



# Commercial Asset Finance Brokers Association of Australia Limited

ABN 32 129 490 133

**National Professional Body of the Equipment Finance Industry**

This agreement is made on .....

BETWEEN ..... (hereinafter referred to as "the Broker")

and ..... (hereinafter referred to as "the Financier")

## RECITALS

- A. The Financier provides asset based finance products and services.
- B. The Financier intends to make its asset based finance products and services available through the Broker.
- C. The Broker possesses expertise in financial matters and marketing of asset based finance products.
- D. The Broker at its discretion intends to market the Financier's asset based finance products to its Clients.

## AGREEMENT

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

In this document:

**'Application'** means an application for a Finance product submitted to the Financier by the Broker on behalf of a Client of the Broker, for a Financial Product.

**'Commencement Date'** means

**'Client'** means any person in respect of whom an Application is made to the Financier by the Broker.

**'Finance Product Documentation'** means documentation including software as supplied to the Broker by the Financier from time to time in relation to Financial Products.

**'Financial Product'** means any asset based finance product including finance leases, operating leases, hire purchase agreements, asset finance agreements, chattel mortgages, rental agreements and/or such other products as offered by the Financier to the Broker from time to time.

**'Settled Transaction'** means a Financial Product entered into by the Financier pursuant to an Application.



## **1.2 Interpretation**

In this document:

- a) the singular includes the plural and vice versa;
- b) words denoting any gender include all genders;
- c) other grammatical forms of defined expressions have corresponding meanings;
- d) a reference to a party to this document includes that party's successors and permitted substitutes and assigns;
- e) a reference to a document or agreement includes that document or agreement as novated, altered, supplemented or replaced except to the extent prohibited by this document;
- f) a reference to any thing includes any part of that thing and a reference to a group of things or persons includes each thing or person in that group;
- g) references to 'persons' or words implying natural persons included bodies corporate, joint ventures, partnerships, trusts, associations, unincorporated bodies and Public Authorities;
- h) 'including' and cognate expressions indicate what is included without limiting what may be included; and
- i) a reference to an agreement includes any legally enforceable arrangement, understanding, undertaking or representation whether or not in writing.

## **2. APPOINTMENT AND ACCEPTANCE**

1. The Financier appoints the Broker on a non-exclusive basis to market the Financial Products in accordance with the terms and conditions contained in this document.
2. The Broker accepts the appointment on the terms and conditions of this document.

## **3. STATUS OF THE BROKER**

- a) The Broker is an independent contractor exercising free and independent judgement.
- b) The Broker must not imply or hold out to any person that the Broker acts under the document in any other capacity than that of an independent contractor.
- c) Subject to this document, the Broker has no authority to bind or purport to bind the Financier in relation to any matter without the Financier's prior consent.
- d) Nothing in this document shall be construed as creating the relationship of employer and employee, partnership or joint venture between the parties.



#### **4. DUTIES OF THE BROKER**

The Broker must:

- a) ensure that all Applications are in a complete and commercially acceptable format;
- b) exercise the skill and care appropriate to that of a prudent person in similar circumstances in marketing the Financier's Products and in doing any related thing;
- c) observe all applicable provisions of the *Privacy Act 2001* or any code of conduct issued by the Privacy Commissioner under that legislation;
- d) observe all applicable provisions of the *Trade Practices Act 1974*;
- e) observe all other applicable legislation or legal requirements which relate or may relate to the Broker, or the marketing for the Financial Products; and
- f) act in good faith and exercise due care and skill in marketing the Financial Products and providing Applications.

#### **5. NEGATIVE OBLIGATIONS OF THE BROKER**

The Broker must not:

- a) use documentation in respect of the Financial Products other than Finance Product Documentation, except with the Financier's written consent;
- b) offer the Financial Products at rates or on terms other than those advised or approved by the Financier from time to time, except with the prior written consent of the Financier;
- c) give any warranty or make any representation in relation to the Financial Products other than those authorised by the Financier;
- d) issue, use, deliver or publish any circular, advertisement or other material in relation to the Financial Products in any way including by direct marketing or direct mail unless the material has been provided or approved by the Financier;
- e) make any misrepresentation concerning the nature of the Financial products;
- f) submit any Application to the Financier that the Broker believes is false or misleading or incomplete.

#### **6. RIGHTS AND OBLIGATIONS OF THE FINANCIER**

- 6.1 The Financier is under no obligation to approve any particular Application and may decline, approve, or modify any Application at its absolute discretion.
- 6.2 The Financier may revise or modify the description, purposes, terms and conditions of a Finance Product from time to time, but only in respect of future transactions.
- 6.3 The Financier may withdraw any Financial Product at any time.



- 6.4 In the event that the Financier exercises its rights to revise or modify a Financial Product in accordance with Paragraph 6.2 and the proposed revision or modification is to the detriment of the Broker and/or the Broker's Clients or the Financier intends to exercise its rights to withdraw a Financial Product in accordance with Paragraph 6.3 herein then the Financier must give the Broker 90 days notice in writing before implementing any revision, modification or withdrawal.
- 6.5 The Financier agrees to process Applications promptly and advise the Broker of its decision to approve (including all terms and conditions) or decline the Application within a reasonable and commercial period of time.
- 6.6 On receipt of all necessary documentation and the compliance of all approval terms and conditions the Financier agrees to promptly process the settlement, but in any event within one working day of the receipt of the necessary documentation and the compliance of all approval terms and conditions.
- 6.7 The Financier acknowledges that the Clients are and remain the property of the Broker, and the Financier agrees not to deal direct with the Clients for the marketing of Financial Services or any of the Financier's products and services and the processing and refinancing of residual and balloon payments, premature payouts, or any other matters subject to the provisions of Paragraph 6.9 herein.
- 6.8 All inquiries including contract terms and conditions, premature payouts, residuals and balloon payments made by a Client to the Financier will be referred to the Broker who is obliged to respond to the Client.
- 6.9 Notwithstanding the provisions of Paragraph 6.7 herein the Financier may contact the Client regarding:
- (i) arrears or defaults in rental and/or interest payments
  - (ii) overdue post-settlement conditions
  - (iii) Client inquiries which the Broker has failed to address within a reasonable period of time,
- in which event the Financier will inform the Broker of the circumstances and provide the Broker with copies of any correspondence.

## **7. BROKER MAY CONDUCT OTHER BUSINESS**

Nothing in this document prevents the Broker from engaging in any other business or undertaking or transacting any business with any other bank, insurance company or other financial institution, including marketing and providing products similar to the Financial Products.

## **8. FEES**

### **8.1 Entitlement to Fees**

- a) The Financier will pay commission to the Broker immediately on settlement of the Settled Transaction to which it relates.
- b) The Financier will pay to the Broker commission at the rates agreed between the parties on a case by case basis.

### **8.2 Fees Payable Following Termination**

If this Agreement is terminated, the Financier will continue to pay after the date of termination any fees on commission which the Broker is entitled to under this document.



**9. BROKER'S RESPONSIBILITY FOR EMPLOYEES, CONTRACTORS AND AGENTS**

The Broker is at all times responsible for the conduct of its employees, contractors and agents, and must ensure that those employees, contractors and agents act lawfully and in good faith at all times and are fully informed of and observe the Financier's practices and procedures for marketing the Financial Products.

**10. TERMINATION**

**10.1 Provision for Termination**

- a) The Financier may terminate this Agreement by 30 days written notice to the Broker in the event of:
  - (i) any material breach or default by the Broker any of its employees of any provision of this document where such breach or default has not been rectified within 30 days after written notice from the Financier requiring such breach or default to be rectified;
  - (ii) any act of dishonesty or fraud by the Broker in relation to any matter under this document;
  - (iii) the entry into bankruptcy, insolvency, receivership, administration or liquidation (as the case may be) of the Broker; or
  - (iv) the Broker being or stating that it is unable to pay its debts when they fall due.
- b) The Broker may terminate this Agreement by 30 days written notice to the Financier.

**10.2 Accrued Rights and Liability on Termination**

The termination of this Agreement does not affect or limit any rights or remedies which may have accrued to the parties to this document prior to that termination.

**11. INFORMATION**

- a) Each party must make every reasonable effort to maintain the confidentiality of all information relating to the business and affairs of the other party which, by its nature, is confidential ("Confidential Information") and to protect the Confidential Information from unauthorised access or use.
- b) A party must immediately notify the other party of any incident which comes to its attention regarding any actual or potential breach of confidentiality, disclosure or unauthorised use of the Confidential Information.

**12. INTELLECTUAL PROPERTY**

The Financier will at all times retain the right and title to all intellectual property in relation to the Financial Products Documentation which must be returned by the Broker to the Financier immediately upon the termination of this Agreement.



### 13. ASSIGNMENT

- a) The Broker must not dispose of or encumber any interest in the Broker's rights and obligations under this document, except in accordance with this clause.
- b) The Broker may assign all or any of its rights and obligations under this document:
  - (i) to an assignee approved by the Financier; and
  - (ii) with the Financier's prior written consent (which consent must not be unreasonably withheld).
- c) If requested by the Financier, the assignee will enter into a new agreement in terms identical, subject to any necessary changes, to the terms of this document.
- d) The Financier will not assign or transfer any of its rights under this document without the consent of the Broker (which consent must not be unreasonably withheld).

### 14. MISCELLANEOUS

#### 14.1 Services of Notices

- a) In addition to any mode of service authorised by law, any demand or notice in connection with this document may be served upon the Broker:
  - (i) by being delivered to the Broker at the address appearing in this document;
  - (ii) by posting it in a letter at any post office addressed to the Broker at the address appearing in this document; or
  - (iii) by faxing it to the Broker on the following facsimile number:

*facsimile number:*

- b) The production of the receipt of the post office for that letter is conclusive proof of the service of any notice so sent at the time when it ought to be delivered in due course of post, although that letter may be returned through the post office undelivered.
- c) Notices may be given by the Broker to the Financier by:
  - (i) by being delivered to the Financier at the address appearing in this document;
  - (ii) by posting it in a letter at any post office addressed to the Financier at the address appearing in this document; or
  - (iii) by faxing it to the Financier on the following facsimile number:

*facsimile number:*

#### 14.2 Waiver

No waiver of any breach of this document or any of its terms is effective unless the waiver is in writing and signed by the party against whom waiver is claimed.

