

**(Applicant)**

**Queensland Law Foundation Pty Ltd**

# **LOAN AGREEMENT**

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## LOAN AGREEMENT

### PARTIES

State of Queensland (**Applicant**)

AND

**Queensland Law Foundation Pty Ltd** of Law Society House, 179 Ann Street, Brisbane in the State of Queensland (**QLF**)

### BACKGROUND

- A. QLF has agreed at the request of the Applicant to provide financial accommodation to the Applicant.
- B. QLF and the Applicant have agreed to enter into this agreement to set out the terms of the financial accommodation.

### AGREEMENTS

#### 1. INTERPRETATION

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##### 1.1 Definitions

In this document:

**Advance** means a principal amount specified in **Item 1** of the Schedule.

**Drawdown Date** means the date on which the Advance is to be drawn down at the request of the Applicant or any other date that the Applicant and QLF agree to in writing.

**Event of Default** means any of the events, omissions or circumstances specified in clause 7.1.

**Loan** means at any time and from time to time the principal amount of the advance outstanding at that time.

**Repayment Date** means the date specified in **Item 2** of the Schedule or any other date that the Applicant and QLF agree to in writing.

##### 1.2 Construction

In this document:

- (a) words in the singular include the plural and vice versa;
- (b) words indicating any gender indicate the appropriate gender;
- (c) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (d) a reference to a person is to be construed as a reference to an individual, body corporate, unincorporated association, partnership, joint venture or government body;



- (e) any reference to a party includes that party's executors, trustees, administrators, successors in title and assigns;
- (f) references to any document including this document include references to the document as amended, consolidated, supplemented, novated or replaced;
- (g) a reference to a Statute includes a reference to or citation of all enactments amending or consolidating the Statute and to an enactment substituted for the Statute;
- (h) monetary references are references to Australian currency;
- (i) the Background and Schedule forms part of this document;
- (j) a reference to an Item is a reference to an Item in the Schedule to this document; and
- (k) headings are included for convenience only and do not affect interpretation of this document.

## **2. ADVANCE**

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- 2.1 QLF will at the request of the Applicant provide the Advance to the Applicant by way of a cash advance on the Drawdown Date on the terms set out in this document.
- 2.2 The Advance will be provided to the Applicant by way of cheque drawn by QLF payable to the Applicant or as the Applicant directs.

## **3. REPAYMENT**

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- 3.1 The Applicant must repay and finally discharge the Loan on the Repayment Date.
- 3.2 QLF may extend the Repayment Date for a further period agreed to in writing between the parties.

## **4. PAYMENTS**

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- 4.1 All payments to be made by the Applicant to or at the direction of QLF must be made in Australian dollars in immediately available funds not later than 4 pm Brisbane time on the due date.
- 4.2 All payments to be made by the Applicant to QLF must be paid to QLF at the address specified in **Item 3** of the Schedule or at any other place QLF may direct in writing.
- 4.3 All payments under this document must be made by the Applicant without set-off or counterclaim and free and clear of and without any deductions.
- 4.4 All payments under this document must be made by the Applicant without any deduction for any income or other taxes, imposts, deductions or withholdings of any kind. If the Applicant is compelled by law to make any deductions, the Applicant must make sure that the deduction does not exceed the minimum legal liability in that regard. The Applicant must pay QLF any additional amount necessary to make sure that QLF receives the full amount of the payment due under this document as if the deduction had not been made.
- 4.5 The Applicant must provide QLF with a tax receipt and any other documentation certifying the actual payment of any deduction made under clause 4.4.

## **5. REPRESENTATIONS AND WARRANTIES**

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- 5.1 The Applicant represents and warrants to QLF that:
- (a) it has the necessary capacity for the execution, delivery and performance of this document;
  - (b) it has fully disclosed in writing to QLF all material facts relating to it which is material to the decision of QLF to enter into this document and provide financial accommodation to the Applicant;
  - (c) it does not have and will not during the term of this document have any right of set-off or counterclaim or any right to rescind or any other claim with respect to this document by way of cross action against QLF;
  - (d) it is not the trustee of any trust and enters into this document on its own behalf and not as trustee of any trust; and
  - (e) it has not committed an act of bankruptcy.
- 5.2 Each of the representations and warranties contained in clause 5.1 will be considered to be repeated on each day during the term of this document, with reference to the facts and circumstances then subsisting, as if made on each of those days.

## **6. UNDERTAKINGS**

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For as long as the Loan remains outstanding under this document to QLF, the Applicant undertakes with QLF to:

- (a) provide QLF with all information relating to the Applicant's financial position which QLF may reasonably request;
- (b) comply with the requirements of all applicable rules, laws, regulations, orders and decrees of any person binding on the Applicant;
- (c) notify QLF promptly of the occurrence of an Event of Default or any event which with the giving of notice, lapse of time or fulfilment of any condition, would become an Event of Default and the steps taken to remedy it; and
- (d) notify QLF promptly of any event or change in the Applicant's circumstances, the effect of which either would or might render any representation or warranty made in this document untrue or incorrect in any way.

## **7. EVENTS OF DEFAULT**

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- 7.1 Each of the following is an Event of Default:
- (a) if the Applicant fails to repay the Loan on the Repayment Date or fails to pay any other money payable under this document on the due date for payment of that money;
  - (b) if the Applicant fails to perform or observe any of the undertakings of this document unless the non-performance or non-observance has been waived or excused by QLF in writing;
  - (c) if QLF ascertains that the Applicant has made any false, inaccurate or misleading statement which in the opinion of QLF has a material effect on the provision by QLF of the Advance or the maintenance of the Loan; or
  - (d) if the Applicant commits an act of bankruptcy.

- 7.2 If an Event of Default has occurred QLF may at any time, by notice to the Applicant, do any or all of the following:
- (a) declare that the Loan is immediately due and payable in which case the Loan will be immediately due and payable; or
  - (b) declare that the Loan is due and payable on demand, in which case the Loan will become due and payable immediately on demand by QLF.

## **8. COSTS AND EXPENSES**

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The Applicant must on demand by QLF pay and indemnify QLF against all costs, losses, charges, expenses, liabilities, damages, fees and disbursements including all reasonable legal costs on a solicitor and own client basis paid or incurred by QLF of or incidental to:

- (a) the exercise or attempted exercise of any right, power, privilege, authority or remedy of QLF under this document; and
- (b) all taxes excluding income tax payable by QLF, outgoings, penalties, fines, demands, charges, costs, stamp and other duties and assessments imposed by any government agency directly or indirectly on this document or any payment or receipt under this document.

## **9. NOTICES**

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- 9.1 All notices given under this document must be in writing and may be delivered in person or by mail or sent by facsimile transmission to the address for service specified in **Item 3** of the Schedule.
- 9.2 A party may change its particulars for service by notice in writing to the other parties.
- 9.3 A notice sent by post will be considered to be received 3 days after posting.
- 9.4 A notice sent by facsimile transmission will be considered to be received on the date stated on the facsimile transmission report produced by the machine sending the facsimile.

## **10. REFERENCES TO AND CALCULATIONS OF TIME**

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- 10.1 Where time is to be calculated by reference to a day or event, that day or the day of that event is excluded.
- 10.2 Where something is done or received after 5.00 pm on any day, it will be taken to have been done or received on the following day.
- 10.3 Where a term in this document requires anything to be done on a Saturday, Sunday or public holiday, that matter or thing must be done or will be taken to have been done on the next succeeding day which is not a Saturday, Sunday or public holiday.

## **11. GENERAL**

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### **11.1 Severability**

Every term of this document is independent of the others. Any term which is prohibited or unenforceable in any jurisdiction is to the extent of the prohibition or unenforceability considered removed without invalidating the remaining terms.

### **11.2 Entire Agreement**

This document represents the entire agreement between the parties and supersedes all prior representations, agreements, statements and understandings between the parties.



### **11.3 Certificate as conclusive evidence**

A certificate signed by QLF about a matter or about a sum payable to it under this document is conclusive evidence of the amount or any other factual matter stated in it unless proven to be incorrect.

### **11.4 Obligations not affected by delay or waiver**

Unless expressly waived by QLF any omission, delay or waiver by it does not affect the obligations of the Applicant or the rights of QLF under this document.

### **11.5 No moratorium**

The terms of any legislation postponing payment of money or claiming to restrict any rights of QLF are to the extent that it is lawful expressly excluded from application to this document.

### **11.6 Amendment**

This document may only be varied by the written agreement of the parties.

### **11.7 Applicable Law**

This document is governed by the laws in force in the State of Queensland. The parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of the Courts of Queensland.

### **11.8 Assignment**

- (a) The Applicant may not transfer its obligations under this document without the approval of QLF.
- (b) QLF may assign its rights under this document to any person without the consent of the Applicant.

### **11.9 Consents**

Where the consent, waiver or approval of QLF is required under this document:

- (a) unless otherwise expressed it may in its discretion and whether or not acting reasonably be withheld or given subject to terms; and
- (b) it is not valid unless expressly given in writing by QLF.

### **11.10 Attorneys**

Each person who executes this document for 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.

### **11.11 Joint and Several**

An obligation of two or more persons under this document binds them jointly and severally and every expressed or implied agreement or undertaking by which two or more persons derive any benefit in terms of this document will take effect for the benefit of those persons jointly and severally.

### **11.12 Waiver**

The failure of a party to this document to enforce a term or the granting of any time or indulgence will not be construed as a waiver of the term nor of a waiver of the right of the party at a later time to enforce the term.

### **11.13 Counterparts**

- (a) This document may consist of a number of counterparts and if so the counterparts taken together constitute one and the same instrument.
- (b) This document may be executed by one or more of the parties executing a counterpart, which may be a facsimile copy of this document and transmitting that executed counterpart by facsimile to the party or parties, which on either the sender's transmission record indicating that it was received without error or the receipt by the other party or by one of the other parties of the executed document by the sender, will be taken as conclusive evidence of the execution of this document by that party.
- (c) The parties agree to be bound by this document being executed in counterparts under this clause.

### **11.14 Publicity**

No public announcement or communication about the negotiations of the parties or the subject matter or terms of this document will be made without the approval of both parties.

### **11.15 Confidential Information**

QLF may for the purpose of exercising any of its rights, powers or remedies under this document disclose to any person any documents, records or information about the Applicant or this document that QLF thinks fit even if the disclosure of those documents or records or that information would be in breach of any law or duty owed by QLF to the Applicant in respect of those documents or records or that information including a duty to keep them secret or confidential.

### **11.16 No Merger**

The rights and obligations of the parties contained in this document will not be extinguished by or on completion.

**SCHEDULE**

**Item 1:** \$ to be paid by QLF to the Applicant.

**Item 2:** day of , 20 .

**Item 3:**

Address for service of Notices for QLF:

Ground Floor  
179 Ann Street  
Brisbane Qld 4000

Address for service of Notices for the Applicant:



