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Submission to the Australian Securities Investment Commission

CONSULTATION PAPER 355

Product intervention orders: Short term credit and continuing credit contracts

1. Background to Consumer Credit Law Centre SA (CCLCSA)

This submission is in response to Consultation Paper 355 (CP 355) seeking feedback on the use of ASIC's product intervention power with respect to short term credit and continuing credit contracts. The submission is based on the Consumer Credit Law Centre SA's (CCLCSA) experience advising consumers who entered into short term credit and continuing credit contracts with BHF Solutions Pty Ltd (BHFS), Gold Silver Standard Finance Pty Ltd (GSSF) or BSF Solutions Pty Ltd (BSF) and service agreements with Cigno Pty Ltd (Cigno) or Cigno Australia Pty Ltd (Cigno Australia), which has resulted in them suffering significant detriment.

Consumer Credit Law Centre SA

The CCLCSA was established in 2014 to provide free legal advice, representation, legal education, advocacy and financial counselling to consumers in South Australia in the areas of credit, banking and finance. The CCLCSA is managed by Uniting Communities who also provide general and state-wide specialist community legal services specialising in Social Security, disability advocacy and elder abuse, as well as a range of services to low income and disadvantaged people including mental health, drug and alcohol, and disability services.

Uniting Communities

Uniting Communities (UC) is an inclusive not-for-profit organisation that works alongside more than 80,000 South Australians every year. We seek to reduce inequality and improve wellbeing for those who are striving to overcome disadvantage. Our service delivery, advocacy, and community building activities are central to achieving this goal. We offer more than 90 services to support the needs of both individuals and our community, across a range of areas. These include mental health and counselling, residential aged care and support for independent living, housing crisis and emergency support, disability services, services for the Aboriginal and Torres Strait Island people, financial and legal, drug and alcohol counselling, family relationships, and respite and carer support.

Uniting Communities, through the CCLCSA, supports ASIC using its product intervention power to address the significant detriment for consumers from disadvantaged households who have entered contracts with GSSF/BHFS/BSF and Cigno / Cigno Australia.

Through our financial counselling and consumer credit legal services, the CCLCSA has observed significant harm caused by these entities:

- The issuing of loans using these models that evade compliance with responsible lending laws and other consumer protections;
- Excessively high fees (including establishment, default and ongoing account maintenance fees);
- Loans arranged that appear wholly unsuitable for the borrowers, and require unrealistic repayments to be made;
- Difficulty our clients have reported having when trying to contact Cigno to discuss issues with their loans;
- Not being members of the Australian Financial Complaints Authority (AFCA), leaving borrowers with limited access to justice; and
- Aggressive debt collection tactics.

The CCLCSA welcomes ASIC making the product intervention orders to prohibit credit providers and their associates from issuing short term and continuing credit contracts, except in accordance with strict limits on total fees that can be charged.

2. Feedback on list of proposals and questions

The CCLCSA provides the following feedback on selected questions outlined on pages 19 – 21 of CP 355.

Short term credit product intervention order

D1 Q1 Do you consider that short term credit facilities, when issued to retail clients in the way described in paragraph 23, have resulted in, or will or are likely to result in, significant detriment to retail clients? Please provide any relevant case studies and evidence (including qualitative and quantitative data) which support your response.

Yes. The CCLCSA have advised numerous retail clients who have experienced significant detriment as a result of entering into short term credit facilities with BHFS/GSSF and Cigno (and more recently BSF Solutions and Cigno Australia). As identified by ASIC at para 15 of CP 355, the detriment to clients includes:

- absence of rights to hardship;
- absence of legitimate IDR and EDR processes;
- absence of any caps on fees and charges; and
- failing to assess capacity to repay.

Beyond this, the CCLCSA is concerned about the debt collection practices of Cigno and their exploitation of vulnerable consumers. Clients are likely to be unfamiliar with enforcement processes and intimidated into prioritising their Cigno debts over food, other essentials and regulated creditors. CCLCSA clients have received collection letters titled (in red) “THIRD AND FINAL NOTICE LEGAL ACTION: INVESTIGATION PENDING” that states a failure to contact Cigno to arrange payment will lead to *“an internal investigation and verification of all the information provided when you entered into the recorded contract – discrepancies will be evaluated and if considered fraudulent, will be reported to police and possible also to AUSTRAC if deemed necessary”*.

Due to intimidating debt collection activity by Cigno, clients frequently report to the CCLCSA that they are forced to prioritise unaffordable Cigno repayments over day-to-day living expenses in order to avoid Cigno’s excessive default and rescheduling fees. Clients have reported increased contact from Cigno after the commencement of the Covid-19 Centrelink supplement, including predatory marketing after the supplement was announced. The marketing appears targeted at accessing COVID-19 supplements by encouraging consumers to pay out outstanding accounts and to take out further loans using Cigno during COVID-19 pandemic responses. Marketing to Cigno customers at the beginning of the pandemic involved suggestions that no other lenders will be able to assist them. There was also the indirect suggestion that consumers should have cash at home during a pandemic to encourage consumers to enter into further loans through Cigno. Please refer to **Annexure A** for an example of Cigno marketing material and a collection notice.

Case study

Nancy* borrowed \$150 from Cigno back in 2016 while experiencing a family violence crisis. Within two months, Nancy's account balance had rapidly grown to \$861.50. Nancy had not heard from Cigno for four years. Then after the government announced income support packages due to the COVID-19 pandemic in March 2020, Nancy received debt collection emails from Cigno stating that she owed them \$861.50.

More information about Nancy's* experience and further case studies in support of our submission can be found at [Annexure B](#).

Case study:

Claire* was a single parent of a pre-schooler and receiving Centrelink benefits. Claire needed funds to purchase textbooks for her university studies. Claire entered into short term loan with GSSF and Cigno for \$300.00. Claire did not realise that Cigno was not the lender of the funds advanced.

Claire had already paid \$600.00 but Cigno were demanding a further \$700.00 (a total of \$1300). Claire had already defaulted on other bills and entered variations with other creditors in order to ensure there were sufficient funds available to repay the Cigno loan. Claire had not bought any winter clothing for her daughter and had sought emergency relief to obtain food for her daughter. Claire was worried she had reached her quota for emergency relief and the stress and lack of food made it hard for Claire to focus on her study.

D1 Q2 Do you consider that ASIC should make the order, which is in substantially the same terms as the 2019 order (i.e. ASIC Corporations (Product Intervention Order—Short Term Credit) Instrument 2019/917)? Please give reasons to support your response, including whether you consider that there have been any significant changes in matters relevant to ASIC's decision (such as the financial circumstances of retail clients) since 14 September 2019.

The CCLCSA supports ASIC's proposal to use the product intervention power under Pt 7.9A of the Corporations Act 2001 (Cth) to prohibit credit providers and their associates from providing short term credit and charging for additional or collateral services where the total fees that can be charged exceed the maximum permitted under the short term credit exemption.

While Cigno / BHFS did switch to the continuing credit model after the product intervention order, it appears to the CCLCSA that Cigno / BHFS has recommenced using the short term credit model. The CCLCSA therefore supports ASIC making the order to

eliminate the use of the short term model by Cigno and its associated entities or other industry participants.

The reasons the CCLCSA support the making of the order are consistent with those raised in our previous submissions. There have been significant changes to the financial circumstances of retail clients since September 2019; economic stability and social conditions have worsened for large numbers of consumers. These changes increase the urgency and importance of making the product intervention orders.

In the past, the majority of the clients that we assisted in relation to Cigno loans relied on Centrelink as their primary source of income. However, since the 2019/2020 bushfires and the COVID-19 pandemic, we have been contacted by clients who were employed prior to these events and had not experienced financial hardship. For an increasing number of clients, these events have led to them losing their employment and being in need of cash to meet immediate living expenses, meaning an increased demand for short term credit.

With COVID-19 case numbers continuing to escalate around Australia and the corresponding disruptions to employment, the financial circumstances of retail clients are becoming increasingly strained. This means the need to stamp out exploitative practices is greater than ever. Although a Cigno loan may assist an individual in the very short term, the CCLCSA's experience is that Cigno loans exacerbate existing financial stress due to the high cost of maintaining Cigno's extortionate fees. The vulnerabilities and desperation that leads clients to apply for this type of short term finance also prevents them from being able to make informed decisions and fully comprehend the associated fees and costs of the money they are borrowing.

D1 Q3 Are you aware of entities, including BSF Solutions and Cigno Australia, that are currently issuing, or likely to issue, short term credit facilities in the way described in paragraph 23?

The CCLCSA has seen short term credit contracts / service agreements issued by Cigno Australia and BSF Solutions dated July 2021 and August 2021.

D1 Q4 What alternative approaches could ASIC take that would achieve our objectives of preventing the significant detriment identified in this paper?

The CCLCSA believes that the issuing of product intervention orders should only be a short term measure and that legislative reform is vital in order to address the significant detriment caused to retail clients by the use of these models.

As raised in previous submissions, and highlighted by the 23 June 2021 judgment in *Australian Securities and Investments Commission v BHF Solutions Pty Ltd [2021] FCA*

684,¹ our legislation requires updating to make it clear that “helper” contracts and other such models are not intended to be exempt from the National Credit Code.

The CCLCSA calls on ASIC to implore the Australian Parliament to urgently pass the *National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill 2019 (No. 2)*.² This will bring into effect the proposed broad anti-avoidance provisions which will prevent credit providers from circumventing the rules and protections contained in the *National Consumer Credit Protection Act 2009* (Cth).

The CCLCSA wants to further emphasise the importance of all industry participants being required to hold membership of the independent external dispute resolution scheme, AFCA. This would provide consumers and their advocates with options for redress and ensure visibility over future practices of Cigno (or related entities).

Continuing credit contracts product intervention order

D2 Q1 Do you consider that continuing credit contracts, when issued to retail clients in the way described in paragraph 48, have resulted in, or will or are likely to result in, significant detriment to retail clients? Please provide any relevant case studies and evidence (including qualitative and quantitative data) which support your response.

The continuing credit model has resulted in significant detriment to retail clients and will continue to result in such detriment. Regardless of the model used (short term or continuing credit) the underlying exorbitant cost of the credit remains. Vulnerable retail clients, who could never afford to make the contracted repayments, are pushed further into financial despair by these models.

The CCLCSA were deeply concerned that COVID-19 supplements paid to Centrelink recipients were being directly targeted as a revenue stream by predatory third party service providers, such as Cigno. This defeated the principle behind COVID-19 supplements, to stimulate the economy to ensure Australians are able to purchase food and essential services during the economic downturn. At a time when other credit providers were supporting consumers with increased hardship assistance and support, Cigno was marketing to further exploit vulnerable Australians. The CCLCSA is also highly concerned at the use of data scraping as a marketing tool to contact consumers when funds in their bank account are low.

¹ Decision on appeal, awaiting judgment from 23 November 2021 hearing.

² Introduced 2 December 2019, second reading debate 15 March 2021

https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bid=s1234

Case study: Continuing credit contract

Jane*, a mother of two children, was experiencing financial hardship due to numerous debts, while living in a private rental. Jane borrowed \$340 by entering into a continuing credit contract with BHFS and a Cigno services agreement. Under the agreement, Jane was required to make a single repayment of \$538.85 in four weeks time; a payment she could have never afforded. In May 2021, Jane* presented to a local homelessness service and sought assistance from a financial counsellor. By this time, Jane had made payments of \$380 towards her debt but the exorbitant fees charged meant her outstanding account was \$565.00. Following some challenging discussions and negotiations, the financial counsellor was able to get the outstanding amount waived.

Further case studies in support of our submission can be found at [Annexure B](#).

Case Study and Documentation: Continuing credit contract

Refer to [Annexure C](#) for an example of a continuing credit contract / services agreement dated 22 May 2020.

Client borrows \$230 on 22 May 2020 and is required to pay \$373.40 on 9 June 2020 (two weeks later).

D2 Q2 Are you aware of entities, including Cigno and BHFS, that are issuing, or likely to issue, continuing credit contracts in the way described in paragraph 48? If so, please provide any relevant evidence to support your response.

The CCLCSA cannot conclude whether continuing credit contracts are currently being issued by Cigno / Cigno Australia and BHFS / BFS, or whether they are solely issuing short term loan agreements (agreements dated July 2021 and August 2021). Nor can we identify when the continuing credit contracts commenced, as we have seen a continuing credit contract dated 2016 (noting that the client requested and received this document in 2020 after Cigno recommenced collection activity).

D2Q3 Are you aware of any changes in the continuing credit contracts market—including changes to the continuing credit contracts that were issued in the way described in paragraph 48—since the publication of CP 330 (July 2020) and the Addendum to CP 330 (November 2020), which may be relevant to ASIC’s proposal to make a continuing credit contracts production intervention order? If so, please provide any relevant evidence to support your response.

The CCLCSA are not aware of any changes in the continuing credit contracts market since the publication of CP 330 and Addendum to CP 330, relevant to the issuing of a product intervention order.

Based on the CCLCSA's identified case studies (**Annexure B**), continuing credit contracts (as issued per paragraph 48) have continued perpetrating significant consumer harm. It appears that when shifting to the continuing credit contract model, the default fee has risen to \$79. During COVID-19 consumers have reported to us that they were not able to contact Cigno via phone, nor was Cigno responding to emails or texts / other contact, thereby restricting consumers ability to reschedule payment dates (resulting in more default fees being charged on their accounts). This demonstrates the ongoing disregard for fair practices by Cigno and their unconscionable conduct directed at vulnerable Australians.

In a 2021 correspondence with a CCLCSA financial counsellor who was negotiating for a vulnerable consumer who was experiencing homelessness, a Cigno staff member responded, "***We are doing what we can to help in any way possible but please try to conceive that there are also certain limitations because we must consider CIGNO's welfare as a corporation in terms of getting a reasonable revenue.***"

D2Q4 Do you agree with our proposal to make a continuing credit contracts product intervention order by legislative instrument as set out in the draft product intervention order in Attachment 2 to this paper?

The CCLCSA agrees with ASIC's proposal to make a continuing credit contracts product intervention order.

D2Q5 What alternative approaches could ASIC take that would achieve our objectives of preventing the significant detriment identified in this paper?

As detailed in D1Q4 above, the CCLCSA believes that the issuing of product intervention orders should only be a short term measure and that legislative reform is vital in order to address the significant detriment caused to retail clients by the use of these models.

As raised in previous submissions, and highlighted by the 23 June 2021 judgment in *Australian Securities and Investments Commission v BHF Solutions Pty Ltd [2021] FCA 684*,³ our legislation requires updating to make it clear that "helper" contracts and other such models are not intended to be exempt from the National Credit Code.

The CCLCSA calls on ASIC to implore the Australian Parliament to urgently pass the *National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill 2019 (No. 2)*.⁴ This will bring into effect the proposed broad anti-avoidance protections which will prevent credit providers from circumventing the rules and protections contained in the *National Consumer Credit Protection Act 2009* (Cth).

³ Decision on appeal, awaiting judgment from 23 November 2021 hearing.

⁴ Introduced 2 December 2019, second reading debate 15 March 2021

https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bid=s1234

The CCLCSA wants to further emphasise the importance of all industry participants being required to hold membership of the independent external dispute resolution scheme, AFCA. This would provide consumers and their advocates with options for redress and ensure visibility over future practices of Cigno (or other entities).

Thank you for your consideration.

The Consumer Credit Law Centre SA



Annexures:

Annexure A – Cigno marketing and collection notice (p10 -13)

Annexure B – Case Studies (p14-21)

Annexure C - Continuing credit contract loan agreement / services agreement – May 2020 (p22-26)

Annexure A – Cigno marketing and collection notice

From: Cigno <cigno@cignoloans.com.au>
Date: 25 March 2020 at 5:51:48 pm ACDT
To:
Subject: Cigno - Important Update

As you are aware, we are all facing tough times ahead due to the potential impact of the Coronavirus. The virus itself is a health issue but the bigger impact will be the loss of jobs and the hard times that will follow.

As a result, many lenders may adjust credit assessment policies and as a result will be more reluctant to lend to those in need. This will happen as they see a bigger risk in terms of being repaid.

We offer a service whereby we focus on the emergency needs of clients that often cannot get credit elsewhere. Please be assured that Cigno will stand by you, our clients, and do our very best to assist in the same manner as we always have.

What we ask of you now is that you review your file and start a new affordable repayment plan to settle your account with us. So that if a time comes when you are in need of assistance, we can be here for you. In fact, if possible, settle your account in full and put money aside for an emergency - that way you have two emergency options.

Remember, from a health perspective there's no need to panic. There are many ways you can protect yourself by adopting just a few small habits such as:

1. Personal Hygiene

- Frequently wash your hands with soap or an alcoholic based solution. Ensure when you wash it's for at least 20 seconds.
- Dry your hands well afterwards
- Avoid touching your face (mouth, nose and eyes).
- Avoid close contact with people who are unwell or showing symptoms such as a cough or runny nose.

2. Avoid Spreading the Sickness

- Cover your mouth and nose with your elbow when sneezing or coughing.
- Throw away used tissues.

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- If you are sick or feel that you may be showing some early symptoms, ensure you promptly see a doctor and self-isolate to stop you spreading to someone else.

3. Be Prepared

- In the event that you can't leave your home, have a good stockpile of food, medication and other essential goods readily available.
- Have money saved in cash at home if an emergency arises.

If you would like more information on the Coronavirus please visit the Department of Health's website <https://www.health.gov.au/>

For information on your account with us and to start paying today, please log in to the [Member Portal](#) or reach out to our support team.



Cigno Pty Ltd
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ABN: 43 612 373 734
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From: Cigno <cigno@cignoloans.com.au>
Date: 15 April 2020 at 9:18:42 pm ACST
To:
Subject: Are Your Debts Spiralling Out of Control?

Have you recently lost your job?
Were you already struggling with overwhelming debt?
Unsure about your future?
There may be a solution to get you out of debt, once and for all.

Many Australians have lost their jobs as a result of Government restrictions and thousands that were already struggling with unmanageable debt have fallen further into financial hardship.

Although the Government has introduced support packages for Australians, for many, this may not be enough.

If you were already in financial hardship or fighting uncontrollable debt before the outbreak, losing your job could further your dilemma.

Unfortunately, your current financial situation will not support a loan approval, but there are other solutions available to reduce debt stress and improve your financial situation.

We may have a solution for you to get you through this difficult time with a number of debt relief solutions that may be tailored to individual needs and see you free of debt.

Solutions include:

- Debt negotiation and mortgage refinance
- Debt Settlement
- A Debt Management Plan (DMP)

These solutions aim to reduce your overall debt, pause interest and combine your debts into one, easy-to-manage payment.

Be on track like thousands of Australians everyday and get out of debt with realistic, affordable solutions.

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[FIND OUT MORE](#)



Cigno Pty Ltd

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From: Cigno <cigno@cignoloans.com.au>
Date: 15 April 2020 at 11:21:39 pm ACST
To:
Subject: Don't Let the Coronavirus Infect Your Debts

A place that you can count on in uncertain times.

Coronavirus is having a major impact across the country as many Australians are now facing financial insecurity and stress due to job loss or decreased hours of work.

Many businesses have been forced to close due to the Government's tight social distancing measures to help stop the spread of the virus. This has resulted in a number of companies given no choice but to stand down or terminate their staff members.

Dealing with overwhelming debt can be a stressful experience. If you were already struggling with out-of-control debts, pairing that with the Coronavirus pandemic may make it feel as though there is no way out.

Don't worry, we have a solution for you. It's time to put a plan in place to get out of debt, once and for all.

To support you through these challenging times find yourself with a tailored Debt Management Plan (DMP). A DMP eases financial stress by:

- Reducing your debt
- Pausing your interest
- Putting a stop to harassing phone calls
- Combining your debts into one, easy-to-manage payment

If you're struggling with debt due to the impact of Coronavirus, you're not alone. Lets start by focusing on supporting you financially so you don't have to deal with unnecessary debt stress.

Experienced debt specialists are on-hand to assess your current financial situation and get your finances back on track with a realistic, affordable solution.

[Get started on your debt relief journey today!](#)

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Cigno Pty Ltd

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Date: [REDACTED]
 Client Ref: [REDACTED]
 Loan Ref: [REDACTED]

THIRD AND FINAL NOTICE LEGAL ACTION: INVESTIGATION PENDING

Dear :

URGENT ATTENTION REQUIRED!

Payment Dishonour - Date [REDACTED] Amount [REDACTED]

Despite our collection efforts regarding your small loan, we have not been able to settle the matter.

Your accounts is now on hold for 7 days in which you need to make contact with us.

If you do not make contact with us, we have no alternative but to commence an investigation to determine whether the information you provided, including your financial situation, was correct and accurate at the time of taking the loan. Our decision was based on that information and misrepresentation will be regarded as extremely serious.

If you do make contact and your situation is such that you are experiencing hardship, we are happy to accommodate you and make an arrangement that is suitable.

If you have multiple little debts and a consolidation loan would help you, then through our finance associate company BHF Solutions Pty Ltd or another lender we can apply for a consolidation loan of up to \$5000.00 to cover all your debts. This will however be reliant on your conduct and ability to settle your debts.

If you are not in contact with us we cannot help you.

Please call us from a landline on (07) 5644 3500 or from a mobile on 0437 873 910. You can also send us a text or an email and we will call you on your preferred number.

Please contact us so we can help you put an suitable arrangement in place. If you contact us before [REDACTED] we can reduce the amount you owe up to 30%. We can only help you if we speak to you.

As at the date of this letter, your total outstanding balance is [REDACTED]

As you have requested a payment amount [REDACTED] we will continue to Direct Debit this amount from your bank account until your loan is settled. Your payment intervals are **Weekly** and your next payment date is [REDACTED]

This is your last opportunity to remedy the default and prevent further action against you. You need to comply with your contract, and contact us within 14 days to confirm the above payment or to make an arrangement that is suitable to you.

Failure to do so will lead to:

- an internal investigation and verification of all the information provided when you entered into the recorded contract - discrepancies will be evaluated and if considered fraudulent, will be reported to the police and possibly also to AUSTRAC if deemed necessary.
- the possibility of you being sued for the total amount outstanding under your contract.
- seeking of a judgement against you in the Courts and pursuing you for the amount of judgement either by way of an examination of your means in Court or a garnishee of income or bank account.

If this action is taken, there will be additional fees added to your account as set out in the credit guide you were provided upon applying for this loan. If you subsequently default during the period specified for remedying the default referred to in this letter, you may be subject of enforcement proceedings without further notice if it is not remedied within the period. Under the Privacy Act 1988, this debt may be included in a credit reporting agency's credit information file about you if.

Annexure B – Case Studies

*Names have been changed

The CCLCSA has worked in conjunction with the South Australian Financial Counselling Association (SAFCA) to provide ASIC with case studies of vulnerable people who were provided with short term credit and continuing credit contracts in South Australian and the Northern Territory.

1. Lauren*

Lauren resides in a remote community in the Northern Territory. In November 2021, Lauren approached a financial counselling service because she was confused about why Cigno Australia were continuing to use direct debit to take money from her bank account when she had already paid by the loan. On 15 September 2021 Cigno Australia facilitated the provision of a short term loan of \$70.00 to Lauren. According to a statement of account received by the financial counselling service, by 5 November 2021 Cigno Australia were claiming an outstanding balance of \$490.00 (seven times the original amount borrowed).

2. Bill*

Bill is a single father of one child with severe disabilities. He is unable to work due because he is his child's full-time carer. Bill only receives income from Centrelink. He had been homeless and was residing at a shelter at the time he obtained a short term loan of \$250.00 through Cigno Australia on 28 June 2021.

Bill sought the assistance of a financial counselling service in relation to his debts. An assessment by the service showed that Bill's bank account was overdrawn 42 per cent of the time and that there were frequent dishonour charges and failed direct debits. The financial counselling service also found that Bill he had a range of existing payday loans, buy now pay later debts, wage advances and debt collection payments at the time Cigno Australia advanced the loan to him.

Despite never being able to afford the Cigno Australia loan repayments, throughout the course of the loan contract Cigno Australia direct debited \$375.00 from Bill's account. With the help of the financial counselling service the outstanding balance of \$390.45 owed to Cigno Australia under the short term credit contract was waived.

3. Lily*

Lily resides in the Tiwi Islands, Northern Territory and was in significant financial hardship, living off Jobseeker and borrowed money to survive. In 2021 she applied for a short term loan of \$175.00 through Cigno Australia to pay for food. When Lily applied for the loan she was unaware of the fees and charges that would be added to her account. Cigno Australia administered a \$145.22 fee to Lily to borrow the requested \$175.00 (nearly 80 per cent of the borrowed amount in one fee alone). Lily could not afford to make loan repayments and continued to incur further fees including \$79.00 default fees and \$22.00 change of payment schedule fees.

Lily sought the assistance of a financial counselling service who contacted Cigno Australia and requested that they waive Lily's debt. Cigno Australia refused to waive the debt, citing that they had a right to sell credit and raise fees.

4. Monica*

Monica is a carer and supports a child living with disability. Monica had been affected by the Adelaide Hills bushfires in 2019. Monica worked minimal part-time hours and was unable to work after the bushfires. Monica needed cash to meet her living expenses. Monica applied for a \$175.00 loan online through Cigno.

Monica paid \$54.00 each week for a total of ten weeks totaling a sum of \$540.00. In early 2020, around the time that the COVID-19 pandemic started, Monica then became suspicious that she had not paid off the 'loan'. Monica called her bank and told them to cease the direct debits so that she could review her agreement.

When Monica called her bank, they were familiar with Cigno and issues with clients experiencing hardship and direct debits paid to Cigno. Monica tried to access Cigno's members' portal but it did not work. Monica tried calling Cigno but there was a voice message advising that nobody was in the office due to the COVID-19 pandemic. Monica tried calling a multitude of times over many weeks, however she was unable to speak to Cigno and kept hearing the same voice message. Monica then tried emailing Cigno and did not receive any response. Throughout this time Monica kept receiving marketing messages from Cigno encouraging her to pay off her account and to borrow more money during COVID-19.

Monica tried using Facebook Messenger and SMS to contact Cigno. Monica used every contact source listed on Cigno's website, to no avail. Monica then began receiving weekly dishonor letters from Cigno. In some weeks, Monica received the same letter twice but with different repayment amounts. Monica was confused and again tried to contact Cigno and was still unable to get through to them. She then received a letter from Cigno stating that she owed a further amount of around \$500.00. This would mean she would pay back over \$800.00 in fees alone, excluding the principal sum borrowed. Each week, further default charges of \$79.00 had been charged despite Monica not being able to access the members' portal to change scheduled payment dates or view her agreement. The default letters implied that if she did not resume the direct debit payments or enter into another loan with the lender, that she would get into trouble with the police or AUSTRAC; that the debt was being referred to a debt collector; and that Cigno would garnish her income or bank account.

After the third week of missed payments, a default letter emailed to Monica threatened investigation action:

"If you do not make contact with us, we have no alternative but to commence an investigation to determine whether the information you provided, including your financial situation, was correct and accurate at the time of taking the loan. Our decision

was based on that information and misrepresentation will be regarded as extremely serious.

If you do make contact and your situation is such that you are experiencing hardship, we are happy to accommodate you and make an arrangement that is suitable.

If you have multiple little debts and a consolidation loan would help you, then through our finance associate company BHF Solutions Pty Ltd or another lender we can apply for a consolidation loan of up to \$5000.00 to cover all your debts. This will however be reliant on your conduct and ability to settle your debts...This is your last opportunity to remedy the default and prevent further action against you. You need to comply with your contract, and contact us within 14 days to confirm the above payment or to make an arrangement that is suitable to you. Failure to do so will lead to:

- *an internal investigation and verification of all the information provided when you entered into the recorded contract*
- *discrepancies will be evaluated and if considered fraudulent, will be reported to the police and possibly also to AUSTRAC if deemed necessary.*
- *the possibility of you being sued for the total amount outstanding under your contract.*
- *seeking of a judgement against you in the Courts and pursuing you for the amount of judgement either by way of an examination of your means in Court or a garnishee of income or bank account.”*

One week later, Monica received a Notification of Referral to External Collections:

“Despite our collection efforts regarding your small loan, we have not been able to settle the matter. Your account is to be forwarded through to an external collections agency Milton Graham within three business days. Milton Graham can be contacted on 13 23 33 or via email clientservices@dnb.com.au to accommodate a new affordable arrangement that is suitable.

As at the date of this letter, your total outstanding balance is [approximate amount of \$500.00]

Please find attached a copy of your up to date Account Statement for your own personal records”

Monica contacted the CCLCSA and sent a dispute to Cigno. Cigno offered to waive the outstanding balance that Cigno were claiming. At no time was Monica able to speak to anyone from Cigno (even though Cigno asked Monica to get in touch with them each time she received a letter). Monica was too fatigued and overwhelmed to pursue recovering the balance she felt she overpaid to Cigno through court action. Monica was unable to access AFCA to file a dispute about the service agreement as Cigno and BHFS are not members.

5. Melissa*

Melissa is a person living with a disability and has a gambling addiction. Whilst she was at the Adelaide Casino at the end of May 2020, she applied online for a \$230.00 Cigno loan. Earlier that same day, Melissa had made several withdrawals using her debit card and had exhausted all of her funds. At the time, Melissa already had two other payday loans and was receiving the Disability Support Pension.

Melissa had previously borrowed \$300.00 from Cigno and believed that she had 'paid off' the loan. Melissa did not understand that she had entered into a continuing credit contract. Melissa entered into another drawdown through Cigno under the continuing credit exemption model but did not understand what this meant or that it was different to her other regulated small amount credit contracts. Melissa gambled and lost the \$230.00.

The repayment schedule was to repay approximately \$373.40 the following fortnight which was an amount that Melissa was never able to afford. Fees and charges were added to her account.

Melissa sought the assistance of the CCLCSA and reported that when she was trying to repay the \$300.00 loan, she was going without food and seeking emergency relief in order to repay Cigno. Melissa had previously renegotiated her payments but that each time she did, she was charged a \$22.00 fee. Melissa was worried that she would never be able to 'pay off' the drawdown or have enough money to buy food as Cigno were seeking repayments that she could not afford or would add further fees and charges. Melissa was also worried about how she would seek emergency food relief during COVID-19 pandemic. Cigno claimed approximately \$700.00 and had referred the amount to a debt collector, Milton Graham.

Had Melissa sought to borrow money from a regulated small amount credit provider:

- The lender would have been required to have regard to the fact that she already had two other payday loans;
- The lender would have been required to obtain a copy of her bank statements for the preceding 90 days which would have shown she was at the Adelaide Casino and that she had withdrawn all of her funds; and
- The cost of credit would have been capped (i.e. the lender could only recover 200% of the adjusted credit amount in the event of default);
- If the lender advanced the loan, Melissa would have been able to raise a dispute that the loan was unsuitable and had recourse to AFCA.

6. Nancy*

Nancy is a single mother who left a situation of family violence in March 2016. After she left, Nancy needed immediate cash and entered into a contract online that she believed was with an online payday loan company for the sum of \$150.00. The proposed payments were to repay an initial amount \$129.00 and then \$127.30 one fortnight later, which Nancy was never able to afford. Nancy was unable to make the scheduled payments due to her family violence crisis. She was also unable to afford the further default and collection fees and charges Cigno had charged to her account. Within two months in May 2016, Nancy's account had rapidly grown to \$861.50.

Nancy had not heard from Cigno for four years. Then after the government announced income support packages due to the COVID-19 pandemic in March 2020, Nancy received debt collection emails from Cigno stating that she owed them \$861.50.

Nancy sent a message to Cigno seeking copies of her contract. The copies of the contracts forwarded by Cigno for the BHFS 'loan' stated that it was a 'continuing credit contract'.

Nancy contacted the CCLCSA and advised that she would have to use all of the COVID-19 supplement and increased amounts from JobSeeker to repay Cigno the outstanding amount claimed.

7. Kym*

Kym suffered chronic health issues and had been injured in a workplace accident in February 2019. Kym had joint custody of raising his child with his ex-wife. Towards the end of March 2019, Kym had exhausted his savings and was struggling to meet his basic living expenses. Kym borrowed \$350.00 through Cigno Loans believing that it would operate like any other regulated payday lender. By the first week of May 2019, Cigno were claiming that he owed them \$1171.70. No responsible lending assessment was undertaken by Cigno and Kym was never in a position to be able to afford to repay the loan. The loan was granted using the short term credit exemption model which notably had lower dishonour fees of \$49.00.

Kym attempted to resolve the dispute with Cigno but reported that it seemed that “one arm of the business was not communicating with the other arm”. When Kym raised a dispute with Cigno, he was sent inconsistent letters by them and it seemed there was no effective internal dispute resolution system with effective oversight. In the end Kym gave up dealing with Cigno.

On the 22 March 2020, Scott Morrison announced JobSeeker and the COVID-19 supplement payment to support Australians receiving Centrelink benefits during the pandemic. Kym was relieved to learn that he would be able to pay his basic living expenses and keep himself and his child safe throughout the pandemic.

Three days later on 25 March 2020, Kym received the following message from Cigno:

Subject: FINAL NOTICE - Referral to Milton Graham

Dear [Kym]

IMPORTANT: YOUR LAST PAYMENT HAS FAILED

Due to failure to repay your loan, your file is at risk of being forwarded through to our external collections agency, Milton Graham, in 3 business days time.

To resolve your debt to Cigno internally, please make payment today via Member Portal or to details below:

<https://members.cignoloans.com.au/>

Username: [redacted]

That same day, Kym received an SMS text message from Milton Graham, debt collectors acting for Cigno. Kym sought assistance from the CCLCSA. Kym believed that the messages were intentionally timed to be sent after the Centrelink income support measures were announced by the federal government and targeted at Centrelink recipients who might agree to use the COVID-19 supplements and Jobseeker payments to pay amounts claimed by Cigno.

That same day, Kym received an email in his junk email box suggesting that he needed a reserve of emergency cash for the pandemic, as well as the following:

As a result, many lenders may adjust credit assessment policies and as a result will be more reluctant to lend to those in need. This will happen as they see a bigger risk in terms of being repaid.

We offer a service whereby we focus on the emergency needs of clients that often cannot get credit elsewhere. Please be assured that Cigno will stand by you, our clients, and do our very best to assist in the same manner as we always have.

What we ask of you now is that you review your file and start a new affordable repayment plan to settle your account with us. So that if a time comes when you are in need of assistance, we can be here for you. In fact, if possible, settle your account in full and put money aside for an emergency - that way you have two emergency options.

After reading this email Kym called the Cigno phone number but there was a voicemail message, and he was unable to speak to anyone from Cigno. Six days later, Kym received the following:

Hi [Kym]!

Need a Cash Boost? Great news! You're already APPROVED!

Simply verify your bank details for deposit to receive funds TODAY!

Visit: [https://cignoloans.com.au/\[redacted\]](https://cignoloans.com.au/[redacted])

Once received, your contracts will be sent to you in MINUTES! Too Easy right?

Get started today!

Two weeks later, Kym received emails marketing the services of Debt Management Plans through Cigno. CCLCSA is concerned that consumers were contacted immediately after the COVID-19 supplements were announced and they were unable to speak with anyone from Cigno.

8. Tom*

Tom resides in a remote community in the Northern Territory. He has limited comprehension of English language. Tom's sole income is from Centrelink. Tom sought assistance from a financial counselling service who assessed his financial position. The service found that Tom's bank account was overdrawn 32 per cent of the time and that Cigno loans direct debits were the primary cause of this. The financial counselling service also found that Tom had been advanced four Cigno loans in 2020, with amounts advanced by Cigno ranging from \$75.00 to \$100.00 and that his repayments to Cigno totalled \$1,011.00. Tom had never been in a position to afford the credit provided by Cigno.

9. James*

James lives in a remote community in the Northern Territory. James approached a financial counselling service to apply for a No Interest Loans Scheme (NILS) loan to pay outstanding debt. The financial counselling service assessed James's financial position and advised him that he was not eligible for a NILS loan because he couldn't afford to NILS loan repayments due to several existing direct debits he did not remember signing up for. While assessing James's financial

position, the financial counselling service reviewed his bank statements which showed frequent overdrawing of his account by Cigno.

The financial counselling service contacted Cigno and obtained a copy of James's statement of account which showed that on 3 December 2018 he was advanced a \$350.00 loan. By 9 January 2019, just over one month later, James's account had rapidly grown to \$862.75.

Upon emailing authority Cigno advised the financial counselling service account was finalised and final balance of \$432.65 was waived. Despite this waiver, a total of \$1,650.00 (nearly five times the original amount borrowed) had been direct debited by Cigno from James's account prior to the loan account being closed.

10. Dylan*

Dylan had recently separated from his wife and son, was made redundant and was receiving Newstart Allowance. He entered two small amount credit contracts as he was desperate to see his son and wanted to keep making Child Support payments to appease his former wife in order so that he could still have contact with his child. Dylan then applied for a third pay day loan but was declined by the pay day lenders that he had previously borrowed money from. Unbeknownst to Dylan, the small amount credit providers most likely declined Dylan's application on the basis of the rebuttable presumption that, as he already had two payday loans in the preceding ninety days, he could not meet repayments without substantial hardship.

Dylan ended up getting a loan believing that he was applying for an ordinary pay day loan, but the lender was in fact GSSF facilitated by Cigno. Dylan received a sum of \$350.00 in short term credit from Cigno and GSSF. Within 49 days, the balance had more than tripled to \$1171.00.

Dylan was not able to afford the first repayment. He asked for hardship assistance and was charged \$20.00 to change the payment date. After he failed to make two repayments, Dylan noticed that Cigno had changed the date of processing the direct debit; the third repayment date had been brought forward one day without notice to him. Dylan did not have adequate funds and was charged \$30.00 Payment Reschedule Fee and a \$49.00 Dishonour Fee. Dylan also incurred direct debit dishonour payments from his bank.

Concerned at how rapidly the debt was growing and the changing payment dates, Dylan contacted Internal Dispute Resolution (IDR) for Cigno and outlined his complaint. Dylan felt stressed when he realised he would never have capacity to make the repayments. He was unable to meet the demands of Cigno without not paying rent and risking eviction.

However, while Dylan was awaiting a response from IDR, he continued to be contacted by the collections section of Cigno, who continued to demand that Dylan make payments and to process direct debits from his account.

The response from IDR was that a full review for affordability had been undertaken and that he was only approved for an amount that was deemed to be repayable based on his income and expenditure. Cigno then referred Dylan to the terms of the contract that stated he agreed he

was of sound mind and judgement to make decisions regarding his finances. Cigno presented Dylan an offer to settle the dispute for \$512.00 but Dylan made a counter-offer to settle the dispute for the sum of money borrowed. Dylan did not hear back from IDR regarding his counter offer.

Cigno collections continued to contact Dylan threatening to forward the debt to an external collections agency if he did not make payment within three days. Cigno then contacted him and said they would either accept payment for the full outstanding amount of \$1171.00 in lowered repayment amounts or alternatively accept a reduced amount of \$820.00 if he made four weekly payments of \$205.00. Dylan asked whether the response from collections was a response to his earlier counter-offer email to IDR. Later that same day, IDR sent an email offering to settle the dispute for \$512.00.

Two days later, Cigno sent an email advising that his account had been forwarded to an external collection agency, Ilion and Milton Graham. Dylan reported that the contact from Cigno was confusing, unprofessional and that he felt harassed. Dylan also felt he had been tricked as he did not realise that Cigno were different to a regulated small amount credit contract provider and was shocked at the very high-cost of credit.

Dylan then received weekly emails from other online lenders. When he applied for other loans, he was declined. However, the decline emails directed him to an online business that he believed used the same phone number as Cigno.

11. Amy*

Amy* is a single mother with complex mental health issues. In December 2019 Amy needed immediate cash and applied for a \$300.00 loan through Cigno. Amy's sole income was Centrelink. Amy had also previously obtained a loan through Cigno and that she was unable to pay back because it was unaffordable. Despite all of these factors, Cigno facilitated the provision of the \$300.00 loan to Amy on 21 December 2019. Amy was unable to make the scheduled payments because they were never affordable. She was also unable to afford the further default and collection fees and charges Cigno had charged to her account. By 30 January 2020, just over one month later, Amy's account had rapidly grown to \$863.75.

By December 2021, Cigno claimed that Amy's total debt owed for the \$300.00 loan was \$2,100.00 (seven times the original amount borrowed). Throughout the life of the loan Amy paid Cigno \$1,273.61 (more than four times the original amount borrowed). Amy obtained the support of a financial counsellor who undertook an assessment of her bank statements and found that Amy's account was overdrawn 61 per cent of the time. Through the advocacy of the financial counsellor, Amy was able to obtain a refund of 50 per cent of fees she had paid to Cigno.

Annexure C – Continuing credit contract loan agreement / services agreement – May 2020

Cigno Pty Ltd
ABN: 43 612 373 734
Ph: (07) 5644 3500
Mob: 0437 873 910
Em: info@cignoloans.com.au
Mail: PO Box 3362,
AUSTRALIA FAIR, SOUTHPORT QLD 4215



SERVICES AGREEMENT

Date: 22/05/2020

Service Provider: Cigno Pty Ltd

Client Details:

Client Number:
Client Name:
Date of Birth:
Address:
Bank Details:

The following is a Service Agreement between Cigno Pty Ltd (Service Provider) and

The Client has chosen to engage the Service Provider to assist, rather than dealing directly with a lender or provider. The Service Provider will facilitate in all enquiries, management, payments and all other services related to the loan or financial product.

In return for the Service Provider providing these services, the Client agrees to remunerate the Service Provider in the following manner:

Services and Fees

Financial Supply Fee:	\$116.50
Total Account Keeping Fees (\$5.95 charged weekly):	\$11.90

Additional Costs

Change of Payment Schedule Fee:	\$22.00
Drawdown Fee:	To be advised prior to processing the drawdown

In the event, and only on request, you wish to change your payment obligations under the loan arranged for you, a Change of Payment fee will be added. Note, you may incur additional weekly Account Keeping Fees if the duration of your agreement is extended.

Each time that you request a drawdown, we will calculate and communicate the Drawdown Fee to you for your acceptance prior to processing the drawdown. We will determine the amount of the Drawdown Fee based on our reasonable estimate of the cost of arranging and managing the additional credit obtained through the drawdown of funds. This Drawdown Fee will be added to the total amount owing to the Service Provider.

Payment Schedule

The Service Provider will facilitate all payments due to the lender as well as the Service Provider in accordance with both agreements. The Service Provider will collect payments from you by direct debit (see below). Upon collection and on your behalf, repayments will be allocated proportionately between the amount owing to the lender and the amount owing to the Service Provider, in accordance with the relative amounts owed by you under this Service Agreement and your loan contract with the lender. If there is a shortfall in amounts owing, payments will be applied between the respective obligations at the discretion of the Service Provider.

All payments will be collected in intervals and amounts as set out in the loan contract that you enter into with the lender. The Service Provider will retain a copy of that loan contract to enable it to calculate and collect repayments from you to forward to the lender. The amount of each repayment will depend on transactions that you make on the loan account. We will make reasonable attempts to notify you any time there is a change to the amount of each periodic payment that we collect from you.

The table below sets out your repayments under this agreement and your agreement with the lender, as at the commencement date of both agreements, assuming no further advances of credit in the period covered by the table. Your payment obligations will change if you receive any further advance of credit from the lender.

Repayment 1 09/06/2020	\$373.40
------------------------	----------

In the event your repayments are at a deficit to the lender, you agree to make payments to the Service Provider until the deficit and your obligations under this agreement are discharged.

A Default Event

A Default Event occurs when you are unable to meet your obligations under your agreement (which, for the avoidance of doubt, includes a direct debit request being dishonoured by your bank). Upon which, the Service Provider will make all reasonable attempts to inform you of the Default Event as well as negotiating with the lender a new arrangement for repayments to assist you in fulfilling your obligations. If a Default Event occurs, you irrevocably authorise the Service Provider to change the timing of any direct debit request or other payment method that may be made under this Agreement in

The Client acknowledges that they have not relied on any representations made by the Service Provider or an agent of the Service Provider in entering into this Agreement.

The parties agree to the terms of this agreement.

order to reduce the likelihood of that direct debit request being dishonoured. You also agree that if a direct debit request is dishonoured, the Service Provider may attempt to further process that direct debit or other payment method on subsequent days and is not liable for any liability that you may incur to your financial institution as a result of direct debit requests processed by the Service Provider being dishonoured.

If there are amounts due and owing to Cigno and unpaid, Cigno may refuse to provide any further services to you under this agreement.

Default Fees and Charges

Default Fee: \$79.00
Change of Payment Fee: \$22.00

Default Fees and Charges are incurred as a result of a default event, disbursement, administration, communication and reconciliation of your account.

You acknowledge that it is your responsibility to contact the Service Provider to negotiate a suitable alternative to your payment arrangement. Where possible, if you contact the Service Provider, these fees can be reviewed and potentially removed.

Direct Debit and Other Payment Method Agreement

Your Account Details

Account Name:
BSB Number:
Account Number:

By entering into this agreement, you acknowledge that you authorise and request the Direct Debit Providers in the table below as well as any other payment method provider that Cigno (the Service Provider) may use to receive, account and remit payments from your account details provided (as per the table above) or any other account you provide in the future, for both the Service Provider and the Lender in accordance with your agreement and the terms and conditions of the direct debit or other payment method providers which can be found at www.cignoloans.com.au/third-party-direct-debit-agreement/. The debits will be in intervals and amounts as directed by the Service Provider as per the terms and conditions of this agreement including all future draw downs. You will receive notice of debit payments from your bank account in accordance with this agreement and the terms and conditions of any direct debit or other payment method service provider.

Direct Debit Providers

Direct Debit Provider	User ID
Split Payments Pty Ltd	492448, 543948
EziDebit Pty Ltd	165969, 303909, 301203, 234040, 234072, 342199, 428198
PayGate Pty Ltd	314753

Other Payment Providers

QCPay Authorised recurring payments

Additional

By entering into this Agreement, you acknowledge and agree that:

- you are at least 18 years old, of sound mind and judgement and able to make decisions regarding your finances;
- you understand that you have the right to get independent legal and financial advice before entering into the Services Agreement;
- if you have any questions about the terms of the Services Agreement you will not enter into a Services Agreement unless those questions are answered to your satisfaction;

Consent to Receive Contact from Service Provider

By entering into this agreement you are giving your express consent for the Service Provider and its affiliates to contact you by way of email, SMS, Phone (including pre-recorded and computer generated messages), push notification, user portal message, fax and other forms of communication for the purposes of customer service, debt collection, marketing and promotion. This consent survives the termination of this contract and continues indefinitely unless you notify the Service Provider in writing that you withdraw your consent.

Electronic Transactions Act 1999

You give consent in accordance with the Electronic Transactions (Queensland) Act 1999 for the purposes of entering into this document and all documents related to it.

You agree that your electronic acceptance of this document shall be as valid as an original signature of such party and shall be binding.

Severability

If any part of this agreement is held to be void or unenforceable the part shall only be ineffective to the extent of such unenforceability without invalidating the remaining parts.

Execution and Entire Agreement

This Agreement between the Client and the Service Provider is entered in to on the 22/05/2020 and constitutes the entire agreement between the parties and supersedes all prior negotiations, representations, proposals, undertakings and agreements, whether written or oral, relating to the subject matter of this agreement.

To the maximum extent possible, the parties exclude all terms implied into this Agreement by law.



ABN: 15 631 775 123
EM: info@bhfsolutions.com.au
ADD: PO Box 7001
AUSTRALIA FAIR QLD
4215

**LOAN AGREEMENT
CONTINUING CREDIT CONTRACT**

THIS LOAN AGREEMENT (this "Agreement") dated this 22nd day of May, 2020

BETWEEN:

BHF Solutions Pty Ltd of PO Box 7001, AUSTRALIA FAIR QLD 4215
(the "Lender")

AND

IN CONSIDERATION OF the Lender providing a continuing credit facility (the "Loan") to the Borrower, and the Borrower repaying the Loan Amount to the Lender, both parties agree to keep, perform and fulfil the promises and conditions set out in this Agreement:

Loan Amount & Obligation to Repay

1. The Lender promises to provide a line of credit of up to \$230,000AUD (the "Credit Limit") to the Borrower and the Borrower promises to repay all moneys advanced to the Borrower by the Lender plus any fees payable by the Borrower under this Agreement.
2. The "Loan Amount" at any time is the sum of all moneys advanced to the Borrower under this Agreement and any fees payable under this Agreement, less any payments received from the Borrower under this Agreement.

Fees

3. The Borrower must pay a fee of \$15.00AUD each time that an advance of funds is requested from the Lender, up to a maximum of \$120.00 AUD in any 12 month period.
4. If a fee is not paid by the Borrower at the time specified in clause 3, it is capitalised and becomes part of the Loan Amount.

Continuing credit contract

5. The Loan is a continuing credit contract. If the Loan Amount, excluding any fees incurred, does not exceed the Credit Limit, the Borrower may request a further advance of money from the Lender, for an amount not less than \$50.00 and up to:
 - a. if the Loan Amount at the time of the request is zero – the Credit Limit, or
 - b. if the Loan Amount at the time of the request is not zero – up to 25% of the difference between:
 - i. the Loan Amount immediately after the most recent (at the time of the request) advance of moneys by the Lender, and
 - ii. any payments received by the Lender from or on account of the Borrower, less the amount of such payments that has been applied to outstanding fees in accordance with clause 9.
6. The Lender may, in its sole and absolute discretion, refuse to provide an advance requested under clause 5 if:
 - a. the Borrower has defaulted on an obligation to make a payment under this Agreement and has not remedied that default by the time they request an advance of funds, or
 - b. at the time that the Borrower requests the advance of funds, the Lender has reasonable grounds to believe that the Borrower will not be able to comply with its obligations under clause 8 of this Agreement if the advance were made, or
 - c. the Lender lacks the funds and is unable to obtain funds to provide the advance.
7. The Lender may, in its sole and absolute discretion:
 - a. on its own initiative if it considers that the Borrower will not be able to repay an amount of credit equivalent to the Credit Limit in accordance with this Agreement, reduce the Credit Limit to an amount that it considers to be within the Borrower's capacity to repay, or
 - b. at the request of the Borrower, increase or reduce the Credit Limit by the amount requested by the Borrower.

For the avoidance of doubt, nothing in this clause 7 or any policy published or representation made by the Lender obliges the Lender to reduce or increase the Credit Limit.

Payment

8. On the 09/06/2020 and every second Tuesday thereafter during the term of this Agreement in which the Loan Amount is greater than zero, the Borrower must pay to the Lender:

- \$245.00AUD (the "Repayment Amount")

As at the commencement of this Agreement, assuming that there are no further advances of funds, you will be required to make repayments in accordance with the table below.

Date	Amount
09/06/2020	\$245.00

If there are any further advances of funds, your schedule of repayments will change and you will be given a new repayment schedule.

9. Payments made by the Borrower will be applied first to any outstanding fees capitalised into the Loan Amount, and then in repayment of moneys advanced to the Borrower by the Lender.

Term

10. This Agreement continues in effect until the earliest of the following events occurs:

- a. the Loan Amount is zero for a period of 12 consecutive months, or
- b. the Borrower repays the entire Loan Amount and notifies the Lender that they wish to terminate this Agreement.

Default

11. Notwithstanding anything to the contrary in this Agreement, if the Borrower defaults in the performance of any obligation under this Agreement, the Loan Amount at that time becomes immediately due and payable.

12. If a default in performance of an obligation under this Agreement, including without limitation to immediately pay the Loan Amount due to clause 10, is not remedied within 7 days after being given a notice by the Lender demanding that the default is remedied, the Lender may terminate this Agreement without further notice to the Borrower.

Governing Law

13. This Agreement will be construed in accordance with and governed by the laws of the State of Queensland.

General Provisions

14. Headings are inserted for the convenience of the parties only and are not to be considered when interpreting this Agreement. Words in the singular mean and include the plural and vice versa. Words in the masculine mean and include the feminine and vice versa.

15. For the avoidance of doubt, the term "Loan" in this Agreement is a reference to the continuing credit facility provided under this Agreement.

16. A default under this Agreement cannot be waived except in writing signed by the party giving the waiver. Failure by a party to enforce a right does not constitute waiver of that right.

Entire Agreement

17. Except as otherwise provided in this Agreement, this Agreement may be varied by the Lender giving notice in writing to the Borrower no less than 14 days before the variation will take effect, if the variation is done for any of the following reasons:

- a. to comply with any change or anticipated change in any relevant law, code of practice or guidance;
- b. to reflect any decision of a court, ombudsman or regulator;
- c. to reflect a change in our systems or procedures, including for security reasons;
- d. as a result of changed circumstances (including by adding benefits or new features);
- e. to respond proportionately to changes in the cost of providing the credit; or
- f. to make the provisions of this Agreement clearer.

For the avoidance of doubt, this clause 17 does not apply to changes to the Credit Limit, which may be changed only in accordance with clause 7.

18. This Agreement constitutes the entire agreement between the parties and supersedes all prior negotiations, representations, proposals, undertakings and agreements, whether written or oral, relating to the subject matter of this agreement.

19. To the maximum extent possible, the parties exclude all terms implied into this Agreement by law.

20. The Borrower acknowledges that they have not relied on any representations made by the Lender or an agent of the Lender in entering into this Agreement.

IN WITNESS WHEREOF, the parties have duly affixed their signatures on this 22nd day of May, 2020

SIGNED, SEALED, AND DELIVERED
this 22nd day of May, 2020

BHF Solutions Pty Ltd
per: _____

SIGNED, SEALED, AND DELIVERED
this 22nd day of May, 2020
