
UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 8-K

CURRENT REPORT

**Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934**

Date of Report (Date of earliest event reported): June 8, 2006

ResMed Inc.

(Exact Name of Registrant as Specified in Charter)

Delaware
(State or Other Jurisdiction of
Incorporation)

001-15317
(Commission
File Number)

98-0152841
(I.R.S. Employer
Identification No.)

14040 Danielson Street
Poway, California 92064-6857
(Address of Principal Executive Offices)(Zip Code)

(858) 746-2400
(Registrant's telephone number, including area code)

N/A
(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
-

Item 1.01. Entry into a Material Definitive Agreement.

On June 8, 2006, our wholly-owned Australian subsidiary, ResMed Limited, entered into a Syndicated Facility Agreement with HSBC Bank Australia Limited as original financier, facility agent and security trustee, that provides for a loan in three tranches. HSBC Bank Australia Limited has the right to assign part or all of its rights and/or obligations under the Syndicated Facility Agreement to other financial institutions.

Tranche A is a EUR 50 million term loan facility that refinances all amounts outstanding under a previous syndicated facility agreement dated May 16, 2005 between ResMed Limited and HSBC Bank Australia Limited, all of which was on loan from ResMed Limited to our subsidiary, ResMed SA, to fund an acquisition. (The May 2005 agreement was filed as an exhibit to ResMed's Form 8-K filed May 24, 2005.) Tranche A bears interest at a rate equal to LIBOR for deposits denominated in EUR plus a margin of 0.80% or 0.90%, depending on the ratio of the total debt to EBITDA of ResMed Inc. and its subsidiaries (the "ResMed Group") for the most recently completed fiscal year for the applicable interest period. Payments of principal must be made to reduce the total outstanding principal amount of Tranche A to EUR 48.25 million on June 30, 2006, EUR 44.5 million on June 30, 2007, EUR 37.75 million on June 30, 2008, EUR 27.5 million on June 30, 2009, EUR 15 million on December 31, 2009, and the entire outstanding principal amount must be repaid in full on June 8, 2011.

Tranche B is a USD 15 million term loan facility that may only be used for the purpose of financing capital expenditures and other asset acquisitions by the ResMed Group which have been approved by the facility agent (acting on the instructions of all financiers). Tranche B bears interest at a rate equal to LIBOR for deposits denominated in EUR, Australian dollars, USD, or Sterling plus a margin of 0.80% or 0.90%, depending on the ratio of the total debt to EBITDA of the ResMed Group for the most recently completed fiscal year for the applicable interest period. The entire principal amount must be repaid in full on June 8, 2011.

Tranche C is a USD 60 million term loan facility that may only be used for the purpose of the payment by ResMed Limited of a dividend to ResMed Holdings Limited, which will ultimately be paid to ResMed Inc. Tranche C bears interest at a rate equal to LIBOR for deposits denominated in EUR, Australian dollars or USD plus a margin of 0.70% or 0.80%, depending on the ratio of the total debt to EBITDA of the ResMed Group for the most recently completed fiscal year for the applicable interest period. Payments of principal must be made to reduce the total outstanding principal amount of Tranche C to USD 30 million on December 31, 2007 and the entire outstanding principle amount must be repaid in full by June 8, 2009.

The Loan is secured by a pledge of one hundred percent of the shares of ResMed Inc.'s subsidiary, Saime SA, pursuant to a Pledge Agreement. In addition, ResMed Limited's obligations under the Loan are subject to two guarantee and indemnity agreements, one on behalf of ResMed and its U.S. subsidiary, ResMed Corp., and another on behalf of ResMed's international subsidiaries, ResMed SA (other than Tranche C), ResMed GmbH & Co. KG, ResMed (UK) Limited and Take Air Medical Handels-GmbH.

The Syndicated Facility Agreement contains customary covenants, including certain financial covenants and an obligation that ResMed Limited maintain certain financial ratios, including a minimum debt service cover ratio, a maximum ratio of total debt to EBITDA and a minimum tangible net worth. The entire principal amount of the Loan and any accrued but unpaid interest may be declared immediately due and payable in the event of the occurrence of an event of default as defined in the Syndicated Facility Agreement, which includes, among other items, failure to make payments when due, breaches of representations, warranties or covenants, the occurrence of certain insolvency events, the occurrence of an event or change which could have a material adverse effect on ResMed Limited and its subsidiaries, and if ResMed Inc. ceases to control ResMed Limited, ResMed Corp., ResMed SA, ResMed GmbH & Co. KG, ResMed (UK) Limited, Take Air Medical Handels-GmbH or Saime SA.

Simultaneous with the Syndicated Facility Agreement, ResMed Limited entered into a working capital agreement with HSBC Bank Australia Limited for revolving, letter of credit and

overdraft facilities up to a total commitment of 6.5 million Australian dollars for one year, and ResMed (UK) Limited entered into a working capital agreement with HSBC Bank plc for a revolving cash advance facility up to a total commitment of 3 million Sterling for one year.

Copies of the Syndicated Facility Agreement and related material documents are attached as exhibits to this report, and the foregoing summary is qualified by reference to the full documents.

Item 2.03. Creation of a Direct Financial Obligation.

On June 8, 2006, our wholly-owned Australian subsidiary, ResMed Limited, entered into the Syndicated Facility Agreement described in Item 1.01 above, which description is incorporated by reference into this Item 2.03. The obligations of ResMed Limited are secured by a pledge of one hundred percent of the shares of ResMed Inc.'s subsidiary, Saime SA, and ResMed Limited's obligations under the Loan are subject to two guarantee and indemnity agreements, one on behalf of ResMed and its U.S. subsidiary, ResMed Corp., and another on behalf of ResMed's international subsidiaries, ResMed SA (other than Tranche C), ResMed GmbH & Co. KG, ResMed (UK) Limited and Take Air Medical Handels-GmbH, as described in Item 1.01 above.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

<u>Exhibits:</u>	<u>Description of Document</u>
10.1	Syndicated Facility Agreement, dated as of June 8, 2006, by and between ResMed Limited and HSBC Bank Australia Limited.
10.2	Deed of Guaranty and Indemnity, dated as of June 8, 2006, by and among HSBC Bank Australia Limited, ResMed Limited, ResMed SA, ResMed GmbH & Co. KG, ResMed (UK) Limited and Take Air Medical Handels-GmbH.
10.3	Deed of Guaranty and Indemnity, dated as of June 8, 2006, by and among HSBC Bank Australia Limited, ResMed Inc., ResMed Corp. and ResMed Limited.
10.4	Working Capital Agreement, dated as of June 8, 2006, by and among ResMed (UK) Limited and HSBC Bank plc.
10.5	Working Capital Agreement, dated as of June 8, 2006, by and among ResMed Limited and HSBC Bank Australia Limited.

SIGNATURES

We have authorized the person whose signature appears below to sign this report on our behalf, in accordance with the Securities Exchange Act of 1934.

Date: June 14, 2006

RESMED INC.
(registrant)

By: /s/ Brett Sandercock
Name: Brett Sandercock
Its: Vice President, Finance
Chief Financial Officer

EXHIBIT INDEX

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10.4	Working Capital Agreement, dated as of June 8, 2006, by and among ResMed (UK) Limited and HSBC Bank plc.
10.5	Working Capital Agreement, dated as of June 8, 2006, by and among ResMed Limited and HSBC Bank Australia Limited.

CLAYTON UTZ

EXECUTION COPY

Syndicated facility agreement

ResMed Limited
ABN 30 003 765 142

Borrower

Each person listed in Schedule 1

Original Financier

HSBC Bank Australia Limited
ABN 48 006 434 162

Facility Agent

HSBC Bank Australia Limited
ABN 48 006 434 162

Security Trustee

The Clayton Utz contact for this document is
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Our reference 15136/15286/80038182

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Parties

ResMed Limited ABN 30 003 765 142
(“Borrower”)
Each person listed in Schedule 1
(each an **“Original Financier”**)
HSBC Bank Australia Limited ABN 48 006 434 162
(in this capacity the **“Facility Agent”**)
HSBC Bank Australia Limited ABN 48 006 434 162
(in this capacity the **“Security Trustee”**)

Background

At the request of the Borrower, the Financiers have agreed to provide financial accommodation to the Borrower in accordance with this agreement.

Operative provisions

1. Definitions and interpretation

1.1 Definitions

In this agreement:

“Accepted Accounting Practices” means the accounting practices and standards generally accepted in the United States of America.

“Accounts” means a statement of income, balance sheet and a statement of cash flow together with any statements, reports (including any directors’ and auditors’ reports) and notes attached to or intended to be read with any of them.

“Additional Guarantor” means a person who enters into a guarantee and indemnity pursuant to clause 16.5 or clause 17.2.

“Advance” means a Tranche A Advance, a Tranche B Advance or a Tranche C Advance.

“Agency Fee Letter” means the letter dated on or about the date of this agreement from the Facility Agent and the Security Trustee to the Borrower, as accepted by the Borrower, setting out the fees payable by the Borrower to the Facility Agent and the Security Trustee for their own account in connection with the Finance Documents.

“Alternative Currency” means any currency, other than US Dollars.

“Australian Dollars” or **“AUD”** means the lawful currency for the time being of the Commonwealth of Australia.

“Authorisation” means:

- (a) any authorisation, permit, consent, approval, resolution, licence, exemption, permission, recording, filing or registration required by any Government Authority or any law; and

- (b) in relation to any act, matter or thing which will be prohibited or restricted either in whole or in part by any law if a Government Authority intervenes or acts in any way within a specified period after lodgement, filing, registration, notification or any other event, the expiry of that period without intervention or action.

“Authorised Officer” in relation to any Obligor means a person appointed as an authorised officer of that Obligor for the purposes of the Finance Documents by a resolution of the board of directors of that Obligor and in respect of whom the Facility Agent has received a certificate signed by a director of that Obligor setting out that person’s name, position and signature and confirming the appointment, provided the Facility Agent has not received notice of revocation of that appointment.

“Availability Period” means the Tranche A Availability Period, the Tranche B Availability Period or the Tranche C Availability Period.

“Base Rate” means:

- (a) the BBSY Base Rate in relation to Advances in Australian Dollars;
- (b) Eurolibor in relation to Advances in Euros;
- (c) Sterling LIBOR in relation to Advances in Sterling; and
- (d) US Dollar LIBOR in relation to Advances in US Dollars.

“BBSY Base Rate” for any period means the rate expressed as a percentage per annum (rounded upwards if necessary to 4 decimal places) which is:

- (a) the average of the bid rates shown at approximately 10.10 am (Sydney time) on page “BBSY” on the Reuters Screen on the first day of that period for a term equal to or approximately equal to the period; or
- (b) if the Facility Agent is unable to determine the average rate in accordance with paragraph (a) of this definition or the basis on which the bid rates referred to in paragraph (a) of this definition changes and, in the reasonable opinion of the Facility Agent, that rate ceases to reflect the Financiers’ cost of funding to the same extent as at the date of this agreement, the rate determined by the Facility Agent, acting reasonably, to be the appropriate equivalent rate having regard to prevailing market conditions.

“Bill” has the meaning given to “bill of exchange” in the *Bills of Exchange Act 1909* (Commonwealth), but does not include a cheque or payment order, and any reference to the drawing, acceptance, indorsement or other dealing of or with a Bill refers to a drawing, acceptance, indorsement or other dealing within the meaning of that Act.

“Business Day” means a day (other than a Saturday or Sunday) on which banks are open for business generally in Sydney and London.

“Commitment” in relation to a Financier means that Financier’s Tranche A Commitment, Tranche B Commitment and Tranche C Commitment.

“Constitution” means the replaceable rules, constitution or combination of both as those terms are used in section 134 of the Corporations Act or, in the case of Obligors incorporated outside Australia, the relevant constitutional documents of that Obligor.

“Controller” means, in relation to a person’s property:

- (a) a receiver or receiver and manager of that property; or

(b) anyone else who (whether or not as agent for the person) is in possession, or has control, of that property to enforce an Encumbrance.

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

“Current Assets” means the aggregate value of the current tangible assets of the Group on a consolidated basis determined in accordance with Accepted Accounting Practices.

“Deed of Variation” means the Deed of Variation relating to the Resmed Loan Agreement dated on or about the date of this agreement between the Borrower and ResMed SA.

“Default Interest Period” means, for an Unpaid Sum, a period of 30 days (or any other period the Facility Agent selects) beginning on the day on which the amount falls due, or on the last day of another Default Interest Period for that Unpaid Sum.

“Default Rate” means, for any day in a Default Interest Period, the applicable Prescribed Rate for that Default Interest Period plus 2%.

“Distribution” means:

- (a) any dividend, charge, interest, fee, payment or other distribution (whether cash or assets) or redemption, repurchase, defeasance, retirement or repayment on or in respect of any shares issued by any Obligor; or
- (b) any interest payment, any repayment or prepayment of any amount of principal or any other payment in respect of any liability of any member of the Group to any shareholder of the Borrower at any time in connection with any Financial Liability.

“Drawdown Date” means the date on which an Advance is made.

“Drawdown Notice” means a notice given under clause 4 in the form of Schedule 4.

“EBITDA” means, for any period, the Operating Profit for that period before taking into account Gross Interest payable or receivable by the members of the Group, Tax on income and profits payable by the members of the Group, depreciation and amortisation in respect of fixed assets, real property, and plant and equipment, intangibles and exceptional and extraordinary items (and, in the case of an operating loss, it shall be expressed as a negative amount), but excluding stock-based compensation costs and/or costs arising from employee share schemes, in each case, determined in accordance with, and by reference to, the relevant financial statements delivered to the Facility Agent and Accepted Accounting Practices including, without limitation, FASB Statement No. 123 (Accounting for Stock-Based Compensation).

“Encumbrance” means a mortgage, charge, pledge, lien, encumbrance, security interest, title retention, preferential right, trust arrangement, contractual right of set-off or any other security agreement or arrangement in favour of any person.

“Equivalent” means, in relation to an amount specified in a particular currency (the “first amount”), the net amount of any other currency which the Facility Agent determines can be purchased with the first amount in the Australian foreign exchange market at or about 11.00 am on the day on which the calculation falls to be made for spot delivery.

“Euro” or “EUR” means the single currency of European Participating Member States, and, in respect of all payments to be made under this agreement in Euros, immediately available, freely transferable funds.

“Euro Amount” means, in relation to an Advance, the amount of that Advance in Euros specified in the relevant Drawdown Notice.

“Eurolibor” means, for an Interest Period:

- (a) the rate determined by the Facility Agent to be the arithmetic mean, expressed as a percentage per annum (rounded up (if necessary) to 4 decimal places), of the rates for deposits in Euro quoted:
 - (i) at or about 11.00 am (London time) 2 Business Days before the first day of that Interest Period; and
 - (ii) for a period equal or comparable to that Interest Period,on the Reuters monitor system page “LIBOR 01” or any page which replaces that page; or
- (b) where the page referred to in paragraph (a) is not available, or less than 2 rates are quoted on that page at that time, the rate determined by the Facility Agent to be the arithmetic mean of the rates expressed as a percentage per annum (rounded up (if necessary) to 4 decimal places), at which deposits:
 - (i) denominated in Euro;
 - (ii) for the same or for a comparable amount; and
 - (iii) for a period equal or comparable to that Interest Period,are offered to the Facility Agent by any two Reference Banks, in the interbank market selected by it, at or about 11.00 am (local time in the place of that market) 2 Business Days in the place of that market before the first day of that Interest Period.

“European Participating Member States” means any member state of the European Union that adopts or has adopted the Euro as its lawful currency in accordance with legislation of the European Community relating to the Economic and Monetary Union.

“Event of Default” has the meaning given in clause 18.1.

“Event of Insolvency” means:

- (a) a Controller, administrator or similar officer is appointed in respect of a person or any asset of a person;
- (b) a liquidator or provisional liquidator is appointed in respect of a corporation;
- (c) any application (not being an application withdrawn or dismissed within 5 Business Days) is made to a court for an order, or an order is made, or a meeting is convened, or a resolution is passed, for the purpose of:
 - (i) appointing a person referred to in paragraph (a) or (b) other than under a solvent scheme of arrangement pursuant to Part 5.1 of the Corporations Act;
 - (ii) winding up or dissolving a corporation; or
 - (iii) proposing or implementing a scheme of arrangement;
- (d) a moratorium of any debts of a person or any other assignment, composition or arrangement (formal or informal) with a person’s creditors or any similar proceeding or arrangement by which the assets of a person are subjected conditionally or unconditionally to the control of that person’s creditors or a trustee,

is ordered, declared or agreed to, or is applied for and the application is not withdrawn or dismissed within 5 Business Days;

- (e) any writ of execution, garnishee order, mareva injunction or similar order, attachment, distress or other process is made, levied or issued against or in relation to any asset of a person;
- (f) a person becomes, or admits in writing that it is, or is declared to be or is taken under any applicable law to be, insolvent or unable to pay its debts; or
- (g) anything analogous to anything referred to in paragraphs (a) to (f) inclusive of this definition, or which has a substantially similar effect, occurs with respect to a person under any other law.

“Excluded Taxes” means any Taxes imposed by any jurisdiction on the overall net income of a Finance Party as a consequence of the Finance Party being a resident of or organised or doing business in that jurisdiction.

“Facilities” means the Tranche A Facility, the Tranche B Facility and the Tranche C Facility.

“Facility Agent” means HSBC Bank Australia Limited, or if HSBC Bank Australia Limited has been replaced, the successor appointed under clause 21.22.

“Facility Office” in respect of a Financier means the address of that Financier specified in Schedule 1 or in the Substitution Certificate or other document by which it became a party to or acquired rights under this agreement or, subject to clause 25.5(b), any other address as notified by that Financier to the Facility Agent (by not less than 5 Business Days’ notice) as the address through which it will perform its obligations under this agreement.

“FASB” means the Financial Accounting Standards Board in the United States of America.

“Fee Letters” means the Agency Fee Letter and the Upfront Fee Letter.

“Final Termination Date” means the date falling on the fifth anniversary of the date of this agreement.

“Finance Documents” means:

- (a) this agreement;
- (b) any Substitution Certificate;
- (c) the Security Trust Deed;
- (d) the Working Capital Agreements;
- (e) any Hedge Agreement;
- (f) the Deed of Variation;
- (g) each Security;
- (h) each Fee Letter;
- (i) any document that amends, supplements, replaces or novates any of the above; and
- (j) any other document as agreed by the Borrower and the Facility Agent to be a Finance Document for the purposes of this agreement.

“Finance Party” means any Financier, the Facility Agent, the Security Trustee, any Hedge Counterparty and the Working Capital Financiers.

“Financial Liability” means an obligation (whether present or future, actual or contingent) to pay or deliver any money or commodity under or in respect of any financial accommodation including under or in respect of any:

- (a) money borrowed or raised;
- (b) redeemable or repurchaseable share or stock;
- (c) bill of exchange, promissory note or other financial instrument (whether or not transferable or negotiable);
- (d) put option or buyback or discounting arrangement in respect of any property;
- (e) lease, licence or other arrangement in respect of any property entered into primarily to raise finance or to finance the acquisition of that property (other than a lease, licence or arrangement which may be accounted for as an operating lease under applicable generally accepted accounting principles);
- (f) hire purchase or deferred payment obligation for any property or service;
- (g) interest or currency swap or hedge arrangement, financial option, futures contract or analogous transaction; or
- (h) arrangement which achieves the same or a similar commercial effect as or to any of the above,

and any guarantee (including any guarantee and indemnity, indemnity, letter of credit, performance bond, acceptance or endorsement) of any Financial Liability of another person. It does not include any extended payment terms for the supply of goods and services entered into by the Borrower in the ordinary course of its ordinary business.

“Financial Ratio” means (individually and collectively) the ratios and covenants set out in clause 17.

“Financial Year” means each 12 month period ending on any 30 June.

“Financier” means:

- (a) any Original Financier; and
- (b) any person to which rights and/or obligations under the Finance Documents are assigned or transferred under clause 25 and which agrees to be a “Financier” or which assumes rights and obligations pursuant to a Substitution Certificate,

provided that on:

- (i) termination in full of all the Commitments of any Financier; and
- (ii) irrevocable payment in full of all amounts which may be or become payable to that Financier under the Finance Documents,

that Financier will cease to be a Financier.

“Gearing Ratio” means, in respect of any Twelve-Month Period, the ratio of Total Debt to EBITDA during that period.

“Government Authority” means any government or any governmental or semi governmental entity, authority, agency, commission, corporation or body (including those constituted or formed under any Statute), local government authority, administrative or judicial body or tribunal or stock exchange.

“Gross Interest” means, for any period, the aggregate amount of interest, amounts in the nature of interest and other fees of, or associated with, Total Debt that has been paid, incurred or accrued due for payment by the Group during that period calculated in accordance with Accepted Accounting Practices.

“Group” means the Parent and its Subsidiaries.

“Group Company” means any member of the Group.

“GST” means any goods and services tax, consumption tax, value added tax or any similar tax, impost or duty.

“GST Liability” has the meaning given in clause 24.2.

“Guarantees” means the International Guarantee, the US Guarantee and all other guarantees required to be entered into pursuant to clause 16.5 and clause 17.2.

“Guarantor” means an Original Guarantor and an Additional Guarantor.

“Hedge Agreement” means the 2002 ISDA Master Agreement dated 16 May 2005 and entered into between HSBC Bank plc, Sydney Branch, ABN 98 067 329 015 and the Borrower (including all transactions and confirmations entered into under it) and any other interest rate hedge agreement or other hedge agreement (including any master agreement, any schedule thereto and any transaction or confirmation under it) entered into by the Borrower with a Hedge Counterparty in relation to hedging arrangements under or related to this agreement.

“Hedge Counterparty” means HSBC Bank plc, Sydney Branch ABN 98 067 329 015 and any other entity nominated by HSBC Bank Australia Limited.

“HSBC Entities” means HSBC Bank plc, its Subsidiaries and affiliates.

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

“Intercompany Loans” means:

- (a) any Financial Liabilities owed by the Borrower to:
 - (i) ResMed NZ Limited AK/955498;
 - (ii) ResMed Holdings Limited ABN 28 0003 765 133 in its own capacity; or
 - (iii) ResMed EAP; and
- (b) any Financial Liabilities owed by:
 - (i) ResMed (UK) Limited;
 - (ii) ResMed Inc, Australian Branch ABN 46 064 514 852;

- (iii) ResMed Asia Pacific Limited ABN 86 070 076 470;
 - (iv) ResMed Holdings Limited as trustee of the ResMed Property Trust;
 - (v) ResMed (R&D) Limited ABN 42 087 053 969; or
 - (vi) the Parent,
- to the Borrower.

“Interest Coverage Ratio” means, in respect of a Twelve-Month Period, the ratio of EBITDA to Gross Interest during that Twelve-Month Period.

“Interest Period” means, in relation to an Advance, each period determined in accordance with clauses 7.1 and 7.2 and, in relation to an Unpaid Sum, each period determined in accordance with clause 8.1.

“Interest Period Quotation Date” means two Business Days before the first day of an Interest Period.

“International Guarantee” means the guarantee and indemnity dated on or about the date of this agreement and executed by the Borrower, ResMed SA, ResMed GmbH & Co. KG, ResMed (UK) Limited and Take Air Medical Handels-GmbH in favour of the Security Trustee.

“Joint Venture” means any form of joint venture, whether a company, unincorporated entity, undertaking, association, partnership or other similar entity.

“LIBOR Quotation Date” means, in relation to any period for which LIBOR is to be determined, the date on which quotations are customarily provided by leading banks in the London interbank market for deposits in the relevant currency for delivery on the first day of that period.

“Majority Financiers” means at any time:

- (a) during any period no Advances are outstanding, Financiers the aggregate of whose Commitments at the relevant time represent by value more than $66\frac{2}{3}\%$ of the Total Commitments at that time;
- (b) during any period any Advance is outstanding but no Event of Default subsists, Financiers the aggregate of whose participation in the Advances then outstanding represent by value more than $66\frac{2}{3}\%$ of the aggregate of all the Advances then outstanding; or
- (c) during any period any Advance is outstanding and an Event of Default subsists, Financiers the aggregate of whose participation in Advances then outstanding represents by value more than $66\frac{2}{3}\%$ of the aggregate of all of the Advances at that time,

whether or not a majority of Financiers by number.

“Margin” means:

- (a) if the Gearing Ratio is less than or equal to 1.80:1:
 - (i) in relation to Tranches A and B, 0.80 per cent per annum; and
 - (ii) in relation to Tranche C, 0.70 per cent per annum;

- (b) if the Gearing Ratio is greater than 1.80:1:
 - (i) in relation to Tranches A and B, 0.90 per cent per annum; and
 - (ii) in relation to Tranche C, 0.80 per cent per annum,

in each case with the Gearing Ratio being calculated by the Facility Agent by reference to the latest Accounts received by the Facility Agent under clause 16.2 prior to the Interest Period Quotation Date. If for any reason the Facility Agent is unable to calculate the Gearing Ratio (including because the Facility Agent has not received the required Accounts) the Margin will be 0.90 per cent per annum for Tranches A and B and 0.80 per cent per annum for Tranche C. The parties agree that any change in the Margin will only take effect from the first day of the next Interest Period and that the Margin may not change within an Interest Period.

“Material Adverse Effect” means, in respect of a person, a material adverse effect in the reasonable opinion of the Facility Agent on:

- (a) its business, property or financial condition;
- (b) its ability to perform its obligations under a Finance Document; or
- (c) the effectiveness or priority of any Security given by it.

“Material Authorisation” in relation to an Obligor means any Authorisation required to be obtained by it in accordance with clause 16.1(d).

“Net Income” means, for any period, the net profit (or losses) after Tax of the Group for such period as determined in accordance with, and by reference to, the relevant financial statements delivered to the Facility Agent and Accepted Accounting Practices.

“Net Profit After Tax” has the same meaning given to that term under generally accepted accounting principles in Australia consistently applied.

“Obligations” means all the liabilities and obligations of any Obligor to any Finance Party under or by reason of any Finance Document and includes any liabilities or obligations which:

- (a) are liquidated or unliquidated;
- (b) are present, prospective or contingent;
- (c) are in existence before or come into existence on or after the date of this agreement;
- (d) relate to the payment of money or the performance or omission of any act;
- (e) sound in damages only; or
- (f) accrue as a result of any Event of Default,

and irrespective of:

- (g) whether any Obligor is liable or obligated solely, jointly or jointly and severally with another person;
- (h) the circumstances in which any Finance Party comes to be owed each liability or obligation, including any assignment of any liability or obligation; or
- (i) the capacity in which any Obligor and any Finance Party comes to owe or to be owed that liability or obligation.

“Obligor” means (without duplication) the Borrower, each borrower under each Working Capital Agreement, each Guarantor and any other member of the Group which has been required to provide (whether or not it has yet entered into) Security.

“Operating Profit” means for any period, the operating profit on ordinary activities of the Group determined in accordance with, and by reference to, the relevant financial statements delivered to the Facility Agent and Accepted Accounting Practices.

“Original Guarantor” means each person listed in Schedule 2.

“Original Security” means:

- (a) the International Guarantee;
- (b) the US Guarantee; and
- (c) the Pledge.

“Parent” means ResMed Inc, a US corporation incorporated in Delaware.

“Permitted Currency” means:

- (a) Euros, in relation to Tranche A;
- (b) Australian Dollars, United States Dollars, Euros and Sterling, in relation to Tranche B; and
- (c) Australian Dollars, United States Dollars and Euros, in relation to Tranche C.

“Permitted Encumbrances” in respect of any Obligor means:

- (a) any Encumbrance created under the Security;
- (b) the UBOC Security;
- (c) the rent deposit deed (relating to the lower ground floor premises at 8 Wimpole Street, London W1) dated 18 January 2006 and executed by ResMed (UK) Limited in favour of Wimpole House Limited and all other rent deposit deeds executed by ResMed (UK) Limited in relation to leases of premises in the United Kingdom, provided that the aggregate of the amounts secured under all the rent deposit deeds does not exceed GBP 250,000;
- (d) in respect of ResMed Inc. and ResMed Corp.:
 - (i) inchoate liens incident to construction on or maintenance of property; or liens incident to construction on or maintenance of property now or hereafter filed of record for which adequate reserves have been set aside (or deposits made pursuant to applicable law) and which are being contested in good faith by appropriate proceedings and have not proceeded to judgment, provided that, by reason of non-payment of the obligations secured by such liens, no such property is subject to a material impending risk of loss or forfeiture;
 - (ii) liens for taxes and assessments on property which are not yet past due; or liens for taxes and assessments on property for which adequate reserves have been set aside (to the extent required by the Accepted Accounting Practices) and are being contested in good faith by appropriate proceedings and have not proceeded to judgment, provided that, by

reason of nonpayment of the obligations secured by such liens, no such property is subject to a material impending risk of loss or forfeiture;

- (iii) defects and irregularities in title to any property which in the aggregate do not materially impair the fair market value or use of the property for the purposes for which it is or may reasonably be expected to be held;
- (iv) easements, exceptions, reservations, or other agreements for the purpose of pipelines, conduits, cables, wire communication lines, power lines and substations, streets, trails, walkways, drainage, irrigation, water, and sewerage purposes, dikes, canals, ditches, and other like purposes affecting property which in the aggregate do not materially burden or impair the fair market value or use of such property for the purposes for which it is or may reasonably be expected to be held;
- (v) rights reserved to or vested in any Government Authority to control or regulate, or obligations or duties to any Government Authority with respect to, the use of any property, excluding any consensual arrangements with any Government Authority (other than those in existence on the date hereof, if any) which individually or in the aggregate, are not reasonably expected to have a Material Adverse Effect on such Obligor;
- (vi) present or future zoning laws and ordinances or other laws and ordinances restricting the occupancy, use, or enjoyment of property;
- (vii) statutory liens, other than those described in paragraphs (i) or (ii) above, arising in the ordinary course of business with respect to obligations which are not delinquent or are being contested in good faith, provided that, if delinquent, adequate reserves have been set aside with respect thereto (to the extent required by the Accepted Accounting Practices) and, by reason of nonpayment, no property is subject to a material impending risk of loss or forfeiture;
- (viii) rights of tenants under leases and rental agreements covering property entered into in the ordinary course of business of the person owning such property;
- (ix) liens consisting of pledges or deposits to secure obligations under workers' compensation laws or similar legislation, including liens of judgments thereunder which are not currently dischargeable; and
- (x) liens consisting of deposits of property to secure bids made with respect to, or performance of, contracts (other than contracts creating or evidencing an extension of credit to the depositor),

provided that the aggregate of the amounts secured under the above categories of Permitted Encumbrance will not exceed USD 1,000,000;

- (e) any other lien that arises by operation of law in the ordinary course of ordinary business, where the amount secured is not overdue or is being contested in good faith; or
- (f) any Encumbrance otherwise approved by the Facility Agent.

“Pledge” means the French law document titled Agreement for the Pledge of Account of Financial Instruments Relating to Shares of SAIME dated on or about the date of this

agreement and executed by ResMed SA in favour of HSBC Bank Australia Limited as security agent and others, creating a pledge over ResMed SA's shares in SAIME.

"Potential Event of Default" means any event or circumstance which, with the passage of time or the giving of notice or both, would become an Event of Default.

"Power" means any right, power, authority, discretion, remedy or privilege.

"Prescribed Rate" for each Interest Period means the aggregate of the Margin and:

- (a) the BBSY Base Rate for Advances in Australian Dollars;
- (b) Eurolibor for Advances in Euros;
- (c) US Dollar LIBOR for Advances in US Dollars;
- (d) Sterling LIBOR for Advances in Sterling,

in each case in relation to that Interest Period.

"Previous Facility Agreement" means the syndicated facility agreement dated 16 May 2005 between the Borrower and HSBC Bank Australia Limited as initial lender, facility agent and security trustee.

"Reference Banks" means HSBC Bank plc, Barclays Bank plc and Lloyds TSB Bank plc or any other banks or financial institutions determined by the Facility Agent from time to time in consultation with the Borrower.

"Related Body Corporate" has the meaning given in section 9 of the Corporations Act, but on the basis that "Subsidiary" for the purposes of that definition has the meaning given in this agreement.

"Repayment Date" means any date on which the Borrower is required to make a payment under clause 6.1(a) or 6.3.

"ResMed Corp." means ResMed Corp., a US corporation incorporated in Minnesota, having its principal office at 14040 Danielson Street, Poway, CA 92064 USA.

"ResMed EAP" means ResMed EAP, a US corporation incorporated in Delaware.

"ResMed GmbH & Co. KG" means ResMed GmbH & Co. KG, a limited liability company incorporated in Germany having its seat in Martinsried (Municipality of Planegg), registered in the commercial register of the local court of Munich under HRA 85330.

"ResMed Holdings Limited" means ResMed Holdings Limited ABN 28 003 765 133, whose registered office is at 97 Waterloo Road, Macquarie Park, NSW 2113.

"Resmed Loan Agreement" means the Intercompany Loan Agreement dated 13 May 2005 between the Borrower (as lender) and ResMed SA (as borrower).

"ResMed Property Trust" means the trust constituted pursuant to a deed entitled "The ResMed Property Trust Deed" dated 7 August 1997 and entered into between ResMed Holdings Limited ACN 003 765 133 as trustee and the Borrower as initial unit holder.

"ResMed SA" means ResMed SA, a limited company incorporated under the laws of France with a share capital of EUR46,050,000, whose registered office is at Parc de la Bandonnière, 2 rue Maurice Audibert, 69800 Saint Priest, France registered with the Registry of Commerce and Companies of Lyon under single identification number 407 775 170.

“ResMed (UK) Limited” means ResMed (UK) Limited, incorporated in England with company registration number 02863553, whose registered office is at 65 Milton Park, Abingdon, Oxfordshire, OX14 4RX.

“SAIME” means SAIME a limited company (*société par actions simplifiée*) organised and existing under the laws of France, with a share capital of EUR 7,890,000, whose registered office is situated at 25, avenue de l’Etain, 77176 Savigny le Temple, registered with the Registry of Commerce and Companies of Melun under single identification number 451 683 536 RCS Melun.

“Security” means the Original Security and all other Encumbrances held by the Security Trustee at any time for the due satisfaction of the Obligations.

“Security Trust Deed” means the security trust deed dated on or about the date of this agreement and entered into between the Borrower and the Security Trustee.

“Security Trustee” means HSBC Bank Australia Limited, or if HSBC Bank Australia Limited has been replaced, the successor appointed under the Security Trust Deed.

“Semi-Annual Date” means 30 June and 31 December in each year.

“Semi-Annual Period” means each six-month period commencing on a Semi-Annual Date and ending on the next Semi-Annual Date.

“Statute” means any legislation of any Parliament or of any State or Territory of any jurisdiction in force at any time, and any rule, regulation, ordinance, by-law, statutory instrument, order or notice at any time made under that legislation and, in each case, any consolidations, amendments, re-enactments and replacements.

“Sterling” or **“GBP”** means the lawful currency for the time being of the United Kingdom; and, in respect of all payments to be made under this agreement in Sterling, immediately available, freely transferable funds.

“Sterling LIBOR”, in relation to an Interest Period or any other period, means:

- (a) the British Bankers Association Interest Settlement Rate displayed on the appropriate page of the Reuters screen; or
- (b) if the relevant page is replaced or the service ceases to be available, another page or service displaying the appropriate rate as the Facility Agent (after consultation with the Borrower and the Financiers) may specify; or
- (c) if no such rate is available, the arithmetic mean (rounded upwards to four decimal places) of the rates quoted by the Reference Banks to leading banks in the London interbank market,

and in all cases, the rate will be established as at 11.00 am on the LIBOR Quotation Date for the offering of deposits in Sterling and for the period requested.

“Subsidiary” in relation to any person, has the meaning given in the Corporations Act but as if “body corporate” included any person and for the purposes of which any beneficial interests will be deemed shares. A reference to a subsidiary in relation to the Borrower also includes the Resmed Property Trust.

“Substitution Certificate” means a certificate substantially in the form of Schedule 5 completed and entered into in accordance with clause 25.4, and a reference to **“substitutes”**

will be construed as references to a person becoming party to this agreement under any Substitution Certificate.

“Take Air Medical Handels-GmbH” means Take Air Medical Handels-GmbH a limited liability company (*Gesellschaft mit beschränkter Haftung*) incorporated under the laws of Germany, registered with the commercial register of the Local Court of Achim in Germany under HRB 5506, dated 17 May 2005.

“Tangible Net Worth” means, in respect of the Group (on a consolidated basis) at any time, the aggregate of tangible fixed assets and Current Assets at that time less all current liabilities and all long term liabilities (including, without limitation, contingent liabilities) at that time.

“Tax” means all taxes, levies, imposts, deductions, charges and withholdings assessed, imposed, collected, or withheld under any legislation and, in each case, all interest, fines, penalties, charges, fees or other amounts in respect of them.

“Total Commitments” means the aggregate of the Total Tranche A Commitments, the Total Tranche B Commitments and the Total Tranche C Commitments.

“Total Debt” means, for a period, in respect of the Group, the aggregate principal amount of all Financial Liabilities to entities outside the Group which is interest bearing (including but not limited to, interest on convertible notes, redeemable preference shares and any amounts payable in relation to any finance lease which is treated as interest) on a consolidated basis, but excluding the Intercompany Loans.

“Total Tranche A Commitments” means, at any time, the aggregate of the Tranche A Commitments at that time.

“Total Tranche B Commitments” means, at any time, the aggregate of the Tranche B Commitments at that time.

“Total Tranche C Commitments” means, at any time, the aggregate of the Tranche C Commitments at that time.

“Tranche A Advance” means any loan under the Tranche A Facility or, where the context requires, the principal amount of that loan outstanding.

“Tranche A Availability Period” means the period from and including the date of this agreement to the close of business on 30 June 2006.

“Tranche A Commitment” in relation to a Financier means the amount set out against that Financier’s name in Schedule 1 as its Tranche A Commitment or in the Substitution Certificate or other document by which it became a party to or acquired rights under this agreement, in any case as reduced or increased by substitution or transfer under clause 25 and any Substitution Certificate to which the Financier is a party, to the extent not cancelled or reduced under this agreement.

“Tranche A Facility” means the EUR 50,000,000 term loan facility made available under this agreement as referred to in clause 2.1(a).

“Tranche A Facility Reduction Date” means each date for reduction of the Tranche A Commitment and the Total Commitments under clause 5.4 and (if necessary) repayment of the Tranche A Advances under clause 6.1.

“Tranche A Termination Date” means the earlier of:

- (a) the Final Termination Date; and

(b) any date on which the Tranche A Facility is terminated or cancelled in accordance with this agreement.

“Tranche B Advance” means any loan under the Tranche B Facility or, where the context requires, the principal amount of that loan outstanding.

“Tranche B Availability Period” means the period from and including the date of this agreement to the close of business on the Business Day prior to the Final Termination Date.

“Tranche B Commitment” in relation to a Financier means the amount set out against that Financier’s name in Schedule 1 as its Tranche B Commitment or in the Substitution Certificate or other document by which it became a party to or acquired rights under this agreement, in any case as reduced or increased by substitution or transfer under clause 25 and any Substitution Certificate to which the Financier is a party, to the extent not cancelled or reduced under this agreement.

“Tranche B Facility” means the USD 15,000,000 term loan facility made available under this agreement as referred to in clause 2.1(b),

“Tranche B Termination Date” means the earlier of:

(a) the Final Termination Date; and

(b) any date on which the Tranche B Facility is terminated or cancelled in accordance with this agreement.

“Tranche C Advance” means any loan under the Tranche C Facility or, where the context requires, the principal amount of that loan outstanding.

“Tranche C Availability Period” means the period from and including the date of this agreement to the close of business on 30 June 2006.

“Tranche C Commitment” in relation to a Financier means the amount set out against the Financier’s name in Schedule 1 as its Tranche C Commitment or in the Substitution Certificate or other document by which it became a party to or acquired rights under this agreement, in any case as reduced or increased by substitution or transfer under clause 25 and any Substitution Certificate to which the Financier is a party, to the extent not cancelled or reduced under this agreement.

“Tranche C Facility” means the USD 60,000,000 term loan facility made available under this agreement as referred to in clause 2.1(c).

“Tranche C Facility Reduction Date” means each date for reduction of the Tranche C Commitment and the Total Commitments under clause 5-5 and (if necessary) repayment of the Tranche C Advances under clause 6.3.

“Tranche C Termination Date” means the earlier of:

(a) the date falling 3 years after the date of this agreement; and

(b) any date on which the Tranche C Facility is terminated or cancelled in accordance with this agreement,

“Twelve-Month Period” means a period of twelve calendar months ending on a Semi-Annual Date.

“UBOC Facilities” means the facilities provided by Union Bank of California, N.A. and other lenders to ResMed Corp., ResMed EAP Holdings Inc. and Servo Magnetics Inc. pursuant to the UBOC Loan Agreement.

“UBOC Loan Agreement” means the second amended and restated revolving loan agreement dated 1 March 2006 and entered into between ResMed Corp., ResMed EAP Holdings Inc. and Servo Magnetics Inc. as borrowers, the Parent as guarantor, the lenders named therein and Union Bank of California, N.A. as administrative agent.

“UBOC Security” means all encumbrances created under or pursuant to the “Collateral Documents”, as defined in the UBOC Loan Agreement as at the date of this agreement.

“Upfront Fee Letter” means the letter dated on or about the date of this agreement from the Facility Agent to the Borrower, as accepted by the Borrower, setting out certain upfront fees payable by the Borrower referred to in clause 10.1.

“Unpaid Sum” means any sum due and payable by an Obligor under the Finance Documents but unpaid.

“US Dollars” or **“USD”** means the lawful currency of the United States of America; and, in respect of all payments to be made under this agreement in US Dollars, funds which are for same day settlement in the New York Clearing House Interbank Payments System (or such other funds as may at the relevant time be customary for the settlement of international banking transactions denominated in US Dollars).

“US Dollar Amount” means, in relation to an Advance, the amount of that Advance in US Dollars specified in the relevant Drawdown Notice.

“US Dollar LIBOR”, in relation to an Interest Period or any other period, means:

- (a) the British Bankers Association Interest Settlement Rate displayed on the appropriate page of the Reuters screen; or
- (b) if the relevant page is replaced or the service ceases to be available, another page or service displaying the appropriate rate as the Facility Agent (after consultation with the Borrower and the Financiers) may specify; or
- (c) if no such rate is available, the arithmetic mean (rounded upwards to four decimal places) of the rates quoted by the Reference Banks to leading banks in the London interbank market,

and in all cases, the rate will be established as at 11.00 am on the LIBOR Quotation Date for the offering of deposits in US Dollars and for the period requested.

“US Guarantee” means the guarantee and indemnity dated on or about the date of this agreement between the Parent, ResMed Corp., the Borrower and the Security Trustee.

“Working Capital Agreements” means:

- (a) the working capital agreement dated on or about the date of this agreement and entered into between the Borrower and HSBC Bank Australia Limited;
- (b) any agreement from time to time entered into between ResMed (UK) Limited as borrower and HSBC Bank plc as lender relating to the provision of working capital facilities to ResMed (UK) Limited;

- (c) any agreement from time to time entered into between ResMed SA as borrower and HSBC France as lender relating to the provision of working capital facilities to ResMed SA;
- (d) any agreement from time to time entered into between ResMed GmbH & Co. KG as borrower and HSBC Trinkaus & Burkhardt KgaA as lender relating to the provision of working capital facilities to ResMed GmbH & Co. KG; and
- (e) any other agreement from time to time entered into between any Group Company and any HSBC Entity pursuant to which working capital facilities are provided by the HSBC Entity to the Group Company.

“Working Capital Financier” means any lender or financier under any Working Capital Agreement.

1.2 Interpretation

In this agreement:

- (a) headings are for convenience only and do not affect interpretation;

and unless the context indicates a contrary intention:

- (b) **“person”** includes an individual, the estate of an individual, a corporation, a Government Authority, an association, a Joint Venture and a trust;
- (c) a reference to a party includes that party’s executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
- (d) a reference to a document (including any Finance Document) is to that document as varied, novated, ratified, replaced or restated from time to time;
- (e) a reference to a law includes any law, Statute and official directive of any Government Authority;
- (f) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (g) a reference to a party, clause or schedule is a reference to a party, clause or schedule to or of this agreement, and a reference to this agreement includes all schedules to it;
- (h) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) **“includes”** in any form is not a word of limitation;
- (j) all accounting terms used in this agreement have the meaning given to them under Accepted Accounting Practices;
- (k) if the day on or which a person must do something under this agreement is not a Business Day:
 - (i) if the act involves a payment that is due on demand, the person must do it on or by the next Business Day; and

-
- (ii) in any other case, the person must do it on or by the previous Business Day;
 - (l) a reference to a “**month**” is, where that month is the last month to occur in any period, a reference to a period starting on the relevant date in a calendar month and ending on the numerically corresponding day in the next calendar month, except that if there is no numerically corresponding day in the next calendar month, the period will end on the last Business Day in that calendar month; and
 - (m) a reference to “**subsists**” or any similar expression in relation to an Event of Default or a Potential Event of Default indicates an Event of Default or Potential Event of Default which has not been remedied or waived in accordance with the terms of the Finance Documents.

1.3 Joint and several liability

The expression Obligor refers to each person identified as an Obligor, and the obligations of the Obligors under this agreement bind them, jointly and severally.

1.4 Working Capital Agreements

The parties agree that, for the purposes of clauses 11, 12, 21, 22 and 23, each reference to Finance Document shall exclude the Working Capital Agreements.

2. The Facilities

2.1 Facilities

Subject to the terms of this agreement and in reliance on the representations and warranties set out in clause 15 and in the Security, the Financiers grant to the Borrower the following facilities:

- (a) **(Tranche A Facility):** a term loan facility under which the Financiers when requested by the Borrower under a Drawdown Notice will make Tranche A Advances in Euros to the Borrower during the Tranche A Availability Period in an aggregate amount not exceeding the Total Tranche A Commitments;
- (b) **(Tranche B Facility):** a term loan facility under which the Financiers when requested by the Borrower under a Drawdown Notice will make Tranche B Advances in Australian Dollars, US Dollars, Euros or Sterling to the Borrower during the Tranche B Availability Period in an aggregate amount not exceeding the Total Tranche B Commitments; and
- (c) **(Tranche C Facility):** a term loan facility under which the Financiers when requested by the Borrower under a Drawdown Notice will make Tranche C Advances in Australian Dollars, US Dollars or Euros to the Borrower during the Tranche C Availability Period in an aggregate amount not exceeding the Total Tranche C Commitments.

2.2 Financiers' Commitments

No Financier is obliged to participate in the making of:

- (a) **(Tranche A Advances):** a Tranche A Advance if to do so would cause the aggregate of its participation in Tranche A Advances outstanding under this agreement to exceed its Tranche A Commitment;

-
- (b) **(Tranche B Advances):** a Tranche B Advance if to do so would cause the aggregate of its participation in the Tranche B Advances outstanding under this agreement to exceed its Tranche B Commitment; and
 - (c) **(Tranche C Advances):** a Tranche C Advance if to do so would cause the aggregate of its participation in the Tranche C Advances outstanding under this agreement to exceed its Tranche C Commitment.

2.3 Several obligations

The obligations of each Finance Party under the Finance Documents are several. The failure of a Finance Party to perform its obligations under the Finance Documents will not relieve any other Finance Party or any Obligor of any of its respective obligations or responsibilities under the Finance Documents. No Finance Party will be responsible for the obligations of any other Finance Party under any Finance Document.

2.4 Separate and independent rights

The rights of each Finance Party under the Finance Documents are separate and independent rights. Any amount owing under the Finance Documents to any Finance Party by an Obligor constitutes a separate and independent debt which, subject to the terms of the Finance Documents, may be separately enforced by that Finance Party.

2.5 Purpose

- (a) The Tranche A Facility may only be used for the purpose of repaying all amounts outstanding under the Previous Facility Agreement.
- (b) The Tranche B Facility may only be used for the purpose of financing capital expenditure and other acquisitions of assets by the Group, which have been approved by the Facility Agent (acting on the instructions of all the Financiers).
- (c) The Tranche C Facility may only be used for the purpose of the payment by the Borrower of a special dividend to ResMed Holdings Limited, which will ultimately be paid to the Parent.
- (d) No Finance Party is bound to monitor or verify the application of any Advance and no Finance Party will have any liability to any person arising from a failure by the Borrower to use an Advance for a purpose specified in this clause 2.5.

2.6 Termination

- (a) The Tranche A Facility terminates on the Tranche A Termination Date.
- (b) The Tranche B Facility terminates on the Tranche B Termination Date.
- (c) The Tranche C Facility terminates on the Tranche C Termination Date.

3. Conditions precedent

3.1 Conditions precedent to the first Advance

The obligations of the Financiers to make the first Advance available to the Borrower under this agreement are subject to the Facility Agent being satisfied that on the first Drawdown Date:

- (a) **(Documents):** the Facility Agent has first received all of the documents listed in Schedule 3 in form and substance reasonably satisfactory to it; and

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- (b) **(Fees):** all fees then due from the Borrower under clause 10 have been paid.

3.2 Conditions precedent to all Advances

The obligations of the Financiers to make each Advance (including the first Advance) available to the Borrower under this agreement are subject to the Facility Agent being satisfied that both at the date of the relevant Drawdown Notice and at the relevant Drawdown Date:

- (a) **(Representations and warranties true):** the representations and warranties set out in clause 15 to be repeated on those dates are true and correct and will be true and correct immediately after the making of the Advance, in each case, with reference to the facts and circumstances existing at that time;
- (b) **(No Event of Default):** no Event of Default or Potential Event of Default is subsisting or will result from the making of the Advance; and
- (c) **(Further Guarantees and Security):** all Guarantees and Security required by the terms of this agreement to be entered into on or before the Drawdown Date have been, or will on the Drawdown Date be, duly executed and delivered to the Facility Agent together with all other documents required by the Finance Documents to be delivered to the Facility Agent in relation to those Guarantees and Security.

3.3 Conditions precedent to Tranche B Advances

- (a) The obligations of the Financiers to make each Tranche B Advance available to the Borrower under this agreement are also subject to:
 - (i) where the proceeds of the Tranche B Advance are to be used to finance the acquisition of assets by the Group, the prior written consent of the Facility Agent (acting on the instructions of all the Financiers), which consent shall not be unreasonably withheld, to the proposed acquisition;
 - (ii) where the Facility Agent has approved an acquisition, the target company under the proposed acquisition becoming an Additional Guarantor by executing a guarantee and indemnity in favour of the Security Trustee immediately after completion of the acquisition in accordance with clause 16.5;
 - (iii) where the Facility Agent has approved the acquisition, the Facility Agent being satisfied (acting reasonably) that the target company under the proposed acquisition carries on a business which is either substantially similar, related or complementary to the business of the Group as a whole; and
 - (iv) where the proceeds of the Tranche B Advance are to be used to finance capital expenditure by the Group, the Borrower must obtain the approval of the Facility Agent (acting on the instructions of all the Financiers), which approval shall not be unreasonably withheld, to the capital expenditure.
- (b) The Borrower will provide the Facility Agent with such additional information and documents as the Facility Agent may reasonably require for the purposes of considering any approval and consent under clause 3.3(a)(i).

3.4 Facility Agent not liable

The Facility Agent will be entitled to be satisfied with the form and substance of a document provided to it under clauses 3.1(a) and 3.3(b) if the document appears to the Facility Agent on its face to conform with its description. The Facility Agent will not be liable for any cost, loss, damage or expense suffered or incurred by any person as a result of it being so satisfied.

3.5 Waiver of Conditions Precedent

- (a) A condition precedent in clauses 3.1 and 3.3 may only be waived by the Facility Agent acting on the instructions of all Financiers.
- (b) A condition precedent in clause 3.2 may be waived by the Facility Agent acting on the instructions of the Majority Financiers.

4. Drawdowns**4.1 Notice**

The Borrower may request an Advance by giving a Drawdown Notice to the Facility Agent. Only one Advance may be requested in a Drawdown Notice, unless the Facility Agent otherwise consents.

4.2 Contents of Drawdown Notice

Each Drawdown Notice will be in the form of Schedule 4 and in each case will specify:

- (a) the proposed Drawdown Date which must be a Business Day before the expiry of the applicable Availability Period;
- (b) the Facility to be utilised;
- (c) the currency of the Advance, which must be a Permitted Currency;
- (d) for the Tranche A Advance, the Euro Amount of the Advance (which must equal Euro 50,000,000);
- (e) for Tranche B Advances the amount of the Advance in a Permitted Currency (which must be at least USD500,000 (or its Equivalent), but must not exceed the aggregate undrawn Commitment of the Tranche B Facility);
- (f) for Tranche C Advances, the amount of the Advance in a Permitted Currency (which must be at least USD15,000,000 (or its Equivalent));
- (g) the purpose for which the Advance will be applied;
- (h) the proposed duration of its (or its first) Interest Period; and
- (i) payment instructions.

4.3 Requirements of Drawdown Notice

Each Drawdown Notice will be irrevocable and must be:

- (a) received by the Facility Agent by 4.00 pm (Sydney time) at least 2 Business Days before the proposed Drawdown Date; and

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- (b) signed by an Authorised Officer of the Borrower.

4.4 Amount of Tranche B and Tranche C Advances in Alternative Currencies

If a Tranche B Advance or a Tranche C Advance is to be made in an Alternative Currency, the amount to be drawn down will be the Equivalent, as determined by the Facility Agent, in that Alternative Currency of the US Dollar Amount on the second Business Day before the relevant Drawdown Date.

4.5 Facility Agent to notify Financiers

Immediately after receipt of a Drawdown Notice which complies with the provisions of this agreement the Facility Agent will notify each Financier of the proposed Advance including the amount of the proposed Advance and the proposed Drawdown Date.

4.6 Making of Advances

- (a) Subject to the provisions of this agreement, each Financier will, on the date specified in any Drawdown Notice for an Advance, make available through its Facility Office its participation in the Advance. Each amount will be made available to the Facility Agent in the Permitted Currency specified in the Drawdown Notice.
- (b) The amount of each Financier's participation in each Advance will equal the proportion which its Tranche A Commitment, Tranche B Commitment or Tranche C Commitment, as the case may be, bears to the Total Tranche A Commitments, the Total Tranche B Commitments or the Total Tranche C Commitments, as the case may be.
- (c) All amounts made available to the Facility Agent under clause 4.6(a) will be applied in accordance with clause 11 for disbursement to or to the order of the Borrower in accordance with the provisions of the relevant Drawdown Notice and this agreement.

4.7 Maximum number of Advances

- (a) **(Tranche A):** The Borrower may not deliver a Drawdown Notice if as a result of the proposed Advance more than one Tranche A Advance would be outstanding.
- (b) **(Tranche B):** The Borrower may not deliver a Drawdown Notice if as a result of the proposed Advance more than five Tranche B Advances would be outstanding.
- (c) **(Tranche C):** The Borrower may not deliver a Drawdown Notice if as a result of the proposed Advance more than three Tranche C Advances would be outstanding.

5. Cancellation and reduction of Facilities

5.1 Tranche A Commitments

Any part of the Tranche A Commitments not utilised under this agreement before the expiry of the Tranche A Availability Period will be cancelled automatically on the expiry of the Tranche A Availability Period.

5.2 Tranche B Commitments

Any part of the Tranche B Commitments not utilised under this agreement before the expiry of the Tranche B Availability Period will be cancelled automatically on the expiry of the Tranche B Availability Period.

5.3 Tranche C Commitments

Any part of the Tranche C Commitments not utilised under this agreement before the expiry of the Tranche C Availability Period will be cancelled automatically on the expiry of the Tranche C Availability Period.

5.4 Reduction of the Tranche A Commitment on the Tranche A Facility Reduction Dates

The Tranche A Commitment reduces on each date set out below to the amount appearing beside that date:

Tranche A Facility Reduction Date	Tranche A Commitment (EUR)
30 June 2006	48,250,000
30 June 2007	44,500,000
30 June 2008	37,750,000
30 June 2009	27,500,000
31 December 2009	15,000,000
Tranche A Termination Date	0

5.5 Reduction of Tranche C Commitment

The Tranche C Commitment reduces on:

- (a) 31 December 2007 to USD 30,000,000; and
- (b) the Tranche C Termination Date to zero.

5.6 Reduction consequent on repayment or prepayment

- (a) The Tranche A Commitments will be reduced (the reduction being applied proportionally as between the Tranche A Commitments of all Financiers) by the reduction contemplated under clause 5.4 and the amount of any repayment or prepayment of any Tranche A Advance made under clause 6.1 or 6.4.
- (b) A Financier's Tranche A Commitment will be reduced by the amount of any other prepayment of that Financier's participation in any Tranche A Advance made under any other provision of this agreement.
- (c) The Tranche B Commitments will be reduced (the reduction being applied proportionally as between the Tranche B Commitments of all Financiers) by the amount of any repayment or prepayment of any Tranche B Advance made under clause 6.2 or 6.4.

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- (d) A Financier's Tranche B Commitment will be reduced by the amount of any other prepayment of that Financier's participation in any Tranche B Advance made under any other provision of this agreement.
 - (e) The Tranche C Commitments will be reduced (the reduction being applied proportionally as between the Tranche C Commitments of all Financiers) by reduction contemplated under clause 5.5 and the amount of any repayment or prepayment of any Tranche C Advance made under clause 6.3 or 6.4.
 - (f) A Financier's Tranche C Commitment will be reduced by the amount of any other prepayment of that Financier's participation in any Tranche C Advance made under any other provision of this agreement.

5.7 Limitations

- (a) Any Commitments cancelled or otherwise extinguished under this agreement may not be reinstated.
- (b) The Commitments may only be reduced or cancelled as expressly provided under this agreement.

6. Repayment and prepayments

6.1 Repayment of Tranche A Advances

- (a) On each Tranche A Facility Reduction Date, the Borrower (without limiting its obligations under this clause) must repay the Tranche A Advances, to the extent necessary (if at all) to ensure that the outstanding Tranche A Advances are no greater than the Tranche A Commitment (as reduced in accordance with clause 5.4). The Financiers are entitled to share in repayments under this paragraph pro rata according to their participation in the Tranche A Advances.
- (b) The Borrower will repay all Tranche A Advances in full on the Tranche A Termination Date.

6.2 Repayment of Tranche B Advances

The Borrower will repay all Tranche B Advances in full on the Tranche B Termination Date.

6.3 Repayment of Tranche C Advances

- (a) On each Tranche C Facility Reduction Date, the Borrower (without limiting its obligations under this clause) must repay the Tranche C Advances, to the extent necessary (if at all) to ensure that the outstanding Tranche C Advances are no greater than the Tranche C Commitment (as reduced in accordance with clause 5.5). The Financiers are entitled to share in repayments under this paragraph pro rata according to their participation in the Tranche C Advances.
- (b) If on any Semi-Annual Date, the US Dollar Equivalent of the outstanding Tranche C Advances exceeds the Tranche C Commitment (as reduced in accordance with clause 5.5) at that time, the Borrower must, within 30 days of that Semi-Annual Date, repay or prepay such Tranche C Advances to the extent necessary (if at all) so that the US Dollar Equivalent of the outstanding Tranche C Advances is no greater than the Tranche C Commitment (as reduced in accordance with clause 5.5).
- (c) The Borrower will repay the Tranche C Advances in full on the Tranche C Termination Date.

6.4 Voluntary prepayment

- (a) The Borrower may prepay an Advance in whole or in part (but, if in part, by a minimum of EUR 2,000,000 and a multiple of EUR 2,000,000 in the case of Tranche A, and a minimum of USD 1,000,000 (or its Equivalent) and a multiple of USD 1,000,000 (or its Equivalent) in the case of Tranche B, and a minimum of USD 2,000,000 (or its Equivalent) and a multiple of USD 2,000,000 (or its Equivalent) in the case of Tranche C) on the last day of its current Interest Period on giving not less than 5 Business Days' prior notice to the Facility Agent.
- (b) Any notice of prepayment given by the Borrower is irrevocable and the Borrower is bound to prepay in accordance with the notice.
- (c) The Borrower may not voluntarily prepay any Advance except in accordance with this clause 6.4.

6.5 General provisions relating to repayment and prepayment

- (a) Immediately after its receipt of a notice of prepayment under this clause 6 the Facility Agent will promptly notify each Financier of the prepayment, the date on which the prepayment is to be made and its proportional share of the prepayment.
- (b) Amounts repaid or prepaid in respect of the Advances under any provision of this agreement may not be re-utilised under this agreement.
- (c) Any repayment or prepayment of any amount under any provision of this agreement will be made together with interest and fees accrued on the amount repaid or prepaid and any amount required to be paid in accordance with clause 20 but otherwise without premium or penalty.

7. Interest

7.1 Interest Periods

- (a) In the Drawdown Notice for each Advance (and, in the case of each Interest Period after the first for each Advance, in writing at least 2 Business Days' prior to the commencement of that Interest Period), the Borrower will notify the Facility Agent whether the Interest Period for the Advance is to be of 1, 2 or 3 months duration or such other period agreed between the Borrower and the Facility Agent (acting on the instructions of all Financiers where the Interest Period is proposed to be of longer than 3 months duration).
- (b) The first Interest Period in relation to an Advance is the period commencing on the Drawdown Date for that Advance. Any subsequent Interest Period in relation to an Advance will commence on the last day of the immediately preceding Interest Period. Interest for each Interest Period is, subject to clause 7.3, to be calculated from (and including) the first day of that Interest Period to (but excluding) the last day of that Interest Period.
- (c) If an Advance is utilised during an Interest Period relating to another Advance under the same Facility, then unless the Facility Agent and the Borrower agree otherwise, the first Interest Period relating to the further Advance ends on the last day of the Interest Period relating to the earlier Advance. On the last day of that Interest Period the Advances will be consolidated and treated as one.

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- (d) If the Borrower does not select an Interest Period for an Advance in accordance with clause 7.1 (a), the Interest Period will be 3 months.
 - (e) The term of each Interest Period is subject to any marginal adjustment as the Facility Agent in its discretion determines so that the first and last days of it are Business Days and the final Interest Periods terminate on the Tranche A Termination Date, the Tranche B Termination Date or the Tranche C Termination Date, as applicable.
 - (f) The Facility Agent will promptly notify the Financiers of each Interest Period determined in accordance with clauses 7.1 and 7.2.

7.2 Restrictions on selection

- (a) The Borrower will select the duration of Interest Periods under clause 7.1 (a) so as to ensure that:
 - (i) each Repayment Date will also be the last day of an Interest Period in relation to an Advance or Advances at least equal to the amount due to be repaid on that date; and
 - (ii) no Advance will have an Interest Period expiring after the Tranche A Termination Date, the Tranche B Termination Date or the Tranche C Termination Date, as applicable.
- (b) If it appears to the Facility Agent in good faith that the requirements of clause 7.2(a) will not be met by the Borrower's selection of any Interest Period, the Facility Agent, on behalf of and after consultation with the Borrower, will (despite any other provision of this agreement) select a different duration for that Interest Period.

7.3 Calculation of interest

- (a) Interest on each Advance accrues daily and is to be computed as follows:
 - (i) in relation to Advances in Australian Dollars or Sterling, on a daily basis on a year of 365 days; and
 - (ii) in relation to Advances in US Dollars or Euros, on a daily basis on a year of 360 days.
- (b) The rate of interest for each Advance for each Interest Period is the Prescribed Rate in relation to the relevant Interest Period. The Facility Agent will promptly notify the Financiers and the Borrower of each determination of the Prescribed Rate under this clause 7.3.
- (c) The Facility Agent's certificate as to the rate of interest at any time will be conclusive and binding on the Obligors in the absence of manifest error on the face of the certificate.

7.4 Payment of interest

The Borrower will pay to the Facility Agent for the account of the Financiers the accrued interest in relation to each Advance on the last day of each Interest Period applicable to that Advance calculated up to that day.

8. Interest on overdue amounts**8.1 Default interest**

- (a) The Borrower must pay interest on each amount that is not paid when due, from (and including) the day on which it falls due to (but excluding) the day on which it is paid in full, at the rate calculated in accordance with paragraph (b). The Borrower must pay this interest on demand.
- (b) Interest on an unpaid amount accrues each day in a Default Interest Period at the Default Rate for that Default Interest Period, and is capitalised (if not paid) on the last day of that Default Interest Period.
- (c) This subclause does not affect the Borrower's obligation to pay each amount under this agreement when it is due.

8.2 Interest after judgement

If a liability of the Borrower becomes merged in a judgment or order, the Borrower, as an independent obligation, must pay interest on the amount of that liability, from (and including) the date of the judgment or order until it is paid in full, at the higher of the rate that applies under the judgment or order and the rate calculated in accordance with clause 8.1.

8.3 Accrual and calculation of interest

Interest under this clause:

- (a) accrues daily; and
- (b) is calculated on the basis of the actual number of days on which interest has accrued and of (i) a 365 day year (in relation to amounts due in Australian Dollars or Sterling); or (ii) a 360 day year (in relation to amounts due in US Dollars or Euros).

9. Bill reliquefaction**9.1 Drawing of Bills**

The Borrower agrees to draw Bills in connection with any Advance in the manner required by any Financier whenever requested by a Financier to do so. The discounted value of those Bills when added to the aggregate discounted value of all other Bills drawn under this clause 9.1 for the relevant Financier and which are outstanding at any time may not exceed that Financier's participation in all Advances which are outstanding at that time.

9.2 Attorney

The Borrower irrevocably and for valuable consideration appoints each Financier (severally) as its attorney to draw Bills in its name or on its behalf under clause 9.1 and agrees to ratify all action taken by any Financier as its attorney under this clause 9.2.

9.3 Dealing

Each Financier may realise or deal with any bill drawn for it under clause 9.1 as it, in its discretion, determines.

9.4 Appointment revoked

The requirement to draw Bills under clause 9.1 and each appointment under clause 9.2 will cease and be revoked without necessity for notice when all Advances are fully and finally repaid. Nothing in clause 9.1 or 9.2 requires the Borrower, or authorises any Financier as attorney, to draw a Bill which matures after, in the case of Bills drawn in connection with any Tranche A Advance, the Tranche A Termination Date or, in the case of Bills drawn in connection with any Tranche B Advance, the Tranche B Termination Date or, in the case of Bills drawn in connection with any Tranche C Advance, the Tranche C Termination Date.

9.5 Indemnity

- (a) Each Financier indemnifies the Borrower against liability on any Bill drawn by the Borrower at the request of that Financier under clause 9.1 or drawn by that Financier under clause 9.2. Each Financier agrees to pay the costs of preparation of and all stamp duty on each Bill drawn at its request under clause 9.1 or by it acting as attorney under clause 9.2.
- (b) Clause 9.5(a) does not affect any obligation of the Borrower under the Finance Documents. In particular the obligations of the Borrower to make payments under the Finance Documents are not in any way affected by any liability of a Financier, contingent or otherwise, under the indemnity in clause 9.5(a),

9.6 Notice

On request from the Borrower through the Facility Agent (not more often than once each quarter) each Financier will notify the Borrower through the Facility Agent of the total face value of Bills outstanding at that time under this clause 9 which have been drawn by the Borrower at the request of that Financier under clause 9.1 or drawn by that Financier as attorney under clause 9.2.

9.7 Satisfaction of Obligations

If the Borrower discharges any Bill drawn under this clause 9 at its maturity by payment the amount of that payment will be taken to have satisfied, to the extent of the payment, amounts owing to the Financier that prepared the Bill or at whose request the Borrower prepared that Bill.

10. Fees

10.1 Upfront fees

The Borrower will pay to the Facility Agent for distribution among the Financiers such fees calculated and payable in accordance with the Upfront Fee Letter.

10.2 Unused Commitment fee

- (a) **(Tranche A):** The Borrower must pay to the Facility Agent on account of the Financiers proportionally to their respective Tranche A Commitments an unused commitment fee in Euros at a per annum rate equal to 30% of the Margin on the daily unutilised balance of the Tranche A Commitment. This fee:
 - (i) accrues daily from the date of this agreement up to and including the Final Termination Date;

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- (ii) is calculated on the basis of the actual number of days elapsed and of a 360 day year; and
 - (iii) is payable in arrears, on the last day of each calendar month, and on the Final Termination Date or, if earlier, on the day on which the Tranche A Commitment reduces to zero.
 - (b) **(Tranche B):** The Borrower must pay to the Facility Agent on account of the Financiers proportionally to their respective Tranche B Commitments an unused commitment fee in US Dollars at a per annum rate equal to 30% of the Margin on the daily unutilised balance of the Tranche B Commitment. This fee:
 - (i) accrues daily from the date of this agreement up to and including the Final Termination Date;
 - (ii) is calculated on the basis of the actual number of days elapsed and of a 360 day year; and
 - (iii) is payable in arrears, on the last day of each calendar month, and on the Final Termination Date or, if earlier, on the day on which the Tranche B Commitment reduces to zero.
 - (c) **(Tranche C):** The Borrower must pay to the Facility Agent on account of the Financiers proportionally to their respective Tranche C Commitments an unused commitment fee in US Dollars at a per annum rate equal to 30% of the Margin on the daily unutilised balance of the Tranche C Commitment. This fee:
 - (i) accrues daily from the date of this agreement up to and including the Tranche C Termination Date;
 - (ii) is calculated on the basis of the actual number of days elapsed and of a 360 day year; and
 - (iii) is payable in arrears, on the last day of each calendar month, and on the Tranche C Termination Date or, if earlier, on the day on which the Tranche C Commitment reduces to zero.

10.3 Payments to the Facility Agent and Security Trustee

The Borrower will pay to the Facility Agent for its own account, and to the Security Trustee for its own account, fees in the amounts and on the dates as specified in the Agency Fee Letter.

10.4 No refund

All fees payable by the Borrower under this clause 10 are non-refundable and non-rebateable.

11. Payments

11.1 Payment to Security Trustee

- (a) All payments to be made by any Obligor under the Finance Documents will be paid to or to the order of the Security Trustee or, in the case of the Pledge, HSBC Bank Australia Limited as security agent, provided that the Security Trustee and HSBC Bank Australia Limited as security agent (in the case of the Pledge) consents, subject to clause 11.1 (b), to all payments being made to the Facility Agent, until the Security becomes enforceable and the Security Trustee or, in the case of the Pledge,

HSBC Bank Australia Limited as security agent withdraws its consent by notice to the Facility Agent and the Borrower.

- (b) Any payment made by an Obligor to the Security Trustee, HSBC Bank Australia Limited as security agent or the Facility Agent for the account of any other Finance Party on the terms of clause 11.1 (a) satisfies the Obligor's obligation to make that payment.

11.2 Time and place

- (a) Subject to clause 11.1 all payments by any Obligor under any Finance Document or by any Financier under this agreement are to be made to the Facility Agent in the required currency specified in the Finance Document in immediately available funds not later than 11.00 am (Sydney time) on the due date to the account that the Facility Agent from time to time designates at least 1 Business Day before the payment is made or as otherwise agreed between the Borrower and the Facility Agent.
- (b) Payment made by an Obligor to the Facility Agent for the account of any other Finance Party on the terms of clause 11.1 (a) satisfies the Obligor's obligation to make that payment.

11.3 Merger

If the liability of any Obligor to pay any money the payment or repayment of which forms part of the Obligations becomes merged in any judgment or order, the Obligor will, as an independent obligation, pay to the Facility Agent on behalf of the Financiers interest at the rate which is the higher of that payable under the Finance Documents and that fixed by or payable under the judgment or order.

11.4 Currency for payments

- (a) Advances will be repaid in the currency in which they were drawn down; and interest and other amounts attributable to Advances will be paid in the currency of the relevant Advance. Costs and expenses will be paid in the currency in which they were incurred.
- (b) If, for any reason (including as a result of a judgment or order), an amount payable by the Borrower under or in respect of this agreement (**Relevant Amount**) is received by another party in a currency (**Payment Currency**) that is not the currency in which the amount is expressed to be payable under this agreement (**Required Currency**) then the Borrower, as an independent obligation, must indemnify that party against, and must pay that party on demand the amount of, any shortfall between:
 - (i) the amount of Required Currency which that party receives on converting the amount it received in the Payment Currency into an amount in the Required Currency in accordance with its usual practice; and
 - (ii) the Relevant Amount in the Required Currency.

11.5 Payments to the Obligors

Each payment received by the Facility Agent for payment to any Obligor will be made available to the Obligors by application, on the date of receipt:

- (a) first, in or towards payment of any amounts then due and payable (and unpaid) by any Obligor under the Finance Documents; and

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- (b) second, in payment to the account the Borrower has properly designated for the purpose in the relevant Drawdown Notice or otherwise in writing.

11.6 Payments to the Financiers

The Facility Agent and the Security Trustee will promptly distribute amounts received for payment to the Finance Parties among the Finance Parties (in the case of a Financier, for the account of its Facility Office) proportionally to their respective entitlements by payment to the account each Finance Party has previously notified to the Facility Agent provided that it may deduct from any payment any amount due to the Facility Agent or the Security Trustee by the relevant Finance Party under clause 11.8, 21.21 or 23.

11.7 Insufficient payment

If the Facility Agent or Security Trustee receives a payment under any Finance Document that is insufficient to discharge all the amounts then due and payable by any Obligor under the Finance Documents, the Facility Agent or the Security Trustee, as applicable, may apportion that amount between principal, interest, commission, fees, charges and other amounts payable under the Finance Documents in any manner it determines and any such determination will be binding on each Finance Party and each Obligor.

11.8 Anticipatory payments

Neither the Facility Agent nor the Security Trustee will be obliged to make a payment to a Finance Party or an Obligor out of any sum which it is expecting to receive for the account of that Finance Party or Obligor until it has established that it has received the sum. If either the Facility Agent or the Security Trustee in its absolute discretion elects to make a payment, to the extent that the payment is made but the Facility Agent or the Security Trustee, as applicable, does not receive the sum when due in whole or in part:

- (a) each person to which that payment was made will, on request by the Facility Agent or the Security Trustee, immediately refund that payment to the Facility Agent or the Security Trustee, as applicable;
- (b) each person to which that payment was made will pay to the Facility Agent or the Security Trustee, as applicable, interest on the amount of the sum not paid when due under clause 11.8(a) at a rate determined by the Facility Agent or the Security Trustee, as applicable, to be equal to its cost of funds for the period from the date of payment by the Facility Agent or Security Trustee to the date of receipt by the Facility Agent or the Security Trustee of the due amount.

The provisions of this clause 11.8 are without prejudice to any other rights which any person may have against any party who fails to pay any sum in accordance with any Finance Document.

12. Taxes

12.1 No deduction for Taxes and no set-off or counterclaim

All payments by the Obligors under any Finance Document, whether of principal, interest or other amounts, will be:

- (a) without (and free and clear of any deduction for) any set-off or counterclaim; and

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- (b) without deduction or withholding for any present or future Taxes unless the Obligor is compelled by law to deduct or withhold the same.

12.2 Payment net of Taxes

If:

- (a) an Obligor is compelled by law to make any deduction or withholding from any payment under any Finance Document on account of Taxes (other than Excluded Taxes);
- (b) the Facility Agent or Security Trustee is compelled by law to make any deduction or withholding from any payment to a Finance Party under any Finance Document on account of Taxes (other than Excluded Taxes);
- (c) a Finance Party does not receive a payment to which it is entitled under the Finance Documents free and clear of Taxes (other than Excluded Taxes); or
- (d) a Finance Party is obliged to pay any Taxes (other than Excluded Taxes) in respect of a payment made or to be made by an Obligor under the Finance Documents,

then:

- (i) the Borrower will on demand by the Facility Agent pay to the Facility Agent any additional amounts necessary to ensure that the Finance Party affected receives (after all deductions and withholdings for Taxes other than Excluded Taxes) a net amount equal to the full amount which it would have been entitled to receive and retain had the deduction or withholding not been made or had the payment been free and clear of Taxes (other than Excluded Taxes) or had the Finance Party not been obliged to pay any Taxes (other than Excluded Taxes) in respect of the payment; and
- (ii) where clause 12.2(a) applies the Obligor compelled to make the deduction or withholding will:
 - A. pay to the appropriate Government Authority any amount deducted or withheld in respect of Taxes within the time allowed and in the minimum amount required by law; and
 - B. promptly after making the deduction or withholding provide to the Facility Agent evidence satisfactory to the Facility Agent of that payment having been made.

13. Illegality

If, after the date of this agreement, it becomes unlawful or (as a result of a change in law or regulation) impossible for a Financier to maintain or give effect to any of its obligations under the Finance Documents:

- (a) the Financier's obligations under the Finance Documents will be suspended immediately for the duration of the illegality or impossibility;
- (b) the Financier may, by notice to the Borrower (through the Facility Agent), terminate its obligations under all of the Finance Documents;

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- (c) if a notice is given under clause 13(b), the Borrower will prepay an amount equal to the Financier's participation in all Advances together with all interest and other charges accrued on the Financier's participation and all other amounts payable to the Financier under the Finance Documents in full immediately, or if delay in prepayment does not compound the unlawful event, on the last day of the current Interest Period (or any lesser period if the applicable law requires) notice to that effect from the Financier to the Borrower (through the Facility Agent); and
 - (d) the Borrower will indemnify the Financier, and despite the termination of its obligations under the Finance Documents keep the Financier indemnified, against any cost, loss, damage or expense suffered, incurred or payable by it as a result of the operation of clause 13(a), 13(b) or 13(c) and will pay to the Facility Agent for the account of the Financier prior to termination of the Financier's obligations under the Finance Documents the amount the Financier estimates in good faith to be, then or in the future, payable to it by the Borrower under the indemnity in this clause

14. Increased cost

14.1 Obligation to indemnify

- (a) If because of any change in law or in its interpretation or administration or because of compliance with any request from or requirement of any Government Authority occurring, in either case, after the date of this agreement:
 - (i) a Financier incurs a cost as a result of it having entered into or performed its obligations under any of the Finance Documents or as a result of any Advance being outstanding;
 - (ii) there is any increase in the cost to a Financier of funding or maintaining any Advance made or to be made;
 - (iii) there is a reduction in any amount due and payable to a Financier under any Finance Document;
 - (iv) the rate of return to a Financier on the Advances or the anticipated rate of return on the Financier's overall capital is, in either case, reduced; or
 - (v) a Financier becomes liable to make any payment (not being a payment of any Excluded Tax) on or calculated by reference to the amount of the Advances, then from time to time on notification by the Financier through the Facility Agent the Borrower will pay to the Facility Agent on account of the Financier amounts sufficient to indemnify the Financier against that cost, increased cost, reduction or liability.
- (b) If a Financier has acted in good faith it is no defence that the cost, increased cost, reduction or liability could have been avoided.
- (c) A Financier's certificate as to the amount of, and basis for arriving at, any cost, increased cost, reduction or liability is conclusive and binding on the Obligors in the absence of manifest error on the face of the certificate.

14.2 Prepayment after increased cost

If the Facility Agent has given a notice under clause 14.1 and that notice has not been withdrawn, the Borrower, by notice to the Facility Agent:

- (a) may terminate the relevant Financier's obligation to provide its Commitment; and
- (b) may elect to prepay the amount of that Financier's participation in all outstanding Advances, together with any accrued but unpaid interest and any other amounts (including amounts payable under clause 20) outstanding under each Finance Document that relate to that Financier, on the first date on which the Borrower is required to pay interest under this agreement that falls at least 30 days after the later of:
 - (i) the date that the Facility Agent receives that notice; or
 - (ii) the date on which the Regulatory Change takes effect.

The Borrower's notice is effective when received by the Facility Agent and, once effective, is irrevocable.

15. Representations and warranties

15.1 Representations and warranties

The Borrower represents and warrants that:

- (a) **(status)** it and each of its Subsidiaries is a company limited by shares under the Corporations Act;
- (b) **(power)** it has full legal capacity and power to:
 - (i) own its property and to carry on its business; and
 - (ii) enter into the Finance Documents and to carry out the transactions that they contemplate;
- (c) **(corporate authority)** it has taken all corporate action that is necessary or desirable to authorise its entry into the Finance Documents and its carrying out the transactions that they contemplate;
- (d) **(Authorisations)** it holds each Authorisation that is necessary or desirable to:
 - (i) enable it to properly execute the Finance Documents and to carry out the transactions that they contemplate;
 - (ii) ensure that each Finance Document is legal, valid, binding and admissible in evidence; or
 - (iii) enable it to properly carry on its business,and it is complying with any conditions to which any of these Authorisations is subject;
- (e) **(documents effective)** each Finance Document constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms (except to

the extent limited by equitable principles and laws affecting creditors' rights generally) subject to any necessary stamping or registration;

- (f) **(ranking)** its payment obligations under each Finance Document rank at least equally with all its other unsecured and unsubordinated payment obligations (whether present or future, actual or contingent), other than obligations that are mandatorily preferred by law;
- (g) **(no contravention)** neither its execution of the Finance Documents nor the carrying out by it of the transactions that they contemplate, does or will:
 - (i) contravene any law to which it or any of its property is subject or any order of any Government Authority that is binding on it or any of its property;
 - (ii) contravene any Authorisation;
 - (iii) contravene any undertaking or instrument binding on it or any of its property;
 - (iv) contravene its Constitution; or
 - (v) require it to make any payment or delivery in respect of any Financial Liability before it would otherwise be obliged to do so;
- (h) **(no litigation)** no litigation, arbitration, mediation, conciliation or administrative proceedings are taking place, pending, or to the knowledge of any of its officers after due inquiry, threatened which, if adversely decided, could have a Material Adverse Effect on it or any of its Subsidiaries;
- (i) **(Accounts):**
 - (i) the Accounts and any other financial statements and reports that it has given to the Facility Agent have been prepared in accordance with all applicable laws and (unless inconsistent with those laws) Accepted Accounting Practices;
 - (ii) the Accounts that it has given to the Facility Agent give a true and fair view of the financial condition of the Parent and its Subsidiaries as at the date to which they are made up and of the results of operations of the Parent and its Subsidiaries for the period that they cover; and
 - (iii) there has been no change since the date of the most recent Accounts that it has given to the Facility Agent that could have a Material Adverse Effect on it;
- (j) **(other information):**
 - (i) the other information and reports (if any) that it has given to the Facility Agent in connection with any Finance Document are true and accurate in all material respects and not misleading in any material respect (including by omission); and
 - (ii) any forecasts and opinions in them are fair and reasonable (and were made or formed after due inquiry and consideration by appropriate officers of the Borrower),

as at the date of this document or, if given later, when given;

- (k) **(disclosure of relevant information)** it has disclosed to the Facility Agent all the information that is material to an assessment by it of the risks that it assumes by entering into any Finance Document;
- (l) **(no filings or Taxes)** it is not necessary or desirable, to ensure that any Finance Document is legal, valid, binding or admissible in evidence, that any Finance Document or any other document be filed or registered with any Government Authority, or that any Taxes be paid;
- (m) **(no default)** no Event of Default or Potential Event of Default has occurred and is continuing, and it is not in breach of any other document or agreement in a manner that could have a Material Adverse Effect on it or any of its Subsidiaries;
- (n) **(no Encumbrance)** none of its property, and no property of any other Obligor or any Obligor's Subsidiaries, is subject to an Encumbrance other than a Permitted Encumbrance;
- (o) **(no Controller)** no Controller is currently appointed in relation to any of its property, or any property of any of its Subsidiaries;
- (p) **(no trust)** it is not entering into any Finance Document as trustee of any trust or settlement;
- (q) **(corporate benefit)** its entry into the Finance Documents is in its best interests and for its benefit;
- (r) **(Corporations Act)** by entering into and performing its obligations under the Transaction Documents, neither it nor any Guarantor will be in breach or contravention of the Corporations Act, including Part 2J or Chapter 2E of the Corporations Act; and
- (s) **(Group)** ResMed Property Trust is the only Subsidiary of the Borrower.

15.2 Repetition of representations and warranties

The representations and warranties in this clause are taken to be repeated on the Drawdown Date and on the last day of each Interest Period on the basis of the facts and circumstances as at that date.

15.3 Reliance on representations and warranties

The Borrower acknowledges that the other parties have executed this document and agreed to take part in the transactions that it contemplates in reliance on the representations and warranties that are made or repeated in this clause.

15.4 No representations to the Borrower

The Borrower acknowledges that it has not relied and will not rely on any representation, statement or promise made by or on behalf of any other party in deciding to enter into this document or to exercise any right or perform any obligation under it.

16. Undertakings

16.1 General undertakings

The Borrower must:

- (a) **(maintain status)** maintain, and ensure that each of its Subsidiaries maintains, its status as a company limited by shares under the Corporations Act;

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- (b) **(comply with law)** comply with, and ensure that each of its Subsidiaries complies with, all applicable laws including by paying when due all Taxes for which it or any of its property is assessed or liable (except to the extent that these are being diligently contested in good faith and by appropriate proceedings and it or the relevant Subsidiary has made adequate reserves for them);
- (c) **(keep books)** keep, and ensure that each of its Subsidiaries keeps, proper books (as defined in the Corporations Act) recording its activities and those of each of its Subsidiaries (including financial records in accordance with the Corporations Act), and permit the Facility Agent or its representatives on request to examine and take copies of them;
- (d) **(hold Authorisations)** obtain and maintain each Authorisation that is necessary or desirable to:
- (i) execute the Finance Documents and to carry out the transactions that they contemplate;
 - (ii) ensure that each Finance Document is legal, valid, binding and admissible in evidence; or
 - (iii) enable it to properly carry on its business,
- and must comply with any conditions to which any of these Authorisations is subject;
- (e) **(no administrator)** not appoint, and ensure that none of its Subsidiaries appoints, an administrator without notice to the Facility Agent;
- (f) **(permitted use of funds)** apply the Advances solely for the purposes specified in clause 2.5;
- (g) **(patents)** maintain and keep registered under all applicable laws all patents, trade marks and licences registered in the name of the Borrower where not to do so would have a Material Adverse Effect;
- (h) **(Subsidiaries):**
- (i) ensure that it, each other Obligor and each Obligor's Subsidiaries do not acquire or incorporate any Subsidiary after the date of this agreement without the prior written consent of the Facility Agent (acting on the instructions of all the Financiers), which consent shall not be unreasonably withheld, where the consideration for the acquisition exceeds USD 20,000,000 or its equivalent; and
 - (ii) where it, an Obligor or an Obligor's Subsidiary acquires or incorporates any Subsidiary after the date of this agreement which is at or below USD20,000,000 (or its equivalent) which is not financed in whole or in part by a Tranche B Advance, ensure that the acquired or incorporated Subsidiary is engaged in a business substantially similar or related to that carried on by the Group and the Borrower continues to comply with clause 17.2;

- (i) **(ResMed Loan Agreement)** other than pursuant to the Deed of Variation, not terminate, rescind or agree to any variation of the ResMed Loan Agreement, assign any of its right, title or interest in the ResMed Loan Agreement, release any person from any of its obligations under the ResMed Loan Agreement or otherwise waive any of the Borrower's rights under the ResMed Loan Agreement except for any variation, assignment, release, waiver or termination granted by the Borrower with the consent of the Facility Agent (such consent not to be unreasonably withheld); and
- (j) **(dividends)** without limiting clause 16.1(b) above, comply at all times with section 254T of the Corporations Act including ensuring that its profits (including retained earnings) are always sufficient to apply any amounts it receives under Tranche C towards the payment of dividends.

16.2 Reports and information

The Borrower must give the Facility Agent:

- (a) **(audited consolidated annual Accounts)** as soon as possible (and in any event within 120 days) after the end of each of the Parent's financial years, a set of audited consolidated Accounts for the Group for that financial year, prepared in accordance with the all applicable laws and (except where inconsistent with those laws) the Accepted Accounting Practices;
- (b) **(unaudited consolidated semi-annual accounts)** as soon as possible (and in any event within 90 days) after the end of the first half of each financial year, a set of consolidated Accounts for the Group for that half-year prepared in accordance with all applicable laws and (except where inconsistent with those laws) the Accepted Accounting Practices;
- (c) **(compliance certified)** within 90 days after each Semi-Annual Date, a certificate in a form satisfactory to the Facility Agent signed by any 2 directors of the Parent setting out:
 - (i) the calculation of the Interest Coverage Ratio for the purposes of clause 17.1(a) as at that Semi-Annual Date;
 - (ii) the calculation of the Gearing Ratio for the purposes of clause 17.1(b) as at that Semi-Annual Date;
 - (iii) the calculation of the Tangible Net Worth for the purposes of clause 17.1 (c) as at that Semi-Annual Date; and
 - (iv) the calculations as to whether the ratios in clause 17.2 have been complied with as at that Semi-Annual Date;
- (d) **(copy of reports)** a copy of each document that it gives to its shareholders or to any stock exchange, at the same time as it gives it to them or it;
- (e) **(notice of default)** as soon as it becomes aware that an Event of Default or Potential Event of Default has occurred, full details of that Event of Default or Potential Event of Default;
- (f) **(notice of litigation)** full details of any litigation, arbitration, mediation, conciliation or administrative proceedings which, if adversely decided, could have a Material Adverse Effect on it or any of its Subsidiaries, as soon as the proceedings are commenced or threatened; and

- (g) **(other information)** promptly on request (and in any event within 5 Business Days) any other information relating to the financial condition, business, property and affairs of itself, any Obligor or any of its related bodies corporate that the Facility Agent reasonably requests.

16.3 Financial undertakings

The Borrower must:

- (a) **(negative pledge)** not create or permit to exist, and ensure that each other Obligor and each Obligor's Subsidiaries do not create or permit to exist, any Encumbrance over any of its property, other than a Permitted Encumbrance;
- (b) **(no Financial Liabilities)**
- (i) not incur Financial Liabilities (including without limitation, rent and amounts in the nature of rent payable under any operating lease) which would cause Financial Liabilities (including without limitation, rent and amounts in the nature of rent payable under any operating lease) for the Group to exceed USD50,000,000 (or its Equivalent) from any entity that is not an Obligor;
- (ii) ensure that each other Obligor and each Obligor's Subsidiaries do not incur Financial Liabilities (including without limitation, rent and amounts in the nature of rent payable under any operating lease) which would cause Financial Liabilities (including without limitation, rent and amounts in the nature of rent payable under any operating lease) for the Group to exceed USD50,000,000 (or its Equivalent) from any entity that is not an Obligor, without the prior written consent of the Facility Agent (any such request for consent to be considered in good faith), other than under the UBOC Facilities (or any facilities that replace the UBOC Facilities) and the Intercompany Loans, provided that:
- (iii) the principal amount of the Financial Liabilities under each Intercompany Loan at any time must not exceed an amount greater than the aggregate of USD 10,000,000 (or its equivalent) and the principal amount of those Financial Liabilities as at the date of this agreement; and
- (iv) the total amount of the Financial Liabilities under the UBOC Facilities (or any other facility replacing the UBOC Facilities) and provided to the borrowers under the UBOC Facilities (or the replacing facility) must not at any time exceed USD75,000,000, subject to this limit being reviewed, at the request of the Borrower, by the Facility Agent (acting on the instructions of all the Financiers) after the second anniversary of the date of this agreement (the **"Review Date"**) and, in reviewing this limit, the Facility Agent and the Financiers agree to act in good faith taking into account the financial position, credit standing and circumstances of the Group as a whole as at the Review Date;
- (c) **(provision of financial accommodation)** not provide any financial accommodation (excluding trade receivables incurred in the ordinary course of its ordinary business and normal corporate recharges) or give any guarantee, guarantee and indemnity, or similar document to, or on behalf of, any person that is not an Obligor, and must procure that each other Obligor does not provide any financial accommodation (excluding trade receivables incurred in the ordinary course of its ordinary business

and normal corporate recharges) or give any guarantee, guarantee and indemnity, or similar document to, or on behalf of, any person that is not an Obligor, in an aggregate amount exceeding USD 18,000,000 (or its Equivalent) in any Financial Year, without the Facility Agent's prior written consent;

- (d) **(real property leases)** ensure that the aggregate amount of rent and amounts in the nature of rent payable by the Borrower as tenant under any lease of real property in any Twelve-Month Period does not exceed Euro 20,000,000 (or its Equivalent);
- (e) **(dividends and distributions)** not declare or pay any dividend, repay any loans from shareholders or make any payment or other distribution to any shareholder's in an aggregate amount exceeding 50 per cent of Net Profit After Tax for any Financial Year other than the payment on or before 30 June 2006 (provided it is paid out of profits, including retained earnings) of a single special dividend by the Borrower to ResMed Holdings Limited in an amount not exceeding USD 70,000,000 (or its Equivalent);
- (f) **(no disposal of property)** not dispose of, declare a trust over or otherwise create an interest in, and must ensure that each other Obligor and each Obligor's Subsidiaries do not dispose of, declare a trust over or otherwise creates an interest in any of its property which has an aggregate value exceeding Euro 20,000,000 (or its Equivalent) in any Twelve-Month Period except:
 - (i) as permitted by paragraph (a); or
 - (ii) with the consent of the Facility Agent;
- (g) **(Subsidiaries)** ensure that none of its Subsidiaries (including where it acts as a trustee) acquires any assets, including without limitation, any real property without the consent of the Facility Agent;
- (h) **(insurance)** keep, and must ensure that it, each other Obligor and each Obligor's Subsidiaries keeps, its property and business insured:
 - (i) against the risks and in the amounts that are prudent or usual for a person conducting a business similar to that Obligor or Obligor's Subsidiary, with sound and reputable insurers; or
 - (ii) as the Facility Agent reasonably requires,and must provide the Facility Agent on request with details of the insurance, evidence that it is in full effect and evidence that all premiums have been paid; and
- (i) **(financial year)** not change its financial year.

16.4 Change to Accounting Principles

If any Accounts, or other financial statements delivered to the Facility Agent under this agreement are not prepared in accordance with the Accepted Accounting Practices in effect at the date of this agreement due to a change in the Accepted Accounting Practices occurring after the date of this agreement which results in the Accounts or financial statements being prepared on a different basis to Accounts prepared as at the date of this agreement then:

- (a) unless so indicated by the notes to the relevant Accounts or financial statements, the Borrower must notify the Facility Agent in writing of that matter when delivering the relevant Accounts or financial statements to the Facility Agent; and

- (b) the Borrower must, if the change in the Accepted Accounting Practices affects in any way the computation of any Financial Ratio, with those Accounts or financial statements delivered under this agreement, deliver to the Facility Agent:
 - (i) details of all such adjustments as need to be made to the Accounts or financial statements to bring them into line with the Accepted Accounting Practices applied as at the date of this agreement; and
 - (ii) a separate set of Accounts or financial statements prepared in accordance with the Accepted Accounting Practices in effect at the date of this agreement.

16.5 Acquired Subsidiaries and Additional Guarantees

Unless the Facility Agent otherwise consents in writing, the Borrower must ensure that, where any Subsidiary has been acquired by it, any other Obligor or any Obligor's Subsidiaries after the date of this agreement in accordance with clause 16.1(h)(i) and the acquisition has been financed in whole or in part with the proceeds of a Tranche B Advance, that Subsidiary will, provided it is permitted by law, execute and deliver to the Facility Agent within 5 Business Days (or such later period necessary in order to comply with any law) of its acquisition a guarantee and indemnity in favour of the Security Trustee guaranteeing all obligations of the Obligors under the Finance Documents, which must be in form and substance satisfactory to the Facility Agent. If requested by the Facility Agent, the Borrower must provide a legal opinion as to the enforceability and validity of the guarantee and indemnity and the status of the Subsidiary addressed to the Facility Agent in relation to the new Subsidiary, which must be in form and substance satisfactory to the Facility Agent.

17. Financial Covenants

17.1 Financial Covenants

The Borrower must ensure that:

- (a) for each Twelve-Month Period ending on a Semi-Annual Date, the Interest Coverage Ratio is at least 5.00:1;
- (b) for each Twelve-Month Period ending on a Semi-Annual Date, the Gearing Ratio is equal to or less than 2.25:1; and
- (c) at each Semi-Annual Date, the Tangible Net Worth is not less than the aggregate of:
 - (i) USD 300,000,000; and
 - (ii) 50% of the aggregate Net Income for each Semi-Annual Period ending after 31 December 2005 (with no deduction for a net loss in any such Semi-Annual Period).

17.2 Guarantor Group

If at any time:

- (a) the current book value of tangible assets of the Guarantors (as determined in accordance with Accepted Accounting Principles) is less than 80% of the total tangible assets of the Group (as determined in accordance with Accepted Accounting Principles); or

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- (b) the aggregate EBITDA for the six month period ending on the previous Semi-Annual Date of each Guarantor is less than 80% of EBITDA for the Group for that period,

the Borrower must ensure that within 60 days such members of the Group provide a guarantee and indemnity, in form and substance satisfactory to the Facility Agent, in favour of the Security Trustee for the benefit of the Finance Parties, so that those ratios are complied with. If the new Guarantor is incorporated outside Australia, at the request of the Facility Agent, the Borrower must procure a legal opinion in form and substance reasonably satisfactory to the Facility Agent, in relation to that new Guarantor.

18. Default and termination

18.1 Events of Default

Each of these events or circumstances is an Event of Default:

- (a) **(non-payment)** if an Obligor fails to pay any amount that is due and payable by it under any Finance Document within 2 Business Days of when it is due;
- (b) **(other obligations)** if an Obligor fails to comply with any of its obligations under any Finance Document (other than a failure referred to elsewhere in this clause) and:
 - (i) the Facility Agent considers that the failure cannot be remedied; or
 - (ii) the Facility Agent considers that the failure can be remedied, and the failure is not remedied within 20 Business Days after the Obligor becomes aware of the failure;
- (c) **(misrepresentation)** if any representation, warranty or statement made by, or repeated by, an Obligor, in or in connection with any Finance Document is untrue or misleading (whether by omission or otherwise) in any material respect when so made or repeated;
- (d) **(Event of Insolvency)** if an Event of Insolvency occurs in respect of an Obligor or any of its Subsidiaries;
- (e) **(maintenance of capital)** if an Obligor or any of its Subsidiaries passes a resolution;
 - (i) to permit the giving of financial assistance, whether directly or indirectly, for the purposes of, or in connection with, an acquisition or proposed acquisition by a person of shares or of any right or interest in shares in it or in any holding company of it;
 - (ii) for the reduction of its share capital (including the purchase of its shares but excluding a redemption of redeemable shares); or
 - (iii) to limit its ability to make calls on its uncalled share capital,without the consent of the Facility Agent;
- (f) **(Material Adverse Effect)** if an event or a change occurs which could, or could in the opinion of the Facility Agent, have a Material Adverse Effect on an Obligor or any of its Subsidiaries;

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- (g) **(cross-default)** if:
- (i) Financial Liabilities in an amount exceeding Euro 10,000,000 (or its Equivalent) of an Obligor or any of its Subsidiaries becomes due for payment, or becomes capable of being declared due for payment, (other than at the option of that person or the relevant subsidiary) before the stated maturity of that Financial Liability;
 - (ii) an agreement by any person with an Obligor or any of its Subsidiaries to provide or underwrite financial accommodation in an amount exceeding Euro 10,000,000 (or its Equivalent) or to acquire or assume any risk in respect of Financial Liability in an amount exceeding Euro 10,000,000 (or its Equivalent), is prematurely terminated; or
 - (iii) any money or commodity owing or deliverable by an Obligor or any of its Subsidiaries in respect of any Financial Liability in an amount exceeding Euro 10,000,000 (or its Equivalent) is not paid or delivered when due for payment or delivery (having regard to any applicable grace period);
- (h) **(Encumbrance)** if an Obligor or any of its Subsidiaries creates or permits to exist any Encumbrance over any of its property, other than a Permitted Encumbrance;
- (i) **(compulsory acquisition)** if all or a material part of the property of an Obligor or any of its Subsidiaries is compulsorily acquired by any Government Agency or that Obligor or any of its Subsidiaries sells or divests itself of all or a material part of its property because it is required to do so by a binding order from a Government Agency, and that Obligor or the relevant Subsidiary does not receive compensation for the acquisition, sale or disposal which is acceptable to the Facility Agent;
- (j) **(inability to perform)** if an Obligor ceases for any reason to be able lawfully to carry out all the transactions which any Finance Document contemplates may be carried out by it;
- (k) **(provisions void)** if all or any material provision of any Finance Document is or becomes void, voidable, illegal or unenforceable or of limited force (other than because of equitable principles or laws affecting creditors' rights generally), or an Obligor claims this to be the case;
- (l) **(special investigations)** if any matter relating to an Obligor or any of its Subsidiaries becomes subject to an investigation under any law relating to companies which could have a Material Adverse Effect;
- (m) **(change of control)** if, in the Facility Agent's opinion, the Parent ceases to control (directly or indirectly):
- (i) the composition of the board of directors or other governing body of an Obligor;
 - (ii) 100% of the voting rights attaching to the capital of an Obligor; or
 - (iii) 100% of the issued capital of an Obligor (excluding any part of that capital that carries no right to participate beyond a specified amount in the distribution of either profit or capital),
- including, without limitation, by reason of the acquisition by any means by any person of a relevant interest (as defined in the Corporations Act) in shares of the

Obligor that is sufficient to cause the Parent to cease to exercise the control referred to in paragraph (i), (ii) or (iii);

- (n) **(Financial Ratio)** any Financial Ratio is breached;
- (o) **(Security)** if any Security becomes enforceable; and
- (p) **(cessation of business)** the Borrower or any other Obligor ceases to carry on business or substantially or materially changes the nature of its business.

18.2 Consequences

If an Event of Default has occurred and has not been remedied, the Facility Agent may notify the Borrower that:

- (a) the Financiers' obligation to provide the Facility is terminated, in which case their obligation to do so terminates immediately;
- (b) the Commitment of each Financier is cancelled, in which case their Commitments will be cancelled immediately;
- (c) all Advances, any accrued but unpaid interest and all other amounts outstanding under each Finance Document are due and payable, in which case those amounts are immediately due and payable; and
- (d) all Advances, any accrued but unpaid interest and all other amounts outstanding under each Transaction Document are due and payable on demand, in which case those amounts will be due and payable on demand made at any time.

19. Prior Documentation

The Borrower acknowledges and agrees that immediately upon the drawdown of Tranche A and the application of the Tranche A Advance in repayment of all outstanding amounts under the Previous Facility Agreement:

- (a) each Lender's Commitment under the Previous Facility Agreement is irrevocably and automatically reduced to zero; and
- (b) the Borrower shall have no further right to draw any amount under the Previous Facility Agreement and the Lenders shall have no further obligation to provide any further Advances under the Previous Facility Agreement.

In this clause 19:

"Lender", **"Commitment"** and **"Advance"** has the same meaning as in the Previous Facility Agreement.

20. Indemnities

The Borrower must indemnify each other party against, and must pay on demand the amount of, all losses, liabilities, expenses and Taxes incurred in connection with:

- (a) any Event of Default or Potential Event of Default;
- (b) the administration, and any actual or attempted preservation or enforcement, of any rights under any Finance Document;

- (c) the Financiers not providing an Advance to the Borrower because a condition precedent in clause 3.1, 3.2 or 3.3 was not satisfied and was not dealt with in accordance with clause 3.5;
- (d) the Advances being repaid or becoming due for repayment other than the last day of an Interest Period or any other amount required to be paid under any Finance Document not being paid on its due date, including losses, liabilities, expenses and Taxes incurred because of:
 - (i) the cancellation, termination or alteration of any swap or other arrangement made by a Financier to fund the Advance or other payment; or
 - (ii) any liquidation or re-employment of deposits or other funds acquired by a Financier to fund the Advance or other payment.

Without limiting this, the Borrower must also reimburse each Financier on demand for any amount that the Financier is obliged to pay to the Facility Agent under clause 21.

21. Facility Agent and Security Trustee

21.1 Appointment of Facility Agent

- (a) Each Financier irrevocably appoints and authorises the Facility Agent to act as its agent in connection with the Finance Documents, with power to:
 - (i) enter into each Finance Document (other than this agreement) on its behalf;
 - (ii) exercise any Power that is specifically delegated to the Facility Agent under the Finance Documents together with any Power as is reasonably incidental to it; and
 - (iii) comply with all obligations that are specifically imposed on the Facility Agent under the Finance Documents.
- (b) Where the Facility Agent provides services in connection with the administration of the Advances, that is, when it calculates rates and amounts, keeps records, receives and distributes payments or information under any provision of this agreement and receives and deals with Drawdown Notices, it does not provide those services as agent for the Financiers but the remainder of this clause 21 applies.
- (c) The Facility Agent's duties and obligations under the Finance Documents are solely administrative in nature and the Facility Agent does not have any duties, obligations or liabilities to the other Finance Parties or any of them beyond those expressly stated in the Finance Documents.

21.2 Appointment of Security Trustee

- (a) Each Finance Party (other than the Security Trustee) irrevocably appoints and authorises the Security Trustee to act as trustee of the trust constituted under the Security Trust Deed, with power to:
 - (i) exercise any Power that is specifically imposed or conferred on the Security Trustee under the Finance Documents together with any Power as is reasonably incidental to it; and

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- (ii) comply with all obligations that are specifically imposed on the Security Trustee under the Finance Documents.
 - (b) The Security Trustee does not have any duties, obligations or liabilities to the other Finance Parties or any of them beyond those expressly stated in the Finance Documents.

21.3 Instructions to Facility Agent

- (a) Unless otherwise expressly provided in the Finance Documents and subject to this clause 21.3, the Facility Agent must act or refrain from acting in the exercise of any Power under the Finance Documents, including granting waivers or consents, varying the terms of any Finance Document or providing instructions to the Security Trustee as contemplated by clause 21.4, in accordance with the instructions (if any) of the Majority Financiers. The Facility Agent will not be liable for acting or from refraining from acting in accordance with any instructions of the Majority Financiers. In the absence of any instructions from the Majority Financiers the Facility Agent may act or refrain from acting as it sees fit, provided it has used reasonable endeavours to obtain instructions from the Majority Financiers.
- (b) The following waivers, consents or variations under the Finance Documents may only be granted or made by the Facility Agent with the prior written consent of all of the Financiers and (in the case of variations) the Borrower:
 - (i) the extension of the Tranche A Availability Period, the Tranche B Availability Period or the Tranche C Availability Period;
 - (ii) any variation of the definition of “Majority Financiers” in clause 1.1;
 - (iii) any extension of the date for, or reduction in the amount or currency of, or waiver of any payment of, principal, interest, Margin, fee, commission or any other amount payable under any of the Finance Documents;
 - (iv) any increase in any Financier’s Commitment other than under clause 25;
 - (v) any variation of clauses 11.5, 11.6, 11.7, 12, 13, 14, 23 or this clause 21.3(b);
 - (vi) any variation of any provision where (before the variation) it is provided that certain things may not be done without, or may only be done with, the consent or approval of all the Financiers; and
 - (vii) (except as otherwise expressly provided in this agreement, the Security Trust Deed or any Security) any release of the security provided by any of the Securities over any asset.
- (c) Despite any other provision of any Finance Document in no event will the Facility Agent be required to take any action:
 - (i) which exposes it, or is likely to expose it, to personal liability unless it is indemnified to its satisfaction, acting reasonably; or
 - (ii) which is contrary to any Finance Document or any law.
- (d) Despite any other provision of any Finance Document, the Facility Agent may act or refrain from acting, and may direct the Security Trustee to act or refrain from acting, in the exercise of any Power without seeking the instructions of the Majority

Financiers or all Financiers in circumstances where the act relates to an administrative matter and does not involve a waiver of a breach by an Obligor of its obligations under any Finance Document or any amendment to any Finance Document.

- (e) Any reference in the Finance Documents to the Facility Agent or the Security Trustee being required to form an opinion or to act reasonably (or not unreasonably) will be deemed to require the Financiers to act in the same manner when instructing the Facility Agent.

21.4 Instructions to Security Trustee

- (a) Subject to this clause 21.4, the Security Trustee must act or refrain from acting in the exercise of any Power under the Finance Documents (except pursuant to clause 3.3 of the Security Trust Deed) in accordance with the instructions (if any) of the Facility Agent. The Security Trustee will not be liable for acting or from refraining from acting in accordance with any instructions of the Facility Agent. In the absence of any instructions from the Facility Agent, the Security Trustee may act or refrain from acting as it sees fit, provided it has used reasonable endeavours to obtain instructions from the Facility Agent.
- (b) Despite any other provision of any Finance Document in no event will the Security Trustee be required to take any action:
 - (i) which exposes it, or is likely to expose it, to personal liability unless it is indemnified to its satisfaction, acting reasonably; or
 - (ii) which is contrary to any Finance Document or any law.

21.5 Seeking instructions from Financiers

- (a) Whenever the Facility Agent consults the Financiers to obtain instructions, it agrees to provide a reasonable time during which those instructions may be given and each Financier agrees to respond within any time period specified by the Facility Agent for giving instructions.
- (b) If the Facility Agent notifies the Financiers at the time it requests instructions in relation to a matter that a failure to respond within a specified time will be taken to be a consent to the Facility Agent taking the action or not taking the action, as the case may be, in respect of which the instructions are sought, any Financier which does not respond within the time specified in the request will be taken to have consented.
- (c) Any Financier may, by notice to the Facility Agent, notionally divide any or all of its Commitment and its participation in the Advances into separate amounts to reflect any subparticipation entered into by that Financier and may vote or abstain from voting with respect to each separate amount on any matter separately and differently from its vote or abstention with respect to any other separate amount on such matter.

21.6 Acts binding on Finance Parties

- (a) Each Financier will be bound by any action taken or any action not taken by the Facility Agent or the Security Trustee in accordance with the terms of the Finance Documents whether or not that Financier gave any instruction in relation to that matter.

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- (b) The Security Trustee will be bound by any action taken or any action not taken by the Facility Agent in accordance with the terms of the Finance Documents.

21.7 No need for inquiries

- (a) No Obligor will be concerned to inquire as to whether:
 - (i) the Facility Agent has been given any instructions by the Majority Financiers or all of the Financiers or as to the terms of any instructions so given; or
 - (ii) the Security Trustee has been given any instructions by the Facility Agent or as to the terms of any instructions so given.
- (b) As between the Obligors and the Finance Parties all action taken by either the Facility Agent or the Security Trustee under the Finance Documents will be taken to be duly authorised.

21.8 Restrictions on Financiers' rights

Without limiting clause 2.4, a Financier may exercise a Power against any Obligor under any Finance Document independently of the Facility Agent and the Security Trustee if and only if:

- (a) in the case of a Power conferred on the Facility Agent, the Facility Agent has been instructed by the Financiers as contemplated by clause 21.3 to exercise the Power and the Facility Agent has (provided it has been indemnified if necessary as contemplated by clause 21.3(c)(i)) not done so within a reasonable period from the time the instructions were given; or
- (b) in the case of a Power conferred on the Security Trustee, the Security Trustee has been instructed by the Facility Agent as contemplated by clause 21.4 to exercise the Power and the Security Trustee has (provided it has been indemnified if necessary as contemplated by clause 21.4(b)(i)) not done so within a reasonable period from the time the instructions were given.

21.9 Delegation

- (a) Each of the Facility Agent and the Security Trustee may at any time and from time to time:
 - (i) act in relation to the Finance Documents through its officers and employees; and
 - (ii) delegate the exercise of its Powers and the performance of its duties and obligations under the Finance Documents to agents or attorneys selected by it with reasonable care.
- (b) The Finance Parties and each Obligor agree that each officer, employee, agent and attorney of the Facility Agent or the Security Trustee referred to in clause 21.9(a) (each a **"Delegate"**) will be entitled to the benefit of this clause 21 as if it were the Facility Agent or the Security Trustee, as applicable. Without limitation, no Delegate will be responsible or liable for any cost, loss, damage or expense suffered or incurred by any Finance Party, any Obligor or any other person as a result of or in connection with an act or omission of the Delegate except to the extent arising as a direct result of the gross negligence, fraud or wilful misconduct of the Delegate.

21.10 Provision of information

- (a) The Security Trustee will promptly provide to the Facility Agent:
 - (i) a copy of each report, notice or other document required to be delivered to the Security Trustee by an Obligor under any Finance Document (but the Security Trustee will not be obliged to review or check the accuracy or completeness of those documents); and
 - (ii) a report on anything done following the receipt of instructions from the Facility Agent in accordance with the Finance Documents.
- (b) The Facility Agent will promptly provide to each Financier:
 - (i) a copy of each report, notice or other document required to be delivered to the Facility Agent by an Obligor under any Finance Document for or on behalf of that Financier or which is required to be delivered to the Facility Agent by the Security Trustee under clause 21.10(a) (but the Facility Agent will not be obliged to review or check the accuracy or completeness of those documents); and
 - (ii) a report on anything done following the receipt of instructions from the Financiers in accordance with the Finance Documents.
- (c) Neither the Facility Agent nor the Security Trustee will be obliged on a continuing basis or at any particular time to provide any other Finance Party with any financial or other information with respect to any Obligor or any of its related entities or with respect to compliance by any Obligor with its obligations under the Finance Documents other than as provided in this clause 21.10 or in clause 21.12.
- (d) Despite any other provision of the Finance Documents, neither the Facility Agent nor the Security Trustee is obliged to disclose to any other Finance Party any information relating to any Obligor or any of their related entities or any other person if the disclosure would or in its opinion, acting reasonably, might constitute a breach of any law or any duty of secrecy or confidence or any fiduciary duty.

21.11 Facility Agent and the Security Trustee not bound to enquire

Neither the Facility Agent nor the Security Trustee is obliged to ascertain or enquire, either as at the date of this agreement or on a continuing basis:

- (a) as to the credit or financial condition or affairs of the Obligors or any other person;
- (b) as to the performance or observance by any Obligor or any other person of any of the terms of any Finance Document; or
- (c) whether any Event of Default or Potential Event of Default has occurred or is subsisting.

21.12 Notice of Default

- (a) Neither the Facility Agent nor the Security Trustee will be taken to have any knowledge of the occurrence of a breach, default, Event of Default or Potential Event of Default unless:
 - (i) it has received express notice from another Finance Party or an Obligor stating that the notice is a “**Notice of Default**” and describing the breach, default, Event of Default or Potential Event of Default; or

- (ii) in the case of the Facility Agent only, any officer or employee of the Facility Agent who is responsible for the administration of the transactions contemplated by the Finance Documents has actual knowledge of a failure of any Obligor to make any payment under any Finance Document on its due date.
- (b) If the Security Trustee receives a Notice of Default it will promptly notify the Facility Agent and provide to the Facility Agent that Notice of Default.
- (c) If the Facility Agent receives a Notice of Default or becomes actually aware of an event referred to in clause 21.12(a)(ii) it will promptly notify each of the Financiers.

21.13 Facility Agent or Security Trustee as Financier

With respect to its own Powers as a Financier, each of the Facility Agent and the Security Trustee will have the same Powers under each Finance Document as any other Financier and may exercise those Powers as though it were not performing the duties and obligations delegated to it as the Facility Agent or Security Trustee, as the case may be. The term “Financiers” will include the Facility Agent or Security Trustee in its individual capacity as a Financier.

21.14 Other dealings

- (a) Each of the Facility Agent and the Security Trustee may, without any liability to account to the other Finance Parties or any of them:
 - (i) accept deposits from, lend money to and generally engage in any kind of banking, advisory, financial, trust or other business with any Obligor as if it was not the Facility Agent or Security Trustee, as the case may be; and
 - (ii) accept fees and other consideration from any Obligor for services provided or to be provided in connection with any Finance Document or otherwise.Each other Finance Party releases each of the Facility Agent and the Security Trustee from any obligations it might otherwise have to the other Finance Parties in relation to the matters referred to in this clause 21.14(a).
- (b)
 - (i) In acting as agent under the Finance Documents, the Facility Agent is to be regarded as acting through its agency division which is to be treated as a separate entity from its other divisions or departments.
 - (ii) In acting as trustee under the Finance Documents, the Security Trustee is to be regarded as acting through its trustee or agency division which is to be treated as a separate entity from its other divisions or departments.
 - (iii) If information is received by another division or department of the Facility Agent or the Security Trustee it may be treated as confidential to that division or department and the Facility Agent or the Security Trustee, as the case may be, is not taken to have notice of it.

21.15 Communications

Except where the Finance Documents otherwise expressly provide, all communications to be made between an Obligor and the Finance Parties or any of them concerning the Facilities or the Finance Documents will be made by or through the Facility Agent.

21.16 Observe laws

Each of the Facility Agent and the Security Trustee may refrain from doing anything which would or might in its reasonable opinion either be contrary to any law or render it liable to any person and may do anything which in its reasonable opinion is necessary to comply with any law.

21.17 Relationships

- (a) Nothing in any Finance Document, and no action taken by the Finance Parties under any Finance Document, will be taken to constitute a partnership, association, joint venture or other entity between the Finance Parties.
- (b) In performing its duties under the Finance Documents, each of the Facility Agent and the Security Trustee will act solely on behalf of the Finance Parties and does not assume and will not be taken in any circumstances to have assumed any responsibility, liability, duty (whether fiduciary or otherwise) or obligation towards, or relationship of partnership, agency or trust with, or for, the Obligors.
- (c) Nothing contained in the Finance Documents, and no action taken by the Facility Agent under any Finance Document, will be taken to constitute the Facility Agent as a trustee or fiduciary of any other person.

21.18 Not responsible

- (a) Neither the Facility Agent, the Security Trustee nor any of their respective directors, officers, employees, agents or attorneys will be responsible to any other Finance Party for:
 - (i) any failure of an Obligor or any other person to perform its obligations under any Finance Document;
 - (ii) any Obligor's financial condition;
 - (iii) the completeness or accuracy of any statements, representations or warranties in any Finance Document or any document delivered under or in connection with a Finance Document; or
 - (iv) the valid execution, effectiveness, adequacy, genuineness, validity, enforceability or admissibility in evidence of any Finance Document or any other document.
- (b) Each of the Facility Agent and the Security Trustee may rely on (without further enquiry):
 - (i) any representation, notice or document believed by it to be genuine, correct and appropriately authorised; and
 - (ii) any statement made by an Authorised Officer of any Obligor or a director, authorised signatory or employee of any person regarding any

matters which may reasonably be assumed to be within his or her knowledge or within his or her power to verify.

- (c) Each of the Facility Agent and the Security Trustee may engage any lawyers, accountants or other experts in connection with the exercise of its Powers, or the performance of its obligations, under the Finance Documents and may rely on the advice or services received (without further enquiry).

21.19 Independent investigations

Each Financier acknowledges that:

- (a) it has not relied on any statement, opinion, forecast or other representation made by the Facility Agent or the Security Trustee (or both of them) to induce it to enter into any Finance Document or agree to participate in the Facilities; and
- (b) it has made and (without reliance on the Facility Agent or the Security Trustee and based on such documents as it considers appropriate) it will continue to make:
 - (i) its own appraisal of the affairs and financial condition of each Obligor, the legality and validity of the Finance Documents and any other matters relevant to the Finance Documents; and
 - (ii) its own decisions as to whether or not to take action under any Finance Document.

21.20 Exclusion of liability

- (a) The Facility Agent will not be liable for any cost, loss, damage or expense suffered or incurred by any Finance Party or any other person as a result of or in connection with an act or omission of the Facility Agent except to the extent arising as a direct result of the gross negligence, fraud or wilful misconduct of the Facility Agent.
- (b) The Security Trustee will not be liable for any cost, loss, damage or expense suffered or incurred by any Finance Party or any other person as a result of or in connection with an act or omission of the Security Trustee except to the extent arising as a direct result of any breach of trust by the Security Trustee or as a direct result of the gross negligence, fraud or wilful misconduct of the Security Trustee.

21.21 Reimbursement and Indemnity

- (a) Each Financier will severally reimburse each of the Facility Agent and the Security Trustee (to the extent that it is not reimbursed by the Obligors) rateably in accordance with its Commitments, or if the Total Commitments are then zero in accordance with its Commitments immediately before their reduction to zero, for all expenses (including legal fees, costs and disbursements (on a solicitor/own client basis)) incurred in connection with:
 - (i) negotiating, preparing and executing the Finance Documents, and any subsequent consent, agreement, approval, waiver or amendment under, of or to the Finance Documents;
 - (ii) exercising, enforcing or preserving, or attempting to exercise, enforce or preserve, any Power under the Finance Documents, including any expenses incurred in the evaluation of any matter of material concern to the Facility Agent or the Security Trustee or the investigation of any matter which the Facility Agent or the Security Trustee determines,

acting reasonably, may be an Event of Default or Potential Event of Default; or

(iii) otherwise carrying out its duties or obligations as Facility Agent or Security Trustee, as applicable, under any Finance Document,

Each Financier agrees to pay amounts due under this clause 21.21 (a) within 5 Business Days of demand from the Facility Agent or the Security Trustee, as relevant.

- (b) Each Financier will severally indemnify each of the Facility Agent and the Security Trustee (to the extent that it is not indemnified by the Obligor) rateably in accordance with its Commitments, or if the Total Commitments are then zero in accordance with its Commitments immediately before their reduction to zero, against all claims, costs, losses, damages or expenses suffered or incurred by or made against the Facility Agent or the Security Trustee, as applicable, in connection with:
- (i) any Finance Document;
 - (ii) the performance or purported performance of its duties or obligations as Facility Agent or Security Trustee, as applicable, under any Finance Document; or
 - (iii) any action taken or omitted to be taken by the Facility Agent or Security Trustee, as applicable, under or purportedly under a Finance Document,
- except to the extent that such claim, cost, loss, damage or expense arises as a direct result of, in the case of the Facility Agent, gross negligence, fraud or wilful misconduct or, in the case of the Security Trustee, its breach of trust, gross negligence, fraud or wilful misconduct. Each Financier agrees to pay amounts due under this indemnity within 5 Business Days of demand from the Facility Agent or the Security Trustee, as relevant.
- (c) The Borrower agrees to reimburse each Financier for each amount paid by that Financier under this clause 21.21. The Borrower agrees to pay amounts due under this clause 21.21(c) on demand by the Facility Agent (which demand will be made by the Facility Agent at the direction of the relevant Financier). This reimbursement obligation does not limit the liability of any Obligor under any other provision of any Finance Document.

21.22 Replacement of Facility Agent

- (a) **(Resignation/Notice of removal):** The Facility Agent (the “retiring Facility Agent”) may:
- (i) resign at any time by giving not less than 30 days notice to the other Finance Parties and the Borrower; and
 - (ii) be removed from office on not less than 30 days prior notice signed by or on behalf of the Majority Financiers
- (b) **(Successor Facility Agent):** The Majority Financiers will have the right, in consultation with the Borrower, to appoint a successor Facility Agent on the resignation or removal of the Facility Agent in accordance with clause 21.22(a). If on or before the date on which any resignation or removal of the Facility Agent will take effect, no successor Facility Agent has been appointed, the retiring Facility

Agent may, in consultation with the Borrower, appoint a successor Facility Agent which must be a reputable and experienced financier having an office in Australia.

- (c) **(Rights of successor Facility Agent):** On the successor Facility Agent issuing a written notice to the other Finance Parties and the Borrower accepting its appointment and specifying for the purposes of the Finance Documents an office in Australia and executing any other documents as the retiring Facility Agent may, acting reasonably, require, the successor Facility Agent will succeed to and be vested with all the Powers of the retiring Facility Agent as Facility Agent and the retiring Facility Agent will be discharged from its duties and obligations under the Finance Documents.
- (d) **(Provisions to continue):** The provisions of this clause 21 will continue in effect in relation to the retiring Facility Agent in respect of any action taken or omitted to be taken while the retiring Facility Agent was acting as the Facility Agent.
- (e) **(Documents):** The retiring Facility Agent will, at the cost of the Borrower, make available to the successor Facility Agent any documents and records and provide any assistance as the successor Facility Agent may reasonably request for the purposes of performing its functions as Facility Agent under the Finance Documents.

21.23 No authority

Each Financier acknowledges and agrees that it does not have authority on behalf of the other Finance Parties to:

- (a) waive any right or remedy of the other Finance Parties or any of them under the Finance Documents; or
- (b) modify or vary, or agree to modify or vary, any provision of any Finance Document.

21.24 HSBC Bank Australia Limited as security agent under the Pledge

To the extent applicable and permitted by law, all references to the Security Trustee in this clause 21 (other than clause 21.2(a)) shall include HSBC Bank Australia Limited as security agent under the Pledge.

22. Set-off

If an Event of Default occurs, the Facility Agent and each Financier, without notice to the Borrower, may combine any account that the Borrower holds with it with, or set off any amount that is or may become owing by it to the Borrower against, any amount owing by the Borrower to it under any Finance Document. For this purpose the Facility Agent and each Financier may:

- (a) change the terms (including the repayment date) of any account or other payment obligation between the parties;
- (b) convert amounts into different currencies in accordance with its usual practice; and
- (c) do anything (including execute any document) in the name of the Borrower that it considers necessary or desirable.

This subclause overrides any other document or agreement to the contrary.

23. Pro rata sharing

If at any time the proportion which a Financier ("**Overpaid Financier**") has received or recovered by set-off or otherwise in respect of its portion of any sum due from an Obligor to the Financiers under the Finance Documents is greater (the amount of the excess being the "**excess amount**") than the proportion received or recovered by the Financier receiving or recovering the smallest or no proportion of it, then:

- (a) the Overpaid Financier will, within 3 Business Days of the receipt or recovery, notify the Facility Agent;
- (b) the Overpaid Financier will, within 7 Business Days of notification, pay to the Facility Agent an amount equal to the excess amount;
- (c) the Facility Agent will treat each payment received under clause 23(b) as if it were a payment by the relevant Obligor on account of the sum due from the relevant Obligor and distribute it to the Financiers (other than the Overpaid Financier) in accordance with clause 11;
- (d) unless clause 23(e) applies:
 - (i) the liability of the Obligor to the Overpaid Financier will be increased (or treated as not having been reduced) by an amount equal to the excess amount; and
 - (ii) the relevant Obligor will fully indemnify the Overpaid Financier making a payment for the amount equal to the excess amount to the extent that, despite clause 23(d)(i), the Overpaid Financier's liability has been discharged by the receipt or recovery;
- (e) where the amount received or recovered by the Overpaid Financier was received or recovered otherwise than by payment and the Obligor, or the person from whom the receipt or recovery was made, was insolvent at the time of the receipt or recovery or became insolvent as a result of the receipt or recovery, then:
 - (i) each Financier (other than the Overpaid Financier) will assign to the Overpaid Financier an amount of the Obligations owed to that Financier equal to the amount received by it as contemplated by clause 23(c); and
 - (ii) that assignment will take effect immediately on receipt of payment by the assignor Financier as contemplated by clause 23(c); and
- (f) if all or a portion of the amount received or recovered by the Overpaid Financier is rescinded or must otherwise be restored to an Obligor ("**Repaid Amount**"): ~~the~~
 - (i) each Financier will repay to the Facility Agent for the account of the Overpaid Financier the amount as is necessary to ensure that each Financier repays its proportionate share of the Repaid Amount (together with an amount as is necessary to reimburse the Overpaid Financier for its proportion of any interest on the Repaid Amount which the Overpaid Financier is required to pay) and the provisions of clauses 23(c), 23(d) and 23(e) will apply only to the retained amount;
 - (ii) to the extent necessary, any Obligations assigned under clause 23(c) will be re-assigned; and

- (iii) the liability of the Obligor to each Financier will be increased (or heated as not having been reduced) by an amount equal to the amount repaid by that Financier under this clause 23(f).

Despite any other provision of this clause 23, if a Financier has commenced an action or proceeding in any court to recover sums owing to it under any Finance Document and as a result, or in connection with the action or proceeding, has received an excess amount, the Financier will not be required to share any portion of that excess amount with any Financier which was notified of the legal action or proceeding and which had the legal right to, but did not, join the action or proceeding or commence and diligently prosecute a separate action or proceeding to enforce its rights in the same or another court.

24. Expenses, stamp duties and GST

24.1 Expenses and Stamp Duty

The Borrower must indemnify each other party against, and must pay each other party on demand the amount of, all Taxes and reasonable expenses incurred in connection with:

- (a) the negotiation, preparation, execution, stamping and registration of each Finance Document;
- (b) the transactions that each Finance Document contemplates; and
- (c) any amendment to, or any consent, approval, waiver, release or discharge of or under, any Finance Document, including reasonable legal expenses and reasonable expenses incurred in engaging consultants.

24.2 GST

- (a) Any reimbursement required to be made by an Obligor under any Finance Document for a cost, expense or other amount paid or incurred by a Finance Party will be limited to the total cost, expense or other amount less the amount of any input tax credit to which the relevant Finance Party is entitled for the acquisition to which the cost, expense or other amount relates.
- (b) If GST is payable in respect of any supply made by or through a Finance Party ("**Supplier**") under, pursuant to, or in connection with, any Finance Document ("**GST Liability**"), then:
 - (i) where consideration is provided by a party ("**Recipient**") in relation to that supply that party will pay an additional amount to the Supplier equal to the full amount of the GST Liability; and
 - (ii) except where clause 24.2(b)(i) applies, the Borrower will indemnify and keep that Supplier indemnified for the full amount of the GST Liability.

Each Supplier will provide to the relevant Recipient or the Borrower a tax invoice complying with the relevant law relating to any payment made in accordance with this clause 24.2(b).

25. Assignments and confidentiality**25.1 Successors and assigns**

This agreement is binding on and enures to the benefit of each party to it and its respective successors and permitted assigns.

25.2 Assignments by Obligor

No Obligor can assign any of its rights under any Finance Document without the prior written consent of the Facility Agent (acting on the instructions of all the Financiers).

25.3 Financiers

After consulting with the Borrower, a Financier may assign any or all of its rights under any Finance Document without the consent of the Borrower, the Facility Agent or the other Financiers to a financial institution which the Borrower is not prohibited from contracting with by any law of any relevant country or (where the relevant Financier remains Financier of record) a securitisation vehicle or other vehicle for funding purposes.

25.4 Substitution

- (a) If a Financier wishes to transfer all or any of its rights and obligations under the Finance Documents to another person, subject to paragraph (b), it and the proposed transferee will in New South Wales, the Australian Capital Territory or in such other location as the Facility Agent agrees execute and deliver to the Facility Agent 4 counterparts of a Substitution Certificate.
- (b) A Financier may only arrange a substitution after consulting with the Borrower if:
 - (i) in the case of a Financier other than the Facility Agent, it gives the Facility Agent at least 5 Business Days' notice (or such shorter period approved by the Facility Agent, acting reasonably) of its intention to do so;
 - (ii) the proposed transferee holds all Authorisations that are necessary or desirable in connection with the substitution; and
 - (iii) the Borrower is not prohibited from contracting with the proposed transferee by any law of any relevant country.
- (c) On receipt of 4 counterparts of a Substitution Certificate the Facility Agent will (if it is satisfied that the substitution complies with clause 25.3) promptly:
 - (i) notify the Borrower and each other Financier;
 - (ii) countersign the counterparts on behalf of all other parties to this agreement;
 - (iii) enter the transfer in a register kept by it; and
 - (iv) retain one counterpart of the Substitution Certificate and deliver one counterpart to each of the transferor, transferee and the Borrower.
- (d) On the Substitution Certificate being countersigned by the Facility Agent in accordance with clause 25.4(c) the transferor will be relieved of its obligations to the extent and from the date specified in the Substitution Certificate and the

transferee will be bound by the Finance Documents to the extent and from the date stated in the Substitution Certificate.

- (e) Each other party to this agreement irrevocably authorises the Facility Agent to sign each Substitution Certificate on its behalf and acknowledges that:
 - (i) on a Substitution Certificate being countersigned by the Facility Agent in accordance with clause 25.4(c) it will be taken for all purposes to have consented to the contents of that certificate; and
 - (ii) it will continue to be bound by the provisions of the Finance Documents accordingly.
- (f) Unless the Facility Agent otherwise agrees, no transfer of a Financier's rights and obligations may be effected while any Drawdown Notice is current.
- (g) Each transferee Financier party to a Substitution Certificate must on the Substitution Date (as defined in the Substitution Certificate to which it is party as a "New Financier") pay to the Facility Agent for its own account an administration fee of AUD 2,500.

25.5 Increased costs, Taxes and illegality

- (a) If any assignment or substitution of or with respect to all or any part of the rights or obligations of a Financier under the Finance Documents is made, or a change of Facility Office is made by any Financier, which results (or would but for this clause result) at the time of the substitution, transfer or change in amounts becoming payable under clauses 12.2 or 14.1 then the assignee, transferee or other Financier will be entitled to receive those amounts only to the extent that the assignor or transferor or the Financier acting through its previous Facility Office would have been so entitled had there been no such assignment, transfer or change. Nothing in this clause will affect the rights of a Financier under clauses 12.2 or 14.1 in relation to amounts which may become payable after the time of assignment, transfer or change.
- (b) No assignment or substitution of or with respect to all or any part of the rights or obligations of a Financier under the Finance Documents or change of Facility Office will be made if the assignee, transferee or other Financier would be entitled immediately afterwards to give notice under clause 13.

25.6 Sub-participation

Each Financier will be entitled to enter into any sub-participation or other arrangement with any third party relating to the Finance Documents which does not transfer to that third party any obligation or any legal or equitable interest in any of the rights arising under the Finance Documents.

25.7 Confidentiality - General

Subject to clause 25.8, each party to this agreement must not disclose any information concerning the contents of, or the transactions contemplated by, this agreement to any person who is not a party, except to the extent that:

- (a) **(permitted by documents)** the disclosure is expressly permitted by a Finance Document;
- (b) **(consent of other parties)** the other parties consent to the disclosure;

-
- (c) **(public domain)** the information is already in the public domain, unless it entered the public domain because of a breach of confidentiality by the party;
 - (d) **(employees and advisers)** the disclosure is made on a confidential basis to the party's officers, employees, agents, financiers or professional advisers, and is necessary for the party's business, or is made to any related party of that party;
 - (e) **(comply with laws)** the disclosure is necessary to comply with any applicable law, or an order of a court or tribunal;
 - (f) **(comply with directives)** the disclosure is necessary to comply with a directive or request of any Government Agency or stock exchange (whether or not having the force of law) so long as a responsible person in a similar position would comply;
 - (g) **(obtain Authorisations)** the disclosure is necessary or desirable to obtain an Authorisation from any Government Agency or stock exchange; or
 - (h) **(discovery and litigation)** the disclosure is necessary or desirable in relation to any discovery of documents, or any proceedings before a court, tribunal, other Government Agency or stock exchange.

25.8 Disclosure to assignees or substitutes

- (a) Subject to paragraph (b), a Financier may:
 - (i) disclose to a proposed assignee, substitute, sub-participant or securitisation or funding vehicle under clause 25, or any other person who proposes to enter into contractual relations with a Financier in relation to any Finance Document, any information about an Obligor which that Financier considers appropriate; and
 - (ii) give a copy of any Finance Document to a proposed assignee, substitute, sub-participant or securitisation or funding vehicle under clause 25 or any other person described in paragraph (a)(i).
- (b) Any disclosure made under paragraph (a) must be made on the basis that the person to whom the information or document is disclosed must keep that information or document confidential as required by clause 25.7.

26. Governing law and jurisdiction

26.1 Governing law

This agreement is governed by and must be construed according to the law applying in New South Wales.

26.2 Jurisdiction

- (a) Each Obligor irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this agreement.
- (b) Each Obligor irrevocably waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 26.2(a).

27. Miscellaneous

27.1 Certificate of Facility Agent

A certificate in writing signed by the Facility Agent, the Security Trustee or an officer of the Facility Agent or Security Trustee certifying the amount payable by an Obligor under this agreement or any Security or stating any other act, matter or thing relating to such document is conclusive and binding on each Obligor in the absence of manifest error on the face of the certificate.

27.2 Notices

- (a) All communications (including notices, consents, approvals, requests and demands) under or in connection with this agreement:
- (i) must be in writing;
 - (ii) must be addressed to the address as set out below (or as otherwise notified by a party to the Facility Agent and the Borrower from time to time or when it becomes a party to this agreement), together with (in the case of any notice addressed to the Borrower or the Guarantors) a copy delivered to ResMed Inc. at 14040 Danielson Street, Poway, CA 92064, USA, marked for the attention of the General Counsel:

Borrower

Name: ResMed Limited
Address: 97 Waterloo Road
Macquarie Park
NSW 2113
Australia
Fax: (02) 9889 1475
For the attention of: Chief Financial Officer

Financiers

As specified in Schedule 1 or in a Substitution Certificate

Guarantors

As specified in Schedule 2

Facility Agent

Address: HSBC Centre
580 George Street
Sydney NSW 2000
Fax: (02) 9006 5534
For the attention of: Assistant Manager, Credit Operations

Security Trustee

Address: HSBC Centre
580 George Street
Sydney NSW 2000
Fax: (02) 9006 5534
For the attention of: Assistant Manager, Credit Operations

- (iii) must be signed by any Authorised Officer of the Obligor making the communication or, in the case of a Finance Party, any officer whose title is or includes the word “Manager”, “Executive” or “Director”;
- (iv) are taken to be received by the addressee:
 - A. (in the case of prepaid post) on the second Business Day after the date of posting;
 - B. (in the case of fax) on receipt of a transmission report confirming successful transmission; and
 - C. (in the case of delivery by hand) on delivery at the address of the addressee as provided in clause 27.2(a)(ii).
- (b) Each communication sent under this clause 27.2 may be relied on by the recipient if the recipient, acting reasonably, believes the communication to be genuine and if it bears what appears to be the signature (original or facsimile) of an authorised signatory of the sender.
- (c) Any communication sent or received by the Borrower in accordance with this clause 27.2 will be taken to have been sent or received by each of the Obligors.

27.3 Continuing obligation

Each Finance Document constitutes a continuing obligation regardless of any settlement of account, intervening payment, express or implied revocation or any other matter or thing, until a final discharge has been given to the Obligors.

27.4 Settlement conditional

Any settlement or discharge between any Finance Party and the Obligors (or any Obligor) is conditional on any security or payment given or made by any Obligor or any other person in relation to the Obligations not being avoided, repaid or reduced by virtue of any Insolvency Provision. If a security or payment is so avoided, repaid or reduced, the relevant Finance Party is entitled to recover the value or amount from the Obligors subsequently as if the settlement or discharge had not occurred.

27.5 Further assurance

The Obligors on demand by the Facility Agent or the Security Trustee and at the entire cost and expense of the Obligors will perform all such acts and execute all such agreements, assurances and other documents and instruments as the Facility Agent or the Security Trustee, acting reasonably, requires to perfect or improve the rights and powers afforded or created, or intended to be afforded or created, by any Finance Document.

27.6 Severance

If at any time any provision of any Finance Document is or becomes illegal, invalid, void or unenforceable in any respect under the law of any jurisdiction, that will not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of that Finance Document; or
- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of that Finance Document.

27.7 Remedies cumulative

The rights and remedies conferred by each Finance Document on the Finance Parties are cumulative and in addition to all other rights or remedies available to the Finance Parties by law or by virtue of any Finance Document.

27.8 Waiver

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, any right, power, or remedy provided by law or under any Finance Document by any Finance Party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under any Finance Document.
- (b) A waiver or consent given by a Finance Party under any Finance Document is only effective and binding on that Finance Party if it is given or confirmed in writing by that Finance Party.
- (c) No waiver of a breach of a term of a Finance Document operates as a waiver of another breach of that term or of a breach of any other term of any Finance Document.

27.9 Consents

A consent required under any Finance Document from a Finance Party may be given or withheld, or may be given subject to any conditions, as that Finance Party (in its absolute discretion) thinks fit, unless the Finance Document expressly provides otherwise.

27.10 Indemnities

- (a) Each indemnity in each Finance Document is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of the Finance Documents.
- (b) It is not necessary for any Finance Party to incur any expense or to make any payment before enforcing a right of indemnity conferred by any Finance Document.

27.11 Time of the essence

Time is of the essence in respect of any Obligor's obligations under the Finance Documents.

27.12 Moratorium legislation

To the fullest extent permitted by law, all laws which at any time operate directly or indirectly to lessen or affect in favour of the Obligors any obligation under any Finance Document, or to delay or otherwise prevent or prejudicially affect the exercise by any Finance Party of any power or right under any Finance Document or otherwise, are expressly waived.

27.13 Binding on each signatory

Each Finance Document binds and is enforceable against each party despite:

- (a) any other party not executing a Finance Document or its execution being defective in any way; or
- (b) any obligation or liability of any other party under a Finance Document not being binding or enforceable against that party for any reason.

27.14 Counterparts

- (a) This agreement may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes an original of this agreement, and all together constitute one agreement.
- (b) A party who has executed a counterpart of this agreement may exchange that counterpart with another party by faxing it to that other party and, if that other party requests it, promptly delivering that executed counterpart by hand or post to the other party. However, the validity of this agreement is not affected if that party who has faxed the counterpart delays in delivering or does not deliver it by hand or by post.

27.15 Entire agreement

To the extent permitted by law, in relation to its subject matter, the Finance Documents:

- (a) embody the entire understanding of the parties, and constitute the entire terms agreed by the parties; and
- (b) supersede any prior written or other agreement of the parties.

28. No representation by or reliance

Each Obligor acknowledges that:

- (a) no Finance Party has any duty to supply it with information in relation to or affecting the other Obligors or any Finance Party before the date of this agreement or during the currency of any Finance Document; and
- (b) it has relied on its own inquiries as to the other Obligors, the nature and extent of the entire relationship between each of them and each Finance Party (whether or not recorded in the Finance Documents) and the nature and effect of the Finance Documents.

Schedule 1 - Original Financiers

Financier		Tranche A Commitment	Tranche B Commitment	Tranche C Commitment
Name:	HSBC Bank Australia Limited	EUR 50,000,000	USD 15,000,000	USD 60,000,000
ABN number:	48 006 434 162			
Address for notices:	HSBC Centre 580 George Street Sydney NSW 2000			
Fax:	(02) 9006 5534			
For the attention of:	Assistant Manager, Credit Operations			
TOTAL COMMITMENTS:		EUR 50,000,000	USD 15,000,000	USD 60,000,000

Schedule 2 - Original Guarantors

Name: ResMed SA
Address for notices: Parc de la Bandonniere
2 Rue Maurice Audibert
69800 Saint-Priest
France
Fax: + 33 (0) 4 37 25 12 60
For the attention of: Financial Controller

Name: ResMed GmbH & Co. KG
Address for notices: Fraunhoferstraße 16
82152 Martinsried
Federal Republic of Germany
Fax: +49 89 9901 10 55
For the attention of: Herr Heiko Ekstein

Name: ResMed (UK) Limited
Company number: 02863553
Address for notices: 65 Milton Park
Abingdon
Oxfordshire
OX14 4RX
Fax: +44 1235 813 336
For the attention of: Mr Mark Hastings

Name: Take Air Medical Handels-GmbH
Address for notices: Parc de la Bandonniere
2 Rue Maurice Audibert
69800 Saint-Priest
France
Fax: + 33 (0) 4 37 25 12 60
For the attention of: Financial Controller

Name: ResMed Inc.
Address for notices: 14040 Danielson Street
Poway CA 92064
USA
Fax: +1 858 746 2830
For the attention of: General Counsel

Name: ResMed Corp
Address for notices: 14040 Danielson Street
Poway CA 92064
USA
Fax: +1 858 746 2830
For the attention of: General Counsel

Schedule 3 - Documentary conditions precedent

1. A certified copy of the Constitution of the Borrower,
2. A certified copy of a resolution of the directors of the Borrower:
 - (a) approving the Facilities and authorising the execution by the Borrower of this agreement and of each other Finance Document to which the Borrower is a party and the performance by the Borrower of its obligations under those Finance Documents; and
 - (b) appointing an Authorised Officer or Authorised Officers.
3. An original power of attorney for the execution of each Finance Document to which it is a party from the Borrower executed under common seal or by two directors or a director and a secretary of the Borrower,
4. The Finance Documents duly executed by all parties and, if necessary, stamped and in registrable form.
5. Payment of any stamp duty or filing costs in relation to each of the Finance Documents.
6. Such corporate documents (including constituent documents, extracts of minutes of directors meetings and powers of attorney) in relation to each Obligor (other than the Borrower) as the Facility Agent may require.
7. A copy of the “*registre de mouvements de Hires*” (shareholders’ register) of SAIME dated and certified as true by an authorised representative of SAIME.
8. A copy of the “*statuts*” of SAIME dated and certified as true by an authorised representative of SAIME.
9. An original *k-bis* extract for SAIME dated no less than three months from the date of this agreement.
10. A copy of the latest annual accounts of SAIME dated 30 June 2004 dated and certified as true by an authorised representative of SAIME.
11. A copy of (and of all applications for) any and all approvals, consents, licences, exemptions and other requirements of Government Authorities required for the entry into or performance of the Finance Documents by any Obligor.
12. Legal opinion, addressed to the Facility Agent, from lawyers to the Facility Agent in each of Australia, France, Germany and the United Kingdom covering such matters as to the Obligors and the Finance Documents as the Facility Agent may reasonably require.
13. Legal opinions, addressed to the Facility Agent, from US counsel to the Group, covering such matters as the Facility Agent may reasonably require.
14. Payment of the costs and disbursements of the Finance Parties (both Australian and offshore) in connection with the negotiation and execution of the Finance Documents.

For the purposes of this Schedule, “certified” means a copy certified to be such by a director, secretary or officer of the relevant Obligor.

Schedule 4 - Form of Drawdown Notice

To: HSBC Bank Australia Limited ABN 48 006 434 162 as Facility Agent
From: ResMed Limited ABN 30 003 765 142

Date: []

DRAWDOWN NOTICE

Syndicated Facility Agreement dated [] (“Syndicated Facility Agreement”)

Dear Sirs

We give you notice under clause 4.1 of the Syndicated Facility Agreement that the Borrower wishes to draw an Advance as follows:

Drawdown Date: [date]
Tranche: [A/B/C]
Currency: AUD/USD/EUR/GBP *[Which must be a Permitted Currency]*
Amount: [amount]
Purpose: [purpose]
Interest Period: [1, 2 or 3 months]
Payment Instructions: [insert]

We confirm that each condition specified in clauses 3.1 and 3.2 is satisfied on the date of this Drawdown Notice and will be satisfied on the proposed Drawdown Date.

Terms used in this Drawdown Notice and defined in the Facility Agreement have the same meaning in this Drawdown Notice as in the Facility Agreement.

Yours faithfully

[Authorised Officer]

For and on behalf of ResMed Limited

Schedule 5 - Substitution Certificate

Substitution Certificate made on

By [] ABN [] of []
("Existing Financier")
[] ABN [] of []
("New Financier")

HSBC Bank Australia Limited ABN 48 006 434 162 of HSBC Centre, 580 George Street, Sydney NSW 2000 for itself and as agent for each party under the Facility Agreement

("Facility Agent")

Background

The New Financier wishes to assume [some/all] of the Existing Financier's Commitments under the Facility Agreement.

1. Definitions and interpretation

1.1 Definitions

In this certificate:

"Facility Agreement" means the agreement entitled "Syndicated Facility Agreement" dated [] between ResMed Limited ABN 30 003 765 142 as the "Borrower", each person listed in Schedule 1 as an "Original Financier", HSBC Bank Australia Limited ABN 48 006 434 162 as Facility Agent and HSBC Bank Australia Limited ABN 48 006 434 162 as Security Trustee including any supplements and amendments and also any Substitution Certificates entered into in accordance with that agreement.

"Substituted Commitments" means the Commitments specified as such in Schedule 1 of this certificate.

"Substituted Obligations" means obligations identical to the obligations of the Existing Financier under the Finance Documents in relation to the Substituted Commitments and the Substituted Portion.

"Substituted Portion" means the amount of each outstanding Advance specified as such in Schedule 2 of this certificate.

"Substituted Rights" means Powers identical to the Powers of the Existing Financier under the Finance Documents in relation to the Substituted Commitments and the Substituted Portion.

"Substitution Date" means the later of the date on which this certificate is executed by the Facility Agent or a later date as the parties to this certificate may agree in writing.

1.2 Interpretation

- (a) A reference in this certificate to **"identical"** obligations or Powers is a reference to the character of those obligations or Powers rather than to the identity of the person obliged to perform them or entitled to them.

-
- (b) Unless otherwise defined, expressions used in this certificate have the meanings given to them in the Facility Agreement.
 - (c) For the purposes of this certificate, references in this certificate to Finance Document shall exclude the Working Capital Agreements.

1.3 Finance Documents

This certificate is a Finance Document.

2. Representation

The Existing Financier represents and warrants to the New Financier that as at the Substitution Date the Existing Financier's Commitments under the Facility Agreement are sufficient to permit the substitution of obligations and Powers under this certificate.

3. Substituted Obligations

- (a) The Existing Financier is released from the Substituted Obligations with effect on and from the Substitution Date, provided that the Existing Financier will remain bound by its obligations under the Finance Documents which accrue before the Substitution Date.
- (b) The New Financier undertakes to the Existing Financier, the other Finance Parties and the Obligors that it will assume the Substituted Obligations on and from the Substitution Date.

4. Substituted rights

The Existing Financier will no longer be entitled to the Substituted Rights or the Substituted Portion and the New Financier will become entitled to the Substituted Rights and the Substituted Portion with effect on and from the Substitution Date.

5. Effect on Finance Documents

The parties agree that with effect on and from the Substitution Date:

- (a) the New Financier and each party to each Finance Document will assume obligations towards each other, and have Powers in relation to each other, determined on the basis that the obligations of the New Financier are the Substituted Obligations and the Powers of the New Financier are the Substituted Rights (together with the obligations and Powers of the New Financier existing immediately before the Substitution Date, if any);
- (b) the Existing Financier will be released from its obligations under each of the Finance Documents accruing on and after the Substitution Date to the extent of the Substituted Obligations and it will cease to be entitled to exercise any Powers under the Finance Documents arising on or after the Substitution Date in respect of the Substituted Rights; and
- (c) the New Financier will be deemed a party to each Finance Document to which the Existing Financier is a party as a Financier with Commitments equal to the aggregate of the Substituted Commitments and the Commitments of the New Financier immediately before the Substitution Date, if any.

6. No effect on accrued rights and obligations

Save as expressly provided, this certificate will not affect the Existing Financier's Powers arising, and obligations accrued, before the Substitution Date.

7. Reliquefaction bills

Nothing contained in this certificate releases, relieves or otherwise affects the obligations and the Powers of the Existing Financier in respect of Bills drawn under clause 9 of the Facility Agreement. The New Financier will not assume any obligations, or acquire any Powers, in respect of those Bills.

8. Payments

8.1 Consideration

The Existing Financier and the New Financier will agree separately between themselves the amounts (if any) payable from one to the other in relation to the substitution of obligations and Powers under this certificate.

8.2 Facility Agent

On and from the Substitution Date the Facility Agent:

- (a) will make all payments received by it in respect of the Substituted Commitments, Substituted Obligations, Substituted Rights and Substituted Portion to the New Financier; and
- (b) treat the New Financier as Financier with Commitments equal to the aggregate of the Substituted Commitments and the Commitments of the New Financier immediately before the Substitution Date, if any.

9. Independent assessment

- (a) Without limiting clause 5 of this certificate, the New Financier agrees that clause 21.19 of the Facility Agreement binds it as if the references in that clause to "any Finance Document" included this certificate and the references to the "Facility Agent or the Security Trustee" included the Existing Financier.
- (b) Nothing in any Finance Document obliges the Existing Financier to:
 - (i) accept a retransfer of any of the rights and obligations transferred pursuant to this certificate; or
 - (ii) support any losses directly or indirectly incurred by the New Financier by reason of the non-performance by any Obligor or any other person of its obligations under the Finance Documents or otherwise.

10. Acknowledgements

The New Financier acknowledges that it has received a complete and current copy of each Finance Document together with all other documents and information as it reasonably requires in connection with entry into this certificate.

11. **Governing law**

This certificate is governed by and must be construed accordingly to the law applying in New South Wales.

Schedule 1: Commitments

	<u>Tranche A Commitment</u>	<u>Tranche B Commitment</u>	<u>Tranche C Commitment</u>	<u>Total Commitment</u>
Substituted Commitments				

Schedule 2: Advances

	<u>Total Outstanding</u>	<u>Substituted Portion</u>
Tranche A Advances	[]	[]
Tranche B Advances	[]	[]
Tranche C Advances	[]	[]

Signed as an agreement.

To be signed by Existing Financier, New Financier and Facility Agent.

Signed as an agreement.

Borrower

Signed for and on behalf of **ResMed Limited ABN 30 003 765 142** by its Attorney under a Power of Attorney dated 4 May 2006, and the Attorney declares that the Attorney has not received any notice of the revocation of such Power of Attorney, in the presence of:



Signature of Attorney



Signature of Witness

Brett Andren Sandercock
Name of Attorney in full

Mark Abourrk
Name of Witness in full

Original Financier

Signed for and on behalf of **HSBC Bank Australia Limited ABN 48 066 434 162** by its Attorney under a Power of Attorney dated 29 July 2002, and the Attorney declares that the Attorney has not received any notice of the revocation of such Power of Attorney, in the presence of:



Signature of Attorney



Signature of Witness

Lewis Barton Williams
Name of Attorney in full

Jason Anthony Lowe
Name of Witness in full

Facility Agent

Signed for and on behalf of **HSBC Bank Australia Limited ABN 48 066 434 162** by its Attorney under a Power of Attorney dated 29 July 2002, and the Attorney declares that the Attorney has not received any notice of the revocation of such Power of Attorney, in the presence of:

A stylized, handwritten signature in black ink, consisting of a large, sweeping loop followed by a short horizontal stroke.

Signature of Attorney

A stylized, handwritten signature in black ink, consisting of a large, sweeping loop followed by a short horizontal stroke.

Signature of Witness

Jason Anthony Lowe
Name of Witness in full

Lewis Barton William
Name of Attorney in full

Security Trustee

Signed for and on behalf of **HSBC Bank Australia Limited ABN 48 066 434 162** by its Attorney under a Power of Attorney dated 29 July 2002, and the Attorney declares that the Attorney has not received any notice of the revocation of such Power of Attorney, in the presence of:

A stylized, handwritten signature in black ink, consisting of a large, sweeping loop followed by a short horizontal stroke.

Signature of Attorney

A stylized, handwritten signature in black ink, consisting of a large, sweeping loop followed by a short horizontal stroke.

Signature of Witness

Jason Anthony Lowe
Name of Witness in full

Lewis Barton Williams
Name of Attorney in full

CLAYTON UTZ

EXECUTION COPY

Deed of guarantee and indemnity

HSBC Bank Australia Limited
ABN 48 006 434 162

Security Trustee

ResMed Limited
ABN 30 003 765 142

ResMed SA

ResMed GmbH & Co. KG

ResMed (UK) Limited
Company number 02863553

Take Air Medical Handels-GmbH
Guarantors

The Clayton Utz contact for this document is
Jason Huinink on +61 2 9353 4000

Clayton Utz
Lawyers
Levels 19-35 No. 1 O'Connell Street Sydney NSW 2000 Australia
PO Box H3 Australia Square Sydney NSW 1215
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Our reference 15136/15286/80038182

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Deed of guarantee and indemnity made on 8 June 2006

Parties

HSBC Bank Australia Limited ABN 48 006 434 162 of HSBC Centre, 580 George Street, Sydney NSW 2000 in its capacity as security trustee ("**Security Trustee**")

ResMed Limited ABN 30 003 765 142 of 97 Waterloo Road, Macquarie Park, NSW 2113

ResMed SA, a limited company (*societe anonyme*) incorporated under the laws of France with a share capital of EUR 46,050,000, whose registered office is at Pare de la Bandonniere, 2 rue Maurice Audibert, 69800 Saint Priest, France, registered with the Registry of Commerce and Companies of Lyon under single identification number 407 775 170, represented by Mr Alain Perseguers duly authorised for the purposes hereof

ResMed GmbH & Co. KG, a limited partnership (*Kommanditgesellschaft*) incorporated under the laws of the Federal Republic of Germany, having its seat at Fraunhofer-Straße 16, 82152 Martinsried (Municipality of Planegg) in the Federal Republic of Germany and registered with the commercial register (*Handelsregister*) of the local court (*Amtsgericht*) of Munich under HRA 85330

ResMed (UK) Limited incorporated in England with company registration number 02863553 whose registered office is at 65 Milton Park, Abingdon, Oxfordshire, OX14 4RX

Take Air Medical Handels-GmbH a limited liability company (*Gesellschaft mit beschränkter Haftung*) incorporated under the laws of the Federal Republic of Germany, having its seat at Handelsgesellschaft mbH, Oskar-Schulze-Straße 7, 28832 Achim (bei Bremen), registered with the commercial registry (*Handelsregister*) of the local court (*Amtsgericht*) of Achim under HRB 5506. ("**Guarantors**")

Background

- A. At the request of, inter alia, each Guarantor, the Financiers and the Working Capital Financiers have agreed to make financial accommodation available to the Debtors pursuant to the Facility Agreement and the Working Capital Agreements respectively.
- B. A condition precedent to the Debtors' utilisation of the Facilities and the facilities provided under the Working Capital Agreements is that each Guarantor enters into this deed of guarantee and indemnity.

Operative provisions

1. Definitions and interpretation

1.1 Definitions

In this deed:

"**Debtors**" means:

- (a) the Borrower;
- (b) ResMed SA;

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- (c) ResMed (UK) Limited;
 - (d) ResMed GmbH & Co. KG; and
 - (e) any other Subsidiary of the Parent who becomes a party to a Working Capital Agreement.

“Event of Insolvency” means:

- (a) in relation to any Guarantor, other than any Guarantor incorporated under the laws of Germany or France, the occurrence of an Event of Insolvency (as defined in the Facility Agreement);
- (b) in relation to any Guarantor incorporated under the laws of Germany, the occurrence of any of the following in relation to that Guarantor:
 - (i) it is unable to pay its debts as they fall due (*Zahlungsunfähigkeit* within the meaning of Section 17 of the German Insolvency Code (*Insolvenzordnung*)) or suspends making payments on all or a material part of its debts or announces an intention to do so;
 - (ii) it is over-indebted (*Überschuldung* within the meaning of Section 19 of the German Insolvency Code (*Insolvenzordnung*));
 - (iii) by reason of actual or anticipated financial difficulties, it begins negotiations with any of its creditors for the rescheduling of any of its indebtedness, a moratorium or a composition, assignment or similar arrangement;
 - (iv) a meeting of its shareholders, interest holders, directors or other officers is convened for the purpose of considering any resolution for, to petition for or to file documents with a court or any registrar for its liquidation, winding-up, administration, dissolution, or for the seeking of relief under any applicable bankruptcy, insolvency, company or similar law or any such resolution is passed;
 - (v) for any of the reasons set out in Sections 17 through 19 (inclusive) of the German Insolvency Code (*Insolvenzordnung*), it files for insolvency in accordance with the German Insolvency Code (*Antrag auf Eröffnung eines Insolvenzverfahrens*) or its directors are required by law to file for insolvency; or
 - (vi) the competent court takes any of the actions set out in Section 21 of the German Insolvency Code (*Insolvenzordnung*) or the competent court institutes or rejects (for reason of insufficiency of its funds to implement such proceedings) insolvency proceedings against it (*Eröffnung des Insolvenzverfahrens*); and
- (c) in relation to any Guarantor incorporated under the laws of France:
 - (i) being subject to bankruptcy proceedings (court-ordered recovery, reorganisation or liquidation (“*sauvegarde, redressement ou liquidation judiciaire*”), recovery procedure, reorganisation procedure or transfer procedure (“*plan de sauvegarde, de continuation ou de cession*”), amicable settlement, agreement or other (“*conciliation, concordat ou autres*”) pursuant to the provisions of book VI of the French Commercial Code (*Code de commerce*);

- (ii) having suspended its payments; or
- (iii) being subject to insolvency, excessive debt, bankruptcy or any other state that could justify, against its will, the instigation of any bankruptcy proceedings or warning proceedings (*"procédure d'alerte"*).

"Excluded Obligations" means Obligations of ResMed Limited under Tranche C of the Facility Agreement.

"Facility Agreement" means the syndicated facility agreement dated on or about the date of this deed and entered into between ResMed Limited ABN 30 003 765 142 as borrower, each person listed in schedule 1 of the facility agreement as original financier and HSBC Bank Australia Limited as facility agent and security trustee.

"Guaranteed Money" means all money the payment or repayment of which forms part of the Obligations.

"LTIBR" means any, and not just short term, interest-bearing receivables as set out in the guidelines of the German Federal Ministry of Finance (BMF) dated 15 July 2004, Nos. 19, 20 and 37 and of 22 July 2005.

"Obligations" means all the liabilities and obligation of the Debtors to the Finance Parties or any of them under or by reason of any of the Finance Documents and includes any liabilities or obligations which:

- (a) are liquidated or unliquidated;
 - (b) are present, prospective or contingent;
 - (c) are in existence before or come into existence on or after the date of this deed;
 - (d) relate to the payment of money or the performance or omission of any act;
 - (e) sound in damages only; or
 - (f) accrue as a result of any Event of Default,
- and irrespective of:
- (g) whether each Debtor is liable or obligated solely, or jointly, or jointly and severally with another person;
 - (h) the circumstances in which any Finance Party comes to be owed each liability or obligation and in which each liability or obligation comes to be secured by this deed including any assignment of any liability or obligation or of this deed; or
 - (i) the capacity in which each Debtor and the Finance Parties come to owe or be owed such liability or obligation.

"Power" means any right, power, authority, discretion, remedy or privilege conferred on the Security Trustee by any Finance Document, by statute or by law or equity.

"Security Trust" has the meaning given to it in the Security Trust Deed.

1.2 Facility Agreement

Unless otherwise defined in this deed, expressions used in this deed have the same meanings as in the Facility Agreement.

1.3 Interpretation

In this deed:

- (a) headings are for convenience only and do not affect interpretation,
- and unless the context indicates a contrary intention:
- (b) if more than one person is identified as the Debtor, that expression refers to them, and the obligations of the Debtor under this deed bind them, jointly and severally;
- (c) if more than one person is identified as the Guarantor, that expression refers to them, and the obligations of the Guarantor under this deed bind them, jointly and severally;
- (d) **“person”** includes an individual, the estate of an individual, a corporation, a Government Authority, an association or a joint venture (whether incorporated or unincorporated), a partnership, and a trust;
- (e) a reference to a party includes that party’s executors, administrators, successors and permitted assigns, including persons taking by way of novation;
- (f) a reference to a document (including this deed) is to that document as varied, novated, ratified or replaced from time to time;
- (g) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (h) a word importing the singular includes the plural (and vice versa), and a word importing a gender includes every other gender;
- (i) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this deed, and a reference to this deed includes all schedules, exhibits, attachments and annexures to it;
- (j) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning; and
- (k) **“includes”** in any form is not a word of limitation.

1.4 Finance Document

This deed is a Finance Document for the purposes of the Facility Agreement,

2. Guarantee

2.1 Consideration

Each Guarantor acknowledges that it has received valuable consideration for entering into this deed.

2.2 Guarantee

Each Guarantor irrevocably and unconditionally guarantees to each Finance Party the satisfaction and payment in full of the Obligations by each Debtor (other than itself).

2.3 Payment by Guarantor

If a Debtor does not pay the Guaranteed Money on the due date, each Guarantor (other than where a Guarantor is that Debtor) will immediately on demand pay to the Security Trustee the Guaranteed Money which is then due and unpaid or which later becomes due, owing or payable.

3. Indemnity

Each Guarantor as a separate additional and primary liability irrevocably and unconditionally agrees to indemnify each Finance Party and keep each Finance Party indemnified against any loss or damage suffered by that Finance Party arising out of:

- (a) any failure by any Debtor to satisfy the Obligations; or
- (b) any obligation or liability that would otherwise form part of the Obligations being void, voidable or unenforceable against or irrecoverable from any Debtor for any reason, whether or not any Finance Party, the Security Trustee or the Debtor knew or ought to have known of that reason.

4. Limitation of liability of ResMed SA

Notwithstanding anything contained in this deed, the obligations and liabilities of ResMed SA as a Guarantor under the guarantee and indemnity contained in this deed:

- (a) will not extend to cover any Obligations arising out of or in relation to the Excluded Obligations; and
- (b) shall be limited to an amount not exceeding at any time the aggregate of:
 - (i) all amounts owing by ResMed SA under or in connection with the Working Capital Agreement to which it is a party (including, without limitation, interest, fees and expenses);
 - (ii) the outstanding Tranche A Advances under the Tranche A Facility, the purpose of which is to refinance the facility made available to the Borrower under the Previous Facility Agreement, which was on-lent to ResMed SA, together with all amounts payable in respect of the Tranche A Facility (including, without limitation, interest, fees and expenses); and
 - (iii) all amounts drawn under the Tranche B Facility which have been on-lent to ResMed SA, together with all amounts payable under or in connection with the Tranche B Facility in respect of the amounts on-lent (including, without limitation, interest, fees and expenses).

Nothing in this clause 4 affects any other obligation or liability of ResMed S A, or any obligation or liability of any other Guarantor, under this deed.

5. Liability as guarantor and indemnifier

Any reference in this deed to the obligations or liabilities of each Guarantor will be construed as a reference to its obligations or liabilities, whether as a guarantor or indemnifier or both under this deed. The use of the expression “**Guarantor**” in this deed in relation to a party is not to be construed as diminishing that party’s obligations as an indemnifier under this deed.

6. Nature and preservation of liability

6.1 Absolute liability

- (a) The liability of each Guarantor under this deed is absolute and is not subject to the performance of any condition precedent or subsequent, including any condition between any Guarantor and the Finance Parties or amongst any 2 or more Guarantors.
- (b) This deed binds each person who has executed it, despite:
 - (i) any person, whether named as a party or not, not executing this deed or any Finance Document;
 - (ii) the execution of this deed or any Finance Document by any person is invalid, forged or irregular in any way; or
 - (iii) this deed or any Finance Document is or becomes unenforceable, void or voidable against any other person.

6.2 Unconditional liability

The liability of each Guarantor under this deed (whether or not known to it or to any Finance Party) will not be affected by any act, omission, matter or thing which, but for this clause 6.2, might operate in law or in equity to release a Guarantor from that liability or to reduce the relevant Guarantor's liability under this deed including, any of the following:

- (a) **(Event of Insolvency):** the occurrence before, on or at any time after the date of this deed, of any Event of Insolvency in relation to any Obligor;
- (b) **(Distribution):** the receipt by any Finance Party of any payment, dividend or distribution under any Insolvency Provision in relation to any Obligor;
- (c) **(Event of Default):** the occurrence of any Event of Default;
- (d) **(Invalidity etc):** any Finance Document or any payment or other act, the making or doing of which would otherwise form part of the Obligations being or becoming or being conceded to be frustrated, illegal, invalid, void, voidable, unenforceable or irrecoverable in whole or in part for any reason whether past, present or future;
- (e) **(Further Security):** any Finance Party accepting or declining to accept any Security from any person at any time;
- (f) **(Time or indulgence):** any Finance Party granting time, waiver or other indulgence or concession to, or making any composition or compromise with, any Obligor;
- (g) **(Forbearance):** any Finance Party not exercising or delaying (whether deliberately, negligently, unreasonably or otherwise) in the exercise of any Power it has for the enforcement of any Finance Document or any Obligation;
- (h) **(Acquiescence or other omission):** any laches, acquiescence or other act, neglect, default, omission or mistake by any Finance Party;
- (i) **(Repudiation):** the determination, rescission, repudiation or termination, or the acceptance of any of the foregoing, by any Finance Party or any Obligor of any Finance Document or any Obligation;

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- (j) **(Variation):** any variation to any Finance Document or any Obligation, whether or not that variation is substantial or material, or imposes any additional liability on or disadvantages any Obligor;
 - (k) **(Release):** the full, partial or conditional release or discharge by the Finance Parties or by operation of law, of any Obligor from any Finance Document or any Obligation;
 - (l) **(Security property):** the release of any property from any Security or the substitution of any property in place of any other property the subject of a Security;
 - (m) **(Security):** the Security Trustee releasing, wasting, destroying, abandoning, prejudicing or not perfecting, maintaining, preserving, enforcing or realising or not properly enforcing or realising any Security;
 - (n) **(Loss of Security):** the failure to obtain any Security or the loss or impairment of any Security by operation of law or otherwise, whether or not the same is in breach of any express or implied condition to obtain or preserve that Security, or is in breach of any equitable duty which might otherwise have been imposed on the Security Trustee;
 - (o) **(Priority of Securities):** the Security Trustee agreeing to the postponement or loss of any priority attaching to any Security;
 - (p) **(Accounts):** the opening or operation of any new account with any Finance Party by any Obligor;
 - (q) **(Change of constitution):** any change in membership (whether by death or retirement of an existing member, admission of a new member, or otherwise) or in the name of any partnership, firm or association in which any Obligor is a member;
 - (r) **(Transfer):** the transfer, assignment or novation by any Finance Party or any Obligor of all or any of its rights or obligations under any Finance Document or any Obligation;
 - (s) **(Disclosure):** any failure by any Finance Party to disclose to a Guarantor any material or unusual fact, circumstance, event or thing known to, or which ought to have been known by, the Finance Parties relating to or affecting any Obligor at any time before or during the currency of this deed, whether prejudicial or not to the rights and liabilities of a Guarantor and whether or not any Finance Party under any duty to disclose that fact, circumstance, event or thing to the relevant Guarantor or to any other Obligor;
 - (t) **(Covenant not to take action):** any Finance Party agreeing with any Obligor not to sue, issue process, sign or execute judgment, commence proceedings for - bankruptcy or liquidation, participate in any administration, scheme or deed of arrangement or reconstruction, prove in any bankruptcy or liquidation, or do anything else in respect of the liability of any Obligor;
 - (u) **(Administration):** the provisions of section 440J of the *Corporations Act 2001* (Cth) operating to prevent or delay the enforcement of this deed against any Guarantor or any claim for contribution against any Guarantor;
 - (v) **(Working Capital Agreements):** any Working Capital Agreement being entered into after the date of this deed; or

(w) **(Incapacity):** any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of an Obligor or any other person.

6.3 No merger

- (a) This deed is in addition to and does not merge with, postpone, lessen or otherwise prejudicially affect any Finance Document or any other Power of the Security Trustee or any other Finance Party.
- (b) The Security Trustee will hold any judgment or order obtained by it against any person in respect of the Guaranteed Money or the Obligations collaterally with this deed none of which will merge in that judgment or order.

6.4 No obligation to gain consent

Each Guarantor need not consent to or be made aware of any event referred to in clause 6.2, any transaction between the Finance Parties and any Obligor, or any particulars concerning any obligation or liability that forms part of the Obligations.

6.5 Appropriation

- (a) The Security Trustee is under no obligation to marshal or appropriate in favour of any Guarantor, or to exercise, apply, transfer or recover in favour of any Guarantor, any Security or any funds or assets which the Security Trustee holds, has a claim on, or has received or is entitled to receive, but may do so in the manner and order as the Security Trustee determines in its absolute discretion.
- (b) The Security Trustee may hold in a suspense account (without liability to pay interest) any money which it receives from a Guarantor, or which it receives on account of a Guarantor's liability under this deed, and which the Security Trustee may, at its discretion, appropriate in reduction of the relevant Guarantor's liability under this deed.

6.6 Void or voidable transactions

If:

- (a) (i) the Security Trustee has at any time released or discharged:
 - A. a Guarantor from its obligations under any Finance Document; or
 - B. any assets of a Guarantor from a Security,in either case in reliance on a payment, receipt or other transaction to or in favour of the Security Trustee; or
- (ii) any payment or other transaction to or in favour of the Security Trustee has the effect of releasing or discharging:
 - A. a Guarantor from its obligations under any Finance Document; or
 - B. any assets of a Guarantor from a Security; and

- (b) that payment, receipt or other transaction is subsequently claimed by any person to be void, voidable or capable of being set aside for any reason, including under an Insolvency Provision or under the general law; and
 - (c) that claim is upheld or is conceded or compromised by the Security Trustee;
- then
- (d) **(Restitution of rights):** the Security Trustee will immediately become entitled against the relevant Guarantor to all rights (including under any Security) as it had immediately before that release or discharge;
 - (e) **(Restore position):** the relevant Guarantor must immediately do all things and execute all documents as the Security Trustee may reasonably require to restore to the Finance Parties all those rights; and
 - (f) **(Indemnity):** the relevant Guarantor must indemnify the Security Trustee against costs, losses and expenses suffered or incurred by it in or in connection with any negotiations or proceedings relating to the claim or as a result of the upholding, concession or compromise of the claim.

6.7 Insolvency

Each Guarantor must not lodge any proof of debt or similar claim on the occurrence of an Event of Insolvency in relation to an Obligor in competition with the Finance Parties. Each Guarantor irrevocably appoints the Security Trustee as its attorney to prove in the insolvency of any Obligor for all money to which that Guarantor may be entitled from that Obligor.

6.8 No set-off, counterclaim, etc.

Each Guarantor's liability under this deed will not be reduced or avoided by any defence, set-off or counterclaim available to any other Obligor against any Finance Party.

6.9 Restriction on Guarantor's dealings

- (a) Each Guarantor must not without the Security Trustee's prior written consent:
 - (i) **(No proceedings):** institute any proceedings against any other Obligor;
 - (ii) **(No demand):** make any demand for, or accept any money in part or complete satisfaction of, any liability on any account of any other Obligor other than for a liability arising out of the supply of goods and services by it to that Obligor in the ordinary course of its ordinary business and on arm's length terms;
 - (iii) **(No encumbrances):** create or permit to exist any Encumbrance as security for any obligation which it owes to any other Obligor; or
 - (iv) **(No set-off):** set off any money owing by it against any liability owing to it by any Obligor, or permit any Obligor to set off any money owing by that Obligor to it against any liability owing to that Obligor by it.
- (b) Each Guarantor agrees to hold the benefit of any payment received by it, any set-off effected in its favour, and any Encumbrance (and the proceeds of its realisation) created or existing, in breach of clause 6.9(a) on trust for the Finance Parties (or as agent on behalf of the Finance Parties in the case where the concept of trust does

not exist in the jurisdiction of incorporation of that Guarantor), to be applied in or towards satisfaction of each Guarantor's liability under this deed.

6.10 Claim on each Guarantor

The Security Trustee is not required to make any claim or demand on the principal debtor under the relevant Finance Document or on any other Obligor, or to enforce any Finance Document, or any other Power against any Obligor, before making any demand or claim on a Guarantor.

6.11 Waiver of rights

Each Guarantor must not exercise any right to contribution, indemnity or subrogation which it might otherwise be entitled to claim and enforce against any Obligor until all the Guaranteed Money has been paid to, discharged or recovered by the Finance Parties and no claim referred to in clause 6.6(b) is actually or potentially pending, upheld, conceded or compromised in relation to that payment or other transaction relied on by the Finance Parties as the basis for any discharge.

6.12 Exercise of subrogation rights

Each Guarantor must not seek the transfer to it of any Security which is subject to an agreed order of priority in the Security Trustee's hands under any right of subrogation, unless and until it has entered into a deed under which it undertakes to be bound by the priority affecting that Security with the other parties to that agreed order of priority.

7. Representations and warranties

7.1 Representations and warranties

Each Guarantor represents and warrants that:

- (a) **(status)** it is duly incorporated and validly existing under the place of its incorporation;
- (b) **(power)** it has full legal capacity and power to:
 - (i) own its property and to carry on its business; and
 - (ii) enter into this deed and to carry out the transactions that this deed contemplates;
- (c) **(corporate authority)** it has taken all corporate action that is necessary or desirable to authorise its entry into this deed and its carrying out the transactions that this deed contemplates;
- (d) **(Authorisations)** it holds each Authorisation that is necessary or desirable to:
 - (i) enable it to properly execute this deed and to carry out the transactions that this deed contemplates;
 - (ii) ensure that this deed is legal, valid, binding and admissible in evidence; or
 - (iii) enable it to properly carry on its business.

and it is complying with any conditions to which any of these Authorisations is subject;

- (e) **(documents effective)** this deed constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms (except to the extent limited by equitable principles and laws affecting creditors' rights generally), subject to any necessary stamping or registration;
- (f) **(ranking)** its payment obligations under this deed rank at least pari passu with all its unsecured and unsubordinated payment obligations (whether present or future, actual or contingent), other than obligations that are mandatorily preferred by law;
- (g) **(no contravention)** neither its execution of this deed nor the carrying out by it of the transactions that this deed contemplates, does or will:
 - (i) contravene any law to which it or any of its property is subject or any order of any Government Authority that is binding on it or any of its property;
 - (ii) contravene any Authorisation;
 - (iii) contravene any undertaking or instrument binding on its or any of its property;
 - (iv) contravene its Constitution; or
 - (v) require it to make any payment or delivery in respect of any Financial Liability before it would otherwise be obliged to do so;
- (h) **(no litigation)** no litigation, arbitration, mediation, conciliation or administrative proceedings are taking place, pending, or to the knowledge of any of its officers after due inquiry, threatened which, if adversely decided, could have a Material Adverse Effect on it;
- (i) **(other information):**
 - (i) the other information and reports (if any) that it has given to the Finance Parties in connection with this deed are true and accurate in all material requests and not misleading in any material respect (including by omission); and
 - (ii) any forecasts and opinions in them are fair and reasonable (and were made or formed after due inquiry and consideration by appropriate officers of the Guarantor),
as at the date of this deed or, if given later, when given;
- (j) **(disclosure of relevant information)** it has disclosed to the Security Trustee all the information that is material to an assessment by the Finance Parties of the risks that it assumes by entering into this deed;
- (k) **(no filings or Taxes)** it is not necessary or desirable, to ensure that this deed is legal, valid, binding or admissible in evidence, that this deed or any other document be filed or registered with any Government Authority, or that any Taxes be paid;
- (l) **(no Encumbrance)** none of its property is subject to an Encumbrance other than a Permitted Encumbrance;

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- (m) **(no Controller)** no Controller is currently appointed in relation to any of its property;
 - (n) **(no trust)** it is not entering into this deed as trustee of any trust or settlement;
 - (o) **(no security to Guarantor)** it has not taken any Encumbrance from any other Guarantor for or in consideration of assuming any of its obligations under this deed;
 - (p) **(benefit)** its entry into this deed is in its best interests and for its benefit;
 - (q) **(Facility Agreement)** it has received and read a copy of the Facility Agreement and the Working Capital Agreements; and
 - (r) **(choice of law)** the choice of New South Wales law as the governing law of this deed will be recognised and enforced in its jurisdiction of incorporation (subject to any limitations under German law described in any legal opinion delivered under clause 3.1(a) of the Facility Agreement).

7.2 Representations and warranties repeated

Each representation and warranty in this deed will be repeated on each day whilst any of the Guaranteed Money remains outstanding with reference to the facts and circumstances then subsisting.

7.3 Reliance on representations and warranties

Each Guarantor acknowledges that the Security Trustee has executed this deed and agreed to take part in the transactions that this deed contemplates in reliance on the representations and warranties that are made or repeated in this clause.

7.4 No representations by the Security Trustee

Each Guarantor acknowledges that it has not relied and will not rely on any representation, statement or promise made by or on behalf of the Security Trustee in deciding to enter into this deed or to exercise any right or perform any obligations under it.

7.5 Security Trustee has no duty to disclose

Except as provided in this deed, the Security Trustee was not, before execution of this deed by the Guarantors, and is not in the future, liable to do anything (including disclosing any information to the Guarantors) relating to the Debtors' affairs or transactions with the Finance Parties.

8. General covenants

8.1 General undertakings

Each Guarantor must:

- (a) **(maintain status)** maintain its status as a duly incorporated company which is validly existing;
- (b) **(comply with law)** comply with all applicable law including by paying when due all Taxes for which it or any of its property is assessed or liable (except to the extent that these are being diligently contested in good faith and by appropriate proceedings and it has made adequate reserves for them);

- (c) **(keep books)** keep proper books recording its activities (including financial records), and permit the Security Trustee or its representatives on request to examine and take copies of them;
- (d) **(hold Authorisations)** obtain and maintain each Authorisation that is necessary or desirable to:
 - (i) execute this deed and to carry out the transactions that this deed contemplates;
 - (ii) ensure that this deed is legal, valid, binding and admissible in evidence; or
 - (iii) enable it to properly carry on its business,and must comply with any conditions to which any of these Authorisations is subject;
- (e) **(no administrator)** not appoint an administrator (including *inter alia* in relation to Resmed SA, a conciliateur, an *administrateur judiciaire*, a *mandataire liquidateur* or a *mandataire ad hoc* appointed pursuant to article L.611-3 of the French Commercial Code (*Code de commerce*)) without notice to the Security Trustee. For the avoidance of doubt, nothing in this clause shall prevent a Guarantor from applying for the appointment of an administrator (or to take any similar step) if it is required to do so under any applicable law;
- (f) **(patents)** maintain and keep registered under all applicable laws all patents and trade marks registered in the name of the Guarantor or any of its subsidiaries if not to do so would have a Material Adverse Effect; and
- (g) **(no security to Guarantor)** not take any Encumbrance from any other Obligor for or in consideration of assuming any of its obligations under this deed.

8.2 Reports and information

Each Guarantor must give the Security Trustee:

- (a) **(copy of reports)** a copy of each document that it gives to its shareholders or to any stock exchange, at the same time as it gives it to them or it;
- (b) **(notice of litigation)** full details of any litigation, arbitration, mediation, conciliation or administrative proceedings which, if adversely decided, could have a Material Adverse Effect on it as soon as the proceedings are commenced or threatened; and
- (c) **(other information)** promptly on request (and in any event within 5 Business Days) any other information relating to the financial condition, business, property and affairs of itself or any of its related bodies corporate that the Security Trustee reasonably requests.

8.3 Financial undertakings

Each Guarantor must:

- (a) **(negative pledge)** not create or permit to exist, and ensure that none of its subsidiaries creates or permits to exist, any Encumbrance over any of its property, other than a Permitted Encumbrance;

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- (b) **(no Financial Liabilities)** not incur Financial Liabilities which would cause Financial Liabilities for the Group to exceed an aggregate amount of USD50,000,000 (or its Equivalent), and must ensure that none of its Subsidiaries incurs Financial Liabilities which would cause that amount to be exceeded, without the prior written consent of the Security Trustee, other than under the Intercompany Loans, provided that the principal amount of the Financial Liabilities under each Intercompany Loan must not at any time exceed the principal amount of the Financial Liabilities under each Intercompany Loan as at the date of this deed;
- (c) **(no disposal of property)** not dispose of, declare a trust over or otherwise create an interest in, and must ensure that none of its direct and/or indirect subsidiaries disposes of, declares a trust over or otherwise creates an interest in, all or a substantial part of its property or assets (either in one or several transactions, whether or not related) over any of its property or assets (including its business (*fonds de commerce*)) which has an aggregate value exceeding Euro 20,000,000 (or its Equivalent) in any Twelve-Month Period except:
- (i) as permitted by paragraph (a);
 - (ii) with the prior written consent of the Security Trustee which will not be unreasonably withheld;
 - (iii) at arm's length and for full value in a transaction that is entered into in the ordinary course of its ordinary business; or
 - (iv) by a direct and/or indirect subsidiary of the Guarantor:
 - A. to the Guarantor; or
 - B. to another direct and/or indirect subsidiary of the Guarantor if the Guarantor's ownership interest in the receiving direct and/or indirect subsidiary is at least the same as Guarantor's percentage ownership in the disposing subsidiary; and
- (d) **(insurance)** keep, and must ensure that each of its subsidiaries keeps, its property and business insured:
- (i) against the risks and in the amounts that are prudent or usual for a person conducting a business similar to the Guarantor, with sound and reputable insurers; or
 - (ii) as the Security Trustee reasonably requires,
- and must provide the Security Trustee on request with details of the insurance, evidence that it is in full effect and evidence that all premiums have been paid.

8.4 Negative undertakings

ResMed SA undertakes that, from the date of its deed and so long as there is outstanding Guaranteed Money, it will not and shall cause that any of its present and future direct and/or indirect subsidiaries will not, without the express written consent of the Security Trustee (not to be unreasonably withheld):

- (a) enter into any reorganisation, merger, spin-off or contribution;
- (b) decide, or make any decision which may entail, any change in its share capital;

-
- (c) amend its constitutional documents;
 - (d) change into another corporate form;
 - (e) transfer the address of its registered office outside of France;
 - (f) transfer any direct or indirect shareholding or other interest in any company;
 - (g) make any change in its accounting procedures and/or practices; or
 - (h) create any Encumbrance other than a Permitted Encumbrance.

9. Payments

9.1 On demand

All money payable by each Guarantor under this deed will be paid by each Guarantor on demand by the Security Trustee in immediately available funds to the account and in the manner notified by the Security Trustee to each Guarantor.

9.2 Payment in gross

All money received or recovered by the Security Trustee on account of the Guaranteed Money will be treated as payments in gross without any right on the part of any Guarantor to claim the benefit of any money received or recovered by the Security Trustee or any Security, until the Security Trustee has been paid 100 cents in the dollar in respect of the Guaranteed Money.

9.3 Interest

As a liability separate and distinct from each Guarantor's liability under clauses 2 and 3, each Guarantor will on demand by the Security Trustee pay interest on all amounts due and payable by it and unpaid under or in respect of this deed. Interest will accrue on those amounts from day to day from the due date up to the date of actual payment, before and (as a separate and independent obligation) after judgment, at the Default Rate for successive 30 day interest periods commencing on the date of default (or such other period selected by the Security Trustee) and, if not paid when due, will itself bear interest in accordance with this clause 9.3.

9.4 Merger

If the liability of a Guarantor to pay to the Security Trustee any money under this deed becomes merged in any judgment or order, then, as an independent obligation, the relevant Guarantor will pay interest on the amount of that money at the rate which is the higher of that payable under clause 9.3 and that fixed by or payable under the judgment or order.

9.5 No set-off or deduction

Subject to any Finance Document, all payments by any Guarantor to the Security Trustee will be:

- (a) free of any set-off or counterclaim; and
- (b) without deduction or withholding for or on account of any present or future Taxes, unless a Guarantor is compelled by law to make any deduction or withholding.

If a Guarantor is compelled by law to make any deduction or withholding for or on account of any present or future Taxes (not being Taxes on the overall net income of any Finance Party), then it will:

- (i) pay to the Security Trustee any additional amounts necessary to enable the Security Trustee to receive (after all deductions and withholdings for those Taxes) a net amount equal to the full amount which would otherwise be payable to the Security Trustee if no deduction or withholding was required to be made;
- (ii) promptly (and within the time prescribed by law) pay to the relevant taxing authority the amount of those Taxes which it is compelled by law to deduct or withhold, and indemnify the Security Trustee for any Taxes and interest or penalties to which the Security Trustee may become liable consequent on the failure of it to pay those Taxes; and
- (iii) deliver to the Security Trustee, promptly on request from the Security Trustee, a copy of any receipt issued by the relevant taxing authority on payment of those Taxes.

9.6 Currency indemnity

If, for any reason (including as a result of a judgment or order), an amount payable by a Guarantor under or in respect of this deed (**"Relevant Amount"**) is received by the Security Trustee in a currency (**"Payment Currency"**) that is not the currency in which the amount is expressed to be payable under this deed (**"Required Currency"**) then the Guarantor, as an independent obligation, must indemnify the Security Trustee against, and must pay the Security Trustee on demand the amount of, any shortfall between:

- (a) the amount of Required Currency which the Security Trustee receives on converting the amount it received in the Payment Currency into an amount in the Required Currency in accordance with its usual practice; and
- (b) the Relevant Amount in the Required Currency.

9.7 Currency of payments

The Guarantors must make payment under this deed in the same currency that the Debtor is required to make payment to the Finance Parties. Otherwise, the Guarantors must make each payment under this deed in US Dollars.

10. General Indemnity

The Debtor must indemnify the Security Trustee against, and must pay the Security Trustee on demand the amount of, all losses, liabilities, expenses and Taxes incurred in connection with the administration, and any actual or attempted preservation or enforcement, of any rights under this deed.

11. German Law Limitations

- (a) The Security Trustee agrees not to enforce the guarantee and/or indemnity under this deed against a Guarantor incorporated under the laws of Germany either as a limited liability company (*Gesellschaft mit beschränkter Haftung*) (a **"German GmbH Guarantor"**), or a limited partnership (*Kommanditgesellschaft*) of which the limited partner (*Komplementär*) is a limited liability company (a **"German GmbH & Co. KG Guarantor"**) (a German GmbH Guarantor or a German GmbH & Co. KG Guarantor each hereinafter referred to as a **"German Guarantor"**), if and to the extent the guarantee and indemnity guarantees obligations of a shareholder of the German Guarantor and/or an Affiliate (as defined under German law) (other than obligations of a direct or indirect Subsidiary of the German

Guarantor) and a payment under this deed, or the application of enforcement proceeds, would cause the relevant Guarantor's assets (or in the case of the German GmbH & Co. KG Guarantor, its general partner's assets) less the German GmbH Guarantor's, or in case of a German GmbH & Co. KG Guarantor, its general partner's liabilities, provisions and liability reserves (*Reinvermögen* - the "**Net Assets**") to fall below the registered share capital (*Stammkapital*) of the German GmbH Guarantor, or in the case of a German GmbH & Co. KG Guarantor, of the registered share capital of its general partner (*Begründung einer Unterbilanz*) or an increase of a shortfall, if the Net Assets of the German GmbH Guarantor, or in the case of a German GmbH & Co. KG Guarantor, of its general partner, already fall short of the amount of the registered share capital (*Vertiefung der Unterbilanz*), **provided that** for the purposes of the calculation of the amounts to be released the following balance sheet items shall be adjusted as follows:

- (i) the amount of any increase of the registered share capital (*Stammkapital*) out of retained earnings (*Kapitalerhöhung aus Gesellschaftsmitteln*) without the consent of the Financiers after the date of this deed shall be deducted from the relevant registered share capital; and
- (ii) loans and financial indebtedness incurred by the relevant Guarantor in negligent violation of any provision of the Finance Documents shall be disregarded, and further provided that the relevant Guarantor shall, to the extent legally permitted, for the purposes of the determination of the available net assets (*Reinvermögen*) dispose of all assets which are not necessary for the Guarantor's business (*betriebsnotwendig*) on market terms where the relevant assets are shown in the balance sheet of the Guarantor with a book value (*Buchwert*) which is significantly lower than the market value of such assets. The above limitations shall not apply to any amounts due and payable under this deed which relate to funds which have been on-lent to the respective Guarantor or any of its Subsidiaries and are still outstanding.

The relevant Finance Party shall be obliged to retransfer proceeds from such enforcement if the relevant guarantee and/or indemnity has been enforced even though the enforcement was excluded according to this clause.

- (b) If and to the extent that the guarantee and indemnity under this deed secures obligations and liabilities of a Debtor that has its registered or actual seat or its place of management within Germany or that is subject to limited tax liability in Germany ("**German Debtor**") or any obligations of another Debtor to satisfy the obligations of such German Debtor, such guarantee and indemnity shall not be enforced against assets which qualify as LTIBR (so that such LTIBR shall be excluded from the enforcement of the respective guarantee and indemnity) if and to the extent that such LTIBR is owned by a Guarantor (other than the respective German Debtor), which qualifies as a major shareholder (*wesentlicher Anteilseigner*) of such German Debtor within the meaning of Section 8a German Corporate Income Tax Act (*Körperschaftsteuergesetz*) or which qualifies as an affiliated party within the meaning of Section 1 Paragraph 2 Foreign Tax Act (*Außensteuergesetz*) in relation to such major shareholder.

12. Security Trustee**12.1 Limitation of liability of the Security Trustee**

- (a) The Security Trustee is entering into this deed and each other Finance Document to which it is a party as trustee of the Security Trust.
- (b) The recourse of any other party against the Security Trustee under this deed or any other Finance Document is limited to the property held by the Security Trustee pursuant to the Security Trustee and the right of the Security Trustee to be indemnified out of such property.
- (c) No party under this deed may seek to enforce any right under this deed or any other Finance Document against the Security Trustee personally or against any property of the Security Trustee held in any capacity other than stated in this clause 12.1 except in the case of breach of trust, gross negligence, fraud or wilful default by the Security Trustee.

12.2 Replacement of the Security Trustee

- (a) The Security Trustee may be replaced by a successor in accordance with the Security Trust Deed.
- (b) On the date of its appointment, the successor Security Trustee will assume the rights and obligations of the retiring Security Trustee. However, this does not apply to any obligations of the retiring Security Trustee which arise out of its acts or omissions as Security Trustee before the appointment of the successor, in respect of which the retiring Security Trustee will continue to have obligations imposed by, and the rights contained in, this deed, the Security Trust Deed and the Facility Agreement.

13. Assignment

- (a) A Guarantor may only dispose of, declare a trust over or otherwise create an interest in its rights under this deed with the consent of the Security Trustee.
- (b) The Security Trustee may not dispose of, declare a trust over or otherwise create an interest in its rights under this deed other than in accordance with the Security Trust Deed.

14. Governing law

This deed is governed by and must be construed according to the law applying in New South Wales.

15. Jurisdiction

- (a) Each Guarantor irrevocably:
 - (i) submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to this deed; and

- (ii) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceeding has been brought in an inconvenient forum, if that venue falls within clause 15(a)(i).
- (b) Each Guarantor (other than ResMed Limited) irrevocably appoints ResMed Limited at its registered office from time to time to receive on its behalf process issued out of the courts in New South Wales or any other Australian jurisdiction in connection with this deed and agrees that any failure by the process agent to notify the relevant Guarantor of the process will not invalidate the proceedings concerned. ResMed Limited accepts this appointment.

16. Miscellaneous

16.1 Certificate of Security Trustee

A certificate in writing signed by the Security Trustee or by an officer of the Security Trustee certifying any amount payable by any Guarantor or Debtor to the Security Trustee or stating any other act, matter or thing relating to this deed or any Finance Document is conclusive and binding on the relevant Guarantor or Debtor in the absence of manifest error on the face of the certificate.

16.2 Notices

Each communication (including each notice, consent, approval, request and demand) under or in connection with this deed:

- (a) must be in writing;
- (b) must be addressed as follows (or as otherwise notified by that party to the other party from time to time):

To the Security Trustee:

Name: HSBC Bank Australia Limited
Address: HSBC Centre, Level 15, 580 George Street
Sydney
NSW 2000
Australia
Fax: (02) 9006 5534
For the attention of: Assistant Manager, Credit Operations

To the Guarantor:

Name: ResMed Limited
Address: 97 Waterloo Road
Macquarie Park
NSW 2113
Australia
Fax: (02) 9889 1475
For the attention of: Chief Financial Officer

Name: ResMed SA
 Address: Pare de la Bandonniere
 2 rue Maurice Audibert
 69800 Saint-Priest
 France
 Fax: +33(0)4 37 25 12 60
 For the attention of: Financial Controller

Name: ResMed GmbH & Co. KG
 Address: FraunhoferstraBe 16
 82152 Martinsried
 Federal Republic of Germany
 Fax: +49 89 9901 1055
 For the attention of: Hen Heiko Eckstein

Name: ResMed (UK) Limited
 Address: 65 Milton Park
 Abingdon
 Oxfordshire OX14 4RX
 United Kingdom
 Fax: +44 1235 813 336
 For the attention of: Mr Mark Hastings

Name: Take Air Medical Handels-GmbH
 Address: Pare de la Bandonniere
 2 Rue Maurice Audibert
 69800 Saint-Priest
 France
 Fax: +33(0)4 37 25 12 60
 For the attention of: Financial Controller

- (c) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary, or authorised agent of, that party;
- (d) must be delivered by hand or posted by prepaid post to the address, or sent by fax to the number, of the addressee, in accordance with clause 16.2(b) together with (in the case of notices to a Guarantor) a copy delivered to ResMed Inc. at 14040 Danielson Street, Poway, CA 92064, USA, marked for the attention of the General Counsel; and
- (e) is taken to be received by the addressee:
 - (i) (in the case of prepaid post sent to an address in the same country) on the third day after the date of posting;
 - (ii) (in the case of prepaid post sent to an address in another country) on the fifth day after the date of posting by airmail;
 - (iii) (in the case of fax) at the time in the place to which it is sent equivalent to the time shown on the transmission confirmation report produced by the fax machine from which it was sent; and
 - (iv) (in the case of delivery by hand) on delivery,
 but if the communication is taken to be received on a day that is not a working day or after 5.00 pm, it is taken to be received at 9.00 am on the next working day (**"working day"** meaning a day that is not a Saturday, Sunday or public holiday and

on which banks are open for business generally, in the place to which the communication is posted, sent or delivered).

16.3 Continuing obligation

This deed is a continuing obligation despite any termination by a Guarantor, settlement of account, intervening payment, express or implied revocation or any other matter or thing, and the Security Trustee will continue to be entitled to the benefit of this deed as regards the performance of all the Obligations and any contingent or other liability for advances or other financial accommodation to or for the account of any Obligor made after termination, settlement of account, payment, revocation or other matter or thing until a final discharge has been given to the Guarantors.

16.4 Further assurance

Each Guarantor must promptly on the request of the Security Trustee, and at its own cost, do all further acts and execute and deliver all further documents as the Security Trustee reasonably requires, or as are required by law, to perfect or to give effect to the rights and powers of the Security Trustee created, or intended to be created, by this deed.

16.5 Form of demand

A demand on a Guarantor for payment under this deed may be in any form and contain any information as the Security Trustee determines. It need not specify the amount of the Guaranteed Money, nor the method or basis of calculation of all or any part of the Guaranteed Money, including amounts of, or in the nature of, interest.

16.6 Severance

If at any time a provision of this deed is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that will not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this deed; or
- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this deed.

16.7 Powers cumulative

Each Power is cumulative and in addition to each other Power available to the Security Trustee.

16.8 Waiver

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, any Power by the Security Trustee does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other Power.
- (b) A waiver or consent given by the Security Trustee under this deed is only effective and binding on the Security Trustee if it is given or confirmed in writing.
- (c) No waiver of a breach of a term of this deed operates as a waiver of another breach of that term or of a breach of any other term of this deed.

16.9 Consents

A consent required under, this deed from the Security Trustee may be given or withheld, or may be given subject to any conditions, as the Security Trustee (in its absolute discretion) thinks fit, unless this deed expressly provides otherwise.

16.10 Changes in legislation (moratorium)

If any legislation changes a Guarantor's rights or obligations or delays or prejudicially affects the exercise of any Power under this deed, so that the Security Trustee's rights or obligations are adversely affected, that Guarantor waives its rights under that legislation to the extent that the waiver is not prohibited or made ineffective by law.

16.11 Confidentiality

Subject to clause 16.12, each party to this deed must not disclose any information concerning the contents of, or the transactions contemplated by, this deed to any person who is not a party, except to the extent that:

- (a) **(permitted by documents)** the disclosure is expressly permitted by this deed or is made to any Finance Party or any Obligor;
- (b) **(consent of other party)** the Security Trustee consents to the disclosure;
- (c) **(public domain)** the information is already in the public domain, unless it entered the public domain because of a breach of confidentiality by the party;
- (d) **(employees and advisers)** the disclosure is made on a confidential basis to the party's officers, employees, agents, financiers or professional advisers, and is necessary for the party's business, or is made to any related party of that party;
- (e) **(comply with laws)** the disclosure is necessary to comply with any applicable law, or an order of a court or tribunal;
- (f) **(comply with directives)** the disclosure is necessary to comply with a directive or request of any Government Authority or stock exchange (whether or not having the force of law) so long as a responsible person in a similar position would comply;
- (g) **(obtain Authorisations)** the disclosure is necessary or desirable to obtain an Authorisation from any Government Authority or stock exchange; or
- (h) **(discovery and litigation)** the disclosure is necessary or desirable in relation to any discovery of documents, or any proceedings before a court, tribunal, other Government Authority or stock exchange.

16.12 Disclosure to assignees or substitutes

- (a) Subject to paragraph (b), the Security Trustee may:
 - (i) disclose to a proposed assignee or substitute under clause 12 or 13, or any other person who proposes to enter into contractual relations with the Security Trustee in relation to any Finance Document, any information about the Debtor or any Guarantor which the Security Trustee considers appropriate; and

-
- (ii) give a copy of any Finance Document to a proposed assignee or substitute under clause 12 or 13 or any other person described in paragraph (a)(i).
 - (b) Any disclosure made under paragraph (a) must be made on the basis that the person to whom the information or document is disclosed must keep that information or document confidential as required by clause 16.11.

16.13 Set-off

The Security Trustee, without notice to the Guarantors or the Debtor, may, after the occurrence of an Event of Default, combine any account that a Guarantor holds with the Security Trustee with, or set off any amount that is or may become owing by the Security Trustee to the Guarantor against, any amount owing by the Guarantor to the Security Trustee under this deed. For this purpose the Security Trustee may:

- (a) change the terms (including the repayment date) of any account or other payment obligation between the parties;
- (b) convert amounts into different currencies in accordance with the Security Trustee's usual practice; and
- (c) do anything (including execute any document) in the name of the Guarantor that the Security Trustee considers necessary or desirable.

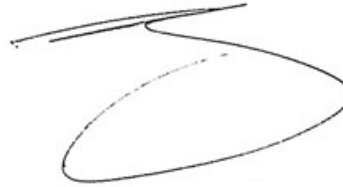
This subclause overrides any other document or agreement to the contrary.

16.14 Counterparts

This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart.

Executed as a deed.

Signed sealed and delivered for and on behalf of **HSBC Bank Australia Limited** by its Attorney under a Power of Attorney dated 29 July 2002, and the Attorney declares that the Attorney has not received any notice of the revocation of such Power of Attorney, in the presence of:

A stylized, handwritten signature in black ink, consisting of a large, sweeping loop followed by a horizontal stroke.

Signature of Attorney

Lewis Barton Williams


A handwritten signature in black ink, appearing to be 'J. Lowe'.

Signature of Witness

Jason Anthony Lowe
Name of Witness in full

Name of Attorney in full

Signed sealed and delivered for and on behalf of **ResMed Limited** by its Attorney under a Power of Attorney dated 4 May 2006, and the Attorney declares that the Attorney has not received any notice of the revocation of such Power of Attorney, in the presence of:

A handwritten signature in black ink, appearing to be 'B. Sandercock'.

Signature of Attorney

Brett Andrew Sandercock

A handwritten signature in black ink, appearing to be 'M. Abourrk'.

Signature of Witness

Mark Abourrk
Name of Witness in full

Name of Attorney in full

Executed by ResMed SA:



Signature

By Alain Perseguers duly empowered for the purposes hereof

Executed by **ResMed GmbH & Co. KG**

represented by ResMed GmbH Verwaltung as its general partner:



Signature of authorised person

Dr. Jürgen P. Rassat Von Mallinckroot

Name

Executed by **ResMed (UK) Limited** acting by:



Signature of Director

Illegible

Name of Director in full

Signature of authorised person

Name



Signature of Secretary

Mark Alan Hastings

Name of Secretary

Signature of authorised person

A handwritten signature in cursive script, appearing to read 'Dieter Paulik'.

Name Dieter Paulik

Signature of authorised person

A handwritten signature in cursive script, appearing to read 'Ganter Gromotha'.

Name Ganter Gromotha

CLAYTON UTZ

EXECUTION COPY

Deed of guarantee and indemnity

HSBC Bank Australia Limited
ABN 48 006 434 162
Security Trustee

ResMed Inc.

ResMed Corp.
US Guarantors

ResMed Limited
ABN 30 003 765 142
Borrower

The Clayton Utz contact for this document is
Jason Huinink on +61 2 9353 4000

Clayton Utz
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PO Box H3 Australia Square Sydney NSW 1215
T +61 2 9353 4000 F +61 2 8220 6700

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Our reference **15136/15286/80038182**

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Deed of guarantee and indemnity made on a 8 June 2006

Parties

HSBC Bank Australia Limited ABN 48 006 434 162 of HSBC Centre, 580 George Street, Sydney NSW 2000, Australia in its capacity as security trustee (“**Security Trustee**”)

ResMed Inc., a Delaware corporation, with its principal office at 14040 Danielson Street, Poway, CA 92064, USA

ResMed Corp., a Minnesota corporation, with its principal office at 14040 Danielson Street, Poway, CA 92064, USA

(“**US Guarantors**”)

ResMed Limited ABN 30 003 765 142 of 97 Waterloo Road, Macquarie Park, NSW 2113, Australia (“**Borrower**”)

Background

- A At the request of, inter alia, each US Guarantor, the Financiers and the Working Capital Financiers have agreed to make the facilities available to the Debtors pursuant to the Facility Agreement and the Working Capital Agreements respectively.
- B A condition precedent to the Debtors’ utilisation of the Facilities and the facilities provided under the Working Capital Agreements is that each US Guarantor enters into this deed of guarantee and indemnity.

Operative provisions

1. Definitions and interpretation

1.1 Definitions

In this deed:

“**Debtors**” means:

- (a) the Borrower;
- (b) ResMed SA;
- (c) ResMed (UK) Limited;
- (d) ResMed GmbH & Co. KG; and
- (e) any other Subsidiary of the Parent who becomes a party to a Working Capital Agreement.

“**Default**” means:

- (a) any Event of Default; or
- (b) Potential Event of Default.

“**Facility Agreement**” means the syndicated facility agreement dated on or about the date of this deed and entered into between ResMed Limited ABN 30 003 765 142 as borrower, each

person listed in schedule 1 of the facility agreement as original financier and HSBC Bank Australia Limited as facility agent and security trustee.

“Guaranteed Money” means all money the payment or repayment of which forms part of the Obligations.

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

“Obligations” means all the liabilities and obligation of the Debtors to the Finance Parties under or by reason of the Finance Documents and includes any liabilities or obligations which:

- (a) are liquidated or unliquidated;
- (b) are present, prospective or contingent;
- (c) are in existence before or come into existence on or after the date of this deed;
- (d) relate to the payment of money or the performance or omission of any act;
- (e) sound in damages only; or
- (f) accrue as a result of any Event of Default,

and irrespective of:

- (g) whether each Debtor is liable or obligated solely, or jointly, or jointly and severally with another person;
- (h) the circumstances in which any Finance Party comes to be owed each liability or obligation and in which each liability or obligation comes to be guaranteed by this deed including any assignment of any liability or obligation or of this deed; or
- (i) the capacity in which each Debtor and the Finance Parties come to owe or be owed such liability or obligation.

“Power” means any right, power, authority, discretion, remedy or privilege conferred on the Security Trustee by any Finance Document, by statute or by law or equity.

“Security Trust” has the meaning given to it in the Security Trust Deed.

“UBOC Intercreditor Agreements” means, collectively, that certain Intercreditor Agreement dated as of 1 March 2006, by Union Bank of California, N.A., as Administrative Agent (“**UBOC**”), and Security Trustee (and acknowledged and agreed to by the Parent), and the Acknowledgement of Structural Subordination Agreement dated as of 1 March 2006, by UBOC and the Security Trustee (and acknowledged and agreed to by ResMed Corp.)

1.2 Facility Agreement

Unless otherwise defined in this deed, expressions used in this deed have the same meanings as in the Facility Agreement.

1.3 Interpretation

In this deed:

- (a) headings are for convenience only and do not affect interpretation, and unless the context indicates a contrary intention:
- (b) if more than one person is identified as the Debtor, that expression refers to them, and the obligations of the Debtor under this deed bind them, jointly and severally;
- (c) if more than one person is identified as the US Guarantor, that expression refers to them, and the obligations of the US Guarantor under this deed bind them, jointly and severally;
- (d) **“person”** includes an individual, the estate of an individual, a corporation, a Government Authority, an association or a joint venture (whether incorporated or unincorporated), a partnership, and a trust;
- (e) a reference to a party includes that party’s executors, administrators, successors and permitted assigns, including persons taking by way of novation;
- (f) a reference to a document (including this deed) is to that document as varied, novated, ratified or replaced from time to time;
- (g) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (h) a word importing the singular includes the plural (and vice versa), and a word importing a gender includes every other gender;
- (i) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this deed, and a reference to this deed includes all schedules, exhibits, attachments and annexures to it;
- (j) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning; and
- (k) **“includes”** in any form is not a word of limitation.

1.4 Finance Document

This deed is a Finance Document for the purposes of the Facility Agreement.

2. Guarantee

2.1 Consideration

Each US Guarantor acknowledges that it has received valuable consideration for entering into this deed.

2.2 Guarantee

Each US Guarantor irrevocably and unconditionally guarantees to each Finance Party the satisfaction and payment in full of the Obligations by each Debtor.

2.3 Payment by US Guarantor

If a Debtor does not pay the Guaranteed Money on the due date, subject to the UBOC Intercreditor Agreements, each US Guarantor will immediately on demand pay to the Security Trustee the Guaranteed Money which is then due and unpaid or which later becomes due, owing or payable.

3. Indemnity

Each US Guarantor as a separate additional and primary liability irrevocably and unconditionally agrees to indemnify each Finance Party and keep each Finance Party indemnified against any loss or damage suffered by that Finance Party arising out of:

- (a) any failure by any Debtor to satisfy the Obligations; or
- (b) any obligation or liability that would otherwise form part of the Obligations being void, voidable or unenforceable against or irrecoverable from any Debtor for any reason, whether or not the Security Trustee knew or ought to have known of that reason,

provided that the foregoing indemnity shall not apply to any loss or damage arising solely as a result of a Finance Party's gross negligence, fraud or wilful default.

4. Liability as guarantor and indemnifier

Any reference in this deed to the obligations or liabilities of each US Guarantor will be construed as a reference to its obligations or liabilities, whether as a guarantor or indemnifier or both under this deed. The use of the expression "**US Guarantor**" in this deed in relation to a party is not to be construed as diminishing that party's obligations as an indemnifier under this deed,

5. Nature and preservation of liability**5.1 Absolute liability**

- (a) The liability of each US Guarantor under this deed is absolute and is not subject to the performance of any condition precedent or subsequent, including any condition between any US Guarantor and the Finance Parties or between the US Guarantors.
- (b) This deed binds each person who has executed it, despite:
 - (i) any person, whether named as a party or not, not executing this deed or any Finance Document;
 - (ii) the execution of this deed or any Finance Document by any person is invalid, forged or irregular in any way; or
 - (iii) this deed or any Finance Document is or becomes unenforceable, void or voidable against any other person.

5.2 Unconditional liability

Unless otherwise provided for in this deed, the liability of each US Guarantor under this deed will not be affected by any act, omission, matter or thing which, but for this clause 5.2, might operate in law or in equity to release a US Guarantor from that liability or to reduce the relevant US Guarantor's liability under this deed including, any of the following:

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- (a) **(Event of Insolvency):** the occurrence before, on or at any time after the date of this deed, of any Event of Insolvency in relation to any Obligor;
 - (b) **(Distribution):** the receipt by any Finance Party of any payment, dividend or distribution under any Insolvency Provision in relation to any Obligor (other than payment in full of the Obligations);
 - (c) **(Event of Default):** the occurrence of any Event of Default;
 - (d) **(Invalidity etc):** any Finance Document or any payment or other act, the making or doing of which would otherwise form part of the Obligations being or becoming or being conceded to be frustrated, illegal, invalid, void, voidable, unenforceable or irrecoverable in whole or in part for any reason whether past, present or future;
 - (e) **(Further Security):** any Finance Party accepting or declining to accept any Security from any person at any time;
 - (f) **(Time or indulgence):** any Finance Party granting time, waiver or other indulgence or concession to, or making any composition or compromise with, any Obligor;
 - (g) **(Forbearance):** any Finance Party not exercising or delaying (whether deliberately, negligently, unreasonably or otherwise) in the exercise of any Power it has for the enforcement of any Finance Document or any Obligation;
 - (h) **(Acquiescence or other omission):** any laches, acquiescence or other act, neglect, default, omission or mistake by any Finance Party;
 - (i) **(Repudiation):** the determination, rescission, repudiation or termination, or the acceptance of any of the foregoing, by any Finance Party or any Obligor of any Finance Document or any Obligation;
 - (j) **(Variation):** any variation to any Finance Document or any Obligation, whether or not that variation is substantial or material, or imposes any additional liability on or disadvantages any Obligor;
 - (k) **(Release):** the full, partial or conditional release or discharge by the Finance Parties or by operation of law, of any Obligor from any Finance Document or any Obligation;
 - (l) **(Security property):** the release of any property from any Security or the substitution of any property in place of any other property the subject of a Security;
 - (m) **(Security):** the Security Trustee releasing, wasting, destroying, abandoning, prejudicing or not perfecting, maintaining, preserving, enforcing or realising or not properly enforcing or realising any Security;
 - (n) **(Loss of Security):** the failure to obtain any Security or the loss or impairment of any Security by operation of law or otherwise, whether or not the same is in breach of any express or implied condition to obtain or preserve that Security, or is in breach of any equitable duty which might otherwise have been imposed on the Security Trustee;
 - (o) **(Priority of Securities):** the Security Trustee agreeing to the postponement or loss of any priority attaching to any Security;

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- (p) **(Accounts):** the opening or operation of any new account with any Finance Party by any Obligor;
 - (q) **(Change of constitution):** any change in membership (whether by death or retirement of an existing member, admission of a new member, or otherwise) or in the name of any partnership, firm or association in which any Obligor is a member;
 - (r) **(Transfer):** the transfer, assignment or novation by any Finance Party or any Obligor of all or any of its rights or obligations under any Finance Document or any Obligation;
 - (s) **(Disclosure):** any failure by any Finance Party to disclose to any US Guarantor any material or unusual fact, circumstance, event or thing known to, or which ought to have been known by, the Finance Parties relating to or affecting any Obligor at any time before or during the currency of this deed, whether prejudicial or not to the rights and liabilities of any US Guarantor and whether or not any Finance Party under any duty to disclose that fact, circumstance, event or thing to the relevant US Guarantor or to any other Obligor;
 - (t) **(Covenant not to take action):** any Finance Party agreeing with any Obligor not to sue, issue process, sign or execute judgment, commence proceedings for bankruptcy or liquidation, participate in any administration, scheme or deed of arrangement or reconstruction, prove in any bankruptcy or liquidation, or do anything else in respect of the liability of any Obligor; or
 - (u) **(Working Capital Agreements):** any Working Capital Agreement being entered into after the date of this deed.

5.3 Waiver of defences

Each US Guarantor waives any defence arising by reason of any disability or other defence of any Debtor or any other guarantor, or the cessation from any cause whatsoever of the liability of any Debtor (other than payment in full of the Obligations), or any claim that that US Guarantor's obligations exceed or are more burdensome than those of any Debtor and waives the benefit of any statute of limitations affecting the liability of that US Guarantor under this deed.

5.4 No merger

- (a) This deed is in addition to and does not merge with, postpone, lessen or otherwise prejudicially affect any Finance Document or any other Power of the Security Trustee or any other Finance Party,
- (b) The Security Trustee will hold any judgment or order obtained by it against any person in respect of the Guaranteed Money or the Obligations collaterally with this deed none of which will merge in that judgment or order.

5.5 No obligation to gain consent

Each US Guarantor need not consent to or be made aware of any event referred to in clause 5.2, any transaction between the Finance Parties and any Obligor, or any particulars concerning any obligation or liability that forms part of the Obligations.

5.6 Appropriation

- (a) The Security Trustee is under no obligation to marshal or appropriate in favour of any US Guarantor, or to exercise, apply, transfer or recover in favour of any US

Guarantor, any Security or any funds or assets which the Security Trustee holds, has a claim on, or has received or is entitled to receive, but may do so in the manner and order as the Security Trustee determines in its absolute discretion, in each case subject to the UBOC Intercreditor Agreements.

- (b) The Security Trustee may hold in a suspense account (without liability to pay interest) any money which it receives from a US Guarantor, or which it receives on account of a US Guarantor's liability under this deed, and which the Security Trustee may, at its discretion, appropriate in reduction of the relevant US Guarantor's liability under this deed, in each case subject to the UBOC Intercreditor Agreements.

5.7 Void or voidable transactions

If:

- (a) (i) the Security Trustee has at any time released or discharged:
 - A. a US Guarantor from its obligations under any Finance Document; or
 - B. any assets of a US Guarantor from a Security,in either case in reliance on a payment, receipt or other transaction to or in favour of the Security Trustee; or
 - (ii) any payment or other transaction to or in favour of the Security Trustee has the effect of releasing or discharging:
 - A. a US Guarantor from its obligations under any Finance Document; or
 - B. any assets of a US Guarantor from a Security; and
 - (b) that payment, receipt or other transaction is subsequently claimed by any person to be void, voidable or capable of being set aside for any reason, including under an Insolvency Provision or under the general law; and
 - (c) that claim is upheld or is conceded or compromised by the Security Trustee;
- then
- (d) **(Restitution of rights):** the Security Trustee will immediately become entitled against the relevant US Guarantor to all rights (including under any Security) as it had immediately before that release or discharge;
 - (e) **(Restore position):** the relevant US Guarantor must immediately do all things and execute all documents as the Security Trustee may reasonably require to restore to the Finance Parties all those rights; and
 - (f) **(Indemnity):** the relevant US Guarantor must indemnify the Security Trustee against costs, losses and expenses suffered or incurred by it in or in connection with any negotiations or proceedings relating to the claim or as a result of the upholding, concession or compromise of the claim.

5.8 Insolvency

Until payment of the Obligations in full, each US Guarantor must not lodge any proof of debt or similar claim on the occurrence of an Event of Insolvency in relation to an Obligor in competition with the Finance Parties. Each US Guarantor irrevocably appoints the Security Trustee as its attorney to prove in the insolvency of any Obligor for all money to which that US Guarantor may be entitled from that Obligor. Provided however that each US Guarantor may lodge any proof of debt or similar claim in relation to an Obligor if that US Guarantor has given the Security Trustee notice of its intention to do so and either:

- (a) the Security Trustee has consented; or
- (b) on the last day of the expiry of the time limit for filing a proof of debt or similar claim, the Security Trustee has not itself filed any such proof of debt or claim.

5.9 No set-off, counterclaim, etc

Each US Guarantor's liability under this deed will not be reduced or avoided by any defence, set-off or counterclaim available to any other Obligor against any Finance Party.

5.10 Restriction on US Guarantor's dealings

- (a) Until payment of the Obligations in full, each US Guarantor must not without the Security Trustee's prior written consent:
 - (i) **(No proceedings):** institute any proceedings against any other Obligor;
 - (ii) **(No demand):** make any demand for, or accept any money in part or complete satisfaction of, any liability on any account of any other Obligor other than in respect of:
 - A. a liability arising out of the supply of goods and services by it to that Obligor in the ordinary course of its ordinary business and on arm's length terms; and
 - B. any intercompany loans by a US Guarantor to any other member of the Group provided that any such intercompany loans are fully subordinated to the Obligations and any repayment of such intercompany loans can only be made if no Default has occurred;
 - (iii) **(No encumbrances):** create or permit to exist any Encumbrance as security for any obligation which it owes to any other Obligor; or
 - (iv) **(No set-off):** set off any money owing by it against any liability owing to it by any Obligor, or permit any Obligor to set off any money owing by that Obligor to it against any liability owing to that Obligor by it, in each case other than in its ordinary course of business and provided that no Event of Default has occurred.
- (b) Each US Guarantor agrees to hold the benefit of any payment received by it, any set-off effected in its favour, and any Encumbrance (and the proceeds of its realisation) created or existing, in breach of clause 5.10(a) on trust for the Finance Parties, to be applied in or towards satisfaction of each US Guarantor's liability under this deed, in each case subject to the UBOC Intercreditor Agreements.

5.11 Claim on each US Guarantor

The Security Trustee is not required to make any claim or demand on the principal debtor under the relevant Finance Document or on any other Obligor, or to enforce any Finance Document, or any other Power against any Obligor, before making any demand or claim on a US Guarantor.

5.12 Waiver of rights

Until payment of the Obligations in full, each US Guarantor must not exercise any right to contribution, indemnity or subrogation which it might otherwise be entitled to claim and enforce against any Obligor until all the Guaranteed Money has been paid to, discharged or recovered by the Finance Parties and no claim referred to in clause 5.7(b) is actually or potentially pending, upheld, conceded or compromised in relation to that payment or other transaction relied on by the Finance Parties as the basis for any discharge.

5.13 Exercise of subrogation rights

Until payment of the Obligations in full, each US Guarantor must not seek the transfer to it of any Security which is subject to an agreed order of priority in the Security Trustee's hands under any right of subrogation, unless and until it has entered into a deed under which it undertakes to be bound by the priority affecting that Security with the other parties to that agreed order of priority.

6. Representations and warranties

6.1 Representations and warranties

Each US Guarantor represents and warrants that:

- (a) **(status)** it is duly incorporated and validly existing under the laws of its state of incorporation;
 - (b) **(power)** it has full legal capacity and power to:
 - (i) own its property and to carry on its business; and
 - (ii) enter into this deed and to carry out the transactions that this deed contemplates;
 - (c) **(corporate authority)** it has taken all corporate action that is necessary or desirable to authorise its entry into this deed and its carrying out the transactions that this deed contemplates;
 - (d) **(Authorisations)** it holds each Authorisation that is necessary or desirable to:
 - (i) enable it to properly execute this deed and to carry out the transactions that this deed contemplates;
 - (ii) ensure that this deed is legal, valid, binding and admissible in evidence; or
 - (iii) enable it to properly carry on its business.
- and it is complying with any conditions to which any of these Authorisations is subject;

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- (e) **(documents effective)** this deed constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms (except to the extent limited by equitable principles and laws affecting creditors' rights generally), subject to any necessary stamping or registration;
- (f) **(ranking)** its payment obligations under this deed rank at least pari passu with all its unsecured and unsubordinated payment obligations (whether present or future, actual or contingent), other than obligations that are mandatorily preferred by law;
- (g) **(no contravention)** neither its execution of this deed nor the carrying out by it of the transactions that this deed contemplates, does or will:
- (i) contravene any law to which it or any of its property is subject or any order of any Government Authority that is binding on it or any of its property;
 - (ii) contravene any Authorisation;
 - (iii) contravene any undertaking or instrument binding on its or any of its property;
 - (iv) contravene its Constitution; or
 - (v) require it to make any payment or delivery in respect of any Financial Liability before it would otherwise be obliged to do so;
- (h) **(no litigation)** no litigation, arbitration, mediation, conciliation or administrative proceedings are taking place, pending, or to the knowledge of any of its officers threatened which, if adversely decided, is reasonably expected to have a Material Adverse Effect on it;
- (i) **(other information):**
- (i) the other information and reports (if any) that it has given to the Finance Parties in connection with this deed are true and accurate in all material respects and not misleading in any material respect (including by omission); and
 - (ii) any forecasts and opinions in them are fair and reasonable (and were made or formed after due inquiry and consideration by appropriate officers of the US Guarantor),
- as at the date of this deed or, if given later, when given;
- (j) **(disclosure of relevant information)** it has disclosed to the Security Trustee all the information that is material to an assessment by the Finance Parties of the risks that it assumes by entering into this deed;
- (k) **(no filings or Taxes)** it is not necessary or desirable, to ensure that this deed is legal, valid, binding or admissible in evidence, that this deed or any other document be filed or registered with any Government Authority, or that any Taxes be paid;
- (l) **(no Encumbrance)** none of its property is subject to an Encumbrance other than a Permitted Encumbrance;
- (m) **(no Controller)** no Controller is currently appointed in relation to any of its property;

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- (n) **(no trust)** it is not entering into this deed as trustee of any trust or settlement;
 - (o) **(no security to US Guarantor)** it has not taken any Encumbrance from any other US Guarantor for or in consideration of assuming any of its obligations under this deed;
 - (p) **(benefit)** its entry into this deed is in its best interests and for its benefit; and
 - (q) **(Facility Agreement)** it has received and read a copy of the Facility Agreement and the Working Capital Agreements.

6.2 Representations and warranties repeated

Each representation and warranty in this deed will be repeated on each day whilst any of the Guaranteed Money remains outstanding with reference to the facts and circumstances then subsisting

6.3 Reliance on representations and warranties

Each US Guarantor acknowledges that the Security Trustee has executed this deed and agreed to take part in the transactions that this deed contemplates in reliance on the representations and warranties that are made or repeated in this clause.

6.4 No representations by the Security Trustee

Each US Guarantor acknowledges that it has not relied and will not rely on any representation, statement or promise made by or on behalf of the Security Trustee in deciding to enter into this deed or to exercise any right or perform any obligations under it.

6.5 Security Trustee has no duty to disclose

Except as provided in this deed, the Security Trustee was not, before execution of this deed by the US Guarantors, and is not in the future, liable to do anything (including disclosing any information to the US Guarantors) relating to the Debtors' affairs or transactions with the Finance Parties.

7. General covenants

7.1 General undertakings

Until payment in full of the Obligations, each US Guarantor must:

- (a) **(maintain status)** maintain its status as a duly incorporated company which is validly existing;
- (b) **(comply with law)** comply with all applicable law including by paying when due all Taxes for which it or any of its property is assessed or liable (except to the extent that these are being diligently contested in good faith and by appropriate proceedings and it has made adequate reserves for them), other than where such non-compliance is not reasonably expected to have a Material Adverse Effect;
- (c) **(keep books)** keep proper books recording its activities (including financial records), and permit the Security Trustee or its representatives on request upon reasonable prior notice during regular business hours to examine and take copies of them;

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- (d) **(hold Authorisations)** obtain and maintain each Authorisation that is necessary or desirable to:
 - (i) execute this deed and to carry out the transactions that this deed contemplates;
 - (ii) ensure that this deed is legal, valid, binding and admissible in evidence; or
 - (iii) enable it to properly carry on its business,and must comply with any conditions to which any of these Authorisations is subject;
 - (e) **(patents)** maintain and keep registered under all applicable laws all patents and trade marks registered in the name of the US Guarantor or any of its subsidiaries if not to do so is reasonably expected to have a Material Adverse Effect; and
 - (f) **(no security to US Guarantor)** not take any Encumbrance from any other Obligor for or in consideration of assuming any of its obligations under this deed.

7.2 Reports and information

Until payment in full of the Obligations:

- (a) **(information)** the Parent agrees to provide the Security Trustee with access to the electronic notification system employed by the Parent so that the Security Trustee will receive electronic notification, when filed with the Securities and Exchange Commission, of and access to copies of each annual report, proxy or financial statement or other report or communication sent to the stockholders of the Parent and filed or required to be filed with the Securities and Exchange Commission, and copies of all annual, regular, periodic and special reports and registration statements which the Parent may file with the Securities and Exchange Commission under Section 13 or 15(d) of the Securities Exchange Act of 19.34, as amended; and
- (b) each US Guarantor must give the Security Trustee:
 - (i) **(notice of litigation)** full details of any litigation, arbitration, mediation, conciliation or administrative proceedings which, if adversely decided, is reasonably expected to have a Material Adverse Effect on it as soon as the proceedings are commenced or threatened; and
 - (ii) **(other information)** promptly on request (and in any event within 10 Business Days) any other information relating to the financial condition, business, property and affairs of itself or any of its related bodies corporate that the Security Trustee reasonably requests.

7.3 Financial undertakings

Until payment in full of the Obligations, each US Guarantor must:

- (a) **(negative pledge)** not create or permit to exist, and ensure that none of its subsidiaries creates or permits to exist, any Encumbrance over any of its property, other than a Permitted Encumbrance (including, for the avoidance of doubt, the UBOC Security and any securities which replace those securities);

- (b) **(no Financial Liabilities)** not incur Financial Liabilities which would cause Financial Liabilities for the Group to exceed USD50,000,000 (or its Equivalent), and must ensure that none of its Subsidiaries incurs Financial Liabilities which would cause that amount to be exceeded, without the prior written consent of the Security Trustee, other than under the UBOC Facilities and the Intercompany Loans, provided that the principal amount of the Financial Liabilities under each Intercompany Loan must not at any time exceed the aggregate of USD10,000,000 and the principal amount of the Financial Liabilities under each Intercompany Loan as at the date of this deed, and the principal amount of the Financial Liabilities under the UBOC Facilities (or any facilities that replace the UBOC facilities) must not at any time exceed USD75,000,000 (or any higher amount approved from time to time by the Security Trustee);
- (c) **(no disposal of property)** not dispose of, declare a trust over or otherwise create an interest in, and must ensure that none of its direct and/or indirect subsidiaries disposes of, declares a trust over or otherwise creates an interest in, all or a substantial part of its property or assets (either in one or several transactions, whether or not related) over any of its property or assets (including its business) which has an aggregate value exceeding USD30,000,000 (or its Equivalent) in any Twelve-Month Period except:
- (i) as permitted by paragraph (a);
 - (ii) with the prior written consent of the Security Trustee which will not be unreasonably withheld;
 - (iii) at arm's length and for full value in a transaction that is entered into in the ordinary course of its ordinary business; or
 - (iv) by a direct and/or indirect subsidiary of the US Guarantor:
 - A. to the US Guarantor; or
 - B. to another direct and/or indirect subsidiary of the US Guarantor if the US Guarantor's ownership interest in the receiving direct and/or indirect subsidiary is at least the same as US Guarantor's percentage ownership in the disposing subsidiary; and
- (d) **(insurance)** keep, and must ensure that each of its subsidiaries keeps, its property and business insured:
- (i) against the risks and in the amounts that are prudent or usual for a person conducting a business similar to the US Guarantor, with sound and reputable insurers; or
 - (ii) as the Security Trustee reasonably requires,
- and must provide the Security Trustee on request with details of the insurance, evidence that it is in full effect and evidence that all premiums have been paid.

7.4 Ratification and Consent

ResMed Inc., as the ultimate holder of the shares in each of the Obligor, consents to and ratifies the execution by each other Obligor of all the Finance Documents to which it is a party.

8. Payments

8.1 On demand

Subject to the UBOC Intercreditor Agreements, all money payable by each US Guarantor under this deed will be paid by each US Guarantor on demand by the Security Trustee in immediately available funds to the account and in the manner notified by the Security Trustee to each US Guarantor.

8.2 Payment in gross

All money received or recovered by the Security Trustee on account of the Guaranteed Money will be treated as payments in gross without any right on the part of any US Guarantor to claim the benefit of any money received or recovered by the Security Trustee or any Security, until the Security Trustee has been paid 100 cents on the dollar in respect of the Guaranteed Money or as otherwise determined and/or approved by a bankruptcy court.

8.3 Interest

As a liability separate and distinct from each US Guarantor's liability under clauses 2 and 3, each US Guarantor will, subject to the UBOC Intercreditor Agreements, on demand by the Security Trustee pay interest on all amounts due and payable by it and unpaid under or in respect of this deed. Interest will accrue on those amounts from day to day from the due date up to the date of actual payment, before and (as a separate and independent obligation) after judgment, at the Default Rate for successive 30 day interest periods commencing on the date of default (or such other period selected by the Security Trustee) and, if not paid when due, will itself bear interest in accordance with this clause 8.3.

8.4 Merger

If the liability of a US Guarantor to pay to the Security Trustee any money under this deed becomes merged in any judgment or order, then, as an independent obligation, the relevant US Guarantor will pay interest on the amount of that money at the rate which is the higher of that payable under clause 8.3 and that fixed by or payable under the judgment or order.

8.5 No set-off or deduction

Subject to any Finance Document, all payments by any US Guarantor to the Security Trustee will be:

- (a) free of any set-off or counterclaim; and
- (b) without deduction or withholding for or on account of any present or future Taxes, unless a US Guarantor is compelled by law to make any deduction or withholding.

If a US Guarantor is compelled by law to make any deduction or withholding for or on account of any present or future Taxes (not being Taxes on the overall net income of any Finance Party), then it will:

- (i) pay to the Security Trustee any additional amounts necessary to enable the Security Trustee to receive (after all deductions and withholdings for those Taxes) a net amount equal to the full amount which would otherwise be payable to the Security Trustee if no deduction or withholding was required to be made;

- (ii) promptly (and within the time prescribed by law) pay to the relevant taxing authority the amount of those Taxes which it is compelled by law to deduct or withhold, and indemnify the Security Trustee for any Taxes and interest or penalties to which the Security Trustee may become liable consequent on the failure of it to pay those Taxes; and
- (iii) deliver to the Security Trustee, promptly on request from the Security Trustee, a copy of any receipt issued by the relevant taxing authority on payment of those Taxes,

8.6 Currency indemnity

If, for any reason (including as a result of a judgment or order), an amount payable by a US Guarantor under or in respect of this deed ("**Relevant Amount**") is received by the Security Trustee in a currency ("**Payment Currency**") that is not the currency in which the amount is expressed to be payable under this deed ("**Required Currency**") then the US Guarantor, as an independent obligation, must indemnify the Security Trustee against, and must pay the Security Trustee on demand the amount of, any shortfall between:

- (a) the amount of Required Currency which the Security Trustee receives on converting the amount it received in the Payment Currency into an amount in the Required Currency in accordance with its usual practice; and
- (b) the Relevant Amount in the Required Currency.

8.7 Currency of payments

The US Guarantors must make payment under this deed in the same currency that the Debtor is required to make payment to the Finance Parties. Otherwise, the US Guarantors must make each payment under this deed in US Dollars.

9. General Indemnity

The Borrower must indemnify the Security Trustee against, and must pay the Security Trustee on demand the amount of, all losses, liabilities, expenses and Taxes incurred in connection with the administration, and any actual or attempted preservation or enforcement, of any rights under this deed.

10. Security Trustee

10.1 Limitation of liability of the Security Trustee

- (a) The Security Trustee is entering into this deed and each other Finance Document to which it is a party as trustee of the Security Trust.
- (b) The recourse of any other party against the Security Trustee under this deed or any other Finance Document is limited to the property held by the Security Trustee pursuant to the Security Trustee and the right of the Security Trustee to be indemnified out of such property.
- (c) No party under this deed may seek to enforce any right under this deed or any other Finance Document against the Security Trustee personally or against any property of the Security Trustee held in any capacity other than stated in this clause 10.1 except in the case of gross negligence, fraud or wilful default by the Security Trustee.

10.2 Replacement of the Security Trustee

- (a) The Security Trustee may be replaced by a successor in accordance with the Security Trust Deed.
- (b) On the date of its appointment, the successor Security Trustee will assume the rights and obligations of the retiring Security Trustee. However, this does not apply to any obligations of the retiring Security Trustee which arise out of its acts or omissions as Security Trustee before the appointment of the successor, in respect of which the retiring Security Trustee will continue to have obligations imposed by, and the rights contained in, this deed, the Security Trust Deed and the Facility Agreement.

11. Assignment

- (a) A US Guarantor may only dispose of, declare a trust over or otherwise create an interest in its rights under this deed with the consent of the Security Trustee.
- (b) The Security Trustee may not dispose of, declare a trust over or otherwise create an interest in its rights under this deed other than in accordance with the Security Trust Deed.

12. Governing law

This deed is governed by and must be construed according to the law applying in New South Wales.

13. Jurisdiction

- (a) Each US Guarantor irrevocably:
 - (i) submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to this deed; and
 - (ii) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceeding has been brought in an inconvenient forum, if that venue falls within clause 13(a)(i).
- (b) Each US Guarantor irrevocably appoints the Borrower at its registered office from time to time to receive on its behalf process issued out of the courts in New South Wales or any other Australian jurisdiction in connection with this deed and agrees that any failure by the process agent to notify the relevant US Guarantor of the process will not invalidate the proceedings concerned. The Borrower accepts this appointment.

14. Miscellaneous**14.1 Certificate of Security Trustee**

A certificate in writing signed by the Security Trustee or by an officer of the Security Trustee certifying any amount payable by any US Guarantor or the Borrower to the Security Trustee or stating any other act, matter or thing relating to this deed or any Finance Document is

14.2 Notices

Each communication (including each notice, consent, approval, request and demand) under or in connection with this deed:

- (a) must be in writing;
- (b) must be addressed as follows (or as otherwise notified by that party to the other party from time to time):

To the Security Trustee:

Name: HSB Bank Australia Limited
Address: HSB Centre, Level 15, 580 George Street
Sydney
NSW 2000
Australia
Fax: + 61 2 9006 5534
For the attention of: Assistant Manager, Credit Operations

To the US Guarantor:

Name: ResMed Inc.
Address: 14040 Danielson Street
Poway, CA 92064
USA
Fax: (1) 858 746 2830
For the attention of: General Counsel

Name: ResMed Corp.
Address: 14040 Danielson Street
Poway, CA 92064
USA
Fax: (1) 858 746 2830
For the attention of: General Counsel

To the Borrower:

Name: ResMed Ltd
Address: 97 Waterloo Road
Macquarie Park
NSW 2113
Australia
Fax: (02) 9889 1475
For the attention of: Vice President, Treasury and Finance

- (c) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary, or authorised agent of, that party;
- (d) must be delivered by hand or posted by prepaid post to the address, or sent by fax to the number, of the addressee, in accordance with clause 14.2(b); and
- (e) is taken to be received by the addressee:

-
- (i) (in the case of prepaid post sent to an address in the same country) on the third day after the date of posting;
 - (ii) (in the case of prepaid post sent to an address in another country) on the fifth day after the date of posting by airmail;
 - (iii) (in the case of fax) at the time in the place to which it is sent equivalent to the time shown on the transmission confirmation report produced by the fax machine from which it was sent; and
 - (iv) (in the case of delivery by hand) on delivery, but if the communication is taken to be received on a day that is not a working day or after 5.00 pm, it is taken to be received at 9.00 am on the next working day ("working day" meaning a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally, in the place to which the communication is posted, sent or delivered)

14.3 Continuing obligation

Until payment of the Obligations in full, this deed is a continuing obligation despite any termination by a US Guarantor, settlement of account, intervening payment, express or implied revocation or any other matter or thing, and the Security Trustee will continue to be entitled to the benefit of this deed as regards the performance of all the Obligations and any contingent or other liability for advances or other financial accommodation to or for the account of any Obligor made after termination, settlement of account, payment, revocation or other matter or thing until a final discharge has been given to the US Guarantors.

14.4 Further assurance

Each US Guarantor must promptly on the request of the Security Trustee, and at its own cost, do all further acts and execute and deliver all further documents as the Security Trustee reasonably requires, or as are required by law, to give effect to the rights and powers of the Security Trustee created, or intended to be created, by this deed.

14.5 Form of demand

A demand on a US Guarantor for payment under this deed may be in any form and contain any information as the Security Trustee reasonably determines. It need not specify the amount of the Guaranteed Money, nor the method or basis of calculation of all or any part of the Guaranteed Money, including amounts of, or in the nature of, interest.

14.6 Severance

If at any time a provision of this deed is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that will not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this deed; or
- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this deed.

14.7 Powers cumulative

Each Power is cumulative and in addition to each other Power available to the Security Trustee.

14.8 Waiver

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, any Power by the Security Trustee does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other Power.
- (b) A waiver or consent given by the Security Trustee under this deed is only effective and binding on the Security Trustee if it is given or confirmed in writing.
- (c) No waiver of a breach of a term of this deed operates as a waiver of another breach of that term or of a breach of any other term of this deed.

14.9 Consents

A consent required under, this deed from the Security Trustee may be given or withheld, or may be given subject to any conditions, as the Security Trustee (in its absolute discretion) thinks fit, unless this deed expressly provides otherwise.

14.10 Changes in legislation (moratorium)

If any legislation changes a US Guarantor's rights or obligations or delays or prejudicially affects the exercise of any Power under this deed, so that the Security Trustee's rights or obligations are adversely affected, that US Guarantor waives its rights under that legislation to the extent that the waiver is not prohibited or made ineffective by law.

14.11 Confidentiality

Subject to clause 14.12, each party to this deed must not disclose any information concerning the contents of, or the transactions contemplated by, this deed to any person who is not a party, except to the extent that:

- (a) **(permitted by documents)** the disclosure is expressly permitted by this deed or is made to any Finance Party or Obligor;
- (b) **(consent of other party)** the Security Trustee consents to the disclosure;
- (c) **(public domain)** the information is already in the public domain, unless it entered the public domain because of a breach of confidentiality by the party;
- (d) **(employees and advisers)** the disclosure is made on a confidential basis to the party's officers, employees, agents, financiers or professional advisers, and is necessary for the party's business, or is made to any related party of that party;
- (e) **(comply with laws)** the disclosure is necessary to comply with any applicable law, or an order of a court or tribunal;
- (f) **(comply with directives)** the disclosure is necessary to comply with a directive or request of any Government Authority or stock exchange (whether or not having the force of law) so long as a responsible person in a similar position would comply;
- (g) **(obtain Authorisations)** the disclosure is necessary or desirable to obtain an Authorisation from any Government Authority or stock exchange; or
- (h) **(discovery and litigation)** the disclosure is necessary or desirable in relation to any discovery of documents, or any proceedings before a court, tribunal, other Government Authority or stock exchange.

14.12 Disclosure to assignees or substitutes

- (a) Subject to paragraph (b), the Security Trustee may:
 - (i) disclose to a proposed assignee or substitute under clause 10 or 11, or any other person who proposes to enter into contractual relations with the Security Trustee in relation to any Finance Document, any information about the Debtors or any US Guarantor which the Security Trustee considers appropriate; and
 - (ii) give a copy of any Finance Document to a proposed assignee or substitute under clause 10 or 11 or any other person described in paragraph (a)(i).
- (b) Any disclosure made under paragraph (a) must be made on the basis that the person to whom the information or document is disclosed must keep that information or document confidential as required by clause 14.11.

14.13 Set-off

The Security Trustee, without notice to the US Guarantors or the Debtors, may, after the occurrence of an Event of Default, combine any account that a US Guarantor holds with the Security Trustee with, or set off any amount that is or may become owing by the Security Trustee to the US Guarantor against, any amount owing by the US Guarantor to the Security Trustee under this deed. For this purpose the Security Trustee may:

- (a) convert amounts into different currencies in accordance with the Security Trustee's usual practice; and
- (b) during the continuance of such Event of Default, do anything (including execute any document) in the name of the US Guarantor that the Security Trustee considers necessary or desirable.

This subclause overrides any other document or agreement to the contrary.

14.14 Counterparts

This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart.

14.15 Termination

- (a) The obligations of each US Guarantor under this deed will continue until the Security Trustee is satisfied that the Obligations have been irrevocably and unconditionally paid or discharged in full, regardless of any intermediate payment or discharge in whole or in part.
- (b) Upon payment in full of the Obligations in accordance with clause (a), the Security Trustee will, at the request and cost of the US Guarantors, release each US Guarantor from its obligations under this deed.

Executed as a deed.

Signed sealed and delivered for and on behalf of **HSBC Bank Australia Limited** by its Attorney under a Power of Attorney dated 29 July 2002, and the Attorney declares that the Attorney has not received any notice of the revocation of such Power of Attorney, in the presence of:

A stylized, handwritten signature in black ink, consisting of a large, sweeping loop followed by a horizontal stroke.

Signature of Attorney

A handwritten signature in black ink, appearing to read 'J Lowe'.

Signature of Witness

Jason Anthony Lowe
Name of Witness in full

Lewis Barton Williams
Name of Attorney in full

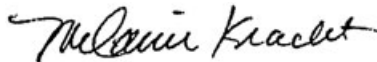
Executed by ResMed Inc. acting by:

A handwritten signature in black ink, appearing to read 'David Pendarvis'.

Signature of authorised officer

Name: David Pendarvis

Title: Secretary

A handwritten signature in black ink, appearing to read 'Melanie Kracht'.

Signature of Witness

Melanie Kracht
Name of Witness



Signature of authorised officer

Name: David Pendarvis

Title: Secretary

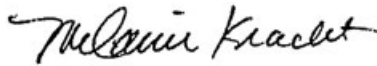
Signed sealed and delivered for and on behalf of **ResMed Limited** by its Attorney under a Power of Attorney dated 4 May 2006, and the Attorney declares that the Attorney has not received any notice of the revocation of such Power of Attorney, in the presence of:



Signature of Witness

Mark Abourrk

Name of Witness in full



Signature of Witness

Melanie Kracht

Name of Witness



Signature of Attorney

Brett Andren Sandercock

Name of Attorney in full

Working Capital Agreement
ResMed (UK) Limited
Borrower

HSBC Bank plc
Financier

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Parties ResMed (UK) Limited ("Borrower")
HSBC Bank plc ("Financier")

Operative provisions

1. Definitions and interpretations

1.1 Definitions

For the purposes of this agreement terms used in this agreement will have the meanings given in or for the purposes of the Facility Agreement unless otherwise defined below or specified in this agreement

"Advance" means any loan under the Facility or, where the context requires, the principal amount of that loan outstanding.

"Authorised Officer" means a person appointed as an authorised officer of the Borrower for the purposes of this agreement by a resolution of the board of directors of the Borrower and in respect of whom the Financier has received a certificate signed by a director of the Borrower setting out that person's name, position and signature and confirming the appointment, provided the Financier has not received notice of revocation of that appointment.

"Availability Period" means the period from and including the date of this agreement to the close of business on the date prior to the Termination Date.

"Business Day" means a day (other than Saturday or Sunday) on which banks are open for business generally in London.

"Commitment" means GBP3,000,000 to the extent not cancelled or reduced in accordance with the terms of this agreement.

"Default" means:

- (a) any Event of Default; or
- (b) Potential Event of Default.

"Drawdown Date" means the date on which an Advance is made or, where the context requires, is proposed to be made.

"Drawdown Notice" means a notice given under clause 4.1 in the form of Schedule 1.

"Event of Default" has the meaning given to it in the Facility Agreement except that each reference to "Facility Agent" in clause 18.1 of the Facility Agreement shall be read as a reference to the "Financier".

"Facility" means the revolving cash advance facility made available under this agreement, as described in clause 2.1.

"Facility Agreement" means the syndicated facility agreement dated on or about the date of this agreement and entered into between ResMed Limited as borrower, each person listed in schedule 1 of the facility agreement as original financier and HSBC Bank Australia Limited as facility agent and security trustee.

“Financial Close” means the date on which all of the conditions precedent in clause 3.1 of the Facility Agreement have been satisfied or waived by HSBC Bank Australia Limited as facility agent under the Facility Agreement.

“Interest Period” means each period determined in accordance with clause 6.1.

“Interest Rate” for each Interest Period means the aggregate of LIBOR in relation to that Interest Period and the Margin on the first day of the Interest Period and any Mandatory Costs.

“LIBOR”, in relation to an Interest Period or any other period, means:

- (a) the British Bankers Association Interest Settlement Rate displayed on the appropriate page of the Reuters screen; or
- (b) if the relevant page is replaced or the service ceases to be available, another page or service displaying the appropriate rate as the Financier may specify; or
- (c) if no such rate is available, the arithmetic mean (rounded upwards to four decimal places) of the rates quoted by the Reference Banks to leading banks in the London interbank market,

and in all cases the rate will be established as at 11.00 am on the Quotation Date for the offering of deposits in Sterling and for the period requested.

“Mandatory Costs” means the percentage rate per annum calculated by the Financier in accordance with Schedule 2 (*Mandatory Cost formula*).

“Margin” means 0.65 per cent per annum.

“Maturing Advance” means an Advance as at the last day of an Interest Period and which is to be repaid in whole or in part with the proceeds of a Rollover Advance in accordance with clause 6.1(c).

“Quotation Date” means, in relation to any period for which LIBOR is to be determined, the date on which quotations are customarily provided by leading banks in the London interbank market for deposits in the relevant currency for delivery on the first day of that period.

“Reference Banks” means the Financier, Barclays Bank plc and Lloyds TSB Bank plc or any other banks or financial institutions determined by the Financier from time to time in consultation with the Borrower.

“ResMed Limited” means ResMed Limited ABN 30 003 765 142, a company incorporated in Australia, whose registered office is at 97 Waterloo Road, Macquarie Park, NSW 2113, Australia.

“Rollover Advance” means one or more Advances:

- (a) made or to be made on the same day that an Advance is due; and
- (b) the aggregate amount of which is equal to or less than the Maturing Advance.

“Sterling” or **“GBP”** means the lawful currency for the time being of the United Kingdom, and, in respect of all payments to be made under this agreement in Sterling, immediately available, freely transferable cleared funds.

“Tax” means all present and future taxes, levies, imposts, duties, fees or charges of whatever nature together with any related interest and penalties (and **“Taxation”** is construed accordingly).

“Termination Date” means, subject to clause 7, the date falling 364 days from (and including) the date of this agreement.

“VAT” means value added tax.

1.2 Interpretation

Clause 1.2 of the Facility Agreement applies in this agreement as if set out in full in this agreement.

1.3 Facility Agreement

The Borrower and the Financier agree that:

- (a) this agreement is a “Working Capital Agreement” and the Financier is the “Working Capital Financier” for the purposes of the Facility Agreement;
- (b) the Financier is a “Beneficiary” for the purposes of the Security Trust Deed and as such will have the benefit of the Security; and
- (c) to the extent of any inconsistency between the provisions of this agreement and the provisions of the Facility Agreement, the provisions of the Facility Agreement will prevail. This agreement is varied to the extent necessary to give effect to this clause.

1.4 Third party rights

No term of this agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by anyone other than a party to this agreement.

2. The Facility

2.1 Facility

Subject to the terms of this agreement and in reliance on the representations and warranties referred to in clause 10(b) of this agreement, the Financier grants to the Borrower a revolving cash advance facility in an aggregate amount equal to the Commitment.

2.2 Commitment

The Financier is not obliged to provide an Advance if to do so would cause the aggregate of all Advances outstanding under this agreement to exceed its Commitment.

2.3 Purpose

- (a) The Facility may only be used for general working capital purposes.
- (b) The Financier is not bound to monitor or verify the application of any Advance and the Financier will not have any liability to any person arising from a failure by the Borrower to use an Advance for a purpose specified in clause 2.3(a).

3. Conditions precedent

3.1 Conditions precedent to the first Advance

The obligations of the Financier to make the first Advance available to the Borrower under this agreement are subject to Financial Close having occurred.

3.2 Conditions precedent to all Advances

The obligations of the Financier to make each Advance available to the Borrower under this agreement are subject to compliance with the procedural requirements specified in clause 4 and the Financier being satisfied that both at the date of the relevant Drawdown Notice and at the relevant Drawdown Date:

- (a) **(Representations and warranties true):** the representations and warranties made by the Borrower in clause 10(b) and the statements in the Drawdown Notice are correct and not misleading at the date of the Drawdown Notice and on the Drawdown Date; and
- (b) **(No Event of Default):**
 - (i) in the case of a Rollover Advance, no Event of Default has occurred which is continuing and no Event of Default will result from the Rollover Advance being provided; and
 - (ii) in any other case, no Default has occurred which is continuing and no Default will result from the making of the Advance.

4. Drawdowns

4.1 Notice

Subject to the terms of this agreement, the Borrower may request an Advance by giving written notice, in the form of a Drawdown Notice signed by an Authorised Officer of the Borrower, to the Financier.

4.2 Contents of Drawdown Notice

Each Drawdown Notice will be in the form of Schedule 1 and in each case will specify:

- (a) the proposed Drawdown Date which must be a Business Day before the expiry of the Availability Period;
- (b) the amount of the Advance (which must be not less than GBP100,000 and an integral multiple of GBP100,000 (or such other amounts agreed by the Financier) or the aggregate unutilised Commitment);
- (c) the proposed duration of its Interest Period (which must be selected in accordance with clause 6); and
- (d) payment instructions.

Only one Advance may be requested in each Drawdown Notice.

4.3 Requirements of Drawdown Notice

Each Drawdown Notice will be irrevocable and must be:

- (a) received by the Financier before 2.00 pm (London time) at least two Business Days (or such shorter period as the Financier may agree) before the proposed Drawdown Date; and
- (b) signed by an Authorised Officer of the Borrower.

4.4 Making of Advances

The Financier will, on the date specified in any Drawdown Notice, make available the Advance to the Borrower in accordance with the provisions of the relevant Drawdown Notice and this agreement.

4.5 Maximum number of Advances

The Borrower may not deliver a Drawdown Notice if as a result of the proposed Advance more than 3 Advances would be outstanding.

5. Repayment and prepayments

5.1 Repayment of Advances

- (a) Subject to clause 5.1(b), the Borrower will repay the full amount of each Advance on the last day of the Interest Period relating to that Advance. The Borrower must repay to the Financier all Advances plus all accrued interest and fees payable on or in connection with the Advances on the Termination Date. Amounts repaid under this clause 5.1(a) may, subject to the terms of this agreement, be re-utilised.
- (b) On the last day of an Interest Period, if the Borrower delivers a Drawdown Notice to the Financier in respect of a Rollover Advance, then only an amount equal to:
 - (i) the amount of the Maturing Advance;less
 - (ii) the amount of the Rollover Advance,need be paid by the Borrower to the Financier (if the amount is a positive number) or by the Financier to the Borrower (if the amount is a negative number).

5.2 Voluntary prepayment of Advances

- (a) The Borrower may prepay an Advance in whole or in part (but, if in part, by a minimum of GBP100,000 and in multiples of GBP100,000 or such other amounts agreed by the Financier) on giving not less than 5 Business Days' prior notice to the Financier.
- (b) Any notice under clause 5.2(a) will be irrevocable and must be signed by an Authorised Officer of the Borrower, specifying the date on which the prepayment is to occur and the amount of the prepayment. The Borrower is bound to prepay in accordance with the notice.
- (c) The Borrower may not voluntarily prepay any Advance except in accordance with this clause 5.2.
- (d) Amounts prepaid under this clause 5.2 may, subject to the terms of this agreement, be re-utilised.
- (e) Subject to clause 5.2(f), the Borrower will on demand by the Financier indemnify the Financier for any loss, cost or expenses which the Financier may sustain or incur as a consequence of receiving a prepayment of an Advance, or any part of it, under this agreement on a date other than the last day of the Interest Period for that Advance.
- (f) The Borrower will, within 2 Business Days of demand by the Financier, pay any

break costs incurred by the Financier (including because of the cancellation, termination or alteration of any swap or other arrangement, or any liquidation or re-employment of deposits or other funds acquired by the Financier to fund the Advance) attributable to all or any part of an Advance being prepaid by the Borrower on a date other than the last day of the Interest Period for that Advance.

- (g) Any prepayment of any Advance under this clause 5.2 will be made together with interest and fees accrued on the amount prepaid and any amount required to be paid in accordance with clause 5.2(e) or 5.2(f) but otherwise without premium or penalty.

5.3 Voluntary cancellation or reduction of Commitment

- (a) The Borrower may, on giving not less than 30 Business Days' prior notice to the Financier, cancel or reduce the Commitment in whole or in part (but, if in part, by a minimum of GBP500,000 and in multiples of GBP500,000) without incurring any penalty or other cost, provided that such cancellation or reduction may only be effected to the extent of the amount of the Commitment unutilised on the date of the cancellation or reduction.
- (b) Any notice under clause 5.3(a) will be irrevocable and must be signed by an Authorised Officer of the Borrower, specify the Commitment being cancelled or reduced, the date on which the cancellation or reduction is to become effective and the amount of the cancellation or reduction.
- (c) Any Commitment cancelled or otherwise extinguished under this agreement may not be reinstated.

6. Interest

6.1 Interest Periods

- (a) In the Drawdown Notice for each Advance, the Borrower will notify the Financier whether the Interest Period for the Advance is to be of 1, 2 or 3 months' duration or such other period agreed between the Borrower and the Financier.
- (b) If the Borrower does not select an Interest Period for an Advance in accordance with clause 6.1(a), the Interest Period will be 3 months.
- (c) The term of each Interest Period is subject to any marginal adjustment as the Financier in its discretion determines so that the first and last days of it are Business Days and no Interest Period extends beyond the Termination Date.
- (d) Each Advance has one Interest Period only.

6.2 Calculation of interest

- (a) Interest on each Advance accrues daily commencing on the relevant Drawdown Date and is to be computed on a daily basis on a year of 365 days.
- (b) The rate of interest for each Advance for each Interest Period is the Interest Rate in relation to that Advance. The Financier will promptly notify the Borrower of each determination of the Interest Rate under this clause 6.2(b).
- (c) The Financier's certificate as to any rate of interest at any time will be conclusive evidence of the rate of interest, absent manifest error.

6.3 Payment of interest

The Borrower will pay to the Financier the accrued interest in relation to each Advance on the last day of the Interest Period (and, if the Interest Period is longer than 3 months, on the days falling at 3 monthly intervals after the first day of the Interest Period) applicable to that Advance calculated up to that day.

6.4 Default interest

If the Borrower fails to pay to the Financier any amount payable by it under this agreement on its due date, interest will accrue on the overdue amount and is payable to the Financier in accordance with clause 8 of the Facility Agreement as if the reference to the "Prescribed Rate" were a reference to "Interest Rate" and the "Borrower" were to the Borrower under this agreement.

The provisions of this clause 6.4 will prevail to the extent of any inconsistency between this clause 6.4 and clause 8 of the Facility Agreement.

7. Annual Review

- (a) If the Borrower wishes to extend the Facility, provided no Default is subsisting, the Borrower may provide notice to the Financier, not less than 30 days prior to the Termination Date, requesting an extension to the Facility for a further 364 days.
- (b) Following a request under clause 7(a), the Financier agrees to consider whether to extend the Facility. The Financier is under no obligation to extend the Facility.
- (c) If the Financier agrees to extend the Facility, whether pursuant to a request under clause 7(a) or otherwise, then the Financier must by notice to the Borrower prior to the Termination Date extend the Facility to such date (not exceeding another 364 days) notified as such by the Financier and this extended date will be the new Termination Date.
- (d) If the Financier chooses not to extend the Facility, the Borrower must comply with clause 5.1(a).

8. Fees**8.1 Unused Commitment Fee**

- (a) Subject to Financial Close occurring, the Borrower will pay to the Financier a non-refundable unused commitment fee in Sterling computed at the rate equal to 30% of the Margin on the daily unutilised balance of the Commitment during the period from and including the date of this agreement until the Termination Date. The accrued unused commitment fee will be payable quarterly in arrears from the date of this agreement and also on the Termination Date.
- (b) The unused commitment fee under clause 8.1(a) will accrue from day to day and be calculated on the basis of a year of 365 days and for the actual number of days elapsed.

8.2 No Refund

All fees payable by the Borrower under this clause 8 are non-refundable and non-rebateable.

9. Payments

9.1 Manner of payment

Subject to any express provision to the contrary in this agreement, all payments by the Borrower under this agreement are to be made to the Financier in Sterling in immediately available funds not later than 11.00 am (London time) on the due date to the account that the Financier from time to time designates or as otherwise agreed between the Borrower and the Financier. Each payment to be made by the Borrower under this agreement will be made in full, without any set-off and in accordance with clause 12 (Tax).

9.2 Payments on a Business Day

If a payment is due on a day which is not a Business Day, the due date for that payment is the next Business Day in the same calendar month, or if none, the preceding Business Day, and interest must be adjusted accordingly.

9.3 Currency for payments

- (a) Sterling is the currency for payment for any sum due from the Borrower under this agreement except that each payment in respect of costs, expenses or Taxes will be paid in the currency in which the costs, expenses or Taxes are incurred.
- (b) If any payment is tendered to the Financier under this agreement in a currency ("**Foreign Currency**") other than the currency in which that amount is required to be paid under this agreement ("**Due Currency**"), the Financier in its absolute discretion may accept payment in the Foreign Currency as tendered.
- (c) If any payment in a Foreign Currency is accepted by the Financier under this agreement, or if any funds are recovered by the Financier under this agreement in a Foreign Currency (whether as a result of any judgment or order, the liquidation of the Borrower or otherwise), the Financier at its absolute discretion may actually or notionally convert such payment or funds to the Due Currency at any time or times as it sees fit and at any rate or rates as it is, or considers (acting in good faith) it would be, able to obtain in the market at the time of that conversion. The amount of the Due Currency actually or notionally received after conversion will be applied in reduction of the amounts owing under this agreement.
- (d) The Borrower will pay to the Financier all commissions and expenses involved in actually or notionally converting any payment or receipt in a Foreign Currency into the Due Currency on the terms contemplated by clause 9.3(c).

9.4 Insufficient payment

If the Financier receives a payment under this agreement that is insufficient to discharge all the amounts then due and payable by the Borrower under this agreement, the Financier may apportion that amount between principal, interest, commission, fees, charges and other amounts payable under this agreement in any manner it determines and any such determination will be binding on the Financier and the Borrower.

10. Other Provisions

- (a) The Borrower and the Financier acknowledge that clauses 13 (*Illegality*), 14 (*Increased cost*) and 20 (*Indemnities*) of the Facility Agreement apply, modified as necessary, in respect of the Facility and the Advances as if set out in full in this agreement and as if references to "Finance Documents" were to "this agreement",

the “Facility Agent” were to the “Financier” and “Borrower” were to the Borrower under this agreement.

- (b) The Borrower makes, for the benefit of the Financier, each of the representations and warranties set out in clause 15.1 of the Facility Agreement (other than the representations and warranties set out in clauses 15.1(a), (o), (r) and (s)), as if set out in full in this agreement, modified as necessary. The Borrower also represents and warrants that:
- (i) **(status):** it is duly incorporated and validly existing under the laws of its jurisdiction of incorporation;
 - (ii) **(insolvency proceedings):** no corporate action, legal proceeding or other procedure or step has been taken in relation to:
 - A. the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Borrower;
 - B. a composition, compromise, assignment or arrangement with any creditor of the Borrower;
 - C. the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of the Borrower or any of its assets; or
 - D. the enforcement of any Encumbrance over any assets of the Borrower,and no analogous procedure or step has been taken in any jurisdiction; and
 - (iii) **(creditors’ process):** no execution, distress, sequestration or other legal process has been commenced against any of the assets of the Borrower.
- Each of the representations and warranties in this clause 10(b) shall be repeated on the same day as they are repeated under the Facility Agreement.
- (c) The Borrower provides, for the benefit of the Financier, each of the undertakings set out in clauses 16 and 17 of the Facility Agreement, as if set out in full in this agreement, modified as necessary.

11. Financier’s rights on Event of Default

11.1 General Rights

If any Event of Default occurs then the Financier may by notice to the Borrower take any one or more of the following actions:

- (a) declare that an Event of Default has occurred;
- (b) declare that the Commitment and any other obligations of the Financier to the Borrower will be cancelled immediately and those obligations will be cancelled immediately and all fees payable in relation to the Commitment will become immediately due and payable; and

-
- (c) declare all Advances, interest on Advances and all other amounts outstanding under this agreement immediately due and payable

12. Tax

12.1 Grossing-up

- (a) If the Borrower is required by law to make a deduction or withholding in respect of Tax from any payment for the account of the Financier under this agreement, the amount payable by the Borrower will be increased to the extent necessary to ensure that, after such deduction has been made, the Financier receives (and is able to retain) a net sum equal to the amount which it would have received had no such deduction been required to be made.
- (b) The Borrower must notify the Financier of any deduction it is required to make under paragraph (a) above.

13. Assignments

- (a) The Borrower may not assign or novate any or all of its rights or obligations under this agreement without the prior written consent of the Financier.
- (b) The Financier may, after consulting with the Borrower, assign all or any of its rights as Financier under this agreement without the consent of the Borrower.
- (c) If any assignment made under clause 13(b) above results (or would but for this clause result) in amounts being payable under clause 10(a) of this agreement, then the assignee will be entitled to receive those amounts only to the extent that the assignor would have been so entitled had there been no assignment.

14. Governing law and jurisdiction

- (a) This agreement is governed by English law.
- (b) The parties irrevocably submit to the non-exclusive jurisdiction of the courts of England.
- (c) The parties irrevocably waive any objection to the venue of any legal process on the basis that the process has been brought in an inconvenient forum.

15. Costs and expenses

15.1 Financier's expenses

The Borrower must pay:

- (a) all reasonable costs and expenses of the Financier in relation to the negotiation, preparation, execution, delivery, stamping, registration, completion, variation and discharge of this agreement;
- (b) all costs and expenses of the Financier in relation to the enforcement, protection or waiver of any rights under this agreement; and
- (c) all costs and expenses of the Financier in relation to the giving of consent or approval under this agreement, including reasonable legal costs, on a full indemnity basis.

15.2 VAT

All amounts payable under clause 15.1 are exclusive of VAT. The Borrower will, in addition, pay any applicable VAT on those amounts.

16. General

- (a) This agreement may be executed in any number of counterparts.
- (b) Clauses 25.7 (*Confidentiality - General*) and 25.8 and (*Disclosure to assignees or substitutes*) of the Facility Agreement apply, modified as necessary, as if set out in full in this agreement.
- (c) Clause 27 (*Miscellaneous*) of the Facility Agreement applies, modified as necessary, as if set out in full in this agreement and as if references to “Finance Document” were to “this agreement” and “Facility Agent” and “Finance Party” were to “the Financier”.

17. Notices

The provisions of clause 27.2 of the Facility Agreement adopted into this agreement by clause 16(c) (*General*), shall be amended so that the addresses of the Borrower and Financier shall read:

Borrower

Name: ResMed (UK) Limited
65 Milton Park
Abingdon
OX14 4RX
United Kingdom

Fax: +44 1235 813 336

For the attention of: Mr Mark Hastings

Financier

Name: HSBC Bank plc
South Oxfordshire Commercial Centre
6 High Street
Abingdon
OX14 5AZ
United Kingdom

Fax: +44 08455 877600

For the attention of: John Garnett (or such other person as is notified to the Borrower in writing by the Financier)

Drawdown Notice

From: ResMed (UK) Limited

To: HSBC Bank plc

Date:

Dear Sirs

ResMed (UK) Limited - Working Capital Agreement

dated [] 2006 (the “Working Capital Agreement”)

1. We refer to the Working Capital Agreement. Terms defined in or for the purposes of the Working Capital Agreement have the same meaning in this Drawdown Notice.
2. We wish to draw an Advance as follows:

Drawdown Date: [] *[Note: This must be a Business Day.]*

Amount: GBP []

Interest Period: []

Payment Instructions: *[To be credited to [account]/insert alternative payment instructions]*

3. We confirm that each condition in clause 3.2 of the Working Capital Agreement is satisfied on the date of this Drawdown Notice and will be satisfied on the Drawdown Date.
4. The Advance is to be used in accordance with clause 2.3 of the Working Capital Agreement.
5. This Drawdown Notice is irrevocable.

Yours faithfully

Authorised Officer of
ResMed (UK) Limited

Schedule 2 — Mandatory Cost formula

- 1 The Mandatory Cost is an addition to the interest rate to compensate the Financier for the cost of compliance with the requirements of the Bank of England and/or the Financial Services Authority (or, in either case, any other authority which replaces all or any of its functions).
- 2 On, or as soon as possible after, the first day of each Interest Period, the Financier shall calculate, expressed as a percentage rate per annum, its Mandatory Cost in accordance with the following paragraphs.
- 3 The Mandatory Cost will be calculated as follows:
- $$\frac{AB + C(B - D) + E \times 0.01}{100 - (A + C)} \text{ per cent. per annum}$$
- 4 Where on the date of application of the formula:
- A is the percentage of Eligible Liabilities (assuming these to be in excess of any stated minimum) which the Financier is from time to time required to maintain as an interest free cash ratio deposit with the Bank of England to comply with cash ratio requirements;
- B is the percentage rate of interest (excluding the Margin and the Mandatory Cost and, in the case of any unpaid amount, the additional rate of interest specified in clause 6.4) payable for the relevant Interest Period on the relevant Advance or unpaid amount;
- C is the percentage (if any) of Eligible Liabilities which the Financier is required from time to time to maintain as interest bearing Special Deposits with the Bank of England;
- D is the percentage rate per annum payable by the Bank of England to the Financier on interest bearing Special Deposits; and
- E is designed to compensate the Financier for amounts payable under the Fees Rules and is calculated by the Financier as being the most recent rate of charge payable by it to the Financial Services Authority under the Fees Rules in respect of the relevant financial year of the Financial Services Authority (calculated for this purpose by the Financier as being the average of the Fee Tariffs applicable to the Financier for that financial year) and expressed in pounds per £1,000,000 of the Tariff Base of the Financier.
- 5 For the purposes of this schedule:
- (a) “Eligible Liabilities” and “Special Deposits” have the meanings given to them from time to time under or pursuant to the Bank of England Act 1998 or (as may be appropriate) by the Bank of England;
 - (b) “Fees Rules” means the rules on periodic fees contained in the Supervision manual of the Financial Services Authority’s Handbook of rules and guidance or such other law or regulation as may be in force from time to time in respect of the payment of fees for the acceptance of deposits;
 - (c) “Fee Tariffs” means the fee tariffs specified in the Fees Rules under the activity group A.1 Deposit acceptors (ignoring any minimum fee or zero rated fee required pursuant to the Fees Rules but taking into account any applicable discount rate); and
 - (c) “Tariff Base” has the meaning give to it in, and will be calculated in accordance with, the Fees Rules.
- 6 In application of the formula, A, B, C and D will be included in the formula as numbers and not as percentages (i.e. 5 per cent will be included in the formula as 5 and not as 0.05). A negative result

obtained by subtracting D from B will be taken as zero. The resulting figures will be rounded to four decimal places.

- 7 Any determination by the Financier in accordance with this schedule in relation to a formula, the Mandatory Cost or any amount payable to it will, in the absence of manifest error, be conclusive and binding on the Borrower.
- 8 The Financier may from time to time, after consultation with the Borrower, determine and notify the Borrower of any amendments which need to be made to this schedule to comply with any change in law, regulation or any requirements from time to time imposed by the Bank of England or the Financial Services Authority (or, in any case, any other authority which replaces all or any of its functions) and any such determination will, in the absence of manifest error, be conclusive and binding on the Borrower.

Signed as an agreement.

Borrower

RESMED (UK) LIMITED

Authorised signatory

Financier

HSBC BANK PLC

Authorised signatory

CLAYTON UTZ

Working Capital Agreement

ResMed Limited ABN 30 003 765 142
Borrower

HSBC Bank Australia Limited ABN 48 006 434 162
Financier

Clayton Utz
Lawyers
Levels 19-35 No. 1 O'Connell Street Sydney NSW 2000 Australia
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Parties ResMed Limited ABN 30 003 765 142 ("Borrower")

 HSBC Bank Australia Limited ABN 43 006 434 162 ("Financier")

Operative provisions

1. Definitions and interpretations

1.1 Definitions

For the purposes of this agreement terms used in this agreement will have the meanings given in or for the purposes of the Facility Agreement unless otherwise defined below or specified in this agreement

"Advance" means any loan under the Revolving Facility or, where the context requires, the principal amount of that loan outstanding.

"Australian Dollars", "A\$" or "AUD" means the lawful currency for the time being of the Commonwealth of Australia.

"Authorised Officer" means a person appointed as an authorised officer of the Borrower for the purposes of this agreement by a resolution of the board of directors of the Borrower and in respect of whom the Financier has received a certificate signed by a director of the Borrower setting out that person's name, position and signature and confirming the appointment, provided the Financier has not received notice of revocation of that appointment.

"Availability Period" means the period from and including the date of this agreement to the close of business on the date prior to the Termination Date.

"Base Rate" for any period means the rate expressed as a percentage per annum (rounded upwards if necessary to 4 decimal places) which is:

- (a) the average of the bid rates shown at approximately 10.10 am (Sydney time) on page "BBSY" on the Reuters Screen on the first day of that period for a term equal to or approximately equal to the period; or
- (b) if the Financier is unable to determine the average rate in accordance with paragraph (a) of this definition or the basis on which the bid rates referred to in paragraph (a) of this definition changes and, in the opinion of the Financier, that rate ceases to reflect the Financier's cost of funding to the same extent as at the date of this agreement, the rate determined by the Financier, acting reasonably, to be the appropriate equivalent rate having regard to prevailing market conditions.

"Business Day" means a day (other than Saturday or Sunday) on which banks are open for business generally in Sydney.

"Commitment" means AUD 6,500,000.

"Default" means:

- (a) any Event of Default; or
- (b) Potential Event of Default.

“Demand” means any demand appearing or purporting to be validly made pursuant to any Letter of Credit.

“Event of Default” has the meaning given to it in the Facility Agreement except that each reference to “Facility Agent” in clause 18.1 of the Facility Agreement shall be read as a reference to the “Financier”.

“Expiry Date” means, in relation to a Letter of Credit, the earlier of:

- (a) the date stated in the Letter of Credit to be the expiry date; and
- (b) the latest date on which demand may be made under the Letter of Credit.

“Facilities” means the Revolving Facility, the Letter of Credit Facility and the Overdraft Facility.

“Facility Agreement” means the syndicated facility agreement dated on or about the date of this agreement and entered into between the Borrower as borrower, each person listed in schedule 1 of the facility agreement as original financier and the Financier as facility agent and security trustee.

“Financial Close” means the date on which all of the conditions precedent in clause 3.1 of the Facility Agreement have been satisfied or waived by the Financier as facility agent under the Facility Agreement.

“Interest Period” means each period determined in accordance with clause 7.1.

“Interest Rate” for each Interest Period means the aggregate of the Base Rate in relation to that Interest Period and the Margin on the first day of the Interest Period.

“Letter of Credit” means any guarantee, performance bond, banker’s undertaking, letter of credit or similar instrument issued or to be issued under the Letter of Credit Facility in the Financier’s usual form.

“Letter of Credit Facility” means the Letter of Credit facility made available under this agreement, as described in clause 2.1(b).

“Letter of Credit Utilisation” means each utilisation under the Letter of Credit Facility.

“Margin” means 0.65 per cent per annum.

“Maturing Advance” means an Advance as at the last day of an Interest Period and which is to be repaid in whole or in part with the proceeds of a Rollover Advance in accordance with clause 6.1(c).

“Outstanding Liability Amount” means, in respect of a Letter of Credit at any time, the amount shown in that Letter of Credit as the maximum amount payable under it or if one or more drawings have been made under that Letter of Credit, the maximum amount capable of being drawn under that Letter of Credit at that time following such drawing or drawings provided that if a Letter of Credit has been returned and cancelled or the Financier is satisfied (acting reasonably) that no further liability exists under the Letter of Credit, the Outstanding Liability Amount of the Letter of Credit is nil.

“Overdraft Base Rate” means the base lending rate of the Financier determined by reference to external rates, as established and quoted from time to time by the Financier in national daily newspapers or financial papers.

“Overdraft Facility” means the overdraft facility made available under this agreement, as described in clause 2.1(c).

“Overdraft Utilisation” means any utilisation under the Overdraft Facility or, where the context requires, the principal amount of that utilisation outstanding.

“Revolving Facility” means the revolving cash advance facility made available under this agreement, as described in clause 2.1 (a).

“Rollover Advance” means one or more Advances:

- (a) made or to be made on the same day that an Advance is due; and
- (b) the aggregate amount of which is equal to or less than the Maturing Advance.

“Termination Date” means, subject to clause 8, the date falling 364 days from (and including) the date of this agreement.

“Utilisation” means an Advance, a Letter of Credit Utilisation or an Overdraft Utilisation.

“Utilisation Date” means the date on which a Utilisation is made or, where the context requires, is proposed to be made.

“Utilisation Notice” means a notice given under clause 4.1 in the form of Schedule 1.

1.2 Interpretation

Clause 1.2 of the Facility Agreement applies in this agreement as if set out in full in this agreement and:

- (a) an outstanding Letter of Credit is **“repaid”** or **“prepaid”** by providing cash cover for that Letter of Credit on terms acceptable to the Financier or by cancelling that Letter of Credit and returning the original to the Financier or providing other evidence (in form and substance satisfactory to the Financier) that no further liability exists under that Letter of Credit; and
- (b) an amount **“outstanding”** under a Letter of Credit at any time is the Outstanding Liability Amount of the Letter of Credit.

1.3 Facility Agreement

The Borrower and the Financier agree that:

- (a) this agreement is a “Working Capital Agreement” and the Financier is the “Working Capital Financier” for the purposes of the Facility Agreement;
- (b) the Financier is a “Beneficiary” for the purposes of the Security Trust Deed and as such will have the benefit of the Security; and
- (c) to the extent of any inconsistency between the provisions of this agreement and the provisions of the Facility Agreement, the provisions of the Facility Agreement will prevail. This agreement is varied to the extent necessary to give effect to this clause

2. The Facilities

2.1 Facilities

Subject to the terms of this agreement and in reliance on the representations and warranties referred to in clause 1 l(b) of this agreement, the Financier grants to the Borrower the following facilities:

- (a) a revolving cash advance facility;

-
- (b) a Letter of Credit facility; and
 - (c) an overdraft facility, in an aggregate amount for the Facilities equal to the Commitment.

2.2 Commitment

The Financier is not obliged to provide a Utilisation if to do so would cause the aggregate of all Utilisations outstanding under this agreement to exceed its Commitment.

2.3 Purpose

- (a) The Facilities may only be used for general working capital purposes.
- (b) The Financier is not bound to monitor or verify the application of any Utilisation and the Financier will not have any liability to any person arising from a failure by the Borrower to use a Utilisation for a purpose specified in clause 2.3(a).

3. Conditions precedent

3.1 Conditions precedent to the first Utilisation

The obligations of the Financier to make the first Utilisation available to the Borrower under this agreement are subject to Financial Close having occurred.

3.2 Conditions precedent to all Utilisations

The obligations of the Financier to make each Utilisation available to the Borrower under this agreement are subject to compliance with the procedural requirements specified in clause 4 and the Financier being satisfied that both at the date of the relevant Utilisation Notice and at the relevant Utilisation Date:

- (a) **(Representations and warranties true):** the representations and warranties made by the Borrower in clause 11(b) and the statements in the Utilisation Notice are correct and not misleading at the date of the Utilisation Notice and on the Utilisation Date; and
- (b) **(No Event of Default):**
 - (i) in the case of a Rollover Advance, no Event of Default has occurred which is continuing and no Event of Default will result from the Rollover Advance being provided; and
 - (ii) in any other case, no Default has occurred which is continuing and no Default will result from the Utilisation being provided.

4. Utilisations

4.1 Notice

- (a) Subject to the terms of this agreement, the Borrower may utilise the Revolving Facility or the Letter of Credit Facility by giving written notice, in the form of a Utilisation Notice signed by an Authorised Officer of the Borrower, of its intention to do so to the Financier.

-
- (b) Subject to the terms of this agreement, the Borrower may utilise the Overdraft Facility by complying with the Financier's standard conditions for the utilisation of overdraft facilities, as notified by the Financier to the Borrower from time to time.

4.2 Contents of Utilisation Notice

Each Utilisation Notice will be in the form of Schedule 1 and in each case will specify:

- (a) the Facility (being the Revolving Facility or the Letter of Credit Facility) to be utilised;
- (b) the proposed Utilisation Date which must be a Business Day before the expiry of the Availability Period;
- (c) the amount of the Utilisation (which, in the case of an Advance, must be not less than AUD 100,000 and an integral multiple of AUD 100,000 (or such other amounts agreed by the Financier) or the aggregate unutilised Commitment);
- (d) in the case of an Advance, the proposed duration of its Interest Period (which must be selected in accordance with clause 7);
- (e) in the case of a Utilisation by the issue of a Letter of Credit:
 - (i) its Expiry Date;
 - (ii) the purpose for which the Letter of Credit is required;
 - (iii) the name and address of the beneficiary; and
 - (iv) any other details as the Financier reasonably requires in order to issue the Letter of Credit; and
- (f) in the case of an Advance, payment instructions.

Only one Utilisation may be requested in each Utilisation Notice.

4.3 Requirements of Utilisation Notice

Each Utilisation Notice will be irrevocable and must be:

- (a) received by the Financier before 2.00 pm (Sydney time) at least two Business Days (or such shorter period as the Financier may agree) before the proposed Utilisation Date; and
- (b) signed by an Authorised Officer of the Borrower.

4.4 Making of Utilisations

The Financier will, on the date specified in any Utilisation Notice, make available the relevant Utilisation to or to the order of the Borrower in accordance with the provisions of the relevant Utilisation Notice and this agreement.

4.5 Maximum number of Advances

(Revolving Facility): The Borrower may not deliver a Utilisation Notice if as a result of the proposed Advance more than 5 Advances would be outstanding.

5. Letters of Credit

5.1 Issue of Letters of Credit

- (a) **(Form):** Each Letter of Credit will be in such form as approved by the Financier.
- (b) **(Issue):** Subject to the terms of this agreement, on the proposed Utilisation Date for any Letter of Credit Utilisation, the Financier will issue the Letter of Credit specified in the relevant Utilisation Notice by delivering that Letter of Credit to or to the order of the Borrower.

5.2 Counter-Indemnity from Borrower

- (a) **(Counter Indemnity):** The Borrower will indemnify and keep the Financier indemnified from and against all liabilities, losses, damages, claims, costs, demands and actions which the Financier may suffer or incur in connection with any Letter of Credit and any payment made pursuant to it,
- (b) **(No investigation):** The Borrower irrevocably directs the Financier to pay any amount for which a Demand is made at any time without further confirmation or investigation by the Financier in relation to any demand appearing or purporting to be validly made pursuant to any Letter of Credit and which the Financier believes in good faith to have been properly demanded under the Letter of Credit. Where any Letter of Credit requires certificates or other documents to be delivered by or on behalf of the beneficiary of that Letter of Credit or other person, the Financier may, if the certificates or documents purport to be in order, assume, without confirmation or investigation, that the certificates or documents tendered are duly signed or provided by the person by whom they appear to be signed or provided and are genuine and correct.
- (c) **(Reimbursement):** Without prejudice to the rights under the Uniform Customs and Practice for Documentary Credits (1993 Revision) (ICC Publication No. 500) (which will apply in relation to all standby letters of credit issued under this agreement), the Borrower agrees to reimburse the Financier immediately on receipt by the Borrower of a written demand for any amounts paid by the Financier pursuant to any Demand, in the currency paid by the Financier ("**Reimbursement Amount**"). At the same time it pays the Reimbursement Amount, the Borrower agrees to pay the Financier interest on the Reimbursement Amount for the period from the date of payment by the Financier under the Letter of Credit to the date of payment of the Reimbursement Amount by the Borrower. The interest payable under this clause 5.2(c) is calculated as if the Reimbursement Amount was an Advance (using the Base Rate for a one month Interest Period).
- (d) **(No impairment):** The obligations of the Borrower under this clause 5.2 will not be impaired by:
 - (i) any waiver or time granted to or by the Financier;
 - (ii) any release or dealings with any rights or security by the Financier (including under the Finance Documents); or
 - (iii) any invalidity of any Letter of Credit or any other circumstances which might impair such obligations.

-
- (e) **(Borrower ultimately liable):** Notwithstanding that the Borrower and the Financier may each be liable in respect of indemnities given in relation to a Letter of Credit, as between the Borrower and the Financier the Borrower is ultimately liable so that it will not be entitled to any right of indemnity or contribution from the Financier.

5.3 Unconditional nature of Borrower's obligations

- (a) The obligations of the Borrower under this clause 5 are absolute and unconditional and are not released or discharged or otherwise affected by anything which but for this provision might have that effect, including but not limited to:
- (i) any set-off, deduction, counterclaim, agreement, defence, suspension, deferment or other claim which the Borrower may have against the Financier or any beneficiary;
 - (ii) any falsity, inaccuracy, insufficiency or forgery of or in any communication which on its face purports to be a communication signed or authorised under this agreement or a Letter of Credit;
 - (iii) any communication inaccurately transmitted or received or sent by an unauthorised person;
 - (iv) any impossibility or illegality of performance of this agreement or a Letter of Credit;
 - (v) any act of any Government Authority, court or arbitrator or application of any law (present or future) in any jurisdiction affecting any of the terms of this agreement or a Letter of Credit;
 - (vi) any failure by any person to obtain any Authorisation or other approval or consent necessary or appropriate in connection with this agreement or a Letter of Credit;
 - (vii) any falsity, inaccuracy, insufficiency or forgery of or in any document presented to the Financier as a document against which the Financier is required to make a payment under the Letter of Credit or otherwise in respect of a Letter of Credit and which appears to the Financier in its opinion to correspond to the documents specified in the Utilisation Notice requesting the relevant Letter of Credit or otherwise required under the relevant Letter of Credit; or
 - (viii) this agreement or a Letter of Credit being wholly or partly void, voidable, unenforceable or invalid,
- (b) The Financier is not liable for any failure, and is not required to make any enquiries, in respect of any matter listed in clause 5.3(a).
- (c) Clauses 5.3(a) and 5.3(b) apply irrespective of:
- (i) the consent or knowledge, or lack of consent or knowledge, of the Financier, the Borrower or any other person of any event described in clause 5.3(a); or
 - (ii) any rule of law or equity to the contrary.

6. Repayment and prepayments

6.1 Repayment of Utilisations

- (a) Subject to clause 6.1(c), the Borrower will repay the full amount of each Advance on the last day of the Interest Period relating to that Advance. Amounts repaid under this clause 6.1(a) may, subject to the terms of this agreement, be re-utilised.
- (b) The Borrower will repay to the Financier all Utilisations plus all accrued interest and accrued fees payable on or in connection with the Utilisations on the Termination Date. For the avoidance of doubt, clause 1.2(a) describes the manner in which a Letter of Credit may be repaid for the purposes of this agreement and any repayment of a Letter of Credit will be effected in that manner.
- (c) On the last day of an Interest Period, if the Borrower delivers a Utilisation Notice to the Financier in respect of a Rollover Advance, then only an amount equal to:
 - (i) the amount of the Maturing Advance;
less
 - (ii) the amount of the Rollover Advance,need be paid by the Borrower to the Financier (if the amount is a positive number) or by the Financier to the Borrower (if the amount is a negative number).

6.2 Voluntary prepayment of Utilisations

- (a) The Borrower may prepay an Advance in whole or in part (but, if in part, by a minimum of AUD 100,000 and in multiples of AUD 100,000 or such other amounts agreed by the Financier) on giving not less than 5 Business Days' prior notice to the Financier.
- (b) The Borrower may prepay a Letter of Credit on giving not less than 3 Business Days' prior notice to the Financier. For the avoidance of doubt, clause 1.2(a) describes the manner in which a Letter of Credit may be prepaid for the purposes of this agreement and any prepayment of a Letter of Credit will be effected in that manner.
- (c) The Borrower may prepay an Overdraft Utilisation in whole or in part at any time and from time to time in accordance with the Financier's standard terms for the utilisation of overdraft facilities.
- (d) Any notice under clause 6.2(a) or 6.2(b) will be irrevocable and must be signed by an Authorised Officer of the Borrower, specify the date on which the prepayment is to occur and the amount of the prepayment. The Borrower is bound to prepay in accordance with the notice.
- (e) The Borrower may not voluntarily prepay any Utilisation except in accordance with this clause 6.2.
- (f) Amounts prepaid under this clause 6.2 may, subject to the terms of this agreement, be re-utilised.
- (g) Subject to clause 6.2(h), the Borrower will on demand by the Financier indemnify the Financier for any loss, cost or expenses which the Financier may sustain or incur as a consequence of receiving a prepayment of an Advance, or any part of it, under this agreement on a date other than the last day of the Interest Period for that Advance.

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- (h) The Borrower will, within 2 Business Days of demand by the Financier, pay any break costs incurred by the Financier (including because of the cancellation, termination or alteration of any swap or other arrangement, or any liquidation or re-employment of deposits or other funds acquired by the Financier to fund the Advance) attributable to all or any part of an Advance being prepaid by the Borrower on a date other than the last day of the Interest Period for that Advance.
 - (i) Any prepayment of any Advance or Letter of Credit under this clause 6.2 will be made together with interest and fees accrued on the amount prepaid and any amount required to be paid in accordance with clause 6.2(g) or 6.2(h) but otherwise without premium or penalty.

6.3 Voluntary cancellation or reduction of Commitment

- (a) The Borrower may, on giving not less than 30 Business Days' prior notice to the Financier, cancel or reduce the Commitment in whole or in part (but, if in part, by a minimum of AUD 500,000 and in multiples of AUD 500,000) without incurring any penalty or other cost, provided that such cancellation or reduction may only be effected to the extent of the amount of the Commitment unutilised on the date of the cancellation or reduction.
- (b) Any notice under clause 6.3(a) will be irrevocable and must be signed by an Authorised Officer of the Borrower, specify the Commitment being cancelled or reduced, the date on which the cancellation or reduction is to become effective and the amount of the cancellation or reduction.
- (c) Any Commitment cancelled or otherwise extinguished under this agreement may not be reinstated.

7. Interest

7.1 Interest Periods

- (a) In the Utilisation Notice for each Advance, the Borrower will notify the Financier whether the Interest Period for the Advance is to be of 1, 2 or 3 months' duration or such other period agreed between the Borrower and the Financier.
- (b) If the Borrower does not select an Interest Period for an Advance in accordance with clause 7.1(a), the Interest Period will be 3 months.
- (c) The term of each Interest Period is subject to any marginal adjustment as the Financier in its discretion determines so that the first and last days of it are Business Days and no Interest Period extends beyond the Termination Date.
- (d) Each Advance has one Interest Period only.

7.2 Calculation of interest

- (a) Interest on each Advance and each Overdraft Utilisation accrues daily commencing on the relevant Utilisation Date and is to be computed on a daily basis on a year of 365 days.
- (b) The rate of interest for each Advance for each Interest Period is the Interest Rate in relation to that Advance. The Financier will promptly notify the Borrower of each determination of the Interest Rate under this clause 7.2(b).

- (c) The rate of interest for each Overdraft Utilisation is the Overdraft Base Rate, calculated daily. The Financier will promptly notify the Borrower of the Overdraft Base Rate from time to time, at the request of the Borrower.
- (d) The Financier's certificate as to any rate of interest at any time will be conclusive evidence of the rate of interest, absent manifest error.

7.3 Payment of interest

- (a) The Borrower will pay to the Financier the accrued interest in relation to each Advance on the last day of the Interest Period (and, if the Interest Period is longer than 3 months, on the days falling at 3 monthly intervals after the first day of the Interest Period) applicable to that Advance calculated up to that day.
- (b) The Borrower will pay to the Financier the accrued interest in relation to each Overdraft Utilisation monthly in arrears on the last Business Day of each calendar month from the date of this agreement, calculated up to that day.

7.4 Default interest

If the Borrower fails to pay to the Financier any amount payable by it under this agreement on its due date, interest will accrue on the overdue amount and is payable to the Financier in accordance with clause 8 of the Facility Agreement as if the reference to the "Prescribed Rate" were a reference to "Interest Rate" in the case of Advances, and "Overdraft Base Rate", in the case of Overdraft Utilisations.

The provisions of this clause 7.4 will prevail to the extent of any inconsistency between this clause 7.4 and clause 8 of the Facility Agreement.

8. Annual Review

- (a) If the Borrower wishes to extend the Facility, provided no Default is subsisting, the Borrower may provide notice to the Financier, not less than 30 days prior to the Termination Date, requesting an extension to the Facility for a further 364 days.
- (b) Following a request under clause 8(a), the Financier agrees to consider whether to extend the Facility. The Financier is under no obligation to extend the Facility.
- (c) If the Financier agrees to extend the Facility, whether pursuant to a request under clause 8(a) or otherwise, then the Financier must by notice to the Borrower prior to the Termination Date extend the Facility to such date (not exceeding another 364 days) notified as such by the Financier and this extended date will be the new Termination Date.
- (d) If the Financier chooses not to extend the Facility, the Borrower must comply with clause 6.1(b).

9. Fees

9.1 Unused Commitment Fee

- (a) Subject to Financial Close occurring, the Borrower will pay to the Financier a non-refundable unused commitment fee in Australian Dollars computed at the rate equal to 30% of the Margin on the daily unutilised balance of the Commitment during the period from and including the date of this agreement until the Termination Date. The accrued unused commitment fee will be payable quarterly in arrears from the date of this agreement and also on the Termination Date.

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- (b) The unused commitment fee under clause 9.1 (a) will accrue from day to day and be calculated on the basis of a year of 365 days and for the actual number of days elapsed.

9.2 LC Fees

The Borrower will pay to the Financier:

- (a) an establishment fee of AUD 250 for each Letter of Credit issued, payable on the relevant Utilisation Date; and
- (b) a fee on each Letter of Credit equal to 0.75 percent per annum from time to time applied on the Outstanding Liability Amount of the Letter of Credit in respect of the period between the Utilisation Date for the Letter of Credit and the earlier of the Expiry Date and the date when the Outstanding Liability Amount under it has been reduced to zero. The accrued fee is payable in respect of each Letter of Credit quarterly in arrears from the Utilisation Date of that Letter of Credit. The fee will accrue from day to day and be calculated on the basis of a year of 365 days and for the actual number of days elapsed.

9.3 No Refund

All fees payable by the Borrower under this clause 9 are non-refundable and non-rebateable.

10. Payments

10.1 Manner of payment

Subject to any express provision to the contrary in this agreement, all payments by the Borrower under this agreement are to be made to the Financier in Australian Dollars in immediately available funds not later than 11.00 am (Sydney time) on the due date to the account that the Financier from time to time designates or as otherwise agreed between the Borrower and the Financier.

10.2 Payments on a Business Day

If a payment is due on a day which is not a Business Day, the due date for that payment is the next Business Day in the same calendar month, or if none, the preceding Business Day, and interest must be adjusted accordingly.

10.3 Merger

If the liability of the Borrower to pay any money under this agreement becomes merged in any judgment or order, the Borrower will, as an independent obligation, pay to the Financier interest at the rate which is the higher of that payable under this agreement and that fixed by or payable under the judgment or order.

10.4 Currency for payments

- (a) The Australian Dollar is the currency for payment for any sum due from the Borrower under this agreement except that each payment in respect of costs, expenses or Taxes will be paid in the currency in which the costs, expenses or Taxes are incurred.
- (b) If any payment is tendered to the Financier under this agreement in a currency ("**Foreign Currency**") other than the currency in which that amount is required to be paid under this agreement ("**Due Currency**"), the Financier in its absolute discretion may accept payment in the Foreign Currency as tendered.

- (c) If any payment in a Foreign Currency is accepted by the Financier under this agreement, or if any funds are recovered by the Financier under this agreement in a Foreign Currency (whether as a result of any judgment or order, the liquidation of the Borrower or otherwise), the Financier at its absolute discretion may actually or notionally convert such payment or funds to the Due Currency at any time or times as it sees fit and at any rate or rates as it is, or considers (acting in good faith) it would be, able to obtain in the market at the time of that conversion. The amount of the Due Currency actually or notionally received after conversion will be applied in reduction of the amounts owing under this agreement.
- (d) The Borrower will pay to the Financier all commissions and expenses involved in actually or notionally converting any payment or receipt in a Foreign Currency into the Due Currency on the terms contemplated by clause 10.4(c).

10.5 Insufficient payment

If the Financier receives a payment under this agreement that is insufficient to discharge all the amounts then due and payable by the Borrower under this agreement, the Financier may apportion that amount between principal, interest, commission, fees, charges and other amounts payable under this agreement in any manner it determines and any such determination will be binding on the Financier and the Borrower.

11. Other Provisions

- (a) The Borrower and the Financier acknowledge that clauses 12 (*Taxes*), 13 (*Illegality*), 14 (*Increased cost*) and 20 (*Indemnities*) of the Facility Agreement apply, modified as necessary, in respect of the Facilities and the Utilisations as if set out in full in this agreement and as if references to “Finance Documents” were to “this agreement” and the “Facility Agent” were to the “Financier”.
- (b) The Borrower makes, for the benefit of the Financier, each of the representations and warranties set out in clause 15.1 of the Facility Agreement, as if set out in full in this agreement, modified as necessary. Each of these representations and warranties shall repeat on the same day as they repeat under the Facility Agreement.
- (c) The Borrower provides, for the benefit of the Financier, each of the undertakings set out in clauses 16 and 17 of the Facility Agreement, as if set out in full in this agreement, modified as necessary.

12. Financier’s rights on Event of Default

12.1 General Rights

If any Event of Default occurs then the Financier may by notice to the Borrower take any one or more of the following actions:

- (a) declare that an Event of Default has occurred;
- (b) declare that the Commitment and any other obligations of the Financier to the Borrower will be cancelled immediately and those obligations will be cancelled immediately and all fees payable in relation to the Commitment will become immediately due and payable;
- (c) declare all Advances, interest on Advances and all other amounts outstanding under this agreement immediately due and payable; and

- (d) declare that the Borrower will immediately pay or procure the payment to the Financier of a sufficient amount to cover the Outstanding Liability Amounts under all Letters of Credit. Upon the Financier making the declaration, the Outstanding Liability Amounts will become immediately due and payable. Once paid, the Outstanding Liability Amounts will be held by the Financier for application in reimbursing the Financier immediately for all payments made or to be made under any outstanding Letters of Credit. Any sum remaining after settling such payments will be applied first in settlement of any other amounts then due and payable to the Financier under this agreement and any balance will be immediately repaid to the Borrower or other person entitled to the balance.

13. Assignments

- (a) The Borrower may not assign or novate any or all of its rights or obligations under this agreement without the prior written consent of the Financier.
- (b) The Financier may, after consulting with the Borrower, assign all or any of its rights as Financier under this agreement without the consent of the Borrower.
- (c) If any assignment made under clause 13(b) above results (or would but for this clause result) in amounts being payable under clause 11 (a) of this agreement, then the assignee will be entitled to receive those amounts only to the extent that the assignor would have been so entitled had there been no assignment.

14. Governing law and jurisdiction

- (a) This agreement is governed by the laws of New South Wales.
- (b) The parties irrevocably submit to the non-exclusive jurisdiction of the courts of New South Wales.
- (c) The parties irrevocably waive any objection to the venue of any legal process on the basis that the process has been brought in an inconvenient forum.

15. Costs and expenses

The Borrower must pay:

- (a) all reasonable costs and expenses of the Financier in relation to the negotiation, preparation, execution, delivery, stamping, registration, completion, variation and discharge of this agreement;
- (b) all costs and expenses of the Financier in relation to the enforcement, protection or waiver of any rights under this agreement; and
- (c) all costs and expenses of the Financier in relation to the giving of consent or approval under this agreement, including reasonable legal costs, on a full indemnity basis.

16. General

- (a) This agreement may be executed in any number of counterparts.
- (b) Clauses 25.7 (*Confidentiality - General*) and 25.8 and (*Disclosure to assignees or substitutes*) of the Facility Agreement apply, modified as necessary, as if set out in full in this agreement.

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- (c) Clause 27 (*Miscellaneous*) of the Facility Agreement applies, modified as necessary, as if set out in full in this agreement and as if references to “Finance Party” were to “this agreement” and “Facility Agent” were to “the Financier”.

Utilisation Notice (Advance / Letter of Credit)

From: ResMed Limited, ABN 30 003 765 142

To: HSBC Bank Australia Limited, ABN 48 006 434 162

Date:

Dear Sirs

ResMed Limited - Working Capital Agreement
dated [] 2006 (the "Working Capital Agreement")

1. We refer to the Working Capital Agreement. Terms defined in or for the purposes of the Working Capital Agreement have the same meaning in this Utilisation Notice.
2. We wish to obtain a Utilisation on the following terms:
Facility: Revolving Facility/Letter of Credit Facility
Proposed Utilisation Date: [] *[Note This must be a Business Day]*
Amount: AUD []
If an Advance:
Interest Period: []
Payment Instructions: *[To be credited to [account]/insert alternative payment instructions]*
If a Letter of Credit:
Expiry Date: []
Purpose for which the Letter of Credit required: []
Beneficiary Details: []
3. We confirm that each condition in clause 3.2 of the Working Capital Agreement is satisfied on the date of this Utilisation Notice and will be satisfied on the Utilisation Date.
4. The Utilisation is to be used in accordance with clause 2.3 of the Working Capital Agreement.

5. This Utilisation Notice is irrevocable.

Yours faithfully

Authorised Officer of
ResMed Limited

Signed as an agreement.

Borrower

Signed for and on behalf of **ResMed Limited ABN 30 003 765 142** by its Attorney under a Power of Attorney dated 4 May 2006, and the Attorney declares that the Attorney has not received any notice of the revocation of such Power of Attorney, in the presence of:



Signature of Witness

Mark Abourrk

Name of Witness in full

Financier

Signed for and on behalf of **HSBC Bank Australia Limited ABN 48 066 434 162** by its Attorney under a Power of Attorney dated 29 July 2002, and the Attorney declares that the Attorney has not received any notice of the revocation of such Power of Attorney, in the presence of:



Signature of Witness

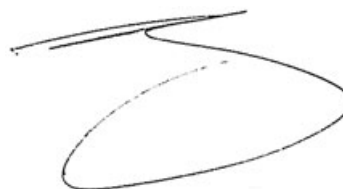
Jason Anthony Lowe

Name of Witness in full


Signature of Attorney

Brett Andren Sandercock

Name of Attorney in full



Signature of Attorney

Lewis Barton Williams

Name of Attorney in full