



NAB Equity Lending

Facility Terms

This document contains important information regarding the terms and conditions which will apply to your NAB Equity Lending Facility.

You should read this document carefully and retain it for future reference.

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Part 1

Loan Terms

1. Loan facility

- 1.1 Although you may have more than one *loan* under the *facility*, this *agreement* is a single credit contract covering each such *loan*.
- 1.2 You may ask us to provide you with fixed interest rate *loans*, or a variable interest rate *loan*, or a combination, up to the *facility limit*. We may impose limits from time to time on the amount of the *facility* that may be at a fixed rate (for the avoidance of doubt such a limit imposed by us will only apply to a *loan* entered into after we have imposed the limit).

Variable rate loans

- 1.3 If you ask for a variable interest rate to apply to all or a portion of the *facility* and we agree, we offer to make you a *loan* of one or more advances provided that:
- (a) the total advances do not exceed the *facility limit*; and
 - (b) the *current LVR* is less than the *base LVR*.

Fixed rate loans

- 1.4 If you ask for a fixed interest rate to apply to all or a portion of the *facility* and we agree, we offer to make you a *loan* consisting of one advance provided that:
- (a) the total advances do not exceed the *facility limit*; and
 - (b) the *current LVR* is less than the *base LVR*.

Instalment gearing arrangements

- 1.5 You may also request that a *loan* be made in connection with an *instalment gearing arrangement* and if we agree, and you satisfy all our (and any fund manager's) requirements from time to time, the *loan* will be taken to be made in connection with an *instalment gearing arrangement*.

Facility limit

- 1.6 We may review the *facility limit* either as a result of a request from you (including a request from you for an advance under clause 2.11 which we fund and which takes you over your current *facility limit*) or if we are required by law to do so.
- 1.7 You must provide us with any information that we reasonably require at the time of any review.
- 1.8 As a consequence of a review we may decrease the *facility limit* or refuse your request for a *facility limit* increase if we consider it appropriate having regard to our legitimate business interests, lending criteria and prudential or regulatory obligations (and even if to do so could result in a *default event*).
- 1.9 You must ensure that, within 5 *business days* of receiving notice of a reduction in the *facility limit* under clause 1.8, the *secured liabilities* are less than the *facility limit*.

- 1.10 If you do not comply with your obligations under clause 1.9 then, without limiting our rights under the mortgage terms in part 3, you and each *guarantor* will be taken to have requested the attorney appointed under clause 13 to take all steps reasonably necessary to ensure that the *secured liabilities* are less than the *facility limit*.
- 1.11 Without reducing any other rights we might have, there are some other instances where we may reduce or cancel your *facility limit*, or block or suspend your use of the *facility*, without your permission, including:
- (a) if you have defaulted on the *agreement* or any other agreement you have with us;
 - (b) where we have good reason to believe that your existing *facility limit* is more than you can manage without financial difficulty;
 - (c) we are notified that you are deceased (however if you are a joint account holder, please contact us if you need to access the *facility*);
 - (d) you are subject to any legal incapacity;
 - (e) your *guarantor*, if any, limits the amount they guarantee (meaning you will not be able to draw above that limit);
 - (f) action is reasonably required to prevent an anticipated breach of the law of Australia or another country;
 - (g) to protect you, or us, or any other person from potentially fraudulent activity or a scam, or other losses; or
 - (h) it is reasonable for us to do so because of things we might consider listed under clause 55.1A.

- 1.12 It may not be possible for us to detect and prevent all transactions referred to in (f) and (g) above. We may take any action or actions under this section separately or concurrently and for as long as is reasonably required to protect our legitimate business interests and to manage any risk. Subject to clause 55.4, we will incur no liability to you where we do so.

- 1.13 Where we take action under clause 1.11 we may not give you advance notice (for example if it is reasonably necessary for us to act quickly to manage a risk). If appropriate, we will give you a general reason for doing so. If we do not give you advance notice, and where it is reasonable to do so, we will advise you within a reasonable time of exercising our discretion under clause 1.11.

Co-operation

- 1.14 You agree that you will provide any information that we reasonably request connected with the facility and any relevant transactions. We may continue any action under clause 1.11 until we receive a satisfactory response. You acknowledge that if we are not satisfied with your response or you fail to respond in a timely manner then we may take this into account when deciding whether or not to cancel your facility limit under clause 1.11.

2. Procedure for drawing, the role of cash management accounts, and instalment gearing

Drawing variable rate advances

2.1 If you have a *loan* to which a variable interest rate applies, and you want us to make you an advance in respect of that *loan*, you or your *authorised representative* or *authorised broker* must tell us:

- (a) when you want the advance; and
- (b) the amount that you require; and
- (c) where and to whom the money is to be paid.

If you want us to make the advance on the day of your request, you must tell us these things by no later than 12 noon on that day.

Cash management accounts

2.2 You authorise us to open a *cash management account* in your name. The *cash management account* will be used, among other things:

- (a) to receive fixed rate advances from us pending an application to acquire *investments*; and
- (b) to receive the net proceeds from the *disposal* of *investments* acquired with a fixed rate *loan* during the *fixed rate period* referred to in clause 8; and
- (c) to debit fixed rate interest under clause 8.4; and
- (d) to receive and hold any cash collateral you provide, including any provided as contemplated by clause 11.2 (c) following the making of a *margin call* request.

2.3 The operation of your *cash management account* will be governed by the terms and conditions for that account, which we will provide separately to you.

2.4 If this is a *joint facility*, you authorise us to open *cash management accounts* in the name of any one or more of you if we reasonably believe it is appropriate. We will do this if *investments* which are not owned by all of you jointly are to be provided as part of the *secured property* for the *joint facility*. Each such *cash management account* will be used, among other things, to receive and hold the net proceeds from the *disposal* of *investments* which are owned by the person in whose name the account is held.

2.5 You may withdraw money from your *cash management account* at any time by written request to us (which must be in a letter physically signed by you and posted or faxed to us), provided that:

- (a) the *current LVR* both before and after any withdrawal is less than the *base LVR*; and
- (b) no *default event* subsists (before the withdrawal) or would occur or be likely to occur (after the withdrawal).

Advances under an instalment gearing arrangement

2.6 If you have requested, and we have agreed to provide, an *instalment gearing arrangement*, we will make

advances to you monthly. These advances are the *loan component* of *instalments* under the arrangement. All amounts advanced under an *instalment gearing arrangement*, together with your *initial equity contribution* (if cash) and *monthly equity contributions* must be used for the acquisition of *approved managed fund investments*, and for no other purpose.

2.7 The availability of an *instalment gearing arrangement* is subject to us agreeing with you:

- (a) the month in which monthly *instalments* will commence (ie after the initial *instalment*);
- (b) the amount of the *initial equity contribution*;
- (c) the amount of the *initial advance*;
- (d) the amount of the *loan component* of each monthly *instalment*;
- (e) the amount of each *monthly equity contribution*,

and to you giving us authority to direct debit an account you nominate for your *initial equity contribution* (unless you provide the *initial equity contribution* in another manner we may agree) and each of your *monthly equity contributions*.

2.8 If you give us 14 *business days*' notice in writing (which must be in a letter physically signed by you and posted or faxed to us), you may change the *instalment gearing arrangement* in any of the following ways:

- (a) you may increase the amount of the *instalments*, in which case the amount of your *monthly equity contributions* must be increased so as to preserve the same ratio between the *loan component* of *instalments* and your *monthly equity contributions*; and
- (b) you may reduce or suspend your *monthly equity contributions* and have us continue to make advances in the agreed amount to acquire *approved managed fund investments* (for one month or, with our prior agreement, more than one) provided that this does not cause the *current LVR* to be equal to or greater than the *base LVR*; and
- (c) you may ask that we reduce, suspend or cease the *instalments*; and
- (d) if your *secured liabilities* exceed the *instalment gearing limit*, you may elect to stop the *instalments* once the total of all loan balances under this *facility* equals or exceeds the *instalment gearing limit*.

If you want to change the *instalment gearing arrangement* in any other way (including in a way that changes the ratio between the *loan component* of *instalments* and your *monthly equity contributions*), you must obtain our consent first.

2.9 During the period when *instalments* are suspended or have ceased for any reason, you are not required to make *monthly equity contributions*. You should notify us if you nevertheless want to continue to make *monthly equity contributions* to acquire *approved managed fund investments* without drawing a *loan component*.

Conditions to making each advance

2.10 In relation to all *loans* (ie whether under an *instalment gearing arrangement* or otherwise), we are not required to make you an advance if having regard to legitimate business interests, or prudential or regulatory reasons:

- (a) a *default event* has occurred in relation to you or a *guarantor*; or
- (b) the advance would cause the *secured liabilities* to exceed the *facility limit* or would give us the right to make a margin call under clause 11; or
- (c) the *current LVR* is equal to or greater than the *base LVR* or if the advance would result in the *current LVR* becoming equal to or greater than the *base LVR*; or
- (d) you request an advance of less than a minimum amount we determine (which may change from time to time and will be notified to you); or
- (e) you request that part of an advance under an *instalment gearing arrangement* be invested in a certain type of *approved managed fund investment* and the amount of that part of the advance is less than a minimum amount we determine (which may change from time to time and will be notified to you); or
- (f) we have not received any document or information we reasonably require, in a form satisfactory to us (including, where you are an individual, any document or other information that we may require to satisfy ourselves that the advance will not be used for a *Code Purpose*); or
- (g) we have asked you to repay the *secured liabilities* under clause 10.4; or
- (h) you are an individual and we reasonably believe that this paragraph applies to that advance, and we are not satisfied that the advance will not be used for a *Code Purpose*.

2.11 We may, having regard to our legitimate business interests, or prudential or regulatory obligations, and where the law so permits, make an advance to you to acquire *investments* that would cause the *secured liabilities* to exceed the *facility limit*. If we do so you acknowledge that:

- (a) your *facility limit* is increased to the amount of the *secured liabilities* after we have made the advance; and
- (b) we will review your *facility limit* in accordance with clauses 1.6 to 1.10 and as a consequence of such review we may decrease your *facility limit* which would require you take steps to ensure that the *secured liabilities* are less than the decreased *facility limit*.

3. Purchasing investments with loan funds

3.1 Advances that we make to you under the *facility* (except under an *instalment gearing arrangement*) must be used to purchase *investments* or for other business or investment purposes as agreed by us.

- 3.2 Advances made to you under an *instalment gearing arrangement* must be used to purchase *approved managed fund investments* only.
- 3.3 You must provide us with any documents or information that we reasonably require as evidence of your intention to acquire *investments* as contemplated by clause 3.1 or clause 3.2. (For example, a confirmation to acquire shares or a completed application form to acquire *managed fund investments*).
- 3.4 On request we will provide you with a list of *approved investments*. That list may also appear on the *website*. Having regard to our legitimate business interests, or prudential or regulatory obligations, we may remove an *investment* from the approved list at any time, without having to give you prior notice. We will give you notice that an *investment* has been removed from the *approved investment* list as soon as practicable after the *investment* is removed.
- 3.5 If you purchase *investments* which are *CHES-eligible investments*, you must purchase them in your name.
- 3.6 Unless we agree otherwise, *investments* that are not *CHES-eligible investments* must be registered in the name of *Nominees* as your nominee.
- 3.7 Having regard to our legitimate business interests, or prudential or regulatory obligations, we may change the *security ratio* used to calculate the *security value* of an *investment* at any time without prior notice to you (including by reducing the *security ratio* of an *investment* to zero) as we determine necessary having regard to a range of factors including:
 - (a) changes or anticipated changes in the market value of the *investment*;
 - (b) our internal risk assessment policies.This may result in a *margin call*.
- 3.8 We will give you notice of any change in the *security ratio* used to calculate the *security value* of an *investment* as soon as practicable after the change.

4. Splitting a loan

You may ask us to split a *loan* into further *loans*, or to change the features of existing *loans*, within the *facility*. After any initial split, you may ask us to change the split by creating further *loans* or consolidating *loans*. If we agree to your request, we treat each *loan* separately for various purposes under the *facility* and you authorise us to open a *loan account* for each *loan*. *Economic costs* and other charges may become payable under clause 9.10 as a result of actions taken under this clause. Please contact us if you are considering splitting a *loan* or consolidating *loans* and would like an estimate of the *economic cost*.

5. Calculation of interest

- 5.1 You agree to pay us interest at the applicable interest rate on each *loan* advanced to you, calculated daily from (and including) the date the *loan* is advanced. We may also charge interest on unpaid interest, fees, charges and any other amount owing in connection with this *agreement* from (and including) the date that relevant amount becomes payable.

- 5.2 We may debit any interest to:
- (a) your variable interest rate *loan account*, if a variable interest rate applies to all or a portion of your *facility* and if to do so would not cause the *secured liabilities* to exceed the *facility limit*; or
 - (b) your *cash management account*, if a fixed interest rate applies to all of your *facility*; or
 - (c) an account nominated by you which is acceptable to us which may include one for which you have provided us with a *direct debit request*.

- 5.3 If we:
- (a) do not, in accordance with clause 5.2, debit your *loan account* because to do so would cause the *secured liabilities* to exceed the *facility limit* or debit your *cash management account* or other account we have agreed; or
 - (b) do debit your *loan account* and upon doing so the *secured liabilities* exceed the *facility limit*,

the amount of the interest is due and payable by you as soon as possible (but in any event by no later than the end of the next working day), and failure to pay will be a *default event*. You should also check the balance of your loan account regularly to check your balances to ensure that there is sufficient credit available in your loan account to meet your interest payment obligations.

- 5.4 If the *secured liabilities* exceed the *facility limit*, we may charge you *default interest* on the amount by which the *secured liabilities* exceed the *facility limit*. You must also pay us *default interest* on any amount you fail to pay on the due date (*including*, the amount of any *margin call* which is not satisfied in accordance with clause 11).
- 5.5 Information on current interest rates and charges is available from us on request. This information may also appear on our *website*.

6. Changing interest rate options

- 6.1 You may request us to change the interest rate features applying to a *loan* or a portion of a *loan*. This request must be in writing (which must be a letter physically signed by you and posted or faxed to us). We are not obliged to agree to a request.
- 6.2 If you change the interest rate features applying to all or a portion of a *loan* from a fixed interest rate to a variable interest rate during the *fixed rate period* you may have to pay an *economic cost* and other charges under clause 9.10. Please contact us if you are considering changing interest options and would like an estimate of the economic cost.

7. Variable interest rate loans

- 7.1 If you have a *loan* to which a variable interest rate applies, we may change the interest rate at any time. The reasons why we may change the variable interest rate include (but are not limited to) changes to the cost or risk of providing the *loan* to you. We will notify you in writing or by newspaper advertisement, on or before the date of any change in the variable interest rate.

- 7.2 If a change to the variable interest rate is not acceptable to you, and you give us notice within 5 days of being notified of the change that you intend to repay the *loan* in accordance with clause 10.1, we will not apply the variable interest rate as so changed to the *loan* (although you must pay interest at the previous rate until the *loan* is repaid).

Interest payable in arrears

- 7.3 If you have a *loan* to which a variable interest rate applies, you must pay interest incurred on that *loan* monthly in arrears. Interest must be paid to us as we direct by one of the methods in clause 5.2(a) or (c), on the last *business day* of each month or on any other *business day* we reasonably decide and of which we give you notice.
- 7.4 We may debit accrued variable rate interest to your *loan account* on a certain day but not debit your nominated *account* under the *direct debit request service agreement* in relation to that interest until a later date. If that happens, interest will accrue for the relevant period on the interest debited to your *loan account*.

Request for capitalisation of interest

- 7.5 You may ask us to advance you the amount of accrued variable rate interest when due. If we agree, we will debit the amount of accrued variable rate interest to your variable interest rate *loan account* and that amount will accrue interest.

Effect of debiting interest to loan account

- 7.6 Debiting an amount to your *loan account* may result in a *margin call*, or it may result in your *facility limit* being exceeded. In either case, our rights in relation to those events are unaffected by the fact that we have agreed to debit the relevant amount to the *loan account*.

8. Fixed interest rate loans

- 8.1 During a *fixed rate period* the interest rate on a *loan* to which a fixed interest rate applies remains fixed.

What happens at the end of the fixed rate period?

- 8.2 Unless you have asked us on or before the last day of the *fixed rate period* to fix the interest rate for a further period (which, if we agree, will be at the then applicable rate for the requested period), at the end of the *fixed rate period*, the interest rate on a fixed rate *loan* automatically converts to the variable interest rate current at that time.

Fixed rate interest payable annually in advance

- 8.3 If you have a *loan* to which a fixed interest rate applies, you may ask us to accept payment of the fixed rate interest annually in advance. If we agree to accept that payment, and you repay or are required by us to repay the *loan* early, we will refund part of the prepaid interest proportionate to the unexpired period in respect of which the interest has been prepaid, but you must pay us our *economic costs* and other charges calculated in accordance with clause 9.10. We may deduct these costs and charges from the interest refund (but you must still pay them if they exceed the

refund amount). Please contact us if you are considering paying out a *loan* with a fixed interest rate where you have paid the interest in advance and would like an estimate of the *economic cost*.

- (b) your *cash management account*, if a fixed interest rate applies to all of your *facility*; or
- (c) an account acceptable to us for which you have provided us with a *direct debit request*.

We will give you two *business days'* notice of any amounts to be debited under this clause 9.4.

Fixed rate interest payable in arrears

8.4 If you have a *loan* to which a fixed interest rate applies, and you do not pay interest annually in advance, you must pay us interest incurred on that *loan* monthly and in arrears. Interest must be paid to us as we direct by one of the methods in clause 5.2(b) or (c), on the last *business day* of each month or on any other *business day* we reasonably decide and of which we give you notice.

8.5 We may, acting reasonably, debit accrued fixed rate interest to your *cash management account* or (if you also have a variable rate *loan*) your variable interest rate *loan account* on a certain day but not debit your nominated *account* under the *direct debit request service agreement* in relation to that interest until a later date. If that happens, interest will accrue for the relevant period on the interest debited to your *cash management account* or variable interest rate *loan account*.

9.5 If we do not debit your *loan account*, or *cash management account* or other account we have agreed, in accordance with clause 9.4, you must reimburse us, *NMS* and *Nominees* within five *business days* of receiving a request from us for any costs, fees and charges incurred on your behalf in accordance with the terms of this *agreement*.

9.6 Your liabilities under this clause 9 include stamp duty, registration or other fees and charges associated with *CHESS*. We can ask you to pay, and you are obliged to pay, these costs and charges within five *business days* of receiving a request from us.

9.7 You acknowledge that *NMS* may charge us a fee in connection with this *agreement* and you agree to reimburse us for the amount of that fee.

9.8 On giving you at least 30 days' notice in writing we may impose any new fee, vary the amount of a fee, vary the frequency of interest and fee charging or the basis of the calculation and charging of fees or interest. This does not apply in connection with:

- (a) the *direct debit request service agreement*, in respect of which see Part 6; or
- (b) changes to government fees and charges.

9.9 Notice of changes to government fees and charges will be given by newspaper advertisement, in writing or electronically, at least 30 days before the change takes effect, or a shorter period if we give notice with reasonable promptness after we are notified by the government. However, we need not notify you if the government publicises the change to fees and charges.

Request for capitalisation of interest

8.6 You may ask us to advance you the amount of fixed rate interest when due. If we agree, we will debit the amount of fixed interest to your fixed rate loan account.

Effect of debiting interest to cash management account or loan account

8.7 Debiting an amount to your *cash management account* or *loan account* under clause 8.4 may result in a *margin call*. Our rights in relation to those events are unaffected by the fact that we have agreed to debit the relevant amount to the *cash management account* or variable interest rate *loan account*.

9. Fees and charges

9.1 You agree to pay:

- (a) all fees, charges payable in connection with this *agreement* and described in the *PDS* and *Application Form*; and
- (b) any other amount owing to us in connection with this *agreement* including those that you must pay to us, *NMS* and *Nominees*.

9.2 We may require you to pay any reasonable *enforcement expenses* incurred in enforcing this *agreement* or a *security interest* as well as any *economic cost* and other amounts you may be charged under clause 9.10.

9.3 You must pay or reimburse us for any charges relating to dishonoured, declined or rejected debits or payments.

9.4 We may debit any fees, costs or charges under clause 9.1, clause 9.2, clause 9.3 or clause 9.7 to:

- (a) your variable interest rate *loan account*, if a variable interest rate applies to all or a portion of your *facility* and if to do so would not cause the *secured liabilities* to exceed the *facility limit*;

Economic costs on prepayments

9.10 If you have a *loan* to which a fixed interest rate applies and:

- (a) (regardless of whether you have paid fixed rate interest in advance) you prepay, or are required by us to repay, all or part of that *loan* before the end of the *fixed rate period*; or
- (b) (regardless of whether you have paid fixed rate interest in advance) you ask us to change the fixed interest rate to a variable interest rate, before the end of the *fixed rate period*,

we may charge you an *economic cost*. An *economic cost* is a reasonable estimate of our loss (if any), calculated by us, representing the difference between our cost of funds for the relevant amount at the start of the *fixed rate period* over the *fixed rate period* and our cost of funds for the relevant amount at the date of prepayment over the remainder of the *fixed rate period*. The amount of this difference is then discounted back to its net present value at a rate determined by us as equivalent to our cost of funds at the date of prepayment. The *economic cost* is due and payable on

the date of prepayment. If asked, we will notify you of our estimate of the *economic cost* before the day it is due and payable.

If you prepay or are required by us to repay all or part of a *loan* to which a fixed interest rate applies before the end of the *fixed rate period*, then as well as paying us our *economic costs*, you agree to indemnify us from and against any liability or loss arising from, and any costs, charges and expenses incurred in connection with, that prepayment or repayment (except to the extent of our fraud, negligence or misconduct).

Before repayment of a fixed rate *loan*, or converting a fixed rate *loan* to a variable rate, it would be advisable for you to ask us to indicate what *the economic cost* (if any) and any other costs might be (but they are payable even if you do not ask us to indicate those costs).

10. Repayments

Repayment at your election

10.1 Subject to clause 9.10, you may repay the whole or part of the *secured liabilities* at any time by giving us five *business days'* notice. You can close the *facility* if you have paid the whole of the *secured liabilities*, by contacting us using the contact details on the back page of this document. You continue to be responsible for paying any part of the *secured liabilities* that is contingently owing to us until it has been paid in full or is no longer contingently owing, and we need not release any *security interest* until this has happened.

Compulsory repayment on default event

10.2 If a *default event* occurs and we require you to do so, you must repay (all or part of) the *secured liabilities* and all other monies owing by you within two *business days* after notice is given by us to you.

10.3 It is a *default event* if:

- (a) you or a *guarantor* fail to perform or observe any obligation under this *agreement* in a material respect, *including* an obligation to pay an amount on time;
- (b) you do not pay interest, fees or other amounts due under clause 9;
- (c) the *secured liabilities* exceed the *facility limit*;
- (d) you or a *guarantor* become *insolvent*, (or in the case of a natural person) die or become of unsound mind or subject to any legal disability or incapacity;
- (e) any provision of this *agreement* or any security created by you or any *guarantor* is or becomes void, voidable or defective;
- (f) you or any *guarantor* without our prior written consent purports or attempts to create any *security interest* over any *secured property* in favour of anyone other than us;
- (g) a *margin call* is not satisfied in accordance with clause 11; or
- (h) any other event occurs which in our opinion may materially affect your or the *guarantor's* ability to

meet your or their obligations under this *agreement*. If you are a small business referred to in the Banking Code of Practice, this subclause (h) does not apply to you

Repayment at our election

- 10.4 Despite clause 10.2, and even if no *default event* has occurred, we may ask you to repay the *secured liabilities* at any time by giving you no less than five *business days'* notice. However, if you are an individual, a small business referred to in the *Banking Code of Practice*, or this is a *Small Business Contract* we will give you a reasonable notice period (consistent with any notice period required under the *Banking Code of Practice*), but this does not limit our rights under clause 1.11.
- 10.5 To avoid doubt, if this is a *joint facility*, each of you is liable for the entire *secured liabilities*. Each of you agrees to pay us any amounts which any of the others does not pay on time or in accordance with any arrangement under which it is expressed to be owing, as at the time we demand that you pay them to us. As a separate undertaking, each of you unconditionally and irrevocably indemnifies us against, and you must pay us for the loss we suffer if the *facility* is unenforceable solely because of, the death, *insolvency* or incapacity of, or any act or omission by, or other circumstances affecting, any of the others, except to the extent of our fraud, negligence or misconduct.
- 10.6 If this is a *joint facility*, except to the extent any of you have a right conferred by the Banking Code of Practice or this agreement and having regard to clause 55A, none of you can otherwise withdraw from, end or limit the *facility*.
- 10.7 Your rights in respect of a *joint facility* as conferred by the Banking Code of Practice include the right to terminate your liability with respect to future advances or financial accommodation to be made under the *facility*, by giving us written notice. If you give us written notice to this effect, we may choose not to provide further advances under the *facility*.

11. Margin calls

11.1 We may have regard to our legitimate business interests, or prudential or regulatory obligations (and will where required to do so by law) make a *margin call* if, at the relevant time, the *current LVR* is equal to or greater than the *margin call LVR* at that time. This may occur in any number of ways, including movement in the value of any item of secured property, us changing the security ratio attributed to any item of secured property (which may include where we reduce the security ratio to zero), us changing the *buffer*, and/or us removing an *investment* from the list of *approved investments*.

We may change the *buffer* at any time. The reasons why we may change the *buffer* include (but are not limited to) changes to our view of the market risk of providing the *loan* to you and taking security over *approved investments*. We will notify you in writing or by newspaper advertisement, on or before the date of any change in the *buffer*.

11.2 If we make a *margin call*, we will take reasonable steps to notify you and ask you to do any of the following (as you choose) by the *margin call deadline*:

- (a) except in relation to fixed rate *loans*, repay some or all of the *secured liabilities*;
- (b) provide us with security over additional *approved investments*;
- (c) provide cash collateral in a *cash management account*,

in any case, so that the *current LVR* is less than the *base LVR*. Having regard to our legitimate business interests, or prudential or regulatory obligations we may agree to an arrangement that may, but need not include any of (a), (b) or (c), so that the *current LVR* is less than the *margin call LVR*.

11.3 We will not be liable to you or any *guarantor* for any loss that you or the *guarantor* incur because of any failure to make a *margin call* as soon as we are entitled to, or at all, except to the extent of our fraud, negligence or misconduct.

11.4 If you do not satisfy a *margin call* by the *margin call deadline* (regardless of whether you have actually received the *margin call*), or we have been unable to contact you to give you a *margin call* (having taken reasonable steps to do so), you and the *guarantor* (if any) will be taken to have requested your attorney appointed under clause 13 to take all steps they deem necessary to *dispose* of any *secured property* that we choose having regard to our legitimate business interests, or prudential or regulatory obligations, and apply the net proceeds of *disposal* in accordance with clause 11.2(a) or (c) (as we deem appropriate, acting reasonably).

11.5 The attorney, acting reasonably, may *dispose* of more of the *secured property* than that required to satisfy the *margin call*.

11.6 The *secured property* may be *disposed* of together with other property of the same type belonging to other clients of a *joint facility* and the *disposal* proceeds of the combined *disposals* allocated in the proportion which the number of your or the *guarantor's* (as the case may be) investments *disposed* bears to the total number of investments *disposed* of the same type.

11.7 If the attorney disposes of secured property, under this clause 11, the attorney will take all reasonable care to dispose of the *secured property* for:

- (a) if, when it is sold it has a market value, not less than that market value; or
- (b) otherwise, the best price that is reasonably obtainable, having regard to the circumstances existing when *secured property* is sold.

11.8 The *margin call deadline* means the following (unless we specify a later time in writing):

- (a) if, at or around the time a *margin call* is to be made, at least 95% by market value of the *secured property* comprises *approved managed fund investments* (as determined by us in our discretion), 2.00 p.m. on the fifth *business day* after the *margin call* is made; and

- (b) in all other cases, 2.00 p.m. on the *business day* after the *margin call* is made.

11.9 We do not need to give notice of a *default event* or a notice to the *guarantor* in order to exercise our rights under this clause 11.

12. Representations, warranties and covenants

12.1 If you are a trustee, you represent and warrant to us that:

- (a) you are the only trustee of the trust;
- (b) no action has to your knowledge, having made due enquiry, been taken or proposed to remove you as trustee of the trust;
- (c) the copies of the trust deed and other documents relating to the trust provided to us disclose all the terms of the trust;
- (d) the trust deed will not be amended or altered without our prior consent;
- (e) you will not relinquish your trusteeship without our prior consent;
- (f) you have power under the trust deed to enter into and observe your obligations under this *agreement* and you enter into this *agreement* in your capacity as trustee of the trust;
- (g) you are not, and never have been, in default under the trust deed;
- (h) our rights under this *agreement* rank in priority to the interests of the beneficiaries of the trust; and
- (i) you have carefully considered the purpose of this *agreement* and consider that entry into this *agreement* is for the benefit of the beneficiaries and the terms of this agreement are fair and reasonable.

Each representation and warranty is taken to be repeated on each date on which we provide a *loan*.

12.2 If you are a trustee, you agree:

- (a) at our request and at your own expense:
 - (i) to execute and cause your successors to execute documents and do everything else necessary or appropriate to bind yourself and your successors under this *agreement*; and
 - (ii) to use your best endeavours to cause relevant third parties to do likewise to bind every person intended to be bound under this *agreement*;
- (b) to observe your obligations as trustee of the trust;
- (c) not, without our consent, to do anything which:
 - (i) effects or facilitates the retirement, removal or replacement of yourself as trustee of the trust; or
 - (ii) could restrict your right of indemnity from the trust fund in respect of obligations incurred as trustee under this *agreement*; or

- (iii) could restrict or impair your ability to observe its obligations under this *agreement*; or
 - (iv) effects or facilitates the termination of the trust; or
 - (v) effects or facilitates the variation of the trust deed; or
 - (vi) effects or facilitates the resettlement of the trust fund; or
 - (vii) could result in the trust fund being mixed with other property; and
- (d) to notify us immediately if any representation or warranty made or taken to be made in connection with this *agreement* is found to be incorrect or misleading when made or taken to be made.

12.3 You represent and warrant that you do not have any reason to suspect that any payment we make in accordance with any instructions you give us using the *facility* will breach any law in Australia or any other relevant country.

13. Power of attorney

In this clause 13, “you” and related terms mean the *client* and, if there is a *guarantor*, each *guarantor*, and applies separately in respect of each and every one of them.

13.1 You (and, if there are more than one of you, each of you severally) appoint us and our authorised officers and agents as your attorneys. If we ask, you must formally approve anything an attorney does under clause 13.2 (including in writing). You may not revoke these appointments until all the *secured property* is released from this *agreement*.

13.2 An attorney may do any act or thing and execute, sign or deliver any document which an attorney reasonably considers necessary or desirable for the purpose of:

- (a) doing anything which you may authorise an attorney to do or request an attorney to do (including a request you are taken to have made under clause 11.4) in connection with the *secured property* (including executing a deed, disposing of or otherwise dealing with the *secured property* or directing *Nominees* and *NMS* to do so, starting, conducting and defending legal proceedings, applying the proceeds or dealing with the *secured property* to repay all or part of the *secured liabilities*, or sending messages or communications by which *secured property* can be disposed of); and
- (b) delegating their powers (including this power and the power to revoke a delegation); and
- (c) exercising their powers even if this involves a conflict of duty or if they have a personal interest in doing so; and
- (d) exercising their powers regardless of whether a *default event* has occurred.

13.3 Neither we nor an attorney are liable for any loss or penalty incurred by you as a result of:

- (a) any delay by an attorney in exercising their powers; or
- (b) an attorney not exercising their powers,

except if caused by our fraud, negligence or misconduct.

13.4 You indemnify each attorney against any reasonable loss or costs they suffer or incur in exercising powers in good faith under this power of attorney. We may debit any such loss or cost to:

- (a) your variable interest rate *loan account*, if a variable interest rate applies to all or a portion of your *facility* and if to do so would not cause the *secured liabilities* to exceed the *facility limit*;
- (b) your *cash management account*, if a fixed interest rate applies to all of your *facility*; or
- (c) an account acceptable to us for which you have provided us with a *direct debit request*.

We will give you two *business days* prior notice of any amounts to be debited under this clause 13.4. A loss under this clause will not be a reasonable loss to the extent that it is caused by our fraud, negligence or misconduct.

13.5 If we do not debit your *loan account*, or *cash management account* or other account we have agreed, in accordance with clause 13.4, you must pay us within two *business days* of receiving a request from us the amount of any loss or cost referred to in clause 13.4.

14. Rights of set-off over your cash management account

14.1 If a *cash management account* has been opened in your name for use in connection with the *facility*, as security for your obligations you agree to give us rights of set-off against that account. If this is a joint facility, each of you agree to give us those rights in relation to each relevant *cash management account*.

14.2 This means that we may set off any amount due by you to us against the credit balance in the *cash management account* if a *default event* has occurred. We may do this without prior notice to you but we will give you notice as soon as practicable after exercising our rights under this clause.

Part 2

Guarantee Terms

This Part only applies if a person is a *guarantor*, either as an original party to this *agreement* or by virtue of a *Guarantor Accession Deed Poll*.

15. Reason for giving a guarantee

- 15.1 The *guarantor* gives us this guarantee in return for us, at the *guarantor's* request, entering into, or continuing, the *facility* with the *client*.
- 15.2 By signing this *agreement*, the *guarantor* incurs certain obligations. The *guarantor* also gives us rights concerning the *secured property*. However, the maximum amount we can recover from the *guarantor* is described in clause 23.

16. Guarantee

- 16.1 The *guarantor* unconditionally and irrevocably agrees to guarantee the obligations of the *client* under this *agreement*.
- 16.2 The *guarantor* guarantees that the *client* will pay us when they become due for payment under this *agreement* all the amounts which may be payable now or in the future under this *agreement* or otherwise are *guarantor's secured liabilities*.
- 16.3 Subject to clause 23, the *guarantor's secured liabilities* can increase at any time without the *guarantor's* consent. We are not obliged to tell the *guarantor* if the amount increases or otherwise changes. However, you may, by written notice to us, limit the amount or nature of the liabilities guaranteed under this Guarantee in the circumstances set out in section 95 of the Banking Code of Practice where that Code applies to you and this *guarantee*.
- 16.4 The *guarantor* agrees to pay us, within two *business days* from when we demand payment, any amounts which the *client* does not pay on time or in accordance with any arrangement under which it is expressed to be owing, as at the time we demand that the *guarantor* pay them to us.
- 16.5 The *guarantor* agrees to pay or reimburse us, within two *business days* from when we demand payment, for all fees in connection with the *guarantee*, including those payable to us, *NMS* or *Nominees* and any fee *NMS* or *Nominees* may charge us. We may require the *guarantor* to pay within two *business days* from when we demand payment any *enforcement expenses* incurred in enforcing the *guarantee*.
- 16.6 The *guarantor* must reimburse, within two *business days* from when we demand payment, us, *NMS* and *Nominees* for any costs, fees and charges incurred on the *guarantor's* behalf in accordance with the terms of the *guarantee*.
- 16.7 The *guarantor's* liabilities under clauses 16.5 and 16.6 include stamp duty, registration or other fees and charges associated with *CHESS*.

- 16.8 On giving the *guarantor* at least 30 days notice in writing we may impose any new fee, vary the amount of a fee, vary the frequency of interest and fee charging or the basis of the calculation and charging of interest, in each case in relation to the *guarantee*.
- 16.9 Except to the extent the *guarantor* has a right conferred by the Banking Code of Practice, the *guarantor* cannot otherwise withdraw from, end or limit the *guarantee*.
- 16.10 When the *guarantor* is not (i) a joint applicant, (ii) director of a corporate applicant, (iii) trustee applicant or (iv) beneficiary of a trust applicant, a Supplementary Guarantor Consent form will be required to validate the *guarantee*.

17. Related indemnity

As a separate undertaking, the *guarantor* unconditionally and irrevocably indemnifies us against, and the *guarantor* must pay us for, the loss we suffer if this *agreement* is unenforceable solely because of the *client's* death, *insolvency* or incapacity or any act or omission by, or other circumstances affecting, the *client*.

18. The guarantor gives up certain rights

- 18.1 As long as the *guarantor* or the *client* has any liability to us for any reason, the *guarantor* may not, without our prior written consent:
 - (a) recover any amount in competition with us against the *client* or any co-guarantor in an *insolvency*, under any right of contribution or indemnity, or in any other way; or
 - (b) claim the benefit, or seek the transfer, of any security, guarantee or indemnity from the *client* or any co-guarantor; or
 - (c) take over any of our rights as creditor; or
 - (d) require us to resort to any security or our rights before or when we resort to the *guarantor*.
- 18.2 The *guarantor* waives in our favour any right the *guarantor* has against us, any co-guarantor or any other person, or their estates or assets which would reduce the *guarantor's* liability to us or the amount we can recover from the *guarantor* or any of them.

19. Payments need not reduce specific parts of guarantor's liability

- 19.1 The *guarantor* agrees that we can treat payments received by us under the *facility* or the *guarantee* in any way permitted by this *agreement*.
- 19.2 We may place and keep in a suspense account any payments we receive from the *guarantor* under this *agreement* and appropriate them at our discretion (acting in a commercially reasonable manner).

20. Acknowledgments by guarantor

The *guarantor* acknowledges that:

- (a) all the terms and conditions of the *guarantee* are set out in this *agreement* and related documents we have seen and approved; and
- (b) we do not provide financial, taxation or legal advice in relation and that the *guarantor* must obtain their own legal and financial advice in relation this agreement and the *guarantee*; and
- (c) no provision can be varied or waived by us except by written notice from us; and
- (d) the *guarantor* is responsible for making, and for continuing to make, the *guarantor's* own investigation of the creditworthiness, financial position and honesty of the *client* and any other person who is a co-guarantor.

21. Guarantor is bound despite certain matters

- 21.1 The *guarantor* is liable to us even if any intended co-guarantor never is or ceases to be liable for any amounts payable under this *agreement* for any reason.
- 21.2 The *guarantor* is fully liable under this *agreement* both together with any one or more co-guarantors as well as separately.
- 21.3 The *guarantor's* liabilities under this *agreement* are not affected by anything that might otherwise affect them at law or in equity *including*:
 - (a) the death, mental or physical disability, legal incapacity, or *insolvency* of the *guarantor*, a co-guarantor or any other person; or
 - (b) the fact that we give up, release in whole or in part, vary or exchange, or fail to obtain, perfect, register or realise, or deal in any other way with any security, guarantee or indemnity or negotiable instrument; or
 - (c) the fact that we grant time or any other concession to or compound or compromise with, or do or omit to do anything which affects the *guarantor's* obligations or the obligations of a co-guarantor or any other person to us or to the *guarantor*; or
 - (d) the fact that we vary, increase, assign, end or replace the *facility*. We will provide the *guarantor* with notice if we vary, increase, assign, end or replace the *facility*.
- 21.4 The *guarantee* continues to cover liabilities incurred after the *guarantor's* death or disability or if the *guarantor* becomes *insolvent*.
- 21.5 A payment by any person will not be taken as discharging any amounts the *guarantor* owes us to the extent that any part of the payment is claimed later to be void or voidable or a preference for any reasons. The *guarantor* will continue to be liable as guarantor for such part.
- 21.6 The *guarantee* is a continuing security and extends to all of the *guarantor's* *secured liabilities*.

22. Guarantor's cash management account

- 22.1 If the *guarantor* wishes to provide us with cash collateral, the *guarantor* authorises us to open a cash management account in the *guarantor's* name. If there is more than one *guarantor* each *guarantor* authorises us to open a separate *cash management account* in their name.
- 22.2 The *cash management account* will be used to receive and hold:
 - (a) the net proceeds from the *disposal* of the *guarantor's* *secured property*; and
 - (b) any other funds the *guarantor* wishes to deposit by way of cash collateral.
- 22.3 A *guarantor* may withdraw money from that *guarantor's* *cash management account* by written request to us (which must be in a letter physically signed by that *guarantor* and posted or faxed to us), provided that at that time:
 - (a) we have not made a *margin call* which remains unsatisfied; and
 - (b) the *current LVR* both before and after any withdrawal is less than the *base LVR*; and
 - (c) no *default event* subsists (before the withdrawal) or would occur or be likely to occur (after the withdrawal).
- 22.4 If a *cash management account* has been opened for a *guarantor* as security for the *guarantor's* obligations, the *guarantor* gives us rights, at any time and from time to time, to set off any amount due by the *guarantor* to us against the credit balance in that account. If there is more than one *guarantor*, each *guarantor* agrees to give us these rights in relation to each relevant *cash management account*. We may do this without notice to the *guarantor*.
- 22.5 The operation of the *guarantor's* *cash management account* will be governed by the terms and conditions for that account, which we will provide separately to the *guarantor*.

23. Limit of guarantee

- 23.1 The *guarantee* is a security for the whole of the *secured liabilities*. However, the amount payable by the *guarantor* is limited to the sum of:
 - (a) the *facility limit*; plus
 - (b) all other amounts payable under clause 16; plus
 - (c) all other amounts payable under clause 17; plus
 - (d) all other amounts payable for breach of an obligation owed by any *guarantor* (other than an obligation to pay money) under the *guarantee*; plus
 - (e) all other amounts forming part of the *guarantor's* *secured liabilities*.
- 23.2 Clause 23.1 does not limit the amount we can claim from a *guarantor* under the *guarantee*, but it limits the amount ultimately recoverable from a *guarantor*.

Part 3

Mortgage Terms

24. Agreement to mortgage

By client

- 24.1 You agree to mortgage, and do mortgage, to us as security for the payment of the *secured liabilities*:
- (a) all *future investments* held in the name of, or on behalf of, any one or more or all of you, automatically and immediately that they become *future investments*;
 - (b) all *new rights*, automatically and immediately that they are acquired by or on behalf of any one or more or all of you; and
 - (c) the credit balance held in each *cash management account*.
- 24.2 In enforcing our security under this *agreement*, we are entitled to resort to any *secured property* we hold from any one or more or all of you.
- 24.3 In respect of those *secured liabilities* which are *loans*, this mortgage is limited to the *security limit*.

By guarantor

- 24.4 The *guarantor* agrees to mortgage, and does mortgage, to us as security for the payment of the *guarantor's secured liabilities*:
- (a) all *future investments* held in the name of, or on behalf of, the *guarantor* automatically and immediately that they become *future investments*;
 - (b) all *new rights*, automatically and immediately that they are acquired by the *guarantor*; and
 - (c) the credit balance held in each *cash management account* in the name of the *guarantor*.
- 24.5 In enforcing our security under this *agreement*, we are entitled to resort to any *secured property* we hold from the *guarantor*.
- 24.6 In respect of those *guarantor's secured liabilities* which are *loans*, this mortgage is limited to the *security limit*.

Registration

- 24.7 We may, at your expense, apply for any registration, or give any notification, in connection with a *security interest* created under this agreement.

25. Power of sale

In this clause 25, 'you' and related terms mean the *client* and, if there is a *guarantor*, each *guarantor*, and applies separately in respect of each and every one of them.

- 25.1 If a *default* event occurs, we may, in addition to any other powers conferred on us by this *agreement*, do all or any of the following:
- (a) *dispose* of all or any of the *secured property* either separately or together with other property of the same type belonging to other clients or their

guarantors, having regard to our legitimate business interests, or prudential or regulatory obligations, and do all acts and things that we consider necessary to complete the *disposal* of the *secured property*;

- (b) demand and recover all of the proceeds from the *secured property* by action or otherwise in your name or our name to the full extent of the estate or interest which you could dispose of;
- (c) make any arrangement or compromise which we consider expedient in our interests; or
- (d) bring or defend any action, suit or legal proceedings in your name or otherwise, for all or any of the above purposes.

- 25.2 We may allocate the *disposal* proceeds of combined *disposals* under clause 25.1(a) according to the proportion which the number of *investments* comprised in the *secured property* sold on your behalf bears to the overall number of *investments* of the same type in the combined *disposal*.

26. Investments

In this clause 26, 'you' and related terms mean the *client* and, if there is a *guarantor*, each *guarantor*, and applies separately in respect of each and every one of them.

- 26.1 In relation to any *investments*:
- (a) where a *sponsorship agreement* is required by us, you must at all times be a party to such an agreement which is in a form that is reasonably acceptable to us, covering those *investments*;
 - (b) you must promptly inform us when any *investments* included in the *secured property* are, or are proposed to be, converted into *CHESSE-eligible investments* and at our request enter into a *sponsorship agreement* in respect of those *investments*; and
 - (c) if any *CHESSE-eligible investments* subject to this *agreement* are replaced with *investments* that are not *CHESSE-eligible investments*, you must ensure the relevant *certificates* are deposited urgently with us.

- 26.2 You must deposit with us or cause to be deposited with us by giving an irrevocable direction to any company, broker, share register or other person specified by us:

- 26.3 any documents or *certificates* evidencing title in relation to *secured property*, *future investments* or *new rights*; and

- 26.4 any *transfers* that we request.

27. Obligations in relation to secured property

In this clause 27, 'you' and related terms mean the *client* and, if there is a *guarantor*, each *guarantor*, and applies separately in respect of each and every one of them.

- 27.1 The *client* must ensure that a *default* event under this *agreement* does not occur. The *guarantor* must ensure that it is not in default under the *guarantee*. You must

also carry out on time all of your obligations *including* obligations to pay the *secured liabilities* or the *guarantor's secured liabilities* (as the case may be). Your obligations under this *agreement* continue even if we release the *secured property* from this *agreement*.

- 27.2 You may request us to release the *secured property* from this *agreement* when there is no amount owing in respect of *secured liabilities* or *guarantor's secured liabilities*. However, even if the *secured liabilities* or the *guarantor's secured liabilities* are paid, the *secured property* remains mortgaged to us until we actually release it from this *agreement*. We will act reasonably in releasing the *secured property*.
- 27.3 The *client* is liable for all of the *client's* obligations under this *agreement* both separately on their own and jointly with any one or more other persons named in this *agreement* as *client*. The *guarantor* is liable for all of the *guarantor's* obligations under this *agreement* both separately on their own and jointly with any one or more other persons named in this *agreement* as *guarantor*.
- 27.4 We may at any time require that *secured property* held in your name be transferred into the name of *Nominees* as your nominee to allow us to perfect or register this mortgage or enforce our rights under this *agreement* or protect the value of, or protect our interest in, the *secured property* or to otherwise improve our position in relation to the *secured property*. You authorise your attorney appointed under clause 13 to execute all documents and do all other things necessary to effect any such transfer.
- 27.5 We may require *NMS* to transfer any *secured property* held in a *participant sponsored holding* in your name into a *participant sponsored holding* of *Nominees* as your nominee to allow us to perfect or register this mortgage or enforce our rights under this *agreement* or protect the value of, or protect our interest in, the *secured property* or to otherwise improve our position in relation to the *secured property*.

28. Restrictions on dealing with the secured property

In this clause 28, 'you' and related terms mean the *client* and, if there is a *guarantor*, each *guarantor*, and applies separately in respect of each and every one of them.

28.1 You must not, without our consent:

- (a) *dispose* of, deal with or part with the possession of any interest in the *secured property*; or
- (b) create or allow to come into existence any *security interest* which affects the *secured property* in favour of anyone other than us; or
- (c) convert any *CHESS-eligible investments* that form part of the *secured property* to *investments* which are not *CHESS-eligible investments*; or
- (d) in relation to any *CHESS-eligible investments* that form part of the *secured property*, change the *controlling participant*, shareholder name or shareholder address; or
- (e) abandon, settle, compromise or discontinue or

become nonsuited in respect of any proceedings against any person (other than us) in respect of any of your rights in connection with the *secured property*; or

- (f) waive any of your rights or release any person from their obligations in connection with the *secured property*.

28.2 You must do anything we reasonably require in connection with the *secured property* including obtaining consents, signing and producing documents, producing receipts, getting documents completed and signed and paying any duties, taxes and other imposts to allow us to perfect or register any *security interest* created under this *agreement* or enforce our rights under this *agreement* or protect the value of, or perfect our interest in, or to otherwise improve our position in relation to the *secured property*.

28.3 You must do anything we reasonably consider necessary for the purpose of:

- (a) providing more effective security over the *secured property* (or any other property you are required to mortgage under this *agreement*) for the payment of the *secured liabilities* or the *guarantor's secured liabilities* (as the case may be) *including*:
 - (i) if it is possible under *CHESS* for the *secured property* to be subject to a reserved *subposition* or similar restriction in our favour or for our benefit you must execute any further documents that we ask you to so as to make the *secured property* subject to such a *subposition* or similar restriction; and
 - (ii) if for any reason any *CHESS-eligible investment* that forms part of the *secured property* becomes an *investment* that is not a *CHESS-eligible investment* you must procure that all certificates issued in respect of those *investments* are deposited with us or a person nominated by us; and
 - (iii) if the *controlling participant* under the *sponsorship agreement* becomes unable or ineligible to continue to perform its obligations under the *sponsorship agreement* or the *controlling participant* resigns, you must enter into a *sponsorship agreement* on terms, and with another person, both reasonably acceptable to us;
- (b) ensuring that any *security interest* created under this *agreement* is enforceable, perfected or otherwise effective;
- (c) ensuring that we have control (as that term is defined under the *PPSA*) of each item of *secured property* at all times;
- (d) enabling us to apply for any registration, or give any notification, in connection with any *security interest* created under this *agreement* so that the *security interest* has the priority we require; or
- (e) enabling us to exercise our rights in connection with the *secured property*; or

- (f) enabling us to register the power of attorney described in clause 13 or a similar power; or
- (g) showing whether you are complying with this *agreement*.

28.4 You must:

- (a) provide to us as soon as possible and in any event by no later than the end of the next *business day* after becoming aware of *new rights*, particulars and documentary evidence of *new rights*;
- (b) pay all instalments, calls or other moneys payable in respect of the *secured property* if we determine that it is reasonably necessary to protect the value of the *secured property*. If funds are not provided, we may, at our discretion, pay or authorise and direct the *nominee* to take up such calls, instalments and other amounts as may be necessary and that payment will form part of the *secured liabilities*;
- (c) take up *new rights* if we ask you to (but you may decline to take up *new rights* for which you have a present or future obligation to make a payment to acquire the *new right* or in connection with that *new right*);
- (d) assist us in exercising any power of sale or *disposal* that we have in respect of the *secured property*; and
- (e) without limiting anything in clause 28.1, enter into a priority agreement in a form acceptable to us if you create or allow to exist any *security interest* over the *secured property* in favour of anyone other than us without our consent.

If you do not do any of these things, then without limiting any other rights we may have, we need not advance to you any further funds under this *agreement*.

29. Preservation of our rights

In this clause 29, ‘you’ and related terms mean the *client* and, if there is a *guarantor*, each *guarantor*, and applies separately in respect of each and every one of them.

This *agreement* does not merge with or adversely affect and is not adversely affected by any of the following:

- (a) another security or right or remedy to which we are entitled; or
- (b) a judgment or order which we obtain against you in respect of any amount owed to us by you.

30. Priority amount

In this clause 30, ‘you’ and related terms mean the *client* and, if there is a *guarantor*, each *guarantor*, and applies separately in respect of each and every one of them.

For the purposes only of fixing priorities in accordance with section 282 of the Corporations Act between this mortgage and any other *security interest* given by you and without affecting any of your obligations under this

agreement, the prospective liabilities secured by this mortgage include, without limitation,

- (a) in respect of the *client*, the prospective liabilities comprising *loans* made under this *agreement*, interest and other amounts payable under this *agreement* and enforcement costs incurred in connection with this *agreement* to a maximum of the *security limit*; and
- (b) in respect of the *guarantor*, the prospective liabilities comprising the *guarantor’s* obligations to guarantee the repayment of all *loans* made under the *facility*, and payment when due of all interest and other amounts payable under the *facility* and *enforcement expenses* incurred in connection with the *facility* or the *guarantee* to a maximum of the *security limit*.

Part 4 CHESS Sponsorship Terms

Explanation of CHESS Sponsorship Terms

The CHESS Sponsorship Terms set out the terms on which National Margin Services Pty Ltd will sponsor your investments which are able to be held in CHESS.

CHESS is a system of electronic registration of shareholders in listed companies. Under CHESS there are no share certificates and transfers are effected electronically. Only persons admitted as participants have access to CHESS. For you to have your investments registered on CHESS you must have your shareholding sponsored by a participant.

The CHESS Sponsorship Terms contain special provisions to better protect National Australia Bank Limited as mortgagee of the investments. In particular, National Margin Services Pty Ltd will only transfer or otherwise deal with the investments at the direction of National Australia Bank Limited or with its consent.

The CHESS Sponsorship Terms also contain the standard sponsorship provisions required by the settlement rules of ASX Settlement Pty Ltd (one of the bodies responsible for the operation of CHESS). These include:

- a statement that the regulatory regime that applies to the participant is set out in the Corporations Act and the Settlement Rules of ASX Settlement Pty Ltd. Accordingly, the participant is regulated by the Australian Securities and Investments Commission and ASX Settlement Pty Ltd;
- a statement that if the participant breaches the sponsorship agreement, you may refer that breach to any regulatory body, including ASX Settlement Pty Ltd;
- a statement that you may lodge a complaint against the participant with any appropriate regulatory authority or other body, including ASX Settlement Pty Ltd and the Australian Financial Complaints Authority;
- the participant’s obligations to give effect to your

withdrawal instructions and not to initiate any transfer or conversion without the authority of National Australia Bank Limited;

- a statement that in some circumstances the participant may change your sponsor by giving you 20 business days notice. You may terminate the CHES Sponsorship Terms on receipt of such a notice;
- a statement that if you make a claim for compensation against the participant, the ability of the participant to satisfy that claim will depend on its financial circumstances. In certain circumstances you may make a claim on the ASX Settlement and Transfer Corporation Pty Ltd;
- a statement of your right to remove your investments from the CHES subregister or from the control of the participant if the participant is suspended from participation in CHES;
- each party's rights to terminate the CHES Sponsorship Terms; and
- a statement outlining the procedures which are put in place in respect of the investments which are held in CHES if you die or become bankrupt.

If you have any queries about the CHES Sponsorship Terms, or you do not fully understand any of the terms, please contact National Margin Services Pty Ltd on 1300 135 145 before you sign the application form.

In this Part 4, 'you' and related terms mean the *client* and, if there is a *guarantor*, each *guarantor*, and applies separately in respect of each and every one of them.

31. Appointment of NMS as your sponsor

- 31.1 You appoint NMS, and NMS agrees, to be your *sponsoring participant* for the *participant sponsored holdings* that have the Holder Identification Number(s) listed in the *HIN Schedule* on the *CHES Sponsorship Terms*.
- 31.2 Subject to clauses 36 and 39, the appointment of NMS as your sponsor under clause 31.1 is irrevocable until we notify you otherwise in writing.

32. Authority of NMS

- 32.1 32.1 NMS may:
- (a) do anything necessary to register the *CHES-eligible investments* that form part of the *secured property* as a *participant sponsored holding* with NMS as the *controlling participant*;
 - (b) on our instructions, do everything necessary to *transfer* and register the *CHES-eligible investments* that form part of the *secured property*; and
 - (c) do anything that is necessary or convenient for the purpose of acting as *controlling participant* in relation to the *CHES-eligible investments* that form part of the *secured property*. For example if the *settlement rules* require that any of the *CHES-eligible investments* be converted from a *participant sponsored holding* (for example, because the issuer will no longer have uncertificated holdings) NMS will initiate the

conversion as required by the *settlement rules*.

- 32.2 NMS will not initiate any *transfer* or *conversion* of *CHES-eligible investments* into or out of your *participant sponsored holding*, or comply with any other instruction you give in relation to the *secured property*, without our express authority.
- 32.3 NMS is under no duty to enquire whether we may validly give any consent or instruction.
- 32.4 NMS may refuse to take action in relation to the *CHES-eligible investments* sponsored by it unless NMS is satisfied that to do so:
- (a) will not affect our *security interest*;
 - (b) will not cause or result in a *default event*;
 - (c) will not give rise to a *margin call*.
- 32.5 Subject to clauses 32.3 and 32.4, NMS will initiate any action necessary to give effect to a request by you to withdraw your *CHES-eligible investments* from sponsorship by NMS, within two *business days* of the date of the request.
- 32.6 NMS may *dispose* of *secured property* in accordance with our instructions where we are acting as your attorney under clause 13. Without limiting this authorisation, NMS will act on our instructions in sending any messages or communications by which *secured property* can be *disposed of*.

33. Your rights

Exchange Traded Options

- 33.1 You may ask us to permit you to lodge, with ACH, *CHES-eligible investments* that form part of the *secured property*, as cover for written positions in the Australian Options Market.
- 33.2 If we agree under clause 33.1 to allow you to lodge *CHES-eligible investments* with ACH you must execute additional documentation, and enter into further arrangements, satisfactory to us. The additional documentation will be in addition to and may amend the *CHES Sponsorship Terms*, and will comprise part of the *CHES Sponsorship Terms*.
- 33.3 We may charge (and you agree to pay) fees in relation to any arrangement under clauses 33.1 and 33.2.

Complaint procedures

- 33.4 If you wish to lodge a complaint against NMS you may refer that complaint to any appropriate regulatory authority or other body, including ASTC and the Australian Financial Complaints Authority.
- 33.5 If NMS breaches any of the provisions of the *CHES Sponsorship Terms*, you may refer that breach to any regulatory authority, including ASTC.

Compensation arrangements

- 33.6 In accordance with the *settlement rules*, NMS has lodged a *sponsorship bond* with ASTC .
- 33.7 You may apply in writing to ASTC for compensation under the *sponsorship bond* if:
- (a) NMS breaches a provision of the *settlement rules*; and

- (b) you suffer loss, damage, costs or expense as a result of that breach; and
- (c) there is no real prospect of you obtaining adequate compensation other than by making an application to ASTC.

33.8 An application for compensation to ASTC must be made:

- (a) within the time specified in a notice published by ASTC advertising for claims; or
- (b) if no notice is published, within 6 months of you becoming aware that you suffered or incurred any loss, damage, cost or expense; or
- (c) any later date that ASTC allows.

33.9 You are not entitled to make a claim under the statutory compensation arrangements specified in the Corporations Act and Corporations Regulations.

33.10 If you make a claim for compensation against NMS, the ability of NMS to satisfy that claim will depend on NMS's financial circumstances.

34. Your responsibilities and acknowledgements

Explanation of the effect of these Terms

34.1 You acknowledge that:

- (a) NMS provided you with an explanation of the effect of the *CHESSE Sponsorship Terms*;
- (b) you have read and understood the *CHESSE Sponsorship Terms* and NMS's explanation of the effect of the *CHESSE Sponsorship Terms*;
- (c) you have sought appropriate advice if you have any queries.

Copy of CHESSE Sponsorship Terms

34.2 By signing the Application Form, you are taken to have expressly instructed NMS not to provide you with an executed copy of the *CHESSE Sponsorship Terms* (although you reserve the right to make a request in writing to NMS for an executed copy at any time).

NMS must be controlling participant

34.3 If any of the *CHESSE-eligible investments* that form, or that are proposed to form, part of the *secured property*, are held in a *participant sponsored holding* and a person other than NMS is the *controlling participant*, you must take all steps necessary to effect a change in the *controlling participant* so that NMS becomes the *controlling participant* in relation to those *CHESSE-eligible investments*.

Supply of information

34.4 You agree to supply all information and supporting documentation that is reasonably required by NMS to permit NMS to comply with the registration requirements under the *settlement rules*.

34.5 If any information that you have previously supplied changes, you must notify NMS of the change (and supply any necessary supporting documentation) as soon as possible.

34.6 You authorise NMS to obtain statements of the *CHESSE-eligible investments* that form part of the *secured property* and other information in relation to your *CHESSE-eligible investments* from ASTC on your request, or at such times as NMS reasonably thinks necessary.

Subpositions

34.7 If, in accordance with this *agreement* or our instructions, NMS initiates any action which has the effect of creating a *subposition* over any *CHESSE-eligible investments* that form part of the *secured property*, your right to *transfer, convert* or otherwise deal with those *CHESSE-eligible investments* is restricted in accordance with the terms of the *settlement rules* relating to *subpositions*.

34.8 If we reasonably determine that under the *settlement rules* a *subposition* may be used to protect our *security interest*, on our request you must do all things to cause those *CHESSE-eligible investments* that we identify, to be reserved in a *subposition* on the terms (if any) we specify.

34.9 Neither NMS nor you may initiate any action which has the effect of reserving or releasing *CHESSE-eligible investments* in or out of a *subposition* without our prior consent, unless the *settlement rules* require NMS or you to initiate that action.

Section 9 transfers

34.10 If NMS effects a *transfer* under section 9 of the *settlement rules* then:

- (a) you may not assert or claim against ASTC or the relevant issuer that the *transfer* was not effected by NMS or that NMS was not authorised to effect the *transfer*; and
- (b) you have no claim arising out of the *transfer* against the National Guarantee Fund.

35. Death or bankruptcy

35.1 If you die or become *bankrupt* a *holder record lock* will be applied to your *CHESSE-eligible investments* that are sponsored by NMS unless your legally appointed representative removes your *CHESSE-eligible investments* from the *CHESSE* Subregister.

35.2 If you die, the *CHESSE Sponsorship Terms* will remain in operation, in respect of the legally appointed representative authorised to administer your estate, for a period of up to three calendar months after the removal of the *holder record lock* (unless your legally appointed representative removes the *CHESSE-eligible investments* from the *CHESSE* Subregister).

35.3 If a joint *participant sponsored holder* dies, all *CHESSE-eligible investments* sponsored by NMS under the joint *holder record* will be transferred into new holdings under a new *holder record* in the name of the survivors (the *CHESSE Sponsorship Terms* remain valid for the new holdings under the new *holder record*).

35.4 If a joint *participant sponsored holder* becomes *bankrupt*, NMS may:

- (a) establish a new *holder record* in the name of the bankrupt, transfer the interest of the bankrupt into

the new holdings under the new *holder record* and request that *ASTC* apply a *holder record lock* to all holdings under that *holder record* (unless the bankrupt's legally appointed representative removes the *CHESS-eligible investments* from the *CHESS Subregister*); and

- (b) establish a new *holder record* in the name of the remaining joint *participant sponsored holders* and transfer the interest of the remaining joint *participant sponsored holders* into the new holdings under the new *holder record*.

36. Suspension of NMS

- 36.1 If *NMS* is suspended from the *settlement facility*, then subject to *NMS's* liquidator, receiver, administrator or trustee asserting an interest in the *CHESS-eligible investments* controlled by *NMS*:
- (a) you may, within twenty *business days* of *ASTC* giving *NMS* notice of its suspension, give notice to *ASTC* requesting that *ASTC* remove any *CHESS-eligible investments* that are sponsored by *NMS* from either
 - (i) the *CHESS Subregister*; or
 - (ii) *NMS's* control to the control of another participant in the *settlement facility*; or
 - (b) if you do not give the request specified in clause 36.1(a), then *ASTC* may change your sponsor and you will be taken to have entered into a new sponsorship agreement with that sponsor on the *CHESS Sponsorship Terms*.

37. Change of sponsor

- 37.1 *NMS* may give you notice of its intention to change the participant that sponsors your *CHESS-eligible investments* in *CHESS*.
- 37.2 You are under no obligation to agree to a change of sponsor and you may, within twenty *business days* of receiving a notice from *NMS* under clause 37.1, terminate the *CHESS Sponsorship Terms* in accordance with clause 39.1(d).
- 37.3 If you do not terminate the *CHESS Sponsorship Terms*:
- (a) your new sponsor will send you a notice confirming that they consent to act as your sponsor; and
 - (b) *NMS's* rights under the *CHESS Sponsorship Terms* will be novated to the new sponsor on the date you receive a notice under clause 37.3(a).
- 37.4 If you continue to use the *facility* after receiving a notice under clause 37.3(a) you will be taken to have consented to the novation of the *CHESS Sponsorship Terms*.
- 37.5 The *CHESS Sponsorship Terms* continue for the benefit of *NMS* in respect of any rights and obligations accruing before notice is given under clause 37.3(a).
- 37.6 To the extent that any law or provision of any agreement makes the novation in clause 37.3(b) not binding or effective, the *CHESS Sponsorship Terms*

continue for *NMS's* benefit until such time as the novation is effective.

- 37.7 Nothing in this clause 37, prevents the completion of *transfers* or *conversions* by *NMS* where the obligation to complete those *transfers* or *conversions* arose before notice was given under clause 37.3(a) and the *CHESS Sponsorship Terms* will continue to apply to the completion of those *transfers* or *conversions*, notwithstanding the novation of the *CHESS Sponsorship Terms* to the new sponsor.

38. Indemnity

- 38.1 You indemnify *NMS* and us against any liability or loss arising from, and any costs, charges and expenses incurred in connection with *NMS* properly carrying out its duties or exercising its powers as *controlling participant* in relation to the *CHESS-eligible investments* or from carrying out any direction given by you or us. This is a continuing indemnity and it is not necessary for *NMS* or us to incur any expense or make any payment before enforcing it. The indemnity under this clause is reduced proportionally to the extent that we have acted fraudulently or with gross negligence and caused or contributed to foreseeable liabilities, losses, damages, costs or expenses.

39. Termination

- 39.1 The *CHESS Sponsorship Terms* terminate immediately:
- (a) by notice in writing from either you or *NMS* to the other;
 - (b) if *NMS* becomes *insolvent*;
 - (c) if *NMS* is suspended from the *settlement facility* or its rights under the *settlement facility* are terminated; or
 - (d) if *NMS* gives you notice under clause 37.1, by you instructing *NMS* to *transfer* the *CHESS-eligible investments* sponsored by *NMS* from your *participant sponsored holding*.
- 39.2 If the *CHESS Sponsorship Terms* terminate under clause 39.1 you must, at our request, immediately enter into a *sponsorship agreement* in relation to the *CHESS-eligible investments* that form part of the *secured property* on terms and with a *controlling participant* acceptable to us.
- 39.3 You may terminate the *CHESS Sponsorship Terms* in relation to any *CHESS-eligible investments* when we specify in writing that we no longer rely on the mortgage of those *CHESS-eligible investments* as security.

40. Variation

- 40.1 If any of the provisions in the *CHESS Sponsorship Terms* are inconsistent with the provisions in the *market rules*, the *clearing rules* or the *settlement rules*, *NMS* may, by giving you not less than seven *business days'* written notice, vary the *CHESS Sponsorship Terms* to the extent which, in *NMS's* reasonable opinion, is necessary to remove any inconsistency.

41. General rights and obligations

- 41.1 The sponsorship agreement in the *CHESSE Sponsorship Terms* replaces any prior sponsorship agreement between you and *NMS*, without affecting any rights or obligations that accrued under that prior agreement.
- 41.2 The *CHESSE Sponsorship Terms* are subject to the *market rules*, the *clearing rules* and the *settlement rules*. You may not take any action that will prevent or impede *NMS* from complying with its obligations under the *market rules*, the *clearing rules* or the *settlement rules*.
- 41.3 *NMS* is:
- an *ASTC* General Settlement Participant; and
 - a wholly owned subsidiary of National Australia Bank Limited.
- 41.4 *NMS* is not an Authorised Deposit Taking Institution and its obligations do not represent deposits or other liabilities of National Australia Bank Limited. National Australia Bank does not guarantee the obligations or performance of *NMS* or the services it offers.
- 41.5 Neither *ASX* nor its subsidiaries and controlled entities have any responsibility for supervising or regulating the relationship between you and *NMS* other than in relation to the *settlement rules* relating to sponsorship agreements.
- 41.6 The regulatory regime that applies to *NMS* is set out in the Corporations Act. Accordingly, *NMS* is regulated by the Australian Securities and Investments Commission. Information as to *NMS*'s status may be obtained from the Australian Securities and Investments Commission. In addition, the regulatory regime established by the *settlement rules* applies to *NMS*. Accordingly, *NMS* is regulated by *ASTC*.

- 42.3 You expressly authorise your attorney appointed under clause 13, at any time we request it, to replace the nominee appointed under clause 42.1 by terminating on your behalf that appointment and instead acting reasonably appointing another person to act in that capacity, and the expression '*Nominees*' in this *agreement* is interpreted accordingly. You authorise your attorney to do all things the attorney deems necessary or desirable on your behalf to effect that replacement, including directing the transfer of any *secured property* held by the terminated nominee to the new nominee. We will notify you in writing after this has occurred.

43. Indemnity to Nominee

You agree to indemnify *Nominees* against all liabilities or loss whatsoever which *Nominees* may suffer or incur except to the extent caused by the fraud, negligence or misconduct of *Nominees*.

44. Authority to mortgage and dispose

- 44.1 You authorise *Nominees* to mortgage on terms we specify in our favour all interests in *future investments* and *new rights* which are held by *Nominees*, to secure the *secured liabilities*.
- 44.2 You authorise *Nominees* to pay the proceeds of *disposal* of any *secured property* held on your behalf towards satisfaction of *secured liabilities* or by way of deposit into a *cash management account*, as we direct.
- 44.3 You authorise *Nominees* to dispose of *secured property* in accordance with our instructions where we are acting as your attorney under clause 13. Without limiting this authorisation, *Nominees* will act on our instructions in sending any messages or communications by which *secured property* can be *disposed of*.

Part 5 Nominee Terms

In this Part 5, 'you' and related terms mean the *client* and, if there is a *guarantor*, each *guarantor*, and applies separately in respect of each and every one of them.

42. Appointment (and replacement) of nominee

- 42.1 Subject to clause 42.3, you appoint *Nominees* to hold on your behalf:
- secured property* which is not *CHESSE-eligible investments*;
 - secured property* which was held in a *participant sponsored holding* but was transferred to *Nominees* under clause 27.4 or 27.5 or was converted to another mode of holding (whether required by us or the *settlement rules*).
- 42.2 The appointment will continue until we transfer the *secured property* into your name where we consider it necessary or this *agreement* terminates.

Part 6 Direct Debit Request Service Agreement

45. Debiting your account

- 45.1 By signing a *direct debit request*, you have authorised us to arrange for funds to be debited from your *account*. You should refer to the *direct debit request* and this *direct debit request service agreement* for the terms of the arrangement between us and you.
- 45.2 We will only arrange for funds to be debited from your *account* as authorised in the *direct debit request*.
- 45.3 If the *debit day* falls on a day that is not a *business day*, we may direct your *financial institution* to debit your *account* on the following *business day*.

If you are unsure about which day your *account* has or will be debited you should ask your *financial institution*.

46. Changes by us to direct debits

We may vary any details of the *direct debit request service agreement* or a *direct debit request* at any time by giving you at least 30 days written notice but we may give you shorter notice (of not less than 14 days) where a shorter period is reasonably required to help us manage a risk. To avoid doubt, clause 64 does not apply in relation to the *direct debit request service agreement*.

47. Changes by you to direct debits

- 47.1 Subject to clause 47.2 and 47.3, you may change the arrangements under a *direct debit request* by contacting us on 1300 135 145 (Client Service Representative(s) – Margin Lending Unit).
- 47.2 If you wish to change, stop or defer a *debit payment* you must notify us or your *financial institution* in writing (which must be in a letter physically signed by you and posted or faxed to us or your *financial institution*) at least 14 days before the next *debit day*. If you first notify your *financial institution*, please promptly let us know.
- 47.3 You may also cancel or suspend your authority for us to debit your account at any time by giving us or your *financial institution* 14 days' notice in writing (which must be in a letter physically signed by you and posted or faxed to us or your *financial institution*) before the next *debit day*. If you first notify your *financial institution*, please promptly let us know.

48. Your obligations regarding direct debits

- 48.1 It is your responsibility to ensure that there are sufficient clear funds available in your account to allow a *debit payment* to be made in accordance with the *direct debit request*.
- 48.1A If there are insufficient clear funds in your account to meet a debit payment:
- (a) you may be charged a fee and/or interest by your *financial institution*;
 - (b) we may charge you reasonable costs incurred by us on account of there being insufficient funds; and
 - (c) you must arrange for the debit payment to be made by another method or arrange for sufficient clear funds to be in your account by an agreed time so that we can process the debit payment.
- 48.2 You should check your *account* statement to verify the amounts debited from your *account*.

49. Disputes about direct debits

- 49.1 If you believe that there has been an error in debiting your *account*, you should notify us directly on **1300 135 145** or in writing. Alternatively you can contact your *financial institution* for assistance.
- 49.2 If we conclude as a result of our investigations that your account has been incorrectly debited we will respond to your query by arranging within a reasonable period for your *financial institution* to adjust your account (including interest and charges) accordingly. We will

also notify you in writing of the amount by which your *account* has been adjusted.

- 49.3 If we conclude as a result of our investigations that your *account* has not been incorrectly debited we will respond to your query by providing you with reasons and any evidence for this finding in writing.
- 49.4 Any queries you may have about an error made in debiting your *account* should be directed to us so that we can attempt to resolve the matter between us and you. If we cannot resolve the matter you can still refer it to your *financial institution* which will obtain details from you of the disputed transaction and may lodge a claim on your behalf.

50. Accounts for direct debits

You should check:

- (a) with your *financial institution* whether direct debiting is available from your *account* as direct debiting is not available on all accounts offered by financial institutions;
- (b) your account details which you have provided to us are correct by checking them against a recent *account* statement; and
- (c) with your *financial institution* before completing the *direct debit request* if you have any queries about how to complete the *direct debit request*.

51. Confidentiality around direct debits

- 51.1 We will keep any information (including your *account* details) in your *direct debit request* confidential. We will make reasonable efforts to keep any such information that we have about you secure and to ensure that any of our employees or agents who have access to information about you do not make any unauthorised use, modification, reproduction or disclosure of that information.
- 51.2 We will only disclose the information we have about you to the extent specifically required by law or for the purpose of this agreement (including disclosing information in connection with any query or claim).

52. Notices regarding direct debits

- 52.1 If you wish to notify us in writing about anything relating to this *direct debit request service agreement*, you should write to:
- NAB Equity Lending
GPO Box 5350
Melbourne Vic 3001.**
- 52.2 If we notify you about anything relating to the *direct debit request service agreement*, we will do so in accordance with clause 57.2.
- 52.3 If we notify you by post and unless you are able to reasonably demonstrate otherwise, that notice will be deemed to have been received two *business days* after it is posted.

Part 7

General Terms

In this Part 7 (except for clause 65), 'you' and related terms mean the *client* and, if there is a *guarantor*, each *guarantor*, and applies separately in respect of each and every one of them.

53. Banking Code of Practice

- 53.1 53.1 We have adopted the Banking Code of Practice and relevant provisions of the Code apply to this *agreement* if:
- (a) you are a *client*, and an individual or small business customer (as defined by the Code); and
 - (b) you are a *guarantor* and an individual, and the *client* is an individual or a small business referred to in the Code.
- 53.2 You can obtain information from us upon request, including:
- (a) information on current interest rates and fees;
 - (b) general descriptive information concerning our banking services, including:
 - account opening procedures;
 - our obligations regarding the confidentiality of your information;
 - complaint handling procedures;
 - bank cheques;
 - the advisability of you informing us promptly when you are in financial difficulty;
 - the advisability of you reading the terms and conditions applying to each banking service we provide to you;
 - (c) general descriptive information about:
 - Anti-Money Laundering and Counter-Terrorism Financing Act 2006;
 - the options available to you under the tax file number legislation; and
 - (d) a copy of the Banking Code of Practice.

54. Declarations by you

- 54.1 You declare that:
- (a) you have told us about all rights that affect, or are proposed or likely to affect, the *secured property*; and
 - (b) you have not breached any law or any obligation to any other person by becoming party to this *agreement*; and
 - (c) all the information you have given us is correct and not misleading; and
 - (d) you have not withheld any information which might have caused us not to enter into this *agreement*; and

- (e) all amounts owing to any other person which could affect the *secured property* have been paid or will be paid before or immediately after you sign this *agreement*; and
- (f) a *default event* has not occurred; and
- (g) if you are individual, the proceeds of each *loan* has not and will not be used for a *Code Purpose*.

- 54.2 You must notify us if anything has happened which would prevent you from repeating all the declarations in clause 54.1 before you ask us for an advance.

55. Our commitment to be fair and when we may be liable

- 55.1 When we exercise a right or discretion under this *agreement* (like considering a request you make or deciding whether or not to do something), we will do it in a way that is fair and reasonable. This includes where we change a term of this *agreement* under clause 64, exercise enforcement or set-off rights or incur expenses that are payable by you.
- 55.1A We can take a range of things into account when exercising our rights and discretions. These can include:
- (a) our legal obligations, industry codes, payment scheme rules and regulator expectations;
 - (b) protecting our customers, staff and systems and the personal information we hold;
 - (c) what you have told us about yourself and how you will use our products and services (including if it's misleading, incorrect or you haven't provided us with all of the information we reasonably need when asked);
 - (d) how our products and services are intended to be used (and how you have used them);
 - (e) our public statements, including those relating to protecting vulnerable persons, the environment or sustainability;
 - (f) community expectations and any impact on our reputation;
 - (g) whether we need to take any action to protect you or another person from a potential fraud or scam; and
 - (h) risk management, including sanctions risk management.

- 55.2B If we impose any conditions or requirements to any consent we give, or agree to any request that you make subject to condition, then you'll need to comply with those conditions or requirements.

- 55.2 We may enforce any part of this *agreement* before we enforce other rights or remedies.

- 55.3 If we do not exercise a right or remedy fully or at a given time (*including a right to make a margin call*), we may still exercise it later. This includes where we delay or defer doing so, or we temporarily waive a requirement.

- 55.4 We are not liable for any loss or damage:
- (a) caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising a right or remedy where:
 - (i) there is no breach of a legal duty of care owed to you by us, or by any of our employees or agents;
 - (ii) if there is a breach of such a duty, such loss or damage could not have been reasonably foreseen as a result of any such breach; or
 - (iii) we reasonably exercise the discretion, including because of one or more of the factors set out at clause 55.1A; or
 - (b) that results from a breach by you of any term of this agreement, except to the extent caused by our fraud, negligence or misconduct.
- 55.5 Our rights and remedies under this *agreement* are in addition to other rights and remedies provided by law independently of this *agreement*.
- 55.6 Our rights and remedies under this *agreement* may be carried out by any or our officers or employees, or any person we authorise.
- 55.7 If the *client* is a small business referred to in the Banking Code of Practice (or this is a *small business contract* protected by the ASIC Act or the Australian Consumer Law), and the client has made all payments when due, we will not take action to enforce this *agreement* against the *client* unless we have given the *client* 30 days' notice before requiring repayment or taking enforcement action (we may give shorter notice, or no notice if the default is unable to be remedied or it is reasonable for us to manage an immediate and material risk) and an event listed below has occurred, and the event is likely to have a material impact on our credit or security risk or the ability of the *client* or a *guarantor* to meet financial obligations:
- (a) the *client* or a *guarantor*:
 - (i) is *insolvent* or no longer has legal capacity;
 - (ii) is subject to enforcement proceedings by another creditor;
 - (iii) is required to repay early any other facility with us for non-payment or another reason in this clause 55.7;
 - (iv) has given us materially incorrect or misleading information (including by omission);
 - (v) has dealt with assets, or attempted to do so, in a way that is not allowed under this *agreement* or any related *security interest*;
 - (vi) fails to provide financial information as required under this *agreement* or a related *security interest*;
 - (vii) does not maintain a licence or permit necessary to conduct their business; or
 - (viii) fails to maintain any insurance required under this *agreement* or a related *security interest*; or
 - (b) we believe on reasonable grounds that the client, an *authorised representative* or *authorised broker* of the *client*, or a *guarantor* has not complied with legal obligations, or it becomes unlawful for us to continue providing the *facility*, where this would cause a material impact on our legal or reputation risk;
 - (c) the *facility* is used for a purpose that we have not approved;
 - (d) there is a change in the *client's*, or a *guarantor's* legal or beneficial ownership which we have not approved;
 - (e) the status, capacity or composition of the *client* or a *guarantor* is changed without our consent.
- ## 55A Unacceptable conduct
- 55A.1 We seek to protect our customers from harm arising from unlawful use of, or financial abuse conducted through, our products. We recognise financial abuse may happen to anyone and can include forms of family and domestic violence or elder abuse.
- 55A.2 We will investigate instances where we identify or are made aware that a product is being used in a financially abusive manner, including:
- (a) coercive or controlling behaviour to limit a person's access to or use of funds;
 - (b) making profane, derogatory, discriminatory or harassing comments to any person;
 - (c) making or promoting threatening or abusive language to any person; or
 - (d) making or threatening physical or psychological harm to any person.
- 55A.3 We may reasonably exercise one or more of our rights in this agreement to suspend, cancel or deny your access to credit, including to reduce a credit limit, if we reasonably consider it appropriate to protect a customer or another person from financial abuse.
- 55A.4 If you are concerned about your banking safety call our NAB Customer Support Hub on 1300 308 175 or refer to Domestic and family violence | Support and assistance -nab.com.au/bankingsafety
- ## 56. Authorised representatives, and authorised brokers
- 56.1 You agree that each of the persons notified by you to us as your *authorised representative* is authorised in your name to:
- (a) access all information, and receive statements of account, in relation to the *facility*, including electronically;
 - (b) give instructions to us, *Nominees*, and *NMS* in relation to the *secured property*;
 - (c) direct us to deal with the proceeds from a dealing by us with the *secured property*;
 - (d) gain, create or perfect security over any *approved investment* or other property of yours in favour of

us *including* but not limited to, notifying particulars of *approved investments* to us as *future investments* for the purposes of this *agreement* entered into by you; and

- (e) any other actions necessary to give effect to this *agreement*.

56.2 You agree that each of the persons notified by you to us as your *authorised broker* is authorised in your name to request us to provide funds or securities to enable us to settle transactions undertaken by the *authorised broker* on your behalf.

56.3 You agree to ratify (*including*, if we request, in writing) anything done by an *authorised representative* or an *authorised broker* or any actions taken by us on your behalf on the instructions of an *authorised broker* or *authorised representative*.

56.4 You agree to indemnify and hold harmless us, and our directors, officers, agents and employees from and against all liabilities, losses, damages, costs, expenses directly or indirectly incurred or suffered by us or any of our directors, officers or employees as a result of complying with the instructions of an *authorised representative* or *authorised broker*. The indemnity under this clause is reduced to the extent that we have acted fraudulently, negligently or with misconduct.

57. Notices and other communications

57.1 Unless otherwise specified in this agreement, notices, certificates, consents, approvals, requests and other communications to us in connection with this agreement must be in writing (unless we agree otherwise) and may be sent by post, facsimile, or electronic mail to the address indicated in the *Application Form*, or any other address we notify you in writing.

57.2 Unless otherwise specified in this agreement, notices, certificates, consents, approvals, requests and other communications in connection with this agreement for you may be given to you by:

- (a) delivering it personally; or
- (b) leaving it at or sending it by post to the postal address nominated by you; or
- (c) electronic communication to a device (including by way of SMS), electronic equipment or electronic address nominated by you; or
- (d) displaying information on our website (after notifying you by electronic communication that the information is available for retrieval on the website and the nature of this information); or
- (e) in the case of a notification of a margin call under clause 11, telephoning the number you nominate (including leaving the margin call details on any voicemail or other recording device on that number).

You may change your nominated electronic address or telephone number by giving us notice.

You may request a paper copy of any notice given to you by electronic means if you request the paper copy within 6 months of receipt of the electronic copy.

A communication given to your *authorised representative* is taken to be given to you.

57.3 Communications to us from a company must be signed by an *authorised representative* or a director.

57.4 For the purposes of this *agreement* unless you are able to reasonably demonstrate otherwise, a communication is taken to be given:

- (a) in the case of a communication given personally – on the date it bears or the date it is received by the addressee, whichever is the later; or
- (b) in the case of a communication sent by post – on the date it bears or the date when it would have been delivered in the ordinary course of post, whichever is the later; or
- (c) in the case of a transmission sent by electronic means the date that it is sent unless the sender's machine received a report that indicates there was a failure in delivering the communication; or
- (d) in the case of anything we publish in the metropolitan daily press, or on a *website*, on the date of publication.

57.5 We will make available your statements of account for your *facility* every three months by electronic means via the website. Unless prevented from doing so by law or under the Banking Code of Practice, we may:

- (a) choose to vary the frequency of the statements we provide to you; or
- (b) vary the means by which we make statements available to you.

We will give you notice if we do either of these things.

57.6 We will provide you with confirmations of all transactions in relation to the *facility* as soon as is reasonably practicable after the transactions.

58. General indemnities, releases and disclaimers

58.1 We will only disclose information that we have about you, the *secured property*, the *facility* and this *agreement*:

- (a) to the extent specifically required by law; or
- (b) for the purposes of this *agreement* (including disclosing information in connection with any query or claim); or
- (c) to the extent we reasonably decide, where disclosure to third parties without your consent is permitted by laws relating to privacy; or
- (d) with your consent.
- (e) To the extent it is reasonably necessary to provide you with the *facility*, you consent to us giving, from time to time, to:
 - (f) any of our related entities; or
 - (g) a *guarantor*; or
 - (h) where this is a *joint facility*, to any *client*; or
 - (i) an *authorised representative* or *authorised broker*;

(j) *NMS and Nominees*,

any information in our possession about you, the *secured property*, the *facility* and this *agreement* which they may request from time to time. We may also give such information to fund managers, *ASX*, *ACH* and *ASTC* to the extent reasonably necessary for effecting transactions in connection with this *agreement*. This information may be given in electronic, paper or spoken form. We are not in any way liable to you, and you release us, our directors and employees from any liability for, the unauthorised accessing or release of any such information (except to the extent, arising from our fraud, negligence or fraud).

- 58.2 You release us, our directors and employees from any and all liability, costs, losses and expenses (including consequential loss) arising from this *agreement* (except to the extent, arising from our fraud, negligence or misconduct).
- 58.3 You acknowledge that we are not responsible for any missed market opportunities or any loss or losses you may suffer or incur as a consequence of a missed market opportunity caused by us taking any action in accordance with this agreement, except to the extent of our fraud, negligence or misconduct.
- 58.4 You acknowledge that there may be a delay between the time you give instructions and when they are effected. In particular (but without limitation), there will be a delay between when we accept funds from you or advance a *loan* to you and when those funds are used to acquire *investments*. We are not in any way liable to you, and you release us, our directors and employees from, any liability for any movement in the value or price of any *investment* between, on the one hand, (a) the date you give instructions to effect a transaction, or the date we receive funds, or the date we advance a *loan*, and, on the other hand, (b) the date the instructed transaction is effected or the date the relevant investment is acquired. The indemnity under this clause is reduced to the extent of our fraud, negligence or misconduct.
- 58.5 If an error is made by us in relation to the recording, effecting or processing of any transaction in connection with this *agreement*, we will not be liable, except to the extent of our fraud negligence or misconduct, for, and you expressly release us from any liability for, any tax consequences suffered by you, and any indirect or *consequential loss* you may incur.
- 58.6 We are not responsible for any decision you make to obtain the *facility*, to enter into any arrangement incidental to the *facility*, to purchase *investments* in connection with the *facility* or the performance of any *investments*.
- 58.7 The fact that we have included an *investment* on our list of *approved investments* is not a recommendation of that *investment* or a representation relating to the past or future performance of it.
- 58.8 Where our officers or agents are acting on our behalf, they do not have our authority to recommend the purchase or sale of, or make a prediction or offer an

opinion in relation to *investments*. You should seek separate advice in relation to these matters if needed.

- 58.9 All indemnities in this *agreement* are continuing indemnities and they survive termination of this *agreement*.
- 58.10 Where this *agreement* refers to our fraud, negligence or misconduct, then for the removal of doubt, unless otherwise state that clause will be taken to include a reference to the fraud, negligence and misconduct of our officers, employees, contractors and agents.

59. Interpretation

- 59.1 In this *agreement* unless the contrary intention appears:
- (a) a reference to this *agreement* or another instrument includes any variation or replacement of any of them;
 - (b) a reference to a statute, ordinance, code or other law, or business rules, includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
 - (c) the singular includes the plural and vice versa;
 - (d) the word 'person' includes a firm, body corporate, an unincorporated association or an authority;
 - (e) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes and assigns;
 - (f) a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually;
 - (g) to the extent permitted by a relevant law a requirement for us to give you a notice or any other information in writing may be done by means of an electronic communication or displaying information at our *website*.
- 59.2 If the whole or any part of a provision of this *agreement* is void, unenforceable or illegal in a jurisdiction, or would result in us being in breach of any industry code to which we have agreed to be bound, it is severed for that jurisdiction. The remainder of this *agreement* has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of the document or is contrary to public policy. If a term of this *agreement* is capable of more than one interpretation, an interpretation which is fair is to be preferred over an interpretation which is unfair.
- 59.3 Headings are inserted for convenience and do not affect the interpretation of this *agreement*.
- 59.4 This *agreement* is governed by the law in force in Victoria. Any court cases involving this *agreement* can be held in the courts of any State or Territory of Australia with jurisdiction. We will give any legal protections available to you in the State or Territory in which you live.

60. Payments and effective date

- 60.1 If a day on which a payment must be made is not a *business day*, then the payment must be made no later than the next *business day*.
- 60.2 We will use and apply any payment or moneys we receive to pay fees, charges, interest and the unpaid balance of your *loan* or *loans* in any order we reasonably determine unless we have expressly agreed with you otherwise in relation to any particular payment.
- 60.3 For the purposes of payments under this *agreement*, a day ends at 4.00 pm.
- 60.4 Payments made by you under this *agreement* must be made without counterclaim or set off, unless you have a right to set off granted by law which cannot be excluded (for example, where a court order permits or where you have established that a payment is not due and payable).
- 60.5 We may acting reasonably assign any date we reasonably consider appropriate to any payment you make (but in the case of a debit, that date must not be earlier than the date on which the relevant transaction occurred).

61. Giving and receiving instructions

- 61.1 We may act on the instructions of any person you notify to us as authorised to give us instructions (*including your authorised broker or authorised representative*) until you give us written notice not to do so. If you are a company, we may also act on the instructions of any one or more of your directors. You must notify us of any change in your directors.
- 61.2 We are authorised to act on any instructions which appear to have been properly created or communicated to us by you, your *authorised representative* or *authorised broker*, and we will not be liable to you for effecting those instructions except to the extent of our fraud, negligence or misconduct. We are under no duty to enquire as to whether instructions are issued by you or with your authority if they reasonably appear to be issued with such authority. We will not be liable to you for instructions that we act upon which are a result of forgery, fraud or error to the extent we did not contribute to the issue (for example, because you shared your account details with a third party who was not authorised on your account, or you unreasonably delayed notifying us after becoming aware of account security issues), unless we have acted fraudulently, negligently or with misconduct.
- 61.3 We will not be liable to you for failing to act on any instructions which we reasonably consider to be communicated to us fraudulently, mistakenly, without authority or containing material omissions or errors to the extent we did not contribute to the issues, unless we have acted fraudulently, negligently or with misconduct.
- 61.4 If this is a *joint facility*, each *client* separately has full authority to deal with and instruct us in connection with the *facility* and this *agreement* without the other or others, unless you advise us otherwise (in writing signed by each *client* and posted or faxed to us).

Subject to clause 55A, we may deal with, and may accept and act upon instructions from, any one of the *clients* without having to make enquiry of any others of them. If we receive conflicting instructions from two or more of the *clients*, or we are notified of a dispute between any of the *clients*, we are entitled not to comply with any of those instructions until the matter is clarified to our satisfaction, and we may require each of you to sign an authority with respect to the *facility* and this *agreement*.

62. Commission

You authorise us to pay commission to any person we choose (*including* to any financial adviser or planner, to any broker, and to any of our related entities). The payment of a commission to any person is not an endorsement or recommendation by us of them or their services.

63. Recovery of GST

If the *GST* has application to any supply made under or in connection with this *agreement*, we may, in addition to any amount or consideration payable under this *agreement*, recover from you an additional amount on account of *GST*, such amount to be calculated by multiplying the amount or consideration payable by you at the prevailing *GST* rate. Any additional amount on account of *GST* recoverable from you under this clause shall be calculated without any deduction or set-off of any other amount and is payable by you upon demand by us, whether such demand is by means of an invoice or otherwise.

64. Amendments

- 64.1 We may amend this *agreement* without the need to obtain your consent or your signature on any document:
- if and to the extent that the amendment is for the purposes of curing any ambiguity or typographical error, or correcting or supplementing any defective or inconsistent provision, so as to make more clear its intended effect; or
 - if and to the extent that the amendment enhances your rights or benefits in any way and/or does not adversely affect your rights or obligations in a material way; or
 - if and to the extent that this *agreement* gives us the right to amend or vary a particular term (*including* by reducing or increasing an amount, adding or removing anything to a list, changing a percentage or value or rate or fee), or otherwise to vary the terms of the arrangement, so long as it is done in accordance with the requirements (if any) of the relevant term.
 - if we consider that the amendment is necessary to establish or more effectively provide control (as that term is defined under the *PPSA*) over the *secured property*.

Unless otherwise specified in this *agreement*, we will notify you of that amendment in writing or by

newspaper advertisement, no later than the day the amendment takes effect, but the amendment is effective on its terms even if notice is given in this way after the change takes effect. If the Banking Code of Practice (or this is a small business contract protected by the ASIC Act or the Australian Consumer Law) applies to you and we believe the change is unfavourable to you, we will give 30 days prior notice but can give shorter notice, or no notice if this is in accordance with law and industry codes. For example, this may happen if it is reasonable for us to manage an immediate and material risk; or in the case of a new or varied government charge, we will tell you about the introduction or change reasonably promptly after the government notifies us, however we may not tell you about the change or introduction if the government publicises it.

- 64.2 In all other cases, we may vary or amend this *agreement* at any time and from time to time by:
- (a) sending to you in accordance with the notice provisions in this *agreement* prior notification in writing describing the proposed amendments, and giving you a reasonable time to consider the proposal (*consideration period*); and
 - (b) if you do not notify us of any objection to the proposed amendment by the end of the *consideration period*, executing amending documentation on your behalf under the Power of Attorney you executed with your *Application Form* (and, to avoid doubt, you agree that your attorneys under that Power of Attorney have the power and authority to execute that amending documentation).

The amending documentation will be effective even if for any reason you do not actually receive the prior notification sent to you.

This clause 64 does not apply where clause 46 applies.

65. Meaning of words

account means the account held at *your financial institution* from which we are authorised to arrange for funds to be debited.

ACH means Australian Clearing House Pty Limited (ABN 48 001 314 503).

agreement means this agreement and:

- (a) in connection with a person who becomes a *guarantor* by virtue of a *Guarantor Accession Deed Poll*, this agreement and that deed poll taken together; and
- (b) in connection with any arrangement relating to options as contemplated by clauses 33.1 and 33.2, this agreement and each document executed at our request in connection with that arrangement, taken together.

Application Form means the application form for the NAB Equity Lending Facility which is submitted to us by the *client*.

approved investments means *approved stocks*, *approved managed fund investments* and the credit balance in each *cash management account*. The current list of *approved stocks* and *approved managed fund investments* at any time will be

available from us, and we will endeavour to keep that list published on the *website*.

approved managed fund investments means, at any time and from time to time, *managed fund investments* which have been assigned a *security ratio* of greater than zero.

approved stocks means, at any time and from time to time, *stocks* which have been assigned a *security ratio* of greater than zero.

ASTC means ASX Settlement and Transfer Corporation Pty Ltd (ABN 49 008 504 532).

ASX means Australian Stock Exchange Limited (ABN 98 008 624 691).

authorised broker means a market participant in the ASX notified to us and authorised by you to buy and sell *investments* in respect of the *facility*.

authorised representative means a person authorised by you and notified to us in writing, as your representative for the purposes of this *agreement*. This may be (but need not be) your financial planner or financial adviser.

Banking Code of Practice or Code means the Banking Code of Practice, but before 1 July 2019 refer to the Code of Banking Practice (2013 version).

bankrupt has the meaning it has in the *settlement rules*.

base LVR means the percentage calculated as follows:

$$\left[\frac{\text{aggregate security value of investments forming part of the secured property}}{\text{aggregate value of investments forming part of the secured property}} \right] \times 100$$

buffer means the percentage calculated from time to time as the sum of:

$$(a) \left[\frac{\text{aggregate value of stock forming part of the secured property}}{\text{aggregate value of investments forming part of the secured property}} \right] \times 100$$

and

$$(b) \left[\frac{\text{aggregate value of managed fund investments forming part of the secured property}}{\text{aggregate value of investments forming part of the secured property}} \right] \times 100$$

business day means any day in which banks and the ASX are open for business in Melbourne.

cash management account means an account opened pursuant to clause 2 or clause 22.

CHESS means the Clearing House Electronic Subregister System established and operated by *ASTC* and *ACH*.

CHESS-eligible investments means *investments* which may be, or are, held on a subregister maintained by *CHESS*.

CHESS Sponsorship Terms means the terms set out in Part 4 of this *agreement*.

clearing rules means the clearing rules of *ACH*.

client means the client in whose name the *facility* is established and, if there is more than one of them, means each of them separately and every two or more of them jointly. It includes lawful assigns and successors.

Code Purpose means the proceeds of an advance are used by an individual for:

- (a) a personal, domestic or household purpose; or
- (b) the purchase, renovation or improvement of residential property for investment purposes; or
- (c) the refinancing of credit that has been provided wholly or predominantly to purchase, renovate or improve residential property for investment purposes; or
- (d) any other purpose which is regulated under the *National Credit Code*.

consequential loss means any loss or damage suffered by a party which is indirect or consequential, loss of revenue, loss of profits, loss of goodwill or credit, loss of use, loss of data, damage to credit rating, loss or denial of opportunity, or increased overhead costs.

controlling participant has the meaning it has in the *settlement rules*.

conversion has the meaning it has in the *settlement rules*.

current LVR at any time means the percentage calculated as follows:

$$\left[\frac{\text{secured liabilities}}{\text{aggregate value of investments forming part of the secured property}} \right] \times 100$$

debit day means a day that payment by you to us for which you have provided us with a *direct debit request* is due.

debit payment means a particular transaction where a debit is made.

default event means any of the events set out in clause 10.3.

default interest at any time means our base variable interest rate at that time for facilities of this type, plus a margin of 2% per annum. Therefore, if the base variable interest rate changes, so does the *default interest* rate.

direct debit request means a direct debit request, the terms of which are set out in the *direct debit request service agreement*.

direct debit request service agreement means the terms of the agreement set out in Part 6 of this *agreement*.

dispose means to sell, transfer, assign, declare trusts over, redeem, convert, surrender or otherwise alienate, whether for valuable consideration or not. 'Disposal' has a corresponding meaning.

enforcement expenses means any:

- (a) legal costs;
- (b) debt collection costs; and
- (c) other expenses,

reasonably incurred by us in relation to any enforcement action taken by us in relation to a *loan*.

economic cost means the amount calculated in accordance with clause 9.8 that you must pay us to cover our reasonable estimate of costs if you terminate a fixed interest rate *loan* early.

facility means the facility comprising a *loan* or *loans* made available to you under this *agreement*.

facility limit means the amount that we are prepared to lend you under the *facility*, which we notify to you.

fixed rate period means a period for which you fix the interest rate applying to a *loan*.

Fund Register means the register of holders of interests in or under any trust or other managed investment scheme.

future investments means any *investments* held in any one or more or all of your names or a *guarantor's* name (as the case may be), or held on behalf of any one or more or all of you or on behalf of a *guarantor* (as the case may be):

- (a) in which you or any one or more or all of you acquire a legal or beneficial interest with moneys advanced under the *facility*; or
- (b) which are registered in a *participant sponsored holding* maintained with *NMS*; or
- (c) for which we hold the share certificate, unit certificate, other scrip or indicia of title; or
- (d) in relation to which we are recorded in a *Fund Register* as the mortgagee; or
- (e) which have been accepted by us as forming part of the *secured property* by notice in writing to you.

GST means a goods and services tax or any similar tax imposed in Australia.

guarantee means the guarantee and indemnity contained in Part 2 of this *agreement*.

guarantor means each person who guarantees your obligations under the *facility* (whether as a party to this *agreement* or by virtue of a *Guarantor Accession Deed Poll*) and, if there is more than one of them, means each of them separately and every two or more of them jointly. It includes lawful assigns and successors.

Guarantor Accession Deed Poll means a document having that title in a form satisfactory to us executed by or on behalf of a person who has agreed to guarantee your obligations under the *facility*.

guarantor's secured liabilities means all amounts which at any time for any reason or circumstance in connection with the *guarantee* or any transaction contemplated by the *guarantee* (including any transaction under or in connection with the *facility*) whether at law, in equity, under statute or otherwise:

- (a) are payable, are owing but not currently payable, are contingently owing, or remain unpaid by the *guarantor* or the *client* to us or have been advanced or paid by us on the *guarantor's* behalf or on behalf of the *client*; or
- (b) are reasonably foreseeable as likely, after that time, to fall within paragraph (a) above.
- (c) A reference to "*guarantor's secured liabilities*" includes any part of it. This definition applies irrespective of the capacity in which the *guarantor* or the *client* are liable in

respect of the amount concerned and whether the mortgagee under the mortgage given by the *guarantor* in this *agreement* is National Australia Bank Limited or an assignee and whether or not the *guarantor* or the *client* consented to or was aware of the assignment.

HIN Schedule means the document provided by us to you (either before or after the date of this agreement) listing the Holder Identification Number(s) for the *participant sponsored holdings* in respect of which you have appointed us as the *sponsoring participant*.

holder record has the meaning it has under the *settlement rules*.

holder record lock has the meaning it has under the *settlement rules*.

including when introducing an item or a list of items does not limit the meaning of the words to which the item or list relates to those items or to items of a similar kind.

initial advance means the first advance made to you under an *instalment gearing arrangement*.

initial equity contribution means any initial contribution of cash or securities you contribute in relation to an *instalment gearing arrangement*.

insolvent means bankrupt, unable to pay debts as and when they fall due, in receivership, in receivership and management, in liquidation, in provisional liquidation, under any form of administration, wound up, dissolved, and subject to any arrangement, assignment or composition, protected from creditors under any statute, or in receipt of protection under statute. 'Insolvency' has a corresponding meaning.

instalment means each instalment used to acquire *approved managed fund investments* under an *instalment gearing arrangement*, comprising the sum of the advance we make to you and the amount you contribute. Thus:

- (a) the first instalment is the sum of the *initial advance* and the *initial equity contribution*; and
- (b) each subsequent instalment is the sum of the *loan component* and the *monthly equity contribution*.

instalment gearing arrangement means an arrangement described in clause 2.6.

instalment gearing limit means \$20,000 or another amount we notify you in writing from time to time.

investments means *stocks*, *managed fund investments* and the credit balance in any account that forms part of the *secured property*.

joint facility means a *facility* under which the *client* comprises more than one person.

loan means a fixed or variable interest rate loan forming part of the *facility* that we make available to you. *Loan* includes an advance made in connection with an *instalment gearing arrangement*.

loan account means the account or accounts we keep in your name to which we debit the amount of any *loan*.

loan component means, in relation to an *instalment*, the advance we make to you to be aggregated with your *monthly equity contribution* for the purpose of acquiring *approved*

managed fund investments.

managed fund investments means units of investment (however described) in a managed investment scheme (whether listed or unlisted), and anything else we notify you in writing or by newspaper advertisement is to be a *managed fund investment* for the purposes of this agreement.

margin call means a margin call made under clause 11 of this agreement.

margin call deadline has the meaning given in clause 11.8.

margin call LVR means the percentage calculated as follows:

$$\text{base LVR} + \text{buffer}$$

market rules means the market rules of the ASX.

monthly equity contribution means the cash that you contribute each month in relation to an *instalment gearing arrangement*.

National Credit Code means *Schedule 1 to the National Consumer Credit Protection Act 2009 (Cth)*.

new rights means:

- (a) your or a *guarantor's* (as the case may be) right, title and interest in all money, dividends, interest, allotments, offers, benefits, privileges, rights, bonuses, shares, *stock*, debentures, distributions or rights to take up *investments* in connection with the *secured property*; or
- (b) your or a *guarantor's* (as the case may be) rights consequent on any conversion, redemption, cancellation, reclassification, forfeiture, consolidation or subdivision in connection with the *secured property*; or
- (c) your or a *guarantor's* (as the case may be) rights consequent on a reduction of capital, liquidation or scheme of arrangement in connection with the *secured property*.

NMS means National Margin Services Pty Ltd (ABN 81 088 233 872) and each replacement *controlling participant*.

Nominees means NMS Nominees Pty Ltd (ABN 62 088 233 792), or any replacement appointed under clause 42.3. NMS Nominees Pty Limited (ABN 62 088 233 792) is a wholly owned subsidiary of National Australia Bank Limited (ABN 12 004 044 937). NMS Nominees Pty Limited is not an Authorised Deposit Taking Institution and its obligations do not represent deposits or other liabilities of National Australia Bank Limited. National Australia Bank Limited does not guarantee the obligations or performance of NMS Nominees Pty Limited or the products or services this subsidiary offers.

participant sponsored holder has the meaning it has in the *settlement rules*.

participant sponsored holding has the meaning it has in the *settlement rules*.

PDS means the Product Disclosure Statement for the NAB Equity Lending Facility.

PPSA means the *Personal Property Securities Act 2009 (Cth)* and any regulations made pursuant to it.

secured liabilities means all amounts which at any time for any reason or circumstance in connection with this *agreement* or any transaction contemplated by this *agreement* (including any transaction under or in connection with the *facility*)

whether at law, in equity, under statute or otherwise:

- (a) are payable, are owing but not currently payable, are contingently owing, or remain unpaid by you to us or have been advanced or paid by us on your behalf; or
- (b) are reasonably foreseeable as likely, after that time, to fall within paragraph (a) above.

A reference to 'secured liabilities' includes any part of it. This definition applies irrespective of the capacity in which you are liable in respect of the amount concerned and whether the mortgagee under this *agreement* is National Australia Bank Limited or an assignee and whether or not you were aware of the assignment.

secured property means:

- (a) *future investments* and *new rights*, any credit balance in a *cash management account* and any other property which we agree to include in the *secured property*; and
- (b) in the case of a *joint facility*, any *stocks* which any one or more or all of you provide as collateral for the *loan*, any credit balance in any *cash management accounts* opened in the name of any one or more or all of you, and any other property of any one or more or all of you which we agree to include in the *secured property*.

security interest means any mortgage, charge, lien, pledge, trust or power or other rights given as or in effect as security for the payment of money or enforcement of obligations. *Security interest* also includes a guarantee or indemnity.

security limit means the amount that the mortgage in this *agreement* is limited to, in respect of *secured liabilities* which are *loans*, being \$10 million or any greater amount we may agree in writing from time to time.

security ratio of an *investment* means the percentage determined by us, from time to time and in our absolute discretion, for the purpose of calculating the *security value* of an *investment*. *Investments* other than *approved investments* will be assigned a *security ratio* of zero. In setting the *security ratio* we may have regard to a range of factors including:

- (a) changes or anticipated changes in the market value of the investment; and
- (b) our internal risk assessment policies.

security value means, at any relevant time:

- (a) in relation to *secured property* which is an *investment* (other than a *cash management account*), the *value* of that *investment* at that time, as determined by us, multiplied by that *investment's security ratio*; and
- (b)
- (c) in relation to *secured property* which is a credit balance in any *account* (including a *cash management account*), that credit balance.

settlement facility means the facility provided by ASTC in accordance with its Australian CS Facility licence.

settlement rules means the settlement rules of ASTC.

small business contract has the meaning of that term when used in the *Australian Securities and Investments Act 2001* (Cth) (ASIC Act) from time to time. With effect from 9 November 2023 small business contracts under the ASIC Act include contracts which are entered into or renewed after that date

where the upfront price payable (which includes the total amount of principal that is owed under a contract for the provision of credit) does not exceed \$5,000,000 and either (or both) of the following apply:

- (a) the business makes the contract in the course of carrying on a business and the business employs fewer than 100 persons; or
- (b) the turnover of the business for the last income year (within the meaning of the *Income Tax Assessment Act 1997*) was less than \$10,000,000. The calculation of turnover will be worked out using the rules in the ASIC Act.

This *agreement* may be a *small business contract* where it meets these requirements.

For the removal of doubt, this agreement may be a *small business contract* even if you are not a 'Small Business' within the meaning of that term in Banking Code of Practice (or as defined above).

sponsorship agreement has the meaning it has in the *settlement rules*.

sponsorship bond has the meaning it has in the *settlement rules*.

stock means shares in corporations from time to time and includes any right or option in respect of shares and debenture stock, bonds, warrants, bills of exchange, certificates of deposit, units in a trust, promissory notes, instalment receipts or any other type of security. It does not include *managed fund investments*.

subposition has the meaning it has in the *settlement rules*.

transfer has the meaning it has in the *settlement rules*.

value of:

- (a) a *stock* at a particular time means the market value of that *stock*;
- (b) a *managed fund investment* at a particular time means the market value of that *managed fund investment*;
- (c) an *investment* at a particular time means the market value of that *investment*,

as determined by us in good faith using commercially reasonable procedures. This may include considering any market prices (which need not be mid-market) we consider relevant from either internal or external sources.

we or **us** means National Australia Bank Limited (ABN 12 004 044 937), its lawful assigns and successors.

website means a website published by us or with our authority, on which information about our margin lending product is published, the address of which we notify you from time to time.

you means:

- (a) in relation to a clause or Part of this agreement where it is so stated at the beginning, the *client* and, if there is a *guarantor*, each *guarantor*; and
- (b) otherwise, the *client*.

your financial institution is the *financial institution* where you hold the *account* that you have authorised us to arrange to debit.

Privacy Notification

This notification covers National Australia Bank Ltd ABN 12 004 044 937 and its related companies (the 'Group'). It includes all the banking, financing, funds management, financial planning, superannuation, insurance, broking and e-commerce organisations in the Group. We are grateful for the trust and confidence you have in us to safeguard your privacy. The notification tells you how we collect your information, what we use it for and who we share it with. It also points out some key features of our Privacy Policy available at www.nab.com.au/privacy. By providing personal information to us, you consent to the collection, use and disclosure of your information in accordance with this Notification and any other arrangements that apply between us.

How we collect information from you

We'll collect your personal information from you directly whenever we can, for example when you fill out a form with us, when you've given us a call, used our websites (including via cookies) or mobile applications (including collection of information about your use of technology when you access these services, such as location data and information about how you use your devices) or dropped into one of our branches. (See our Cookies Policy www.nab.com.au/cookies for more information).

Sometimes we collect your personal information from third parties. You may not be aware that we have done so. If we collect information that can be used to identify you, we will take reasonable steps to notify you of that collection.

How we collect your information from other sources

Sometimes we collect information about you from other sources. We may collect information about you that is publicly available (for example from public registers or social media), or made available by third parties. We do this where:

- we distribute or arrange products on behalf of others, including our business partners;
- we can't get hold of you and need to update your contact details;
- we need information from third parties about an application you make through us;
- we need information for fraud detection and prevention purposes;
- we are checking the security you are offering;
- we can learn insight about your financial needs, such as through property information;
- you have consented to third parties sharing it with us, such as organisations we have loyalty programs with or we sponsor;
- at your request, we exchange information with your legal or financial advisers or other representatives.

We may use or disclose information about you in order to combine the information that we hold with information collected from or held by external sources.

When the law authorises or requires us to collect information

We may collect information about you because we are required or authorised by law to collect it. There are laws that affect financial institutions, including company and tax law, which require us to collect personal information. For example, we require personal information to verify your identity under Commonwealth Anti-Money Laundering law.

NAB believes that by applying for this account, you're not a US citizen or tax resident. If you are a US citizen or tax resident, you'll need to advise NAB by calling 1300 550 316 between 9am and 5pm (AEST/ADST) Monday to Friday.

How we use your information

We use your information to provide you with the product or service you asked for, and for other purposes including:

- giving you information about a product or service including financial help, guidance and advice;
- considering whether you are eligible for a product or service, including identifying or verifying you or your authority to act on behalf of a customer;
- processing your application and providing you with a product or service;
- administering the product or service we provide you, which includes answering your requests and complaints, varying products and services, conducting market research, and managing our relevant product portfolios;
- telling you about other products or services that may be of interest to you, or running competitions and other promotions (this can be via email, telephone, SMS, iM, mail, or any other electronic means including via social networking forums), unless you tell us not to;
- identifying opportunities to improve our service to you and improving our service to you;
- determining whether a beneficiary will be paid a benefit;
- assisting in arrangements with other organisations (such as loyalty program partners) in relation to a product or service we make available to you;
- allowing us to run our business and perform administrative and operational tasks (such as training staff, risk management; developing and marketing products and services, undertaking planning, research and statistical analysis; and systems development and testing)
- preventing, detecting or investigating any fraud or crime, or any suspected fraud or crime;
- as required by law, regulation or codes binding us; and
- for any purpose for which you have given your consent.

You can let us know at any time if you no longer wish to receive direct marketing offers from the Group. We will process your request as soon as practicable. Where you have subscribed to something specific (like to hear from one of our sponsored organisations) then these subscriptions will be managed separately. If you no longer wish to receive these emails click the unsubscribe link included in the footer of our emails.

How we use your credit information

In addition to the ways for using personal information mentioned above, we may also use your credit information to:

- enable a mortgage insurer or title insurer to assess the risk of providing insurance to us or to address our contractual arrangements with the insurer;
- assess whether to accept a guarantor or the risk of a guarantor being unable to meet their obligations;
- consider hardship requests; and
- assess whether to securitise loans and to arrange the securitising of loans.

What happens if you don't provide your information to us?

If you don't provide your information to us, we may not be able to:

- provide you with the product or service you want;
- manage or administer your product or service;
- personalise your experience with us;
- verify your identity or protect against fraud; or
- let you know about other products or services from our Group that might better meet your financial, e-commerce and lifestyle needs.

Sharing your information

We may share your information with other organisations for any purposes for which we use your information.

Sharing with the Group

We may share your personal information with other Group members. This could depend on the product or service you have applied for and the Group member you are dealing with. Where appropriate we integrate the information we hold across the Group to provide us with a complete understanding of you and your needs, including giving you access to the Group or related products you hold via Internet Banking.

Sharing with MLC Limited

NAB acts for MLC Limited ABN 90 000 000 402 (described as MLC Life Insurance) in distributing their life insurance products. MLC Limited is no longer part of the NAB Group of companies. We may exchange personal information with MLC Limited or their service providers in order to administer and manage your life insurance products that are issued by them. We may also need to share information so as to ensure:

- your insurance premium is calculated correctly (balance information may be required to be shared so your insurance can be calculated) and where authorised, make payments on your behalf to MLC Limited;
- insurance claims and benefits are paid;
- NAB and MLC Limited can both tell you about our respective marketing and products offers (including ensuring customers who hold MLC Limited products are excluded from NAB Group campaigns marketing MLC Limited products);
- a smooth customer experience when you contact us, including;
- we can transfer you to the right service centre;

- where appropriate, NAB and MLC Limited can cooperate in order to handle your complaint;
- being able to provide assistance should you wish to speak about your MLC Limited products held (for example, where possible, we may assist by updating contact details on request).

Some of the information exchanged will be stored and visible within NAB Group customer databases; with some of these databases being accessible to MLC Limited for a transition period. All information stored in these databases is subject to this privacy policy as well as NAB Group's security procedures and controls.

Sharing at your request

We may need to share your personal information with your representative or any person acting on your behalf (for example, financial advisers, lawyers, settlement agents, accountants, executors, administrators, trustees, guardians, brokers or auditors) and your referee such as your employer (to confirm details about you).

Sharing with Credit Reporting bodies

When we're checking your credit worthiness and at other times, we might share information about you with credit reporting bodies. When we give your information to a credit reporting body, it may be included in reports that the credit reporting body gives other organisations (such as other lenders) to help them assess your credit worthiness.

Some of the information that we give to credit reporting bodies may reflect adversely on your credit worthiness, for example, if you fail to make payments or if you commit a serious credit infringement (like obtaining credit by fraud). That sort of information may affect your ability to get credit from other lenders.

With your consent, personal information may also be shared with credit reporting bodies or other approved third parties who are authorised to assess the validity of identification information. These checks help us verify whether your identity is real and are not a credit check.

Sharing with third parties

We may disclose your personal information to third parties outside of the Group, including:

- those involved in providing, managing or administering your product or service;
- authorised representatives of the NAB Group who sell products or services on our behalf;
- credit reporting bodies or other approved third parties who are authorised to assess the validity of identification information;
- insurance, investment, superannuation and managed funds organisations, and their advisers and service provider;
- medical professionals, medical facilities or health authorities who verify any health information you may provide;
- real estate agents, valuers and insurers (including lenders' mortgage insurers and title insurers), re-insurers, claim assessors and investigators;

- brokers or referrers who refer your application or business to us;
- other financial institutions, such as banks, as well as guarantors and prospective guarantors of your facility;
- organisations involved in debt collecting, including purchasers of debt;
- fraud reporting agencies (including organisations that assist with fraud investigations and organisations established to identify, investigate and/or prevent any fraud, suspected fraud, crime, suspected crime, or misconduct of a serious nature);
- service providers that assist with fraud detection and prevention;
- organisations involved in surveying or registering a security property or which otherwise have an interest in such property;
- organisations we sponsor and loyalty program partners, including organisations the NAB Group has an arrangement with to jointly offer products or has an alliance with to share information for marketing purposes;
- companies we arrange or distribute products for, such as insurance products;
- rating agencies to the extent necessary to allow the rating agency to rate particular investments;
- any party involved in securitising your facility, including the Reserve Bank of Australia (sometimes this information is de-identified), re-insurers and underwriters, loan servicers, trust managers, trustees and security trustees;
- service providers that maintain, review and develop our business systems, procedures and technology infrastructure, including testing or upgrading our computer systems;
- payments systems organisations including merchants, payment organisations and organisations that produce cards, cheque books or statements for us;
- our joint venture partners that conduct business with us;
- organisations involved in a corporate re-organisation or transfer of NAB Group assets or business;
- organisations that assist with our product planning, analytics, research and development;
- mailing houses and telemarketing agencies and media organisations who assist us to communicate with you, including media or social networking sites;
- other organisations involved in our normal business practices, including our agents and contractors, as well as our accountants, auditors or lawyers and other external advisers (e.g. consultants and any independent customer advocates);
- government or regulatory bodies (including the Australian Securities and Investment Commission and the Australian Tax Office) as required or authorised by law (in some instances these bodies may share it with relevant foreign authorities); and
- where you've given your consent or at your request, including to your representatives, or advisors.

Sharing outside of Australia

We run our business in Australia and overseas. We may need to share some of your information (including credit information) with organisations outside Australia. Sometimes, we may need to ask you before this happens. You can view a list of the countries in which those overseas organisations are located at www.nab.com.au/privacy/overseas-countries-list/

We may store your information in cloud or other types of networked or electronic storage. As electronic or networked storage can be accessed from various countries via an internet connection, it's not always practicable to know in which country your information may be held. If your information is stored in this way, disclosures may occur in countries other than those listed.

Overseas organisations may be required to disclose information we share with them under a foreign law. In those instances, we will not be responsible for that disclosure.

We will not share any of your credit information with a credit reporting body, unless it has a business operation in Australia. We are not likely to share credit eligibility information (that is, credit information we obtain about you from a credit reporting body or that we derive from that information) with organisations unless they have business operations in Australia. However in the event NAB seeks assistance from a related company to manage defaulting loans, we may need, as a consequence, to disclose credit eligibility information to the Bank of New Zealand, located in New Zealand. We are likely to share other credit information about you with organisations outside Australia. A list of countries in which those overseas organisations are located is set out above.

Accessing your information

You can ask us to access information that we hold about you. You have special rights to access credit information we obtain about you from a credit reporting body or that we derive from that information. You can find out how to access your information (including your credit eligibility information) by reading our Privacy Policy, available at www.nab.com.au/privacy or by calling 13 22 65 and asking us for a copy.

Correcting your information

You can ask us to correct information we hold about you. You have special rights to correct your credit information. You can find out how to correct your information (including your credit information) by reading our Privacy Policy, available at www.nab.com.au/privacy or by calling 13 22 65 and asking us for a copy.

Complaints

If you have a complaint about a privacy issue, please tell us about it. You can find out how to make a complaint (including special rights for credit information complaints) and how we will deal with these complaints, by reading our Privacy Policy, available at www.nab.com.au/privacy or by calling 13 22 65 and asking us for a copy.

Contact us

We care about your privacy. Please contact us if you have any questions or comments about our privacy policies and procedures. We welcome your feedback.

You can contact us by:

- submitting an online Compliments, Suggestions or Complaints form via www.nab.com.au
- calling our contact centre on 13 22 65 (Hearing impaired customers can call TTY 13 36 77)
- speaking to us in person at a branch

Contact details for credit reporting bodies

When we're checking your credit worthiness and at other times, we might share information about you with credit reporting bodies. The contact details of those credit reporting bodies are set out below. Each credit reporting body has a credit reporting policy about how they handle your information. You can obtain copies of these policies at their websites.

Illion

www.checkyourcredit.com.au

Illion's credit reporting policy is set out at

<https://www.illion.com.au/legal/illion-credit-reporting-policy-australia>

Phone: 1300 734 806

Mail: Public Access Centre Illion Australia

PO Box 7405 St Kilda Rd VIC 3004

Experian Australia

www.experian.com.au

Experian's credit reporting policy is set out at

www.experian.com.au/privacy-policy

Phone: 1300 783 684

Mail: Consumer Support Experian Australia

PO Box 1969 North Sydney NSW 2060

Equifax Australia

Information Services and Solutions Pty Limited

www.mycreditfile.com.au

Equifax's credit reporting policy is set out at

<https://www.equifax.com.au/credit-reporting-policy>

Contact credit reporting bodies if you think you have been the victim of a fraud

If you believe that you have been or are likely to be the victim of fraud (including identity fraud), you can request a credit reporting body not to use or disclose the information they hold about you. If you do this, the credit reporting body mustn't use or disclose the information during an initial 21 day period without your consent (unless the use or disclosure is required by law). This is known as a **ban period**.

If, after the initial 21 day ban period, the credit reporting body believes on reasonable grounds that you continue to be or are likely to be the victim of fraud, the credit reporting body must extend the ban period as they think reasonable in the circumstances. The credit reporting body must give you a written notice of the extension.

Contact credit reporting bodies if you don't want your information used by them for direct marketing/pre-screening purposes

Credit reporting bodies can use the personal information about you that they collect for a pre-screening assessment at the request of a credit provider unless you ask them not to. A pre-screening assessment is an assessment of individuals to see if they satisfy particular eligibility requirements of a credit provider to receive direct marketing. You have the right to contact a credit reporting body to say that you don't want your information used in pre-screening assessments. If you do this, the credit reporting body must not use your information for that purpose.

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Want more information?

Just call

1300 135 145

Email **equity.lending@nab.com.au**

or visit us at **nab.com.au/equitylending**