

Platinum

mortgagemanagement

General Conditions for Continuing Credit Facility

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GENERAL CONDITIONS FOR CONTINUING CREDIT FACILITY

Definitions

1. In this agreement including the recitals and in these general conditions unless contrary to or inconsistent with the context:
 - Account means the Borrower's running account with Platinum.
 - Additional Security means the property described in the schedule as Additional Security.
 - Adjusted Closing Balance means, for a Payment Period, the closing balance of the Account at the end of a Payment Period less any amount that is an Overdue Amount, is due and payable or is payable on demand.
 - Annual Percentage Rate means subject to change as herein provided the annual rate of interest described in the schedule as the Annual Percentage Rate or as notified to the Borrower from time to time.
 - Borrower means the person or persons described in the schedule as the Borrower.
 - Business Day means a day on which banks are open for business in the Jurisdiction.
 - Card means any card, token or document that is evidence of the Borrower's right to use the Account.
 - Code means the Consumer Credit Code in force in Queensland.
 - Credit Card means the credit card specified in this agreement and any credit card given in addition thereto or in substitution therefor.
 - Credit Card Authority means the credit card authority that is part of the document containing this agreement or any other authority to charge a credit card in the same or similar terms given in substitution therefor.
 - Credit Card Rate means the rate notified to the Borrower from time to time for the various brands of credit card and currently the rate specified in the schedule and described as the Credit Card Rate or if no percentage is so specified 4%.
 - Credit Limit means the maximum amount of credit available to the Borrower in respect of the Account as described in the schedule as the Credit Limit or as fixed by the terms of this agreement.
 - Credit Report and Credit Reporting Agency have the meanings given to those words by the Privacy Act 1988.
 - Date of Commencement means the day on which this agreement is signed by the parties.
 - DDR means the Direct Debit Request that is part of the document containing this agreement.
 - Default Rate means the annual rate of interest being 10% plus the Annual Percentage Rate, or if there is a maximum rate of interest permitted by law in the Jurisdiction, the annual rate of interest being that maximum rate or 10% plus the Annual Percentage Rate, whichever is the lower rate.

Direct Debit Request Service Agreement means the agreement set out below with that name.

Finance Approval means approval in writing from the First Mortgagee to lend to the Borrower the amount specified therein to enable the Borrower to purchase the Land pursuant to the Land Sale Agreement.

First Mortgagee means a reputable financial institution specified in the Request for Finance.

First Home Owner Grant means the First Home Owner Grant scheme established by government to offset the effect of the GST on home ownership by providing a grant to first homeowners.

Guarantor means the person or persons described in the schedule as the Guarantor.

Guarantor Security means the property (if any) described in item 5 of the schedule as Guarantor Security.

Initial Period means the period commencing on the date that the loan for the first Purchase is debited to the Account and ending 2 years thereafter.

Jurisdiction means the State of Queensland.

Known Charges means the total amount of credit fees and charges to the extent ascertainable as set out in the schedule.

Land means the land the subject of a Land Sale Agreement.

Land Sale Agreement means an agreement in writing for the sale and purchase of land between the owner of the land as seller and the Borrower as buyer.

Over Limit Amount means the excess of the closing balance of the Account at the end of the relevant Payment Period over the Credit Limit.

Overdue Amount means for a Payment Period any unpaid part of a Periodic Payment due in a previous Payment Period.

Payment Period means the period of time described in the schedule as "Payment Period" and if none monthly.

Periodic Payment for a Payment Period means:

- a) if the Repayment Type under Item 9 of the schedule is Option 2 (interest free) then:
 - i. for the first Purchase only, zero for the Initial Period and thereafter the Standard Periodic Payment;
 - ii. for the second and every subsequent Purchase the Standard Periodic Payment;
- b) if the Repayment Type under Item 9 of the schedule is Option 3 (interest only) then:
 - i. for the first Purchase only, interest debited to the Account during the Initial Period and thereafter the Standard Periodic Payment;
 - ii. for the second and every subsequent Purchase the Standard Periodic Payment;
- c) if the Repayment Type under Item 9 of the schedule is Option 1 (normal) or no option is selected then the Standard Periodic Payment.

Platinum means Platinum Mortgage Management Pty Ltd ACN 125 739 568 of P.O. Box 2171 Fortitude Valley BC Queensland 4006.

Primary Payment Method means the payment method selected by the Borrower in the schedule and if none is selected the DDR.

Purchase means the purchase of the Land by the Borrower or the satisfaction of a debt owed by the Borrower to a person either arising out of that purchase or for improving the Land.

Request for Finance means request for the advance of credit under this agreement in a form approved by Platinum from time to time duly signed by the Borrower together with a copy of the Land Sale Agreement, a copy of the Finance Approval to which the said request relates and a valuation of the Land.

Schedule means the schedule to this agreement.

Second Mortgage means a second mortgage over the Land on such terms as Platinum reasonably requires to secure the payment of all debts owing by the Borrower under this agreement.

Secondary Payment Method means the payment method that is not selected by the Borrower in the schedule and if none is selected the Credit Card.

Standard Periodic Payment means either:

a) the Adjusted Closing Balance if it is less than \$25; or

that percentage specified in the schedule and described as minimum periodic purchase percentage (or if there is no such percentage in the schedule 10%) of the Adjusted Closing Balance or \$25 whichever is the greater amount.

Statement of account means a statement of account as required by the Code.

Statement Period means a period as determined by Platinum from time to time not exceeding three months and until otherwise notified is the period described in the schedule as the Statement Period.

This agreement means the agreement between the Borrower and Platinum (and if there is a guarantor, the Guarantor) that incorporates all of these general conditions.

Application for credit

2. This agreement does not commence until or unless:

- a) the Borrower is the owner of the Additional Security (if any);
- b) Platinum receives a Credit Report on the Borrower from a Credit Reporting Agency that is satisfactory to Platinum; and
- c) all documentation is correctly completed and signed.

Until these conditions are fulfilled or until Platinum waives all or any of these conditions by paying money to or at the direction of the Borrower, this agreement is and is to be treated by the parties as an application for credit by the Borrower. If any of the said conditions are not satisfied or waived as aforesaid within 10 days after the Date of Commencement Platinum will notify the Borrower accordingly in writing and, if necessary, comply with section 18M of the Privacy Act 1988 and refund any money drawn by Platinum from the account specified in the DDR by using the DDR or otherwise, whereupon neither party will have any claim against the other of any type whether in tort or in contract, at law or in equity.

Authorisation and provision of credit

3. Platinum may decline to supply credit to the Borrower if it would mean that the Credit Limit would be exceeded, or the Borrower is in breach of this agreement. Platinum reserves the right to decline any transaction on the Account.
- 3.1 Credit can only be obtained pursuant to a Request for Finance for the purpose only of a Purchase and if:
 - (a) either the Card or other evidence to the satisfaction of the Platinum as to the identity of the Borrower or any one or more of them, is presented to Platinum;
 - (b) either there is Finance Approval or the Borrower already owns the Land;
 - (c) it is secured by the Second Mortgage and the Guarantor (if any);
 - (d) any money to which the Borrower is entitled from a First Home Owner Grant is credited to the Account immediately upon receipt thereof by the Borrower;
 - (e) in the case of home improvement a certificate from the proposed builder setting out the schedule of proposed works and the actual or estimated cost of carrying out that work;
 - (f) the Borrower is not in default of this agreement.
- 3.2 A Request for Finance can only be made after Finance Approval.
- 3.3 In the case of home improvement funds will be advanced against a certificate from the builder setting out the work done and the cost thereof.

Credit Limit

4. The Credit Limit may be increased at the request or with the consent of the Borrower in any form required by law and may be decreased by Platinum at any time without prior notice and without the Borrower's consent.
- 4.1 Transactions on the Account must not exceed the Credit Limit. The Borrower must immediately pay the amount of any excess of the outstanding balance on the Account over the Credit Limit.

Payment

5. The Account will be debited with, and the Borrower agrees to pay to Platinum the amount of each advance of credit, interest calculated in accordance with this agreement, the fees and charges described in this agreement and any other amounts owing under this agreement.
- 5.1 At the end of every Payment Period the Borrower must pay not less than the Periodic Payment.
- 5.2 The Periodic Payment will be shown on the statement of account. The Borrower may pay any additional amount as it sees fit.
- 5.3 All money payable by the Borrower must be paid either by the DDR or the Credit Card.
- 5.4 Platinum may change at any time the amount or frequency or time for payment or the method of calculation of payments under this agreement.
- 5.5 Any payment made by the Borrower (either by the DDR or the Credit Card) will be credited to the Account:

- (a) if the money is received by Platinum on a Business Day before the end of that day, on that day;
 - (b) if the money is received after the end of a day or on a day which is not a Business Day, on the following Business Day.
- 5.6 If any payment is made other than by DDR or a Credit Card Authority:
- (a) any payment made by the Borrower will be credited to the Account the first Business Day after it was received¹;
 - (b) and it is not accompanied by a reasonable means of Platinum identifying the Account, payment will only be credited to the Account when the Borrower provides Platinum with satisfactory evidence that the payment should be credited to the Account.
- 5.7 Payments will be applied as Platinum sees fit from time to time without prior notice to the Borrower.
- 5.8 Any Overdue Amount and any Over Limit Amount are payable immediately.
- 5.9 If there is both a DDR and a Credit Card Authority Platinum will first seek to collect payment using the Primary Payment Method. If the Primary Payment Method fails for any reason Platinum will then seek to collect payment using the Secondary Payment Method. If the charge to the Secondary Payment Method is honoured Platinum will reduce the dishonour fee in respect of that Primary Payment Method failure by 50%.

Interest

6. The interest for a Payment Period will be calculated for each day of the relevant Payment Period and debited to the Account daily immediately after the end of each day.
- 6.1 Interest is charged on the balance of the Account on a daily basis by applying at the end of each day the current daily percentage rate (namely the current Annual Percentage Rate divided by 365) to the balance of the Account.
- 6.2 If the Repayment Type under Item 9 of the schedule is Option 2 (interest free) interest will not be charged on the first Purchase only during the Initial Period or until the date that the whole amount payable under this agreement (but not including any interest that has not then accrued in accordance with the provisions of the Code) shall become immediately due and payable, whichever is the shorter period.
- 6.3 Platinum may change the Annual Percentage Rate at any time and notify the Borrower of the change by the statement of account or otherwise as it sees fit.

Statement of account

- 6.4 If there is a law that obliges Platinum to supply a statement of account periodically Platinum will send the Borrower a statement of account on a day determined by it but not less than every Statement Period.

¹ nb if paid by cheque it may take more than 5 Business Days to receive the money.

Card

7. Platinum may but is not obliged to issue a Card.
- 7.1 A Card can only be used to obtain credit if the person using the Card is the Borrower and it is used prior to the expiry date shown on the face of the Card.
- 7.2 The Card is the property of Platinum. The Borrower must immediately cut any Card in half and return it to Platinum on demand and must destroy any Card as aforesaid when the expiry date on it has passed. Platinum may issue a new Card to the Borrower at any time. This includes re-issuing a Card because an existing Card has reached, or will soon reach, its expiry date and replacing a Card which has been reported to Platinum as a lost or stolen Card. All these Cards are subject to this agreement. Platinum reserves the right not to reissue or replace a Card.
- 7.3 The Borrower must inform Platinum immediately if the Card is not for any reason in the Borrower's possession and at the same time must supply to Platinum all information the Borrower has as to the whereabouts of the Card and what did or may have happened to the Card.
- 7.4 The Borrower is strictly liable to Platinum for all liability incurred by Platinum as a consequence of the use of the Card by anyone unless beforehand the Borrower notified Platinum in writing that the Card was no longer in their possession.
- 7.5 The Borrower is liable to Platinum to pay any advance of credit from the date determined by Platinum as herein provided and in accordance with this agreement.

Effective date of a transaction

8. Platinum may assign any date it considers appropriate to a debit to the Account but that date must not be earlier than the date on which the relevant transaction occurred. Platinum may make consequential adjustments to a debit or credit to the Account so as to accurately reflect the legal obligations of each party (for example, because of an error or a dishonour of a cheque) in which event Platinum may make consequential adjustments to the Account.

Promises by Borrower

9. The Borrower promises to Platinum that:
 - (a) the purchase price for the Land in the Land Sale Agreement is not more than the true market value of the land at the date of the Land Sale Agreement;
 - (b) the First Mortgagee has agreed in writing to lend to the Borrower the amount specified in the Finance Approval;
 - (c) all information in a Request for Finance will be true and correct;
 - (d) if there is any Additional Security, the Borrower is the sole owner of the Additional Security;
 - (e) the Borrower will supply to Platinum with this agreement the DDR duly completed and signed by all signatories to the bank accounts specified in

- that document or the Credit Card Authority signed by the signatory to the Credit Card or both;
- (f) every debit made by Platinum to either the account nominated in the DDR or the Credit Card to pay for money payable by the Borrower to Platinum under this agreement will be honoured;
 - (g) the completed and signed DDR will not be cancelled without another DDR duly completed and signed first being supplied to Platinum in substitution for the DDR;
 - (h) at least 14 days prior to the expiry date of a Credit Card another Credit Card Authority duly completed with the details of a new credit card and signed by the holder of that credit card shall be supplied to Platinum in substitution for the Credit Card that is about to expire;
 - (i) the Borrower will not assign his estate or any part thereof or enter into a deed of arrangement for the benefit of his creditors;
 - (j) no execution is now or will be levied on or against any of the property or assets of the Borrower;
 - (k) no legal proceeding will be commenced against the Borrower to recover any money and no such proceeding is extant;
 - (l) the Borrower will not breach any agreement between the Borrower and a third party;
 - (m) the Borrower is responsible for the accounts for the email address and the mobile telephone specified in the schedule as the Borrower's email address and mobile telephone number, that email address and telephone number exist and are functioning and the Borrower will inform Platinum of any change thereto or if they or any of them are cancelled or cease to exist;
 - (n) all information supplied to Platinum by the Borrower prior to Platinum deciding to enter into this agreement and by this agreement is true and correct;
 - (o) the Borrower knows of nothing that they have not disclosed to Platinum that would or might be relevant to the decision by Platinum to enter into this agreement;
 - (p) if there is more than one Borrower, they are all jointly and severally liable for credit obtained by any one or more of them under this agreement.
 - (q) any money received by the Borrower or to which the Borrower becomes entitled from a First Home Owner Grant will be credited to the Account on the date that the Borrower receives or is entitled to receive the said grant, whichever occurs first unless otherwise agreed to by Platinum;

Fees and charges

10. The Borrower also promises to pay to Platinum:
- (a) all of the fees and charges set out in the schedule (under the heading "financial table") that are to be debited to the Account and payable at the times specified therein;
 - (b) if any default notice is issued by Platinum under this agreement all reasonable legal fees and disbursements incurred by Platinum in issuing the default notice debited to the Account 7 days after the Borrower has

- been given notice of the amount and payable immediately and in addition to the default notice charge specified in the schedule;
- (c) if there is any Additional Security or Guarantor Security and for any reason Platinum decides to lodge a caveat over it or any part of it that is land to protect its interest therein, all reasonable legal costs and disbursements (\$82 to lodge the caveat) incurred by Platinum in so doing debited to the Account on the respective days it was incurred and payable within 7 days of being notified of the amount;
 - (d) any stamp duty payable on a loan under this agreement that is secured presently at the rate of 40 cents for every \$100 debited to the Account on the day it was incurred and payable immediately;
 - (e) all costs and expenses incurred by Platinum or for which it becomes liable (including without limitation all legal costs and disbursements) of, concerning, arising out of or in any way relating to: (i) the exercise by Platinum of its rights under this agreement; (ii) any default by the Borrower; and (iii) any enforcement of this agreement or any security given by or pursuant to this agreement (including without limitation the costs of obtaining a money judgment in a court or an order from a court to enter upon the Borrower's premises or any part thereof or both) debited to the Account on the day it was incurred and payable within 2 days of being notified thereof such costs and expenses to include all costs except so far as they are of an unreasonable amount or have been unreasonably incurred so that subject to the above exceptions Platinum will be completely indemnified by the Borrower for its said costs and expenses.

10.1 Platinum may, at any time:

- (a) change the amount, frequency or time for payment of a fee or charge under this agreement;
- (b) impose new fees and charges in connection with this agreement, the use of a Card, any transaction concerning the Account or the provision of credit by it to the Borrower under this agreement;
- (c) waive a fee or charge under this agreement at any time without notice to the Borrower.

Security

- 11. The Borrower hereby charges all of their respective interest in the Additional Security to secure the payment of all debts owing by the Borrower under this agreement.
- 11.1 The Borrower acknowledges and agrees that if the Borrower or any of them requests an advance of credit under this agreement they must grant a second mortgage over the Land on such terms as Platinum reasonably requires to secure the payment of all debts owing by the Borrower under this agreement.
- 11.2 If Platinum lodges a caveat over all or any of the said real estate it is under no obligation to withdraw that caveat but must execute a withdrawal of that caveat presented to it by the Borrower for that purpose once the Borrower has satisfied all of its obligations under this agreement.

Default

12. If the Code applies to this agreement and the Borrower is in default, then if Platinum has served on the Borrower a default notice as required by the Code in relation to that default or breach and at the end of the period specified in the said notice the default has not been remedied (or at the end of the said period the Borrower is in default because of a subsequent breach of the same type as the breach specified in the said notice), the whole amount payable under this agreement (but not including any interest that has not then accrued in accordance with the provisions of the Code) shall become immediately due and payable. If the Borrower breaches this agreement enforcement expenses may become payable
- 12.1 If the credit to be provided to the Borrower under this agreement is to be applied wholly or predominantly for business or investment purposes (or for both purposes) then:
 - (a) if the Borrower defaults in the payment of any money under this agreement for more than 2 days then whether or not any formal demand therefor has been made the whole amount payable under this agreement shall become immediately due and payable;
 - (b) if the Borrower is in default of any other provision of this agreement and the default is not capable of being remedied, or fails to remedy the default within 7 days of being notified in writing of that default, the whole amount payable under this agreement shall become immediately due and payable;
 - (c) the Borrower hereby charges their respective right, title and interest in all real estate which they or any of them now have or at any time hereafter may have to secure their obligations under this agreement.
13. The whole amount payable under this agreement (but not including any interest that has not then accrued in accordance with the provisions of the Code) shall become immediately due and payable upon the happening of any of the events enumerated in section 85(2) of the Code whether or not a default notice has been issued.
14. If the Borrower defaults in the payment of any money under this agreement interest will be charged on the amount due and owing and unpaid from time to time at the Default Rate as from and including the due date for payment until it has been repaid. At the end of every day any unpaid interest shall be capitalised for the purpose of calculating interest, namely it will be added to and increase the amount due and owing and thereafter interest shall be charged on the sum of the amount then due and owing and the unpaid interest at the Default Rate. In other words compound interest is charged on the unpaid interest. Unless otherwise advised payments shall be applied first in payment of interest. The provisions of this clause are without prejudice to any of Platinum's other rights and remedies.

Miscellaneous

15. Use of the DDR by Platinum is a sufficient communication by Platinum to the Borrower that Platinum has signed this agreement but does not waive the said condition precedent to the formation of this agreement.

- 15.1 The Borrower consents to Platinum sending unsolicited commercial electronic messages as defined in the Spam Act 2003 (Cth) to the Borrower's email address or mobile telephone number. In so doing Platinum warrants that any such message shall clearly and accurately identify the individual or organisation who authorised the sending of the message and include accurate information about how the recipient can readily contact the individual or organisation. The Borrower agrees that whilst money is owing by the Borrower under this agreement Platinum is not obliged to provide an unsubscribe facility in any of the said electronic messages.
- 15.2 Any notice or other document in writing Platinum wishes to serve on the Borrower may be served as set out in the section 172 of the Code.
- 15.3 Any notice or other document in writing Platinum wishes to serve on the Borrower may be served by email to the Borrower's email address for service as specified herein or at such other email address as the Borrower may have notified to Platinum in writing from time to time and shall be deemed to be served on the day it was transmitted.
- 15.4 The Borrower nominates its address herein and if more than one the first mentioned address as the address for service of notices by Platinum on the Borrower by post, the Borrower's facsimile number in the schedule (if any) and if more than one the first mentioned facsimile number as the facsimile number for the service of notices by Platinum on the Borrower by facsimile and the Borrower's email address in the schedule (if any) and if more than one the first mentioned email address as the email address for the service of notices by Platinum on the Borrower by email.
- 15.5 In the event of any legal proceeding in respect of this agreement being begun by Platinum the process by which it is begun may be served by post on the Borrower at the same address and in the same manner prescribed for the service of any notice in writing by post.
- 15.6 In addition to the changes to fees and charges, payments, the Credit Card Rate and the annual percentage rates referred to in this agreement, Platinum may change any other term of this agreement without the consent of the Borrower.
- 15.7 Subject to any law that obliges Platinum to give notice of a change or to give notice in a certain way, notice of any change will be given by email or in the statement of account preceding the change. Advance notice is not required if the change reduces the obligations of the Borrower or extends the time for payment.
- 15.8 Words importing the singular number or plural number shall include the plural number and the singular number respectively; and words importing the masculine or neuter genders shall include every gender. When two or more parties enter into covenants, obligations and or agreements together, those covenants, obligations and or agreements on their part contained refer to and shall bind them and any two or greater number of them jointly and each of them severally. References to statutes or regulations shall include all legislation amending, consolidating or replacing the legislation referred to; ambiguities shall not be construed for or against a party who drafted or whose solicitor drafted this agreement. Platinum includes Platinum and its assigns. Platinum may assign all or any part of its rights under this agreement.

- 15.9 This agreement shall be deemed to have been made in the Jurisdiction and the construction, validity and performance of this agreement shall be governed in all respects by the laws of the Jurisdiction, and each party irrevocably:
- a) submits to the exclusive jurisdiction of the courts within the capital city of the Jurisdiction;
 - b) waives any objection to the venue of any legal process on the basis that the process has been brought in an inconvenient forum;
 - c) waives any immunity in respect of its obligations under this agreement that it may acquire from the jurisdiction of any court or any legal process for any reason including the operation of a statute, the service of notice, attachment before judgment, attachment in aid of execution or execution or otherwise.
- 15.10 This agreement may consist of a number of counterparts and the counterparts taken together shall constitute one and the same instrument. Signed copies of this agreement sent by facsimile shall constitute a counterpart. This agreement shall be binding upon each Borrower (if more than one) who has signed it notwithstanding the failure of any other Borrower to sign it. Platinum may rely on consents herein given by the Borrower even if Platinum decides not to enter into an agreement with the Borrower.
- 15.11 The Borrower shall make execute and do all acts deeds documents and things and without limiting the generality of the foregoing execute and sign all documents deeds applications forms and instruments which may reasonably be required to give full effect to any security.
- 15.12 No waiver or indulgence (including without limitation a postponement of enforcement proceedings or any action taken under such proceedings or of the operation of any applicable acceleration clause) by Platinum shall be binding on it unless in writing and in any event no waiver of one breach of any term or condition of this agreement shall operate as a continuing waiver unless so expressed nor shall it operate as a waiver of another breach of the same or any other term or condition of this agreement.
- 15.13 In the event that there is more than one person constituting the Borrower then it is expressly agreed between each Borrower who executes this agreement or any Request for Finance and Platinum that the failure of any one or more Borrower to execute this agreement or any Request for Finance or the fact that this agreement or a Request for Finance is not binding on any one or more Borrower who executes the same for any reason whatsoever or that any one or more Borrower is for any reason whatsoever discharged from their obligations hereunder or under a Request for Finance shall not in any way relieve them or the others of them as the case may be from liability under this agreement or under any Request for Finance.
- 15.14 Platinum and the Borrower agree that in the event that any provision of this agreement is contrary to any statutory enactment in force in the Commonwealth of Australia then that provision shall, if capable of being severed, be severed herefrom and the balance of this agreement shall remain in full force and effect.

Guarantee and Indemnity

Guarantee

16. In consideration of Platinum having agreed at the request of the Guarantor to enter into this agreement with the Borrower and by this deed the Guarantor does (and if more than one jointly and severally) HEREBY GUARANTEE to Platinum the due and punctual performance by the Borrower of its obligations under this agreement and the Guarantor HEREBY ACKNOWLEDGES and declares that this Guarantee shall be a continuing guarantee for the whole of the moneys hereby secured and shall not be avoided released or affected in any way by:

- a) any agreement or arrangement made between Platinum and the Borrower whether with or without the consent of the Guarantor or by any alterations or variations to the rights or obligations of either of them;
- b) the granting of any time or other indulgence or forbearance by Platinum to the Borrower whether or not the granting of such further time or other indulgence imposes further liabilities on the Guarantor;
- c) the fact of or notice of the death mental incapacity bankruptcy or liquidation of the Borrower or the Guarantor or any of them;
- d) any composition or arrangement with or release of the Borrower or any composition or arrangement with or release of any one or more of the Guarantor or any other surety or person by Platinum whether the consent of the Guarantor or any of them to any of the foregoing shall have been obtained or notice thereof given to him or not or any omission or delay on the part of Platinum;
- e) the fact that any money payable by the Borrower is not or may cease to be or any part thereof cease to be recoverable from him or from any of the Guarantor or other person or that the Borrower be discharged from all or any of his obligations to pay such money or any part thereof for any reason other than that the same have been paid;
- f) any change in membership of the Borrower or any partnership or firm of which the Borrower is a member or the death liquidation or bankruptcy of the Borrower or any member of the Borrower or the assent of Platinum to any composition arrangement or scheme in respect of the Borrower or the acceptance by Platinum of any dividend or sum of money there under;
- g) if the Borrower is a trustee of a trust, the fact that it does not have a right of indemnity against the assets of the trust;

and Platinum shall be at liberty to regard the Guarantor in all respects as principal debtor and shall not be obliged to take action first against the Borrower.

16.1 The Guarantor further acknowledges and declares that the obligations of the Guarantor hereunder shall not merge or be deemed to have merged in any judgement obtained by Platinum against the Borrower and the Guarantor shall remain liable to Platinum in the terms of this Guarantee notwithstanding that Platinum may in the meantime obtain a judgement against the Borrower.

- 16.2 Any payment made to Platinum and later avoided by the application of any statutory provision shall be deemed not to discharge Guarantor's liability and in any such event the parties are to be restored to the rights which each respectively would have had if the payment had not been made.

Indemnity

- 16.3 Further in consideration of Platinum having agreed to enter into this agreement with the Borrower on the terms and conditions herein contained at the request of the Guarantor and by this deed the Guarantor further covenants with Platinum to save harmless and indemnify Platinum from and against all losses damages costs and expenses which Platinum may suffer as a result of Platinum entering into this agreement including but without limitation all costs incurred by Platinum as a result of or arising out of enforcing its rights under this agreement or any other agreement entered into between the Borrower and Platinum or any other security held by Platinum in respect of the obligations of the Borrower hereunder or in any way incidental to this agreement or any other such security and insofar as it may be necessary so to do in order to give full effect to this indemnity the Guarantor shall waive any rights of recourse they might otherwise have or have had against the Borrower arising out of this indemnity.
- 16.4 In the event that the Borrower is wound up and a liquidator of the Borrower shall lawfully disclaim these presents at any time, no such disclaimer shall operate so as to relieve the obligations of the Guarantor to Platinum pursuant to this indemnity AND IT IS EXPRESSLY AGREED THAT the provisions of this indemnity shall survive any termination of this agreement arising out of any such disclaimer.
- 16.5 It is expressly agreed that this indemnity shall continue notwithstanding any agreement or arrangement or variation of any agreement between Platinum and the Borrower or this agreement and the provisions of the Guarantee hereinbefore given shall with the necessary changes apply to this indemnity.
- 16.6 In the event that there is more than one person or corporation constituting the Guarantor or there is any other co-surety then it is expressly agreed between each Guarantor who executes this agreement and Platinum that the failure of any one or more Guarantor or any other co-surety to execute this agreement or any document as the case may be or the fact that this guarantee and indemnity is not binding on any one or more Guarantor who executes the same for any reason whatsoever or that any one or more Guarantor is for any reason whatsoever discharged from their obligations hereunder shall not in any way relieve them or the others of them as the case may be from liability under this guarantee and indemnity.
- 16.7 In the event that the consideration specified herein is found to be past consideration the Guarantor agrees that Platinum may adduce evidence of other consideration to support the Guarantee.

Guarantor Security

17. The Guarantor hereby charges all of their respective interest in the Guarantor Security to secure the Guarantor's obligations hereunder.
- 17.1 If Platinum lodges a caveat over all or any of the Guarantor Security that is real estate it is under no obligation to withdraw that caveat but must execute a withdrawal of that caveat presented to it by the Guarantor for that purpose once the Borrower and the Guarantor have satisfied all of their obligations under this agreement.

Privacy Consent

18. The Borrower has applied for finance from Platinum and the Guarantor (if any) has applied to Platinum to guarantee the obligations of the Borrower to Platinum. In this Privacy Consent Platinum includes all companies related to Platinum, you and your mean the Borrower and if there is a Guarantor, both the Borrower and the Guarantor, and we, our or us mean Platinum.
- 18.1 The Privacy Act 1988 (Cth) regulates the way in which personal information about customers can be used by credit providers. Certain personal information is required to enable Platinum:
- assess your application for personal or commercial credit and/or credit worthiness and/or to become a guarantor;
 - administer any credit facility which is subsequently provided by Platinum including managing any account in connection with the credit facility, administering insurance claims, recovering any money owed to Platinum, maintaining the value and protecting any assets provided as security for any obligations under the credit facility and for use in connection with the outsourcing of any of Platinum's functions;
 - notifying other credit providers of any default by you; and
 - identifying and sending you any information about Platinum's other related products or services that may be of interest to you.
- 18.2 The following tells you what information might be required and how the information might be used. PLEASE READ THIS CAREFULLY. If you do not provide Platinum with the personal information requested, Platinum will be unable to assess your application for personal or commercial credit or to become a guarantor.

Disclosure of personal information

- 18.3 The types of organisations to which Platinum usually discloses personal information include Credit Reporting Agencies, government departments and authorities, insurers and underwriters, guarantors, agents, contractors, proposed assignees of Platinum's assets and other third parties associated with Platinum who enable or assist Platinum to carry out its functions, for example, mailing houses, debt collection agencies, mercantile agents, archive companies, valuers, call centre operators, solicitors, accountants, other people who provide funding introducers and brokers.

18.4 You consent to Platinum collecting your personal information and using it for the purposes outlined in this document including disclosing your personal information to the types of organisations set out above.

Disclosure of credit information to a Credit Reporting Agency

18.5 You authorise Platinum to give a Credit Reporting Agency certain personal information about you for the purposes of enabling Platinum to obtain a Credit Report about you and/or to allow the Credit Reporting Agency to create or maintain a credit information file containing information about you. The information which Platinum may disclose to the Credit Reporting Agency is limited to:

- your identification (including your name, sex, address and the previous two addresses, date of birth, name of employer and driver's licence number);
- the fact that credit has been applied for and the amount;
- the fact that Platinum is or may be a current credit provider to you;
- details of payments which become overdue for more than 60 days and for which collection action has commenced;
- the fact that payments are no longer overdue;
- details of cheques drawn by you which have been dishonoured more than once;
- the fact that in Platinum's opinion you have committed a serious credit infringement; and
- the fact that credit provided to you by Platinum has been paid or discharged.

Authority to obtain credit information

18.6 You authorise Platinum to obtain from:

- a) a Credit Reporting Agency a Credit Report containing information about you in relation to personal or commercial credit provided to you at any time and from time to time for any purpose related to this agreement; and
- b) a business which provides information about the commercial credit worthiness of persons information about your commercial activities or commercial credit worthiness.

Authority to exchange credit information with another credit provider

18.7 You authorise Platinum to give to and obtain from other credit providers information about your credit worthiness, credit standing, credit history or credit capacity.

Authority to disclose certain information to joint applicants

18.8 You understand that if Platinum declines your credit application or application to become a guarantor due to adverse information on your personal credit file, then each applicant for the credit may be notified that the application has been declined wholly or partly on information derived from the personal Credit Report relating to you.

Authority to disclose certain information to guarantors

18.9 You consent to Platinum providing information about you to any person who proposes to guarantee your obligations to Platinum for the purpose of allowing that person to assess whether to act as your guarantor and/or indemnifier. After the guarantee is given, you consent to Platinum providing information about you to the guarantor and/or indemnifier.

Authority to obtain information about a guarantor

18.10 You authorise Platinum to obtain from a Credit Reporting Agency a Credit Report containing personal credit information about you to assess whether to accept you as a guarantor for the personal or commercial credit applied for by the applicant.

Authority to give opinions

18.11 You authorise Platinum to give to or receive from another credit provider an opinion for purposes connected with your business trade or profession.

Other acknowledgments and consents

18.12 You consent to Platinum exchanging information concerning your financial affairs with any person acting on your behalf including your agent, accountant, solicitor or broker.

18.13 You acknowledge that Platinum may exchange information with government authorities as required or authorised by law including the Australian Taxation Office.

18.14 You agree that Platinum may use your personal information either alone or in conjunction with third parties for marketing purposes to tell you about other related services and products which could suit your needs. If you do not want this to happen please tell us.

18.15 You acknowledge that the above authorities and consents will continue until the credit facility provided is repaid in full and the credit facility terminated.

Access and correction

18.16 If you would like to know more about:

- the personal information which we hold about you; or
- our personal information handling practices; or
- gaining access to the personal information which we hold about you; or
- our handling of personal information about you,

please contact Platinum by writing to Platinum's Privacy Officer at Platinum address in this agreement or such other address as Platinum may have notified to you in writing from time to time.

18.17 Platinum will provide you with a copy of this information for which a fee may be payable. You should let us know if you think any information we hold about you is inaccurate so that we may correct it.

NB: This document does not contain all of the required pre-contractual information. See also the financial table forming part of this agreement.

Direct Debit Request Service Agreement

1. This DDR Service Agreement is made between the Debit User and each account holder who signed the DDR and if more than one jointly and severally (called herein the **Account Holder**).
2. In this agreement unless contrary to or inconsistent with the context:
 - Banking day** means a day other than a day on which the branch of the financial institution specified in the DDR is not open for business.
 - DDR** means the Direct Debit Request given by the Account Holder to the Debit User above or that is part of the document containing or is annexed to or given pursuant to the Principal Contract.
 - DDR Account** means the account specified in the DDR or any other account nominated by the Account Holder in substitution therefor.
 - Financial institution** means the financial institution nominated in the DDR.
 - Principal Contract** means the agreement pursuant to which the DDR was given to the Debit User.
 - Principal Debtor** means the entity that is principally liable to pay money to the Debit User (or the Debit User's principal as the case may be) under the Principal Contract.
 - This DDR Service Agreement** means this Direct Debit Request Service Agreement.
3. In consideration of the Debit User (or the Debit User's principal as the case may be) entering into the Principal Contract the Account Holder promises to the Debit User that:
 - (a) the Debit User can debit the DDR Account and the Account Holder will pay for all money payable to the Debit User under or arising out of the Principal Contract and under this DDR Service Agreement or if the Debit User is not a party to the Principal Contract, all money payable under or arising out of the Principal Contract and under this DDR Service Agreement;
 - (b) every debit made by the Debit User to the DDR Account to pay any of the said money will be honoured;
 - (c) the DDR Account can accept direct debits;
 - (d) there are and will be sufficient clear funds available in the DDR Account to meet each drawing;
 - (e) all required signatories to the account specified in the DDR have signed the DDR;
 - (f) this DDR Service Agreement applies to any other Direct Debit Request supplied by the Account Holder or any of them to the Debit User in addition to or in substitution for the DDR.
4. If the due day for a payment is not a banking day, the Debit User may direct the financial institution to debit the DDR Account on the following banking day. If the Account Holder is unsure about which day the DDR Account has or will be debited it should ask the financial institution.
5. If any debit is returned to the Debit User unpaid by the financial institution the Principal Debtor will be in breach of the Principal Contract and a fee will be

payable by the Principal Debtor as set out in the Principal Contract and thereby the Account Holder.

6. The Debit User promises to the Account Holder that it will not agree to vary the Principal Contract so as to increase the amount that could be debited to the DDR Account without its agreement in writing.
7. The Account Holder may without breaching this DDR Service Agreement or the Principal Contract:
 - (a) stop, defer or alter the amount of a debit that the Debit User is entitled to debit to the DDR Account upon and subject to the following terms and conditions:
 - (i) at least 48 hours before the debit in question is due to be paid the Account Holder notifies the Debit User in writing at the Debit User's address in the Principal Contract of the debit in question by reference to the Principal Contract and the ID number of the Principal Contract;
 - (ii) with the said notice the Account Holder pays to Debit User at its address in the Principal Contract by cash or bank cheque the amount of the said debit and an account transaction fee of \$35.00;
 - (b) the Account Holder may cancel the DDR if at least 7 days before so doing it notifies the Debit User of its intention to do so and supplies to the Debit User a new DDR in substitution for the DDR that is to be cancelled.
8. The Account Holder can stop any given debit or cancel the DDR by notice in writing to either the Debit User or the financial institution. However to do so otherwise than in accordance with procedures set out above will constitute a breach of this DDR Service Agreement and the Principal Contract. Further, if as a consequence a payment required under the Principal Contract is not paid, the non-payment will constitute a breach of the Principal Contract by the Principal Debtor.

Obligations of the Account Holder

9. It is the responsibility of the Account Holder to ensure that there are sufficient clear funds available in the DDR Account to allow a debit payment to be made in accordance with this DDR Service Agreement.
10. If there are insufficient clear funds in the DDR Account to meet a debit payment the Account Holder:
 - (a) may be charged a fee and/or interest by the financial institution;
 - (b) may also incur fees or charges imposed or incurred by the Debit User (or its principal as the case may be) under the Principal Contract; and
 - (c) must arrange for the debit payment to be made by another method or arrange for sufficient clear funds to be in the DDR Account to enable the debit to be processed in accordance with the terms of the Principal Contract.
11. The Account Holder should check the DDR Account statement to verify that the amounts debited to the DDR Account are correct.
12. If the Debit User is liable to pay goods and services tax ("GST") on a supply made in connection with this DDR Service Agreement, then the Account Holder agrees

to pay the Debit User on demand an amount equal to the consideration payable for the supply multiplied by the prevailing GST rate.

Dispute

13. If the Account Holder believes that there has been an error by the Debit User in debiting the DDR Account, it should notify the Debit User by telephone on 3358 2322 and confirm that notice in writing as soon as possible so that the Debit User can resolve the query more quickly. Alternatively the Account Holder can take it up with the financial institution direct.
14. If the Debit User concludes as a result of its investigations that the DDR Account has been incorrectly debited it will respond to the Account Holder's query by arranging for the financial institution to adjust the DDR Account (including interest and charges) accordingly. The Debit User will also notify the Account Holder in writing of the amount by which the DDR Account has been adjusted.
15. If the Debit User concludes as a result of its investigations that the DDR Account has not been incorrectly debited it will respond to the Account Holder's query by providing it with reasons and any evidence for this finding in writing

The Account

16. The Account Holder should check:
 - (a) with the financial institution whether direct debiting is available from the DDR Account as direct debiting is not available on all accounts offered by the financial institutions;
 - (b) that the details of the DDR Account in the DDR are correct by checking them against a recent statement of the DDR Account; and
 - (c) with the financial institution before completing the DDR if it has have any queries about how to complete the DDR.

Privacy

17. The Debit User will make reasonable efforts to keep any information in the DDR confidential.
18. The Debit User will only intentionally disclose information that it has about the Account Holder:
 - (a) to the extent specifically required by law; or
 - (b) for the purposes of this DDR Service Agreement (including disclosing information in connection with any query or claim).

NB: This document does not contain all of the required pre-contractual information. See also the financial table forming part of this agreement.

Information Statement

This is a notice we are required to give you under the Consumer Credit Code

Things You Should Know About Your Proposed Credit Contract

This statement tells you about some of the rights and obligations of yourself and your credit provider. It does not state the terms and conditions of your contract. If you have any concerns about your contract, contact your credit provider and, if you still have concerns, your Government Consumer Agency, or get legal advice.

The Contract

1 How can I get details of my proposed credit contract?

Your credit provider must give you a pre-contractual statement containing certain information about your contract. The precontractual statement, and this document, must be given to you before—

- your contract is entered into; or
- you make an offer to enter into the contract;

whichever happens first.

2 How can I get a copy of the final contract?

If the contract document is to be signed by you and returned to your credit provider, you must be given a copy to keep.

Also, the credit provider must give you a copy of the final contract within 14 days after it is made. This rule does not, however, apply, if the credit provider has previously given you a copy of the contract document to keep.

If you want another copy of your contract write to your credit provider and ask for one. Your credit provider may charge you a fee. Your credit provider has to give you a copy—

- within 14 days of your written request if the original contract came into existence 1 year or less before your request; or
- otherwise within 30 days of your written request.

3 Can I terminate the contract?

Yes. You can terminate the contract by writing to the credit provider so long as—

- you have not obtained any credit under the contract; or
- a card or other means of obtaining credit given to you by your credit provider has not been used to acquire goods or services for which credit is to be provided under the contract.

However, you will still have to pay any fees or charges incurred before you terminated the contract.

4 Can I pay my credit contract out early?

Yes. Pay your credit provider the amount required to pay out your credit contract on the day you wish to end your contract.

5 How can I find out the pay out figure?

You can write to your credit provider at any time and ask for a statement of the pay out figure as at any date you specify. You can also ask for details of how the amount is made up.

Your credit provider must give you the statement within 7 days after you give your request to the credit provider. You may be charged a fee for the statement.

6 Will I pay less interest if I pay out my contract early?

Yes. The interest you can be charged depends on the actual time money is owing. However, you may have to pay an early termination charge (if your contract permits your credit provider to charge one) and other fees.

7 Can my contract be changed by my credit provider?

Yes, but only if your contract says so.

8 Will I be told in advance if my credit provider is going to make a change in the contract?

That depends on the type of change. For example—

- you get at least same day notice for a change to an annual percentage rate. That notice may be a written notice to you or a notice published in a newspaper.
- you get 20 days advance written notice for—
- a change in the way in which interest is calculated;

or

- a change in credit fees and charges; or
- any other changes by your credit provider;

except where the change reduces what you have to pay or the change happens automatically under the contract.

9 Is there anything I can do if I think that my contract is unjust?

Yes. You should first talk to your credit provider. Discuss the matter and see if you can come to some arrangement. If that is not successful you could apply to the court. Contact the Government Consumer Agency or get legal advice on how to go about this.

Insurance

10 Do I have to take out insurance?

Your credit provider can insist you take out or pay the cost of types of insurance specifically allowed by law. These are compulsory third party personal injury insurance, mortgage indemnity insurance or insurance over property covered by any mortgage. Otherwise, you can decide if you want to take out insurance or not.

11 Will I get details of my insurance cover?

Yes, if you have taken out insurance over mortgaged property or consumer credit insurance and the premium is financed by your credit provider. In that case the insurer must give you a copy of the policy within 14 days after the insurer has accepted the insurance proposal.

Also, if you acquire an interest in any such insurance policy which is taken out by your credit provider then, within 14 days of that happening, your credit provider must ensure you have a written notice of the particulars of that insurance. You can always ask the insurer for details of your insurance contract. If you ask in

writing your insurer must give you a statement containing all the provisions of the contract.

12 If the insurer does not accept my proposal, will I be told?

Yes, if the insurance was to be financed by the credit contract. The insurer will inform you if the proposal is rejected.

13 In that case, what happens to the premiums?

Your credit provider must give you a refund or credit unless the insurance is to be arranged with another insurer.

14 What happens if my credit contract ends before any insurance contract over mortgaged property?

You can end the insurance contract and get a proportionate rebate of any premium from the insurer.

Mortgages

15 If my contract says I have to give a mortgage or a charge, what does this mean?

A mortgage or charge means that you give your credit provider certain rights over any property you mortgage. If you default under your contract, you can lose that property and you might still owe money to the credit provider.

16 Should I get a copy of my mortgage?

Yes. It can be part of your credit contract or, if it is a separate document, you will be given a copy of the mortgage within 14 days after your mortgage is entered into.

However, you need not be given a copy if the credit provider has previously given you a copy of the mortgage document to keep.

17 Is there anything that I am not allowed to do with the property I have mortgaged?

The law says you cannot assign or dispose of the property unless you have your credit provider's, or the court's, permission. You must also look after the property. Read the mortgage document as well. It will usually have other terms and conditions about what you can or cannot do with the property.

18 What can I do if I find that I cannot afford my repayments and there is a mortgage over property?

See the answers to questions 22 and 23.

Otherwise you may—

- if the mortgaged property is goods—give the property back to your credit provider, together with a letter saying you want the credit provider to sell the property for you;
- sell the property, but only if your credit provider gives permission first;

OR

- give the property to someone who may then take over the repayments, but only if your credit provider gives permission first.

If your credit provider won't give permission contact your Government Consumer Agency for help.

If you have a guarantor, talk to the guarantor who may be able to help you.

You should understand that you may owe money to your credit provider even after mortgaged property is sold.

19 Can my credit provider take or sell the mortgaged property?

Yes, if you have not carried out all of your obligations under your contract.

20 If my credit provider writes asking me where the mortgaged goods are, do I have to say where they are?

Yes. You have 7 days after receiving your credit provider's request to tell your credit provider. If you do not have the goods you must give your credit provider all the information you have so they can be traced.

21 When can my credit provider or its agent come into a residence to take possession of mortgaged goods?

Your credit provider can only do so if it has the court's approval or the written consent of the occupier which is given after the occupier is informed in writing of the relevant section in the Consumer Credit Code.

General

22 What do I do if I cannot make a repayment?

Get in touch with your credit provider immediately. Discuss the matter and see if you can come to some arrangement. You can ask your credit provider to change your contract in a number of ways, for example—

- to extend the term of the contract and either reduce the amount of each payment accordingly or defer payments for a specified period; or
- to simply defer payments for a specified period.

23 What if my credit provider and I cannot agree on a suitable arrangement?

If you have been unemployed, sick or there is another good reason why you are having problems with your contract, then your contract may be able to be changed to meet your situation.

You may be able to apply to the court. Contact your Government Consumer Agency or get legal advice on how to go about this.

There are other people, such as financial counsellors, who may be able to help.

24 Can my credit provider take action against me?

Yes, if you are in default under your contract. But the law says that you cannot be unduly harassed or threatened for repayments. If you think you are being unduly harassed or threatened, contact your Government Consumer Agency or the Trade Practices Commission, or get legal advice.

25 Do I have any other rights and obligations?

Yes. The law will give you other rights and obligations. You should also **READ YOUR CONTRACT** carefully.

IF YOU HAVE ANY DOUBTS, OR WANT MORE INFORMATION, CONTACT YOUR GOVERNMENT CONSUMER AGENCY OR GET LEGAL ADVICE. PLEASE KEEP THIS INFORMATION STATEMENT. YOU MAY WANT SOME INFORMATION FROM IT AT A LATER DATE.

Information Statement

This is a notice we are required to give you under the Consumer Credit Code

Things You Should Know About Guarantees

This information tells you about some of the rights and obligations of yourself and the credit provider. It does not state the terms and conditions of your guarantee.

Guarantees

1 What is a guarantee?

A promise by you that the person who is getting credit under a credit contract (the **debtor**) will keep to all the terms and conditions. If that person does not do so, you promise to pay the credit provider all the money owing on the contract (and any reasonable enforcement expenses) as soon as the money is asked for, up to the limit, if any, stated in the guarantee. If you do not pay, then the credit provider can take enforcement action against you which may result in the forced sale of any property owned by you such as your house.

2 How do I know how much the debtor is borrowing and how the credit charges are worked out?

These details are on the copy of the credit contract or proposed credit contract that you should be given before you sign the guarantee.

3 What documents should I be given?

Before you sign the guarantee you should get—

- the document you are reading now; and
- a copy of the credit contract or proposed credit contract.

Your guarantee is not enforceable unless you get a copy of the credit contract or proposed credit contract before you sign.

Within 14 days after you sign the guarantee and give it to the credit provider, the credit provider must give you a copy of—

- the signed guarantee; and
- the credit contract or proposed credit contract (if you do not already have a copy of the contract).

4 Can I get a statement of the amount that the debtor owes?

Yes. You can ask the credit provider at any time for a statement of the amount the debtor currently owes or any amounts credited or debited during a period you specify or any amounts which are overdue and when they became overdue or any amount payable and the date it became due.

The credit provider must give you the requested information—

- within 14 days if all the information requested related to a period 1 year or less before your request is given; or
- otherwise within 30 days.

This statement must be given to you in writing if you ask for it in writing but otherwise may be given orally. You may be charged a fee for the statement. You are not entitled to more than 1 written statement every 3 months.

5 How can I find out the payout figure?

You can write to the credit provider at any time and ask for a statement of the amount required to pay out the credit contract as at any date you specify. You can also ask for details of the items that make up the amount. The credit provider must give you the statement within 7 days after you give your request to the credit provider. You may be charged a fee for the statement.

6 What other information can I get?

You can write to the credit provider and ask for a copy of—

- the guarantee; or
- any credit-related insurance contract (such as insurance on mortgaged property) the credit provider has; or
- a notice previously given to you, the debtor or the mortgagor under the Consumer Credit Code.

The credit provider must give you the requested copy—

- within 14 days of your written request if the contract came into existence 1 year or less before the request was given to the credit provider; or
- otherwise within 30 days.

The credit provider may charge you a fee. Your request can be made any time up to 2 years after the end of the credit contract.

7 Can I withdraw from my guarantee?

You can withdraw from your guarantee at any time by written notice to the credit provider if the final credit contract is materially different from the proposed credit contract given to you before you signed the guarantee. If, when the credit contract was entered into, the debtor was ordinarily resident in a place other than Queensland you can also withdraw from your guarantee by written notice to the credit provider before the debtor gets any credit under the credit contract. If, when the credit contract was entered into, the debtor was ordinarily resident in Queensland, you can also withdraw from your guarantee by written notice to the credit provider before the debtor gets any credit under the credit contract provided that either —

- the debtor also terminates or has terminated the credit contract under section 19 (the section of the Consumer Credit Code which enables the debtor to terminate the credit contract before any credit has been obtained or attempted to be obtained under the contract); or
- the debtor has not entered into a contract with another person in reliance on the availability of the credit subject to the guarantee.

8 Can I limit my guarantee?

Yes, if it relates to a continuing credit contract (such as a credit card contract or an overdraft). In that case you can give the credit provider a notice limiting the guarantee so that it only applies to—

- credit previously given to the debtor; and
- any other amount you agree to guarantee.

9 Can my guarantee also apply to any future contracts?

No, unless the credit provider has given you a copy of the proposed new credit contract and you have given your written acceptance.

10 If my guarantee says I have to give a mortgage, what does this mean?

A mortgage means that you give the credit provider certain rights over any property you mortgage. If you default under your guarantee, you can lose that property and you might still owe money to the credit provider.

11 Should I get a copy of my mortgage?

Yes. It can be part of your guarantee or, if it is a separate document, you will be given a copy of the mortgage within 14 days after your mortgage is entered into.

12 Is there anything that I am not allowed to do with the property I have mortgaged?

The law says you cannot assign or dispose of the property unless you have the credit provider's, or the court's, permission. You must also look after the property. Read the mortgage document as well. It will usually have other terms and conditions about what you can or cannot do with the property.

13 What can I do if I find that I cannot afford to pay out the credit contract and there is a mortgage over my property?

See the answer to question 22. Otherwise you may—

- if the mortgaged property is goods—give the property back to your credit provider, together with a letter saying you want the credit provider to sell the property for you;
- sell the property, but only if the credit provider gives permission first;
- OR
- give the property to someone who may then pay all amounts owing under the guarantee or give a similar guarantee, but only if the credit provider gives permission first.

If the credit provider won't give permission contact your Government Consumer Agency for help. You should understand that you may owe money to the credit provider even after mortgaged property is sold.

14 Can the credit provider take or sell the mortgaged property?

Yes, if you have not carried out all of your obligations under your guarantee.

15 If the credit provider writes asking me where the mortgaged goods are, do I have to say where they are?

Yes. You have 7 days after receiving the credit provider's request to tell the credit provider. If you do not have the goods you must give the credit provider all the information you have so they can be traced.

16 When can the credit provider or its agent come into a residence to take possession of mortgaged goods?

The credit provider can only do so if it has the court's approval or the written consent of the occupier which is given after the occupier is informed in writing of the relevant section in the Consumer Credit Code.

17 If the debtor defaults, do I get any warning that the credit provider wants to take action against the debtor?

In most cases both you and the debtor get at least 30 days from the date of a notice in writing to do something about the matter. The notice must advise—

- why the credit provider wants to take action; and
- what can be done to stop it (if the default can be remedied); and

- that if the same sort of default is committed within 30 days of the date of the notice and is not remedied within that period, the credit provider can take action without further notice.

You should immediately discuss any warning notice with the debtor and consider getting independent legal advice and/or financial advice. However, there will be no warning notice if—

- there is a good reason to think the debtor committed a fraud to persuade the credit provider to enter into the contract; or
- the credit provider has been unable to locate the debtor after making reasonable efforts to do so; or
- the court says so; or
- there is a good reason to think that the debtor has, or will, remove or dispose of mortgaged goods without the credit provider's consent, or that urgent action is necessary to protect mortgaged property.

18 When can the credit provider enforce a judgment against me?

When—

- the credit provider has judgment against the debtor and if the judgment amount has still not been met 30 days after the credit provider has asked the debtor in writing to pay it; or
- the court says so because recovery from the debtor is unlikely; or
- the credit provider has been unable to locate the debtor after making reasonable efforts to do so; or
- the debtor is insolvent.

19 If the debtor cannot be found and the credit provider intends to take legal action against me do I get any warning?

You may not. See the answer to question 17.

20 Can the credit provider take action against me without first taking action against the debtor?

Yes, but the credit provider will not be able to enforce any judgment against you except in the circumstances described in the answer to question 18.

21 How much do I have to pay the credit provider if the debtor defaults?

You have to pay what the debtor owes the credit provider, subject to any limit provided in the guarantee, plus the credit provider's reasonable expenses in making you honour your contract of guarantee.

General

22 What can I do if I am asked to pay out the credit contract and I cannot pay it all at once?

Talk to the credit provider and see if some arrangement can be made about paying. If you cannot come to a suitable arrangement, contact the Government Consumer Agency. There are other people, such as financial counsellors, who may be able to help.

- 23 If I pay out money for a debtor, is there any way I can get it back?**
You can sue the debtor, but remember, if the debtor cannot pay the credit provider, he or she probably cannot pay you back for a while, if at all.
- 24 What happens if I go guarantor for someone who is under 18 when he or she signs a credit contract?**
You are responsible for the full debt if the contract of guarantee has a clear and obvious warning. The warning has to tell you that the courts might not let you sue the debtor if you have to pay out the credit contract for him or her.
- 25 Do I have any other rights and obligations?**
Yes. The law does give you other rights and obligations. You should also **READ YOUR GUARANTEE** carefully.

IF YOU HAVE ANY DOUBTS, OR YOU WANT MORE INFORMATION, CONTACT THE GOVERNMENT CONSUMER AGENCY OR GET LEGAL ADVICE. PLEASE KEEP THIS INFORMATION STATEMENT, YOU MAY WANT SOME INFORMATION FROM IT AT A LATER DATE.