consent, approval, resolution, licence, exemption, permission, recording,

filling or registration required by any Government Agency or Law.

**Authorised Officer** in the case of the Borrower means that person specified in the Schedule and in the case of the Treasurer includes the Treasurer's Representative, as may be updated from time to time in accordance with clause 16.2.

**Availability Period** means the period specified in the Schedule, which will commence on (and include) the Commencement Date and end on (and include) the last day of that period or such other extended period as the Treasurer approves in writing.

**Bank** means any ADI which provides Financial Indebtedness to the Borrower under Bank Facility Documents.

**Bank Facility Documents** means any funding and security documents pursuant to which a Bank provides Financial Indebtedness to the Borrower.

**Base Rate** means, on each Rate Set Date, the rate of interest specified in the Schedule.

**Business** means the Borrower's business described in the Schedule.

**Business Day** means any day (except Saturday or Sunday) on which banks are open for business in Adelaide.

**Business Premises** means the premises at which the Borrower conducts the Business as specified in the Schedule.

**Change of Control** of the Borrower means where, at any time, any person, alone or together with any Associate or Associates, ceases to, or commences to, directly or indirectly have Control of the Borrower.

**Commencement Date** means the date of this Agreement.

**Control** means:

- (a) control, or having the capacity to control, the composition of the board, or decision making, directly or indirectly, in relation to the financial and operating policies;
- (b) being in a position to cast, or control the casting of, more than 20% of the maximum numbers of votes that may be cast at a general meeting; or
- (c) having a relevant interest, as defined in section 608 of the Corporations Act, in more than 20% of the securities, as defined in the Corporations Act,

of an Entity (whether alone or together with an Associate).

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

**Crown** means the Crown in right of the State of South Australia, including the Treasurer.

**Drawdown** means the drawdown of the Advance by the Borrower under the Facility upon the terms and conditions of this Agreement.

**Drawdown Date** means the Business Day on which the Drawdown is made or is proposed to be made in a Drawdown Notice.

**Drawdown Notice** means a notice, in the form set out in the Annexure to this Agreement, from the Borrower to the Treasurer requesting a Drawdown under clause 4.1.

**Entity** has the meaning given in section 64A of the Corporations Act, but is also deemed to include a joint



venture within the meaning of Australian Accounting Standard 131.

**Event of Default** means the occurrence of any of the events listed in clause 11.1.

**Facility** means the facility provided by the Treasurer under this Agreement whereby the Borrower may, during the Availability Period, request an Advance of money for the Approved Purpose.

**Facility Limit** means the amount specified in the Schedule.

**Financial Indebtedness** means any indebtedness in respect of:

- (a) money borrowed, raised or owing under any form of agreement with any banks or financial institutions;
- (b) receivables sold or discounted;
- (c) any finance lease or operating lease.

**Financial Year** means each period from 1 July to the following 30 June.

**Funding Period** means the period commencing on the Interest and Payment Commencement Date and ending on the Repayment Date.

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

**GST** means the tax imposed by the GST Law.

**GST Law** has the same meaning attributed in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

**GST Liability** has the meaning given to it in clause 12.4(a).

**Insolvency Event** means any of the following events:

- (a) the administration, liquidation, dissolution or management of the Borrower or its assets under any Insolvency Law;
- (b) the appointment of a receiver, receiver and manager, manager, trustee, administrator, controller or any similar person in respect of the Borrower or its assets or undertaking under any Insolvency Law;
- (c) the Borrower enters into or takes any action to enter into an arrangement or compromise with, or assignment for the benefit of all or any class of its creditors or members or a moratorium involving any of them; or
- (d) the Borrower becomes or admits in writing that it is, or pursuant to any Insolvency Law is deemed to be insolvent.

**Insolvency Law** means any Law relating to insolvency, sequestration, liquidation or bankruptcy (including any Law relating to the avoidance of conveyances in fraud of creditors or of preferences and any Law under which a liquidator or trustee in bankruptcy may set aside or avoid transactions) and any provision of any agreement, arrangement or scheme, formal or informal, relating to the administration of any of the assets of any person.

**Insurances** mean such insurances necessary to cover all risks associated with the Business.

**Interest and Payment Commencement Date** means the

date specified in the Schedule.

**Interest Period** for has the meaning given in clause 6.2(a).

**Law** means principles of law and equity established by decisions of courts, or by any legislation of the Commonwealth of Australia or of any State or Territory of the Commonwealth or of any other relevant jurisdiction, or of any local, municipal, or shire authority now or in the future in force, and any rule, regulation, by-law, statutory instrument, order or other action now or in the future made under any such legislation or pursuant to any court decision, including any policy or notice issued or published by a Government Agency relating to any Tax legislation.

**Material Adverse Effect** means any change that has had, or is reasonably likely to have, an effect that is or will be materially adverse to:

- (a) the ability of the Borrower to perform its obligations under this Agreement;
- (b) the Business;
- (c) the interests of the Treasurer under this Agreement; or
- (d) the assets or financial condition of the Borrower.

**Modified Business Day Convention** means if anything is required by this Agreement to be undertaken on or by a day which is not a Business Day (including the making of any payment) then it must be undertaken on or by the following Business Day unless the day falls in the next month in which case it must be undertaken on or by the preceding Business Day.

**Obligations** means at any time the aggregate of the following amounts:

- (a) the Advance;
- (b) unpaid interest; and
- (c) all liabilities of the Borrower to the Treasurer under or by reason of this Agreement.

**Overdue Rate** means the daily interest rate being an aggregate of 2% per annum and the rate percent per annum determined by the Treasurer to be that which expresses as a percentage per annum the cost to the Treasurer of funding, on a daily basis for the period of the default, any amount due and unpaid under this Agreement.

**Period End Date** means the following dates:

- (a) the Interest and Payment Commencement Date; and
- (b) each 1 April, 1 July, 1 October and 1 January following the Interest and Payment Commencement Date during the Term up to and including the Repayment Date.

**Potential Event of Default** means any event, which with the giving of notice, lapse of time, fulfilment of any condition or any determination is likely to constitute an Event of Default.

**PPS Law** means each of the provisions of:

- (a) the *Personal Property Securities Act 2009 (Cth)*; and
- (b) any regulations made at any time under the *Personal Property Securities Act 2009 (Cth)*.

**PPS Lease** means a 'PPS Lease' as defined under the PPS Law.

**Prepayment Minimum** means the amount specified in the

Schedule.

**Program** means the program established by the Government of the State known as the 'Concessional Bushfire Loans Program'.

**Quarter** means each period of three (3) months ending on 30 June, 30 September, 31 December and 31 March.

**Rate Set Date** means each date specified in the Schedule.

**Related Body Corporate** has the same meaning as defined in the Corporations Act.

**Repayment Date** means the fifth (5<sup>th</sup>) anniversary of the Commencement Date, or such later date as may be extended with the written approval of the Treasurer.

**Significant Business Restructure** means, at the relevant time:

- (a) a Change of Control of the Borrower;
- (b) the sale of all of the Borrower's Business being conducted at that time, or a sale of a portion of that Business which the Treasurer determines is a significant portion of the Borrower's Business;
- (c) a significant restructure, reduction or transformation of the Borrower's Business being conducted at that time, which the Treasurer determines is likely to be materially adverse to the performance of the Borrower's obligations, or the interests of the Treasurer, under this Agreement; or
- (d) a relocation of all of the Borrower's Business being conducted at that time at the Business Premises out of the State of South Australia, or a relocation of a part of that Business out of the State of South Australia which the Treasurer determines is the relocation of a significant part.

**State** means the State of South Australia.

**Tax** means any and all present and future taxes, levies, imposts, deductions, charges, fees, compulsory loans and withholdings levied by any Government Agency, together with interest, penalties and expenses in connection with them.

**Term** means the period commencing on the Commencement Date and ending on the Termination Date.

**Termination Date** means the earlier of:

- (a) the Repayment Date; or
- (b) the date on which the Facility is terminated in accordance with this Agreement.

**Treasurer's Representative** has the meaning given to it in clause 15.1.

**Trust** means any trust in respect of which the Borrower is Trustee.

**Trust Deed** in respect of a Trust, means the trust deed establishing the Trust.

**Working Capital Expenses** means the essential expenses payable by the Borrower while the Business returns to its normal level of trading including payments:

- (a) to third party creditors of the Borrower;
- (b) in respect of goods and services necessary to carry-on

the Business;

- (c) to the Borrower's employees; or
- (d) to meet the scheduled servicing requirements for any loans or debts owing to financial institutions, including the Bank provided that the obligation to make those loan or debt repayments were in existence at the date of this Agreement, and those loans or debts are not being restructured or refinanced with the Advance,

and does not include:

- (e) payment of any loans from or payment of any debts owing to the Borrower's directors, officers or shareholders or any relative or associate of the Borrower.

## 1.2 Interpretation

The following rules apply in the interpretation of this Agreement unless the context requires otherwise:

- (a) the singular number includes the plural number and vice versa;
- (b) any gender includes all genders;
- (c) references to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them;
- (d) references to the whole of a matter or thing include a part of the matter or thing;
- (e) derivatives of words or phrases defined in this Agreement have a corresponding meaning;
- (f) a reference to an agreement or other document includes a reference to that agreement or document as varied, novated, supplemented or replaced at any time;
- (g) a reference to writing includes any mode of reproducing words in a visible form, and includes telex, e-mail or facsimile transmission;
- (h) a reference to a person includes a reference to the persons, successors, substitutes (including, without limitation, persons taking by novation) and assigns;
- (i) an agreement undertaking representation or warranty on the part of or in favour of two or more persons binds or is for the benefit of them jointly and severally;
- (j) headings are for convenience only and do not affect interpretation;
- (k) any reference to dollars, unless otherwise specified, is a reference to Australian dollars;
- (l) references to parties, clauses, schedules, exhibits or annexures are references to parties, clauses, schedules, exhibits and annexures to or of this Agreement unless it is expressly stated otherwise, and a reference to this Agreement includes any schedule, exhibit or annexure to this Agreement;
- (m) all accounting terms used have the meaning given to those terms under applicable Accounting Principles;
- (n) mentioning anything after the words include, includes or including does not limit what else might be included;
- (o) no provision or expression is to be construed against a party on the basis that the party (or its advisers) was responsible for the drafting of this document; and

- (p) a reference to any statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing them, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute.

### 1.3 Trusts

Unless the context requires otherwise, a reference to a transaction, asset, act or liability of any nature of the Borrower includes its transactions, assets, acts or liabilities as trustee (if applicable) and in its own right. Where a Borrower that is a trustee incurs an obligation, it incurs that obligation in its capacity as trustee, and in its own right.

## 2. THE FACILITY

### 2.1 Facility

Subject to the terms of this Agreement, and in reliance upon the representations and warranties made by the Borrower in this Agreement, the Treasurer agrees to make the Facility available to the Borrower during the Term.

### 2.2 Purpose of the Facility

Unless otherwise approved in writing by the Treasurer, the Borrower must only use the Advance for the Approved Purpose. For the avoidance of doubt, the Borrower must not use the Advance for any purpose other than the Approved Purpose and must not use the Advance to refinance any Financial Indebtedness.

### 2.3 Facility Limit

The Treasurer will not be obliged to make the Advance under the Facility, if to do so would cause the applicable Facility Limit to be exceeded.

### 2.4 Termination of Facility

On the Termination Date the Facility is cancelled and terminated and the Facility Limit is reduced to zero.

### 2.5 Information on application of the Advance

The Borrower will provide to the Treasurer any information that the Treasurer requires concerning how the Advance has been, or will be applied and will do so in writing within five (5) Business Days of being requested to do so. For this purpose the Borrower agrees to provide the Treasurer with access to any of the Borrower's books and records so as to verify any such information and consents to the Treasurer obtaining copies of such records. For the purpose of this clause a reference to the Treasurer includes a reference to any agent or adviser to the Treasurer.

## 3. CONDITIONS PRECEDENT

### 3.1 Preconditions to Facility

The obligation of the Treasurer to provide the Advance to the Borrower is subject to the Treasurer receiving, in all things to the Treasurer's complete satisfaction evidence all Insurances required by this Agreement are in full force and effect.

### 3.2 Preconditions to Drawdowns under the Facility

The obligation of the Treasurer to provide the Advance to the Borrower is subject to the following condition precedents:

- (a) the Treasurer being satisfied that no Event of Default or Potential Event of Default is subsisting, both at the date of the Drawdown Notice and at the Drawdown Date, or will result from the making of the Drawdown;
- (b) the Treasurer being satisfied that the Borrower's representations and warranties set out in clause 9 remain true and correct in every particular, both at the date of the Drawdown Notice and at the Drawdown Date, and also immediately after making of the Drawdown;
- (c) the Treasurer is satisfied that the Advance will be applied to the Approved Purpose;
- (d) receipt of a valid Drawdown Notice; and
- (e) the condition precedents to Drawdowns specified in the Schedule (if any).

### 3.3 Preconditions to Drawdowns under the Facility

The conditions precedent in this clause 3 are for the benefit of the Treasurer only, and may be waived or deferred at any time by the Treasurer in writing (and on such conditions as the Treasurer deems fit).

## 4. DRAWDOWNS

### 4.1 Notice

The Borrower may request the Advance under the Facility by one Drawdown on any Business Day during the Availability Period by delivering a Drawdown Notice to the Treasurer in accordance with this clause 4.

### 4.2 Contents of Drawdown Notice

The Drawdown Notice must be in the form specified in the Annexure to this Agreement and:

- (a) contain a certification that the Drawdown will be applied towards the Approved Purpose;
- (b) specify the amount of the Advance which shall not exceed the Facility Limit;
- (c) specify payment instructions, which must be to an account of the Borrower with an ADI; and
- (d) specify the proposed Drawdown Date which must be a Business Day during the Availability Period.

### 4.3 Requirements of Drawdown Notice

The Drawdown Notice must be received by the Treasurer not less than five (5) Business Days (or such shorter time as the Treasurer may agree) before the proposed Drawdown Date, must be signed for the Borrower by a duly authorised person and will be irrevocable once received by the Treasurer.

### 4.4 Making of Advance

Subject to the terms of this Agreement the Treasurer will make the Advance to the Borrower in accordance with the payment instructions specified in the Drawdown Notice for the Advance.

## 5. CANCELLATION OR REDUCTION OF FACILITY

### 5.1 Automatic cancellation of Facility and reduction of Facility Limit

If the Facility Limit has not been fully drawn down by the Borrower upon the expiry of the Availability Period, then the Facility will be automatically cancelled and the Facility Limit will be reduced to zero, effective as of the day of expiry of the Availability Period, and the Treasurer will have no obligation

to provide the Advance to the Borrower.

## 5.2 Automatic reduction of Facility Limit

If the Advance (in whole or part) under the Facility is repaid or prepaid the Facility Limit will be automatically reduced by the amount of the Advance repaid or prepaid and is not available to be re-drawn by the Borrower under the Facility.

## 6. PRINCIPAL AND INTEREST PAYMENTS

### 6.1 Interest & Payment Free Period

The parties acknowledge and agree that notwithstanding anything to the contrary in this Agreement:

- (a) Interest shall not accrue on the Advance prior to the Interest and Payment Commencement Date; and
- (b) the Borrower is not required to make payments of principal or interest prior to the Interest and Payment Commencement Date.

### 6.2 Interest Period

- (a) Subject to clause 6.2(b), each interest period for the Advance under the Facility (Interest Period) will be a duration of three (3) months, commencing on a Period End Date and ending on the next Period End Date.
- (b) The Interest Period for an Advance under the Facility is subject to adjustment as follows:
  - (i) the first Interest Period for the Advance will commence on the Interest and Payment Commencement Date and end on the first Period End Date that follows;
  - (ii) where the Interest Period would otherwise end after the Repayment Date of the Advance it will be adjusted to coincide with the Repayment Date for the Advance;
  - (iii) where the Interest Period would otherwise end after the Termination Date it will be adjusted to coincide with the Termination Date; and
  - (iv) where the first or last day of the Interest Period is not a Business Day it will be adjusted in accordance with the Modified Business Day Convention.

### 6.3 Interest Rate

- (a) The Borrower must pay the Treasurer interest on the outstanding balance of the Advance, which interest will accrue from and including the Interest and Payment Commencement Date until the Advance is repaid in full.
- (b) Interest is payable, and will accrue from day to day on the outstanding balance, for the Advance, and for each Interest Period of an Advance, at a rate equal to the Base Rate.
- (c) The Base Rate will be revised and reset on each Rate Set Date.

### 6.4 Calculation of Interest

Payments in the nature of interest under this Agreement will:

- (a) accrue from day to day;
- (b) be computed from and including the day when the money on which interest is to be payable was provided,

until, but excluding, the day when that money is paid or repaid;

- (c) If payable by reference to specific periods, be computed from and including the first day of the period, until, but excluding the last day of the period; and
- (d) be calculated on the basis of a year of 366 days (except in the case of a leap year, which will be on the basis of a year of 366 days) and for the actual number of days elapsed.

### 6.5 Principal and Interest Payments

- (a) The Borrower must:
  - (i) repay the Advance; and
  - (ii) pay the accrued interest on the Advance, by paying to the Treasurer equal instalments of principal and interest in respect of each Interest Period over the Funding Period for the Advance, which instalments must be paid for each such Interest Period on the last day of the Interest Period.
- (b) For the purposes of clause 6.5(a), the Treasurer will as soon as practicable following each Rate Set Date, provide to the Borrower a statement of:
  - (i) the Base Rate determined to apply to the Advance;
  - (ii) the amount of the instalment of principal and interest required to be paid in respect of each Interest Period over the next Financial Year of the Funding Period; and
  - (iii) the amount of the Advance that would be outstanding at the commencement of each Interest Period over the next Financial Year of the Funding Period.
- (c) The repayment of any portion of the Advance under the Facility is not available to be re-drawn by the Borrower.

### 6.6 Repayment of Advances and Obligations

The Borrower must repay the Advance, together with all other amounts which form part of the Obligations, to the Treasurer on the Termination Date.

### 6.7 Capitalisation of Interest

The Treasurer may capitalise any part of any interest, which becomes due for payment under this Agreement by the Borrower and is not paid, at the times determined by the Treasurer, and if no determination is made, will be deemed to have been capitalised quarterly, and interest shall be payable in accordance with clause 6.8 on that capitalised amount.

### 6.8 Interest on overdue amounts

- (a) The Borrower will pay to the Treasurer interest on amounts due and payable by it under this Agreement but unpaid (including any interest payable under this clause) for the period the amount remains unpaid.
- (b) Such interest will accrue before and (as a separate and independent obligation but without duplication) after any court judgement at a rate of interest equivalent to the Overdue Rate.
- (c) Interest payable on any unpaid amount will be paid on

demand and if not so paid will itself be deemed to be capitalised quarterly and bear interest in accordance with this clause as if it was an unpaid amount.

#### 6.9 Treasurer's determination and calculation

- (a) The Treasurer's determination as to the instalments of principal and interest, the rate of interest and calculation as to an amount of interest, at any time will be conclusive and binding on the Borrower in the absence of manifest error.
- (b) Where any amount of interest payable by the Borrower under this Agreement is required to be calculated for the purpose of payment or capitalisation, the Treasurer will notify the Borrower of the amount of interest calculated to be payable or capitalised, as soon as practicable after it has been calculated by the Treasurer. Failure to do so will not affect the obligations of the Borrower in any way.

### 7. VOLUNTARY PREPAYMENTS

#### 7.1 Voluntary Prepayment of Advances

- (a) Subject to this clause 7.1, the Borrower may, upon giving the Treasurer not less than five (5) Business Days prior written notice, prepay the Advance in whole or part. Such notice of prepayment must specify:
- (i) the prepayment date, which must be the last day of an Interest Period; and
  - (ii) the amount of the Advance to be prepaid.
- (b) Unless the Borrower is prepaying the whole of the Advance or as otherwise agreed by the Treasurer, the amount of the Advance to be prepaid must be at least equal to the Prepayment Minimum and in a whole multiple of the Prepayment Minimum.
- (c) The Borrower, must, together with any amount to be prepaid under this clause 7.1 pay to the Treasurer on the date of prepayment any unpaid interest accrued on the amount to be prepaid.
- (d) If the Borrower is prepaying the whole amount of the Advance under this clause 7.1, then together with the amount being prepaid the Borrower must pay to the Treasurer the balance of all amounts which form part of the Obligations.
- (e) If in a notice of prepayment given under clause 7.1(a), the Borrower is prepaying part of the Advance, then the amount of the equal instalments of principal and interest to be paid by the Borrower with respect to that Advance under clause 6.5 will be adjusted for the balance of the Funding Period of the Advance to take account of the reduction in the amount of the Advance, with effect on and from the date of the Treasurer's receipt of the amount to be prepaid.
- (f) For the purposes of clause 7.1(e), the Treasurer will, as soon as practicable following receipt of the amount prepaid, provide to the Borrower a revised statement of:
- (i) the Base Rate applying to the Advance;
  - (ii) the adjusted amount of the equal instalment of principal and interest required to be paid in respect of each Interest Period over the remaining balance of the Funding Period of the Advance; and
  - (iii) the amount of the Advance, after taking account of the amount prepaid, that is then outstanding and

that would be outstanding at the commencement of each Interest Period over the remaining balance of the Funding Period of the Advance.

- (g) Any notice of prepayment given by the Borrower is irrevocable once received by the Treasurer and the Borrower will be bound to prepay in accordance with the prepayment notice.
- (h) The Borrower must not prepay the Advance except in accordance with this clause 7.1.

#### 7.2 No Re-draw Capability

The prepayment of any portion of the Advance under the Facility is not available to be re-drawn by the Borrower.

### 8. PAYMENTS

- (a) The Borrower will make all payments required under this Agreement without set-off, counter claim, deduction or withholding.
- (b) If a payment becomes due on a day that is not a Business Day, the date for payment will be adjusted in accordance with the Modified Business Day Convention.
- (c) Unless otherwise advised by the Treasurer, all payments by the Borrower under this Agreement will be made to the following account of the Treasurer:

Bank:	Commonwealth Bank of Australia
Name:	DTF Industry Assistance
BSB No:	085 286
Account No:	1000223

### 9. REPRESENTATIONS AND WARRANTIES

#### 9.1 Representations and Warranties by the Borrower

The Borrower represents and warrants to the Treasurer that:

- (a) all information provided by the Borrower in the Application and any further information or documentation subsequently provided, is true and correct in all material respects and is not misleading, and there are no material facts known to the Borrower relating to the Borrower which could or might affect the willingness of the Treasurer to enter into an agreement with the Borrower in terms similar to the terms of this Agreement which have not been disclosed to the Treasurer;
- (b) it is a body corporate duly constituted under applicable Laws with the power to enter into and observe its obligations under this Agreement;
- (c) all Authorisations required to be obtained by it:
- (i) in connection with the execution, delivery and performance of its obligations under this Agreement, and
  - (ii) as a consequence of the entry into and performance by it of, and the validity of, this Agreement, have been obtained and are valid and subsisting;
- (d) this Agreement constitutes its valid and legally binding obligations, enforceable in accordance with their respective terms;
- (e) it is not in default of its obligations to the Bank as at the date of this Agreement under the Bank Facility

Documents and will not be as at the Commencement Date, and nothing in the terms of this Agreement will cause it to be in default;

- (f) Its entry into and performance of its obligations under this Agreement do not and will not contravene or result in any breach of any Law, its constituent documents, or any Indenture, mortgage, a Trust Deed, agreement or other Instrument or arrangement by which the Borrower or any of its assets are bound;
- (g) the Advance provided to it by the Treasurer under the Facility will be applied only and wholly towards the Approved Purpose, unless otherwise agreed with the Treasurer;
- (h) no Event of Default or Potential Event of Default exists;
- (i) to the best of its knowledge, information and belief, there is no Insolvency Event currently threatened or proposed in respect of the Borrower or any Trust;
- (j) the most recent Accounts of the Borrower give a true and fair view of the state of affairs as at the dates to which those accounts relate and the results of its operations for the accounting periods ended on those dates, and that there has been no Material Adverse Effect in the condition of the Borrower since the provision of those statements;
- (k) no litigation, arbitration, Tax claim, dispute or administrative proceeding is current or pending, or to its knowledge, threatened against or affecting the Borrower or any property of the Borrower, the adverse determination of which is likely to cause a Material Adverse Effect;
- (l) In respect of any Trust for which it is trustee:
  - (i) It is the present and only trustee of the Trust, and that no action has been taken or proposed to remove it as trustee of the Trust;
  - (ii) It has an unrestricted right to be indemnified out of the assets of the Trust in respect of and against all losses, costs, expenses, claims, damages, charges, liabilities and related expenses sustained or incurred as a consequence of this Agreement;
  - (iii) no vesting date has been determined under the provisions of the Trust Deed for the Trust;
  - (iv) It has the power, without restriction or condition, to enter into and perform its obligations under this Agreement both personally and in its capacity as trustee of the Trust and has taken the necessary corporate action to authorise the entry into and performance of this Agreement both personally and in its capacity as trustee of the Trust; and
  - (v) It is not in material default under the Trust Deed for the Trust, or under any law, indenture, mortgage, agreement or other Instrument or arrangement by which it is bound.

#### 9.2 Reliance on Representations and Warranties

The Borrower acknowledges that the Treasurer enters into this Agreement in reliance upon the representations and warranties made by the Borrower under this clause 9.

#### 9.3 Survival of Representations and Warranties

Each of the representations and warranties in clause 9.1 will survive the execution of this Agreement and will be deemed to have been repeated by the Borrower at each time the Borrower

submits a Drawdown Notice to the Treasurer and on the Drawdown Date as if then repeated by reference to the then existing circumstances.

#### 9.4 Notification

The Borrower must notify the Treasurer immediately upon becoming aware of a breach of a representation or warranty set out in this Agreement.

### 10. UNDERTAKINGS OF THE BORROWER

#### 10.1 Duration

The undertakings in this clause 10 will remain in force from and after the date of this Agreement and for so long as any obligation is or may be outstanding under this Agreement.

#### 10.2 Financial Information

- (a) As soon as practicable, and in any event not later than sixty (60) days after the completion of each Financial Year, the Borrower will provide the Treasurer with a copy of its Accounts, together with the Accounts for any Trust, for that Financial Year, each to be certified by the Authorised Officer of the Borrower, as giving a true and fair view of its financial condition and prepared in accordance with applicable Laws and applicable Accounting Principles.
- (b) The Borrower will provide the Treasurer, as soon as practicable, such further information regarding the financial condition and business operations of the Borrower, and any Trust, as the Treasurer may from time to time reasonably require.

#### 10.3 Insurance Requirements

The Borrower will effect and maintain the insurances, and on request by the Treasurer provide proof, acceptable to the Treasurer, of the currency of the insurances.

#### 10.4 General Undertakings

The Borrower must:

- (a) not, without the Treasurer's prior written consent, undertake a Significant Business Restructure;
- (b) immediately notify the Treasurer of the occurrence of any Event of Default or Potential Event of Default;
- (c) as soon as practicable notify the Treasurer in writing of any change in Authorised Officers;
- (d) comply in all material respects with all applicable Laws;
- (e) in respect of persons employed by the Borrower:
  - (i) maintain its registration under all relevant compulsory workers' compensation insurance schemes required by Law and duly pay or cause to be paid all levies required to be paid thereunder; and
  - (ii) otherwise comply with the provisions of the *Return to Work Act 2014 (SA)* and any other appropriate Law relating to compulsory workers compensation insurance or rehabilitation and compensation of workers;
- (f) make all accounts, records and other documentation relating to the Business and affairs of the Borrower available to the Treasurer when requested by the Treasurer;

- (g) provide such information in relation to the Borrower or the Business as the Treasurer reasonably requires at any time; and
- (h) as soon as practicable, and in any event not later than sixty (60) days after the completion of each Financial Year, provide an annual compliance certificate in form and substance reasonably required by the Treasurer.

#### 10.5 Trustee Undertakings

The Borrower will, in respect of any Trust for which it is trustee, ensure that:

- (a) the vesting date of the Trust will not be determined;
- (b) the Borrower will remain the only Trustee of the Trust;
- (c) the Borrower will not:
  - (i) do anything which could restrict the Borrower's ability to be indemnified out of the assets of the Trust;
  - (ii) breach its obligations as trustee of the Trust;
  - (iii) effect or facilitate termination or variation of the Trust Deed without the prior consent of the Treasurer;
  - (iv) do or suffer anything which could restrict, limit or impair its ability to observe its obligations under this Agreement; or
  - (v) retire as trustee of the Trust; and
- (d) any successor of the Borrower as trustee of the Trust executes any documents required by the Treasurer to ensure that this Agreement is binding on each successor.

### 11. EVENTS OF DEFAULT

#### 11.1 Events of Default

Each of the following is an Event of Default:

- (a) the Borrower does not pay at or before the due date any amount payable by it under this Agreement, and such default is not remedied within five (5) Business Days of the Treasurer notifying the Borrower of the non payment;
- (b) the Borrower defaults in fully performing, observing and fulfilling any provision of this Agreement, and such default is not remedied within fifteen (15) Business Days of the Treasurer notifying the Borrower of such default, provided always that the Treasurer shall not be required to provide the Borrower with notice of any default that the Treasurer considers to be incapable of remedy;
- (c) any representation, warranty or statement made, repeated or deemed to be made or repeated by the Borrower in this Agreement is proved to be untrue in any material respect when made, repeated or deemed to be made or repeated;
- (d) an Insolvency Event occurs; or
- (e) a Bank Facility Document becomes enforceable or is enforced; or
- (f) any event or series of events (whether related or not) occurs which has a Material Adverse Effect.

#### 11.2 Consequences of an Event of Default

At any time after an Event of Default occurs, the Treasurer may

at the Treasurer's option by way of written notice to the Borrower:

- (a) declare that an Event of Default has occurred; and/or
- (b) declare that its obligation to provide the Advance, or that any other obligations of the Treasurer under the Facility, are terminated, cancelled or suspended; and/or
- (c) declare the Advance immediately due and re-payable, whereupon the Advance will, and all other amounts which form part of the Obligations, become immediately due and payable by the Borrower to the Treasurer.

### 12. COSTS, EXPENSES, DUTIES AND TAXES

#### 12.1 Costs and Expenses

In addition to any other amounts payable by the Borrower to the Treasurer under this Agreement, the Borrower will, upon the Treasurer's demand, reimburse the Treasurer for, and keep it indemnified against:

- (a) all costs and expenses (including legal fees, costs and disbursements on a solicitor/client basis) in connection with any exercise, enforcement or preservation, or any attempted exercise, enforcement or preservation of any rights of the Treasurer; and
- (b) any present or future Tax, rate, levy, impost, deduction, withholding, charge and duty (including fines and penalties) that are payable or assessed in relation to this Agreement and any document or transaction contemplated thereunder.

#### 12.2 Preparation Costs

Each party will pay its own costs and expenses in connection with the negotiation, preparation and execution of this Agreement.

#### 12.3 Taxes and Duties

- (a) The Borrower will pay all stamp, loan transaction, registration and similar Taxes, including fines and penalties which may be payable to or determined to be payable in connection with the execution, delivery, registration, performance or enforcement of this Agreement or any payment, receipt or other transaction contemplated by this Agreement.
- (b) The Borrower will indemnify and keep indemnified the Treasurer against any loss or liability incurred or suffered by it as a result of the delay or failure of the Borrower to pay any such Taxes and duties.

#### 12.4 GST

- (a) Without limiting any other provision of this Agreement, if the Treasurer is or becomes liable to pay GST in respect of any supply it makes under, in accordance with, or pursuant to an enforcement of, this Agreement, whether or not that supply is made to or for the benefit of the Borrower (GST Liability), then:
  - (i) to the extent that an amount is payable by the Borrower to the Treasurer under this Agreement for that supply, that amount will be increased by the full amount of the GST Liability; and
  - (ii) otherwise, the Borrower will indemnify and keep the Treasurer indemnified for the full amount of the GST Liability.

- (b) If requested to do so by the Borrower, the Treasurer will use reasonable endeavours to assist or enable the Borrower to claim any applicable input tax credit in respect of any GST paid by the Borrower in relation to any supply made by the Treasurer under, in accordance with, or pursuant to an enforcement of this Agreement.

### 13. SET-OFF

- (a) The Borrower authorises the Treasurer, at any time after an Event of Default has occurred and is continuing, to apply without prior notice any credit balance or deposit (whether or not then due) to which the Borrower is at any time entitled on any account from the Treasurer or the Crown, whether or not in connection with this Agreement, in or towards satisfaction of any sum then due and unpaid from the Borrower to the Treasurer.
- (b) The Borrower authorises the Treasurer, at any time after an Event of Default has occurred and is continuing, to set-off without prior notice any amount owing (whether present or future, actual, contingent or prospective and on any account whatever) by the Treasurer or the Crown, whether or not in connection with this Agreement, against any liability (whether present or future, actual, contingent or prospective) of the Borrower under this Agreement.
- (c) The Treasurer will not be obliged to exercise any of its rights under this clause 13, which will be without prejudice and in addition to any right of set-off, combination of accounts, lien or other right to which the Treasurer is at any time otherwise entitled (whether by operation of Law, contract or otherwise).

### 14. ASSIGNMENTS

#### 14.1 Successors and Assigns

This Agreement is binding on and for the benefit of each party to this Agreement and their respective successors and permitted assigns.

#### 14.2 Assignments by the Borrower

The Borrower must not assign, novate or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the Treasurer.

#### 14.3 Assignments by the Treasurer

The Treasurer may assign, novate or otherwise transfer any of its rights or obligations under this Agreement at any time to the Treasurer, a minister or other statutory authority of the Crown. In such circumstances the Borrower will perform all such acts and execute all such agreements, assurances and other documents and instruments as the Treasurer may reasonably require to effect such assignment, novation or transfer.

### 15. TREASURER'S REPRESENTATIVES

#### 15.1 Appointment

The Treasurer appoints the person from time to time holding the position in the South Australian Government Financing Authority of "General Manager" or "Director Commercial Operations" as the Treasurer's representative for the purposes of administration of this Agreement, which appointment the Treasurer may vary or revoke at will by notice in writing to the Borrower ("*Treasurer's Representative*").

### 15.2 Authority

Subject to this Agreement, the Treasurer's Representative has authority to:

- (a) exercise all powers and functions of the Treasurer under this Agreement, other than the power to amend or vary this Agreement; and
- (b) bind the Treasurer in relation to any matter arising out of or in connection with this Agreement.

### 15.3 No Limitation

Nothing in this clause 15 shall prevent the Treasurer from exercising any of the Treasurer's powers or rights under this Agreement.

### 16. AUTHORISED OFFICERS

#### 16.1 Authorised Officers to Communicate

All notices, communications and dealings between the Treasurer and the Borrower connected in any way with this Agreement will be signed, conducted and undertaken by, and where necessary, be addressed and sent to, the respective Authorised Officers of the Treasurer or of the Borrower, as relevant.

#### 16.2 List of Authorised Officers

The Treasurer and the Borrower will from time to time notify the other, of the names of all persons authorised to act on their behalf and to give and accept instructions, notices or other communications (both oral and written) on their behalf for the purposes of this Agreement.

#### 16.3 Assumptions

The Treasurer and the Borrower will each be entitled to assume as to the other ("*Other Party*") (and is not obliged to make any inquiries) where it reasonably believed it to be the case:

- (a) the genuineness and authenticity of any instructions given or purportedly given by or on behalf of the Other Party in respect of this Agreement;
- (b) if the Other Party has not given a notice of revocation of authority of all such persons previously authorised, that the person giving the instructions is authorised by the Other Party to do so; and
- (c) that any persons claiming to be a person, details of whom have been given to it in accordance with clause 16.2, is in fact that person.

### 17. NOTICES

Any communication under or in connection with this Agreement must be:

- (a) in writing and addressed as shown in this paragraph (a) (or as otherwise notified in writing by that party to the other party from time to time);

#### The Treasurer

South Australian Government Financing Authority  
Attention: General Manager, SAFA  
Address: 5<sup>th</sup> Floor, State Administration Centre  
200 Victoria Square, Adelaide, SA, 5000

#### The Borrower

As specified in the Schedule.



- (b) signed by the party or a solicitor acting for that party;
- (c) delivered or posted by prepaid post to the address of the addressee shown in paragraph (a) of this clause 17; and
- (d) will be taken to be given or made when delivered, received or left at the address of the recipient shown in paragraph (a) of this clause 17, but if delivery or receipt is not on a Business Day, or is later than 4 pm (Adelaide time), it will be taken to have been given or made at the commencement of the next Business Day.

## 18. AUDITOR-GENERAL

### 18.1 Public Finance and Audit Act, 1987 (SA)

The Borrower acknowledges the provisions of the *Public Finance and Audit Act, 1987 (SA)*, as well as the Treasurer's instructions made under that Act.

### 18.2 Auditor-General

The Borrower agrees that nothing contained in this Agreement or any action taken pursuant to this Agreement limits the rights and responsibilities of the Auditor-General under the *Public Finance and Audit Act, 1987 (SA)*.

### 18.3 Assistance to Auditor-General

The Borrower must, without charge, provide the Auditor-General with such assistance (including the provision of information) as he or she may reasonably require in connection with any carrying out of his or her functions under the *Public Finance and Audit Act, 1987 (SA)*.

## 19. CONTRACT DISCLOSURE

The Borrower agrees to the disclosure of this Agreement and/or information in relation to this Agreement, in either printed or electronic form and either generally to the public or to a particular person as a result of a specific request, in accordance with the requirements of Department of the Premier and Cabinet Circular PC027 issued by the Government of South Australia.

## 20. CONTINUING OBLIGATION

This Agreement constitutes a continuing obligation regardless of any settlement of account, intervening payment, express or implied revocation or any other matter or thing, until a final discharge thereof has been given to the Borrower.

## 21. APPLICATION OF PAYMENTS AND CREDITS

Despite any other provision in this Agreement, as against the Borrower the Treasurer has an absolute discretion to apply any payment or credit received by it under this Agreement in reduction of any part or parts of the Obligations, whenever and on whatever account, notwithstanding 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.

## 22. SETTLEMENT CONDITIONAL

Any settlement or discharge between the Treasurer and the Borrower is conditional on whether there is a reasonable likelihood that any security or payment given or made by the Borrower or any other person in relation to the Obligations, will be avoided, repaid or reduced by virtue of any insolvency

Law. If there is such a reasonable likelihood, then if such security or payment is so avoided, repaid or reduced, the Treasurer is entitled to recover the value or amount of such security or payment avoided, repaid or reduced from the Borrower subsequently as if such settlement or discharge had not occurred.

## 23. FURTHER ASSURANCE

The Borrower agrees, on demand by the Treasurer, and at the entire cost and expense of the Borrower, to perform all such acts and execute all such agreements, assurances and other documents and instruments as the Treasurer reasonably requires to perfect or preserve the rights, benefits and powers afforded, created, or intended to be afforded or created, by this Agreement, including by reason of any variation, suspension, cancellation or termination, or extension, renewal or replacement, of this Agreement.

## 24. REMEDIES CUMULATIVE

The rights and remedies conferred by this Agreement on the Treasurer are cumulative and in addition to all other rights or remedies available to the Treasurer by Law.

## 25. WAIVER

### 25.1 No Waivers

Failure by the Treasurer to exercise or enforce, or a delay by the Treasurer in exercising or enforcing, or the partial exercise or enforcement by the Treasurer of any right, power or remedy provided by Law or under this Agreement will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement of that or any other right, power or remedy provided by Law or under this Agreement.

### 25.2 Written Waivers

Any waiver, approval or consent given by the Treasurer under this Agreement will only be effective and binding if it is given in writing.

### 25.3 No Waiver of other Breaches

No waiver of a breach of any term of this Agreement will operate as a waiver of another breach of that term or of a breach of any other term of this Agreement.

## 26. CONSENTS AND APPROVALS

Any consent or approval referred to in, or required under, this Agreement from the Treasurer may be given or withheld, or may be given subject to any conditions as that party (in the Treasurer's absolute discretion) thinks fit, unless this Agreement expressly provides otherwise.

## 27. DETERMINATIONS AND CERTIFICATES

Any certificate or determination of the Treasurer certifying or determining the amount payable by the Borrower, or stating any other act, matter or thing relating to this Agreement, is conclusive and binding on the Borrower in the absence of manifest error on the face of the certificate or determination.

## 28. MORATORIUM LEGISLATION

To the fullest extent permitted by Law, the provisions of all Laws which at any time operate directly or indirectly to lessen or affect in favour of the Borrower any obligation under this

Agreement, or to delay or otherwise prevent or prejudicially affect the exercise by the Treasurer of any power or right under this Agreement or otherwise, are expressly waived, negatived and excluded.

29. AMENDMENT

This Agreement can only be amended, supplemented, replaced or novated by another written agreement executed by the Treasurer and the Borrower that is expressed to amend, supplement, replace or novate this Agreement.

30. GOVERNING LAW

30.1 Governing Law

This Agreement shall be governed by and construed in accordance with the Laws of the State of South Australia.

30.2 Jurisdiction

- (a) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of South Australia and courts of appeal from them for determining any dispute concerning this Agreement. Each party waives any right it has to object to an action being brought in those courts, to claim that the action has been brought in an inconvenient forum, or to claim that those courts do not have jurisdiction.
- (b) The parties agree that none of them will institute or attempt to institute any proceedings in relation to any dispute or any matter or thing arising out of or in connection with this Agreement other than in a court of South Australia or, in respect of any proceedings in a Federal court, in the Adelaide registry of the relevant Federal court. A party will not, without the consent of all other parties, request that proceedings instituted in a Federal court in South Australia be heard outside South Australia.

31. ATTORNEYS

Each person who executes this agreement on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

32. COUNTERPARTS

This Agreement may be executed in any number of counterparts, all of which will all be taken to constitute one instrument.

EXECUTED by the parties as an Agreement:

THE COMMON SEAL of THE TREASURER )  
was affixed in the presence of: )

*R. Colegate* .....  
Witness  
*Rachael Colegate* .....  
Print Name

EXECUTED by STANLEY LAW PTY LTD )  
(ACN 619 827 333) in accordance with s127 )  
of the Corporations Act 2001 (Cth) )

*[Signature]* .....  
Sole Director

Print Name: *Karen Stanley*



ANNEXURE - DRAWDOWN NOTICE

To: Treasurer of South Australia
Attention: South Australian Government Financing Authority (SAFA)
Level 5, State Administration Centre,
200 Victoria Square, Adelaide, SA, 5000
General Manager
Facsimile: (08) 8115 1363

STANLEY LAW PTY LTD (Borrower) hereby irrevocably provides the Treasurer with a Drawdown Notice pursuant to clause 4 of the Loan Agreement dated [ ] between the Treasurer and the Borrower (Agreement).

Unless the context otherwise requires, terms defined in the Agreement have the same meanings where used herein.

1. The following particulars in relation to the proposed Advance are given:

(a) Proposed Drawdown Date (being a Business Day) is:

(b) The amount of the Advance being requested is: 1530,000

(c) Particulars of the bank account into which the proposed Advance is to be paid:

Bank:
Account Name:
BSB No:
Account No:



2. Representations and Warranties

The Borrower represents and warrants as at the date of this Drawdown Notice that:

- (a) the proposed Drawdown will only be applied towards the Approved Purpose as defined in the Agreement and for no other purpose;
(b) all the representations and warranties set out in the Agreement are true and correct and not misleading and are repeated as at the date of this notice; and
(c) that no event which with the giving of notice, the lapse of time or the making of any determination would be likely to become an Event of Default, has occurred or is continuing.

3. Attachments

The Borrower provides the following:

[ ]

DATED the 30th day of April 2020

EXECUTED by STANLEY LAW PTY LTD
(ACN 619 827 333) in accordance with Section 127(1) of the
Corporations Act 2001

Director:
Print Name: Karen Stanley

MINUTE

S/06/2020  
T20/042  
TR520D1854



MINUTES forming ENCLOSURE

File SAF20/0320

Doc No A1426088

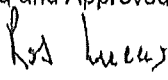
To The Treasurer

**BUSHFIRE LOANS SCHEME – FURTHER LOAN APPROVALS**

Timing: ROUTINE

**Recommendations/Issues:** It is recommended that you:

- note that on 5 April 2020 you approved administrative arrangements for the Concessional Bushfire Loans Scheme. To date you have approved five loans from the Scheme with a total value of \$660,000; and
- approve making the following two loans under the Scheme, which are recommended by SAFA following due diligence having been undertaken by KPMG:
  1. A \$50,000 unsecured loan to Osler Ply Ltd as trustee for the Vogt Family Trust for a total term of five years,
  2. A \$50,000 unsecured loan to PIYHAC Ply Ltd as trustee for PIYHAC unit trust, trading as Cudlee Creek Restaurant Tavern & Caravan Park, for a total term of five years.

Noted and Approved/Not-Approved  
  
 Hon Rob Lucas MLC  
 Treasurer  
 12/6/20

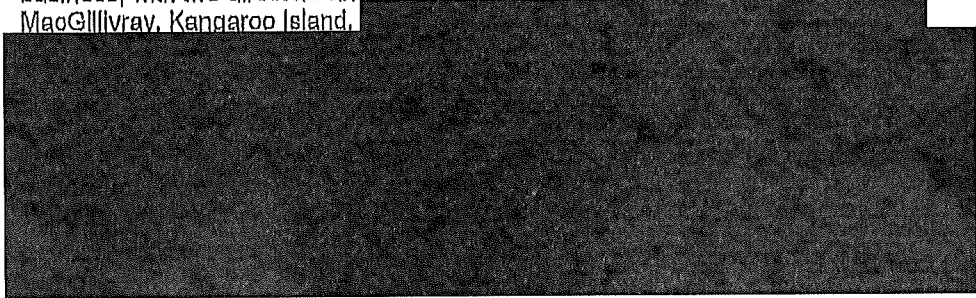
**Key Points:**

- On 5 April 2020 you approved administrative arrangements for the Concessional Bushfire Loans Scheme - minute dated 29 March 2020 attached.
- To date you have approved five loans from the Scheme with a total value of \$660,000.

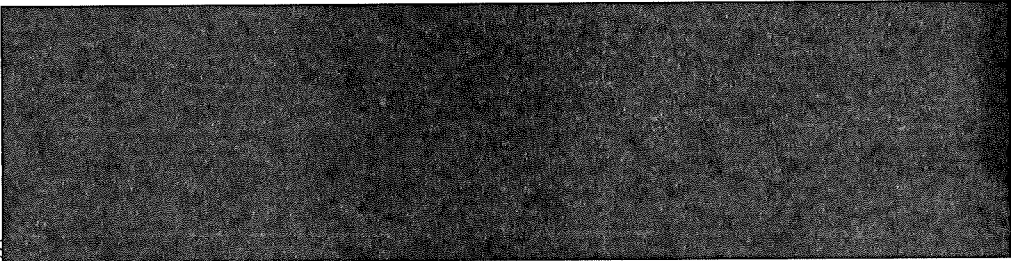


- Due diligence has been completed on a further two applications received under the Scheme. These applications are now being recommended for loans as follows:

1. A \$50,000 unsecured loan to Osler Pty Ltd, as trustee for the Vogt Family Trust, for a total term of five years. This company is a lime-sand supply and grain cartage business, with two directors and one casual employee that operates from premises in MacGillivray, Kangaroo Island.

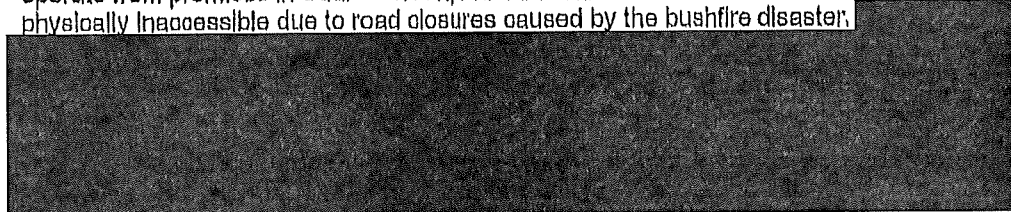


clause 7(1)(c)



clause 13(b)

2. A \$50,000 unsecured loan to PIYHAC Pty Ltd, as trustee for PIYHAC unit trust, trading as Cudlee Creek Restaurant Tavern & Caravan Park, for a total term of five years. The business has five casual employees and two working directors that operate from premises in Cudlee Creek, Adelaide Hills. The business became physically inaccessible due to road closures caused by the bushfire disaster.



clause 7(1)(c)

SAFA's summary recommendation for each of these loans is attached, along with the corresponding due diligence report prepared by KPMG.

- SAFA therefore recommends you approve making the following two loans under the Scheme:
  1. A \$50,000 unsecured loan to Osler Pty Ltd as trustee for the Vogt Family Trust for a total term of five years.
  2. A \$50,000 unsecured loan to PIYHAC Pty Ltd as trustee for PIYHAC unit trust, trading as Cudlee Creek Restaurant Tavern & Caravan Park for a total term of five years.
- SAFA has now received twenty four applications under the Scheme and will continue to work with its advisors, KPMG, to finalise due diligence on all applications and prepare appropriate recommendations to you in due course.

- Should you agree to make these two loans available from the Scheme, SAFA will finalise the terms of the loan documentation with these applicants, with assistance from the Crown Solicitor's Office, and forward the loan documents to you for execution in due course.

*AE Hughes*

Anna Hughes  
GENERAL MANAGER, SAFA

4 June 2020

Contact Officer:	Rindal Chilonho/ Rebecca Wigglesworth
Telephone:	0220 0013/ 0207 2201
Email address:	rindal.chilonho@saf.gov.au

<p><u>Supported</u> / Not Supported</p> <p><i>DR</i></p> <p>David Reynolds <u>CHIEF EXECUTIVE</u> Department of Treasury and Finance Date... <u>4.6.20</u></p>
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**Attachments:**

- SAFA summary Oslar Pty Ltd and KPMG Concessional Bushfire Loan Scheme - Application Review.
- SAFA summary PIYHAC Pty Ltd and KPMG Concessional Bushfire Loan Scheme - Application Review.