

# INVESTMENT LOAN TERMS AND CONDITIONS

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**CommSec**  
Adviser Services



EFFECTIVE DATE 1 November 2018

**Important information.** The CommSec Adviser Services Investment Loan is provided by the Commonwealth Bank of Australia ABN 48 123 123 124 AFSL 234945 and administered by its wholly owned but non-guaranteed subsidiary Commonwealth Securities Limited ABN 60 067 254 399 AFSL 238814 (CommSec), a Participant of the ASX Group and Chi-X Australia. The CHESSE sponsorship of the CommSec Adviser Services Investment Loan is provided by Australian Investment Exchange Limited ABN 71 076 515 930 AFSL 241400 (AUSIEX), a participant of the ASX Group and Chi-X Australia. The information contained in this document does not take into account the investment objectives, financial situation and needs of any particular individual. Because of that, you should assess with the help of legal, financial and taxation advice, whether the information is appropriate in light of your own circumstances before acting on it. Information on taxation is based on current laws and their interpretation. No warranty or guarantee is given by the Commonwealth Bank of Australia or its subsidiaries for the repayment of capital invested or the payment of income with respect to any investment listed as an accepted security. Only investors who fully understand the risks associated with gearing into investments should apply. All applications for a Commsec Adviser Services Investment Loan are subject to the Commonwealth Bank's credit approval process. Fees and charges apply.

Please obtain and consider the product disclosure statement (PDS), available from the Commonwealth Bank of Australia (ABN 48 123 123 124 AFSL 234945) as the product issuer, at website listed on the back cover or by calling CommSec Adviser Services on the phone number listed on the back cover before making any decision about the product.

# TERMS AND CONDITIONS

The Terms and Conditions are made up of the following sections:

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<b>1</b>	<b>INVESTMENT LOAN TERMS AND CONDITIONS</b>	<b>2</b>
	These are the Terms and Conditions upon which Commonwealth Bank of Australia makes a CommSec Adviser Services Investment Loan available and on which Commonwealth Bank of Australia accepts offers to provide security for a CommSec Adviser Services Investment Loan. CommSec Adviser Services Investment Loan is a product of Commonwealth Bank of Australia ABN 48 123 123 124 AFSL and Australian credit licence 234945 administered by its wholly owned but non-Guaranteed subsidiary Commonwealth Securities Limited ABN 60 067 254 399 ("CommSec") a Participant of the ASX Group and Chi-X Australia, and an Australian Financial Services Licensee, Number 238814. CHESS sponsorship is provided by Australian Investment Exchange Limited ABN 71 076 515 930 AFSL 241400 (AUSIEX), a participant of the ASX Group and Chi-X Australia.	
<b>2</b>	<b>PRIVACY INFORMATION AND AUTHORISATION</b>	<b>16</b>
	Information about our policies on the collection and handling of personal information, including the use you authorise us to make of your personal information when you apply for a CommSec Adviser Services Investment Loan.	
<b>3</b>	<b>INVESTMENT LOAN DIRECT DEBIT/DIRECT CREDIT REQUEST SERVICE AGREEMENT</b>	<b>17</b>
	These are the Terms and Conditions upon which CommSec provides direct debit arrangements for the bank account you nominate for settlement of transactions relating to your CommSec Adviser Services Investment Loan. These Terms and Conditions must be read in conjunction with your rights and obligations as set out in: <ul style="list-style-type: none"><li>• the Commonwealth Bank of Australia Electronic Banking Terms and Conditions;</li><li>• the Commonwealth Bank of Australia Privacy Policy;</li><li>• the Code of Banking Practice; and</li><li>• all applicable laws and regulations.</li></ul> Copies of the Commonwealth Bank of Australia Electronic Banking Terms and Conditions and the Commonwealth Bank of Australia Privacy Policy are available from us upon request, or through the Commonwealth Bank of Australia's website at <a href="http://www.commbank.com.au">www.commbank.com.au</a> .	

# SECTION 1 – INVESTMENT LOAN TERMS AND CONDITIONS

These are the Terms and Conditions on which we make a CommSec Adviser Services Investment Loan available and on which we accept offers to provide security for a CommSec Adviser Services Investment Loan.

We refer to them collectively as the “Terms and Conditions”. The Terms and Conditions may change or be amended from time to time. We will provide you with an updated copy of the Terms and Conditions no later than the day any such changes or amendments come into effect. If we make a change that is not acceptable to you, you can cancel the Loan by repaying it. Depending on these Terms and Conditions an *Early Repayment Adjustment* and fees and charges may be payable. The current version of these Terms and Conditions is available on request to us, or through the website [www.commsecadviserservices.com.au](http://www.commsecadviserservices.com.au).

The Terms and Conditions are made up of:

**Part 1 General Provisions;**

**Part 2 Loan Agreement;**

**Part 3 Mortgage;**

**Part 4 Sponsorship Agreement; and**

**Part 5 Nominee Agreement which appear under those headings in this booklet.**

In the event of any inconsistency with other material in this booklet, or in the application form, the Terms and Conditions will prevail. If you are an individual or a small business (as defined in the Code of Banking Practice) and you obtain a CommSec Adviser Services Investment Loan then the relevant provisions of the Code of Banking Practice apply to your Loan. A “small business” is defined in the Code of Banking Practice as a business having less than 100 full time (or equivalent) people if the business is or includes the manufacture of goods, or in any other case, less than 20 full time (or equivalent) people.

We have published a booklet called “The Better Banking Book”, which may be obtained by telephoning us on **13 2221** (between 8 am and 8 pm, Monday to Friday) or from any of our branches. The Better Banking Book contains useful information on a range of banking matters including the rights and obligations that arise out of the banker and customer relationship, account opening procedures, our obligations regarding confidentiality of your information, complaint handling procedures, Bank cheques, the advisability of you informing us promptly when you are in financial difficulty and the advisability of you reading the terms and conditions applying to any banking service provided to you or which you are interested in. Please obtain a copy and take time to read it.

## Part 1 General Provisions

### 1. DEFINITIONS

In these Terms and Conditions:

**Adviser** means:

- the person who you nominate as your adviser or agent in your Application Form or from time to time by Notice to us; and
- any person (including but not limited to a dealer group) for which the person referred to in the preceding paragraph is an authorised representative from time to time;

**Approved Deposit Account** means any deposit account that we approve in writing and which is opened with us to secure obligations under any of the Terms and Conditions;

**ASIC** means Australian Securities and Investments Commission;

**ASX Clear** means ASX Clear Pty Limited ABN 48 001 314 503 and its successors (ASX Clear was previously known as Australian Clearing House);

**ASX Settlement** means the ASX Settlement Pty Limited ABN 49 008 504 532 and its successors (ASX Settlement was previously known as Australian Settlements and Transfer Corporation);

**ASX** means ASX Limited ABN 98 008 624 691 and its successors;

**AUSIEX** means Australian Investment Exchange Limited ABN 71 076 515 930

**Authorised Officer** means each of our officers and each officer of CommSec and/or AUSIEX whose title, in both cases, is or includes the word “manager” or the word “executive”;

**Bank Account** means the Bank account, building society account or credit union account you nominate on the Direct Debit/Direct Credit Request form;

**Base LVR** means *Portfolio Lending Value* divided by *Portfolio Market Value* (disregarding any Financial Product with a *Borrowing Limit* of 0%) and expressed as a percentage;

**Borrower(s)** is how we refer to the applicant for a Loan and whose application is accepted by us;

**Borrowing Limit** means the percentage of the *Market Value* of a particular Financial Product that we are prepared to lend against and may vary depending on how the Financial Product is held;

**Buffer** means a percentage relating to the difference between the *Base LVR* and *Margin Call LVR* as determined by us from time to time and notified by being placed by us on our *Online Banking System*;

**Business Day(s)** means each day on which we are open for business in Sydney;

**CHES Participant Sponsored Holding** means an uncertificated holding of Financial Products on a subregister for that class of Financial Products maintained by ASX Settlement;

**CHES Settlement Facility** means the Clearing House Electronic Subregister System operated by ASX Settlement;

**CommSec** means Commonwealth Securities Limited ABN 60 067 254 399;

**Credit Limit** means the amount, as approved from time to time, that we are prepared to lend to the Borrower under this Loan;

**Current LVR** means the *Loan Balance* divided by the *Portfolio Market Value* (disregarding any Financial Product with a *Borrowing Limit* of 0%) and expressed as a percentage;

**Default Event** means any *Default Event* set out in clause 15 of the Loan Agreement;

**Early Repayment Adjustment** means the adjustment we make in accordance with clause 13 of the Loan Agreement when the Borrower repays a Loan for which we agreed to a fixed *Interest Rate* and terminates that Loan (or part of it) early;

**Electronic Notice** means any communication made by you to us or by us to you that is:

- primarily conducted using electronic means; and,
- made in accordance with, or in connection with, anything anticipated by the Terms and Conditions or the *Online Banking System*, and it includes any and all information that you lodge through or we display on the *Online Banking System* from time to time that relates to your Loan and Loan Account.

**Enforcement Event** means any *Enforcement Event* set out in clause 8 of the Mortgage;

**Equity Contribution** means the cash or Financial Products that you contribute at or prior to the first Loan we make, you contribute monthly thereafter or you contribute as requested by us to reduce the *Current LVR*;

**Financial Product** means:

- a share or unit in the capital of a corporation;

- an instalment receipt;
- a unit in any trust;
- any debenture, debenture stock, bonds, notes, convertible notes, units, warrants or other *Financial Products* created, issued or granted by any corporation, government, unincorporated body or other person;
- options to purchase, subscribe for or acquire any of the securities mentioned above;
- cash held in an account (including an *Approved Deposit Account*) to secure *your* obligations under any of the Terms and Conditions;
- any interest in a *Financial Product*;
- such other kind of *Financial Product* (or interest in a *Financial Product*) as *we* may from time to time agree to accept;

**Guarantee** means the *Guarantee* referred to in the application form and given to *us* in return for approval of the *Loan*;

**Guarantor** means any person whose offer *we* accept to *Guarantee* the *Borrower's* obligations under the *Loan Agreement*;

**Insolvent** or in insolvency means a person is insolvent or an insolvent under administration or has a controller appointed (each as defined under the Corporations Act), in receivership, in receivership and management, in liquidation, in provisional liquidation, under administration, wound up, subject to any arrangement, assignment or composition, protected from any creditors under any statute, dissolved (other than to carry out a reconstruction while solvent) or otherwise unable to pay debts when they fall due;

**Interest Rate** means the *Interest Rate* *we* charge on the *Loan Account*;

**Issuer** means the entity which issues the relevant *Financial Products* whether in its own right or as trustee;

**Lending Value** means the amount *we* are prepared to lend against a particular *Financial Product* calculated by multiplying its *Market Value* by its *Borrowing Limit*;

**Loan** means the amount drawn by the *Borrower* under these Terms and Conditions;

**Loan Account** means the account or accounts *we* keep in the *Borrower's* name, to which *we* debit the amount of any *Loan* and other liability of the *Borrower* under these Terms and Conditions;

**Loan Agreement** means the *Loan* agreement in Part 2 of these Terms and Conditions created when *we* accept the *Borrower's* application for a *Loan*;

**Loan Balance** means at any time, the balance of the *Loan Account* at that time;

**Margin Call** means the circumstances described in clause 10(a) of the *Loan Agreement*;

**Margin Call LVR** means the *Base LVR* plus the *Buffer*;

**Market Operator** means a holder of an Australian Market License who operates as per ASIC Market Integrity Rules;

**Market Value** means:

- for *Financial Products* which are listed on the stock market, the last sale price; and
- for unlisted *Financial Products*, the redemption price for the *Financial Products* and in the absence of a redemption price such value that *we* decide in *our* discretion reasonably exercised;
- where the *Financial Product* is cash, the amount of that cash;

**Maximum Gearing Level** means the lower of the *Maximum Gearing Ratio* and the *Margin Call LVR*;

**Maximum Gearing Ratio** means is the maximum level of gearing *we* will allow, expressed as a percentage against *your Portfolio* (disregarding any *Financial Product* with a *Borrowing Limit* of 0%) as determined by *us* from time to time, and notified by being placed by *us* on *our Online Banking System*;

**Mortgage** means the *mortgage* in Part 3 of these Terms and Conditions supporting the obligations of the *Borrower* and which is created when *we* accept the *Borrower's* application for a *Loan* or a third party *Mortgagor's* offer to give a *mortgage*;

**Mortgaged Property** means any or all of the *Financial Products* which are secured by the *Mortgage* and includes:

- any *Financial Products* *we* accept as *Mortgaged Property* under clause 2 of the *Mortgage*;
- any *Financial Products* the *Borrower* purchases using wholly or partly a drawing on the *Loan Account*;
- all rights and privileges (including rights issues, bonus shares, dividends and profits under a dividend reinvestment plan) accruing as a result of having an interest in those *Financial Products*; and
- all money payable or to become payable to the *Mortgagor* under or by virtue or in respect of those *Financial Products*;

**Mortgagor** means any person who gives *us* the *Mortgage*;

**Nominee** means State Nominees Limited ABN 14 000 677 350;

**Nominee Financial Products** means the *Financial Products* held by the *Nominee* as a result of a transfer to the *Nominee* or an acquisition by the *Nominee* under clause 2 of the Part 5 *Nominee Agreement*;

**Notice** means an *Electronic Notice* and a *Written Notice*;

**Notice of Margin Call** means a *Notice* from *us* to *you* or *your Adviser* which notifies *you* that *your Loan* is in *Margin Call*;

**Online Banking System** means any of the Online Banking Systems and related services (whether provided to *you* through electronic means or otherwise) *we* make available to *you* as part of *your Loan*, whether through the Commonwealth Bank of Australia, one of its subsidiaries, or agents, and their associated websites and other digital channels;

**our** means belonging to *us*;

**Participant Sponsored Holding** means a *CHESS Participant Sponsored Holding* which:

- belongs to a *Mortgagor*;
- is *Mortgaged Property*; and
- *AUSIEX* sponsors under the Part 4 Sponsorship Agreement;

**Portfolio** means collectively the *Financial Products* which *we* have accepted as *Mortgaged Property*;

**Portfolio Gearing Ratio** means *Loan Balance* (plus any unsettled transactions) divided by *Portfolio Market Value* and expressed as a percentage;

**Portfolio Lending Value** means the amount calculated in accordance with clause 6(a) of the *Loan Agreement* comprising the *Lending Value* of all *Financial Products*;

**Portfolio Market Value** means the total of the *Market Value* of all *Financial Products* which *we* have accepted as *Mortgaged Property*;

**PPS Act** means the Personal Property Securities Act 2009 (Cth);

**Proscribed Person** means a person who appears to *us* either (a) to be a *Proscribed Person* or entity under the Charter of the United Nations Act 1945 (Cth); (b) to be in breach of the laws of any jurisdiction relating to money laundering or counter-terrorism; (c) to appear in a list of persons with whom dealings are proscribed by the government or a regulatory authority of any jurisdiction; or (d) act on behalf, or for the benefit of, a person listed in subclauses (a) – (c);

**Regular Loan Advance** means each periodic advance that *we* make to *you* under the Terms and Conditions;

**Rules** means the *ASX Settlement Operating Rules* as in force from time to time;

**Secured Moneys** means any money payable by the *Borrower* under the Terms and Conditions;

**Security Interest** means and includes an interest arising under a *mortgage*, charge, pledge or other encumbrance of any nature and an interest arising from any reservation of title;

**Sub-position** means a facility in the *CHESS Settlement Facility* by which:

- activity in relation to *Financial Products* held in a *CHESS Participant Sponsored Holding* may be restricted; and
- access to those *Financial Products* for limited purposes may be given to a *CHESS* participant other than the controlling participant;

**Unused Borrowing Capacity** means, subject to the *Credit Limit*, the amount of the *Portfolio Lending Value* less the sum of the *Loan Balance* and any drawings which have been requested but not yet debited to *your Loan Account*;

**we, us or Bank** mean Commonwealth Bank of Australia ABN 48 123 123 124, *our* successors and anyone *we* assign *our* rights to, and in Section 2 includes *our* agents;

**Withdrawal Instructions** means instructions for withdrawal of *Financial Products* from a *Participant Sponsored Holding* and includes instructions:

- for the conversion of *Financial Products* in the *Participant Sponsored Holding* to any other mode of holding;
- to initiate a change of sponsorship for the *Financial Products*;
- to endorse or initiate an off market transfer of *Financial Products*; or
- to accept a takeover offer for the *Financial Products* on *your* behalf;

**Written Notice** means any physical, paper based communication in legible form, delivered by *you* to *us*, or by *us* to *you* in that form that is:

- conducted using written means; and
- made in accordance with, or in connection with, anything anticipated by the Terms and Conditions; *you* means:
- in these Part 1 General Provisions, any person who agrees to be bound by any of the Terms and Conditions;

- in the Part 2 *Loan Agreement*, the *Borrower*;
- in the Part 3 *Mortgage*, Part 4 Sponsorship Agreement and Part 5 *Nominee Agreement*, the person who gives us the *Mortgage*; and
- in each case, that person's attorneys, executors and administrators and, in the case of a corporation, its successors and assigns; *your* means belonging to *you*.

**you** means:

- in these Part 1 General Provisions, any person who agrees to be bound by any of the Terms and Conditions;
- in the Part 2 *Loan Agreement*, the *Borrower*;
- in the Part 3 *Mortgage*, Part 4 Sponsorship Agreement and Part 5 *Nominee Agreement*, the person who gives us the *Mortgage*;
- in Section 2, includes individual Borrowers and Guarantors, and any person who holds office in an entity which is a Borrower or Guarantor; and
- in each case, that person's executors and administrators and, in the case of a corporation, its successors and assigns;

**your** means belonging to *you*.

## 2. INTERPRETATION

The Terms and Conditions must be interpreted according to the following rules:

- when more than one person enters into any of the Terms and Conditions the obligations of those persons will be joint and several;
- words indicating the singular number include the plural number and vice versa;
- words indicating persons include bodies corporate; and \* in Section 2, includes individual Borrowers and Guarantors, and any person who holds office in an entity which is a Borrower or Guarantor; and
- the words "including" or "for example" and similar words or expressions when introducing an example do not limit the meaning of the words, to which the example relates, to that example or examples of a similar kind.

## 3. NOTICES

- (a) Unless otherwise provided for in the Terms and Conditions, all *Notices* given by *you* to *us*, or by *us* to *you* (or to third parties, where required), may be given by:
- a *Written Notice*; or
  - subject to paragraphs (b) and (d) below, an *Electronic Notice*, but will only be effective if made, or made and received, in accordance with the Terms and Conditions.
- (b) Despite paragraph (a), *we* will continue to give *you* certain *Notices* (selected by *us* from time to time) as *Written Notices* until such time as *you* make the positive election set out in paragraph (c).
- (c) Unless prohibited by legislation, and subject to paragraph (d) below, *you* may make a positive election in respect of certain *Notices* *we* specify from time to time to be sent by *us*, by giving a *Notice* to *us*, stating *your* election for *us* to send specified *Notices* to *you*, or that *we* have *your* authority to provide *you* with those specified *Notices* by means of:
- electronic communication to or from *your* nominated electronic address (for example, email address or SMS number); or
  - making an *Electronic Notice* or *Electronic Notices* solely available to *you* or *us* via the *Online Banking System*, in accordance with the Terms and Conditions and the Commonwealth Bank of Australia Electronic Banking Terms and Conditions.
- (d) Where *Electronic Notices* to *us* have been permitted by *us* and an election has been made by *you* to send specified *Notices* as *Electronic Notices* to *us*, *we* may give *you* a subsequent *Written Notice* that states that *you* must provide some or all of the specified *Notices* as *Written Notices* rather than as *Electronic Notices* from a specified date, and *you* must take the steps necessary to ensure that all such specified *Notices* from that date are given as *Written Notices*.
- (e) If *you* elect to receive certain *Notices* specified in paragraph (b) as *Electronic Notices*, by providing *us* with the positive election described in paragraph (c), *you* have the right at any time to:
- vary *your* nominated electronic address (for example, email address or SMS number); or
  - revoke *your* election to receive those specified *Notices* as *Electronic Notices*, by a further *Electronic Notice* to *us*.
- (f) Where *we* have provided, or are treated as having provided, a *Notice* to *you* *we* will, upon *your* request and where *we* are required to do so under the Code of Banking Practice, provide a paper copy of that *Notice* or *Notices* to *you* within the timeframe set out in the Code of Banking Practice.
- (g) Subject to this clause 3, *you* may give *us*, or *we* may give *you*, a *Notice* by making that *Notice*

available on the *Online Banking System*, provided that the *Notice* is:

- set out or made available (whether in blank, partially completed, or in full) on or through the *Online Banking System*; and
  - capable of being transmitted to *us* or to *you* using the existing technology and systems incorporated in the *Online Banking System*, and that *Notice*, where it is sent by *you* to *us*, will be received by *us* at the time that *you* receive via the *Online Banking System* a confirmation message stating that the *Notice* has been submitted and has been received by the *Online Banking System*.
- (h) Regardless of whether *you* have made an election under paragraph (c) or (d) above, and regardless of whether that election remains in effect or not, *you* may send *us* a *Written Notice* at any time, and *we* may send *you* a *Written Notice* at any time.
- (i) *You* may allow third parties to view particular *Electronic Notices*, and information on *your Loan* and *Loan Account* through the *Online Banking System*, on the terms set out in the Commonwealth Bank of Australia Electronic Banking Terms and Conditions by giving *us* a *Notice* to this effect. *We* will comply at all times with the Commonwealth Bank of Australia Privacy Policy Statement should *you* give such an authorisation (unless to do so would put *us* in breach of law).
- (j) *We* may send copies of a *Notice* (or parts of a *Notice*) to certain third party organisations for the purpose of verifying details or carrying out any activity set out in that *Notice*. In doing so, *we* will comply at all times with the Commonwealth Bank of Australia Privacy Policy Statement.
- (k) Unless *we* provide *you* with a *Notice* to the contrary (including, without limitation, providing that *Notice* on the *Online Banking System*), each *Notice* given by *you* to *us* or by *us* to *you* in respect of:
- the positive election described in paragraph (c);
  - a Direct Debit/Direct Credit request;
  - a refinance request;
  - a request for broker to broker transfer;
  - the appointment of an *Adviser*; or
  - a *Loan* closure and repayment, must be given as a *Written Notice*, despite anything to the contrary in these Terms and Conditions.
- (l) *You* agree to receiving, and *we* may send, *Loan statements* electronically via e-mail to your nominated e-mail address or by being made available via the *Online Banking System*.

## 4. GIVING OF NOTICES

- (a) *Notices* take effect from the time they are received unless a later time is specified in them, or unless otherwise specifically provided for in the Terms and Conditions.
- (b) If *Notices* are sent by post, they are taken to be received on the day they would be received in the ordinary course of post.
- (c) If *Notices* are sent by a facsimile machine which produces a transmission report, they are taken to be received at the time shown in a transmission report which indicates that the whole facsimile transmission was sent.
- (d) If *Notices* are sent electronically (including via the *Online Banking System*), unless otherwise provided for in the Terms and Conditions, they are taken to be received at the time that they are transmitted by the sender.

## 5. CHANGES TO YOUR PERSONAL OR BANKING DETAILS

- (a) If any of *your* personal details change or are updated (such as *your* name, address, contact number, or e-mail address) *you* must, as soon as possible and in any event within 30 days of that change or update occurring, provide *us* with a *Notice* detailing those changes. *We* will update *your* details on *our* systems (including *our Online Banking System*) based on the information *you* provide in this *Notice*, and from this time *we* will rely on this information when providing *you* with *Notices* or when *we* need to contact *you*. *You* are responsible for ensuring *your* personal details are correct and up to date.
- (b) Only *you*, or *your* joint account holder (if applicable) may change or update *your* personal details.
- (c) If *you* provide *us* with an *Electronic Notice* of changes or updates to *your* personal details using the *Online Banking System*, *you* consent to *us* validating particular details (for example, *your* postal address) with third parties for the purpose of verifying and confirming that those details are correct. *We* will only provide those details to these third parties in accordance with the Commonwealth Bank of Australia Privacy Policy Statement.
- (d) If *you* modify any user-modifiable option on the *Online Banking System*, this constitutes an *Electronic Notice* to *us* of *your* intention to make this change, and *we* will rely and act on such modifications without taking any further steps to confirm or verify these modifications unless required to do so by law or as required by the Commonwealth Bank of Australia Electronic

Banking Terms and Conditions.

## 6. JOINT ACCOUNT HOLDERS POWER OF ATTORNEY

- (a) In this clause, “*you*” means each joint account holder separately, and applies to each of those joint account holders.
- (b) *You* irrevocably appoint each other joint account holder to be *your* attorney, in connection with the Terms and Conditions, with the powers to do anything that *you* are able to do under these Terms and Conditions, including power to deal with the *Loan*, the *Loan Account*, and any of the *Mortgaged Property*. If *we* require, *you* must approve any act that *your* attorney does in connection with these Terms and Conditions, the *Loan*, the *Loan Account*, and the *Mortgaged Property* by giving *us* a *Notice* to this effect in writing prior to that act occurring.
- (c) Unless *we* give *you* a *Written Notice* to the contrary, and despite the width of the power of attorney granted under paragraph (b), *you* acknowledge that *we* are not obliged to accept from *you* certain *Notices* (as determined by *us* from time to time) submitted to *us* in *your* capacity as attorney appointed under this clause 6 unless that *Notice* has been signed by any and all joint account holders.
- (d) *You* fully indemnify each of *your* attorneys appointed under this clause against any loss or damage they incur when acting in strict accordance with the powers granted to that attorney under this power of attorney, and *you* release *us* absolutely from all liability for acting upon any instruction given by *your* attorney in accordance with the Terms and Conditions.

## 7. OUR CONSENT

Whenever *you* ask for *our* consent *we* may, provided *we* act reasonably, give or refuse *our* consent as *we* consider appropriate. *We* may impose reasonable conditions on the giving of *our* consent.

## 8. TRUSTEE PROVISIONS

If *you* enter into any of the Terms and Conditions as a trustee:

- (a) *You* acknowledge that the relevant Terms and Conditions bind *you* personally and in *your* capacity as trustee of the trust
- (b) Conditions

If *you* are a trustee, *you* must:

- be the sole trustee of the trust or if there is more than one trustee, be all the trustees of the trust
- have the power under the trust deed to enter into and observe *your* obligations under the Terms and Conditions
- enter into the Terms and Conditions in *your* personal capacity and in *your* capacity as trustee of the trust and for the benefit of the beneficiaries of the trust
- have all the authorisations required to sign the Terms and Conditions and perform *your* obligations
- have a right to be fully indemnified for all *your* obligations under the Terms and Conditions out of the property *you* hold on trust.

*You* also confirm that:

- the trust is validly constituted and has not been terminated
- there is either:
  - no conflict of interest affecting *you* as trustee (or *your* related parties or directors) which prevents *you* from entering into or performing *your* obligations under the Terms and Conditions; or
  - the trust deed permits *you* to enter into and perform *your* obligations under the Terms and Conditions despite any conflict of interest that may affect *you* (or *your* related parties or directors)
- the trust fund is big enough to satisfy *your* right of indemnity
- the trust is not in default under the trust deed and no action has been taken or proposed to terminate the trust
- *you* have complied with *your* trust obligations (as have any directors or officers if the trustee is a corporation)
- *you* have taken every necessary action to authorise *you* to execute the Terms and Conditions and perform *your* obligations under the Terms and Conditions
- executing the Terms and Conditions is not a breach of trust on *your* part
- our rights under the Terms and Conditions have priority over the interest of the beneficiaries of the trust
- the trust is validly constituted and has not been terminated
- none of the current unit holders or beneficiaries are Superannuation Funds

- (c) What *you* agree to do

Where requested by *us*, *you* agree to provide correct and complete copies of the trust deed and any other documents that disclose all the terms of the trust,

When *you* sign the Terms and Conditions as a trustee, *you* agree to:

- at *our* request, exercise or hold for *us* *your* right of indemnity from the trust fund and the beneficiaries in order to pay *us* any money owed under the Terms and Conditions
- observe and perform *your* obligations as trustee of the trust
- cause any successor trustee to abide by these Terms and Conditions.

- (d) What *you* agree not to do

Without *our* consent *you* will not do anything to:

- retire or be removed or replaced as trustee of the trust or allow additional trustees of the trust to be appointed
- terminate the trust, vary the trust deed or re-settle the trust fund or determine a vesting date
- limit *your* right of indemnity from the trust fund for obligations under the Terms and Conditions.

- (e) Continuance of conditions and agreements

*You* acknowledge that:

- *we* rely on these conditions and agreements being true each time the *Loan* is used
- *you* repeat these conditions and agreements every time *you* request a Credit Limit increase
- these conditions and agreements also apply to any *Guarantor*.

- (f) Additional reporting obligations:

As part of Australia’s international obligations in relation to combating tax evasion, *we* may require *you* to provide additional information. Until *you* provide *us* with this information, *we* may be unable to complete the opening of *your* account.

For example, if *you* are the trustee of a *trust*, *you* need to tell *us* if the settlor or any beneficiary of the *trust* is a tax resident of a country other than Australia. If the settlor or any beneficiary is itself an entity, this requirement applies to all individuals who are an ultimate beneficial owner of that entity. *We* may then require *you* to obtain (and/or provide on their behalf) each individual’s name, address, date of birth and tax residency details. Where *you* are a trustee, *you* do not have to give *us* this information in relation to the settlor if their identity is not known or, if they have no ongoing involvement with the *trust* and their tax residency is not known. In this case, *you* confirm that after reasonable enquiry, *you* have no reason to believe that the settlor is a tax resident in a country outside Australia.

*You* must keep this information up to date, and notify *us* promptly of any change. If *you* need to get in touch with *us*:

- From Australia call 1300 077 141 between 9am – 5pm, Monday – Friday (Sydney Time)
- From overseas call +61 2 9283 6096 between 9am – 8pm, Monday – Friday (Sydney Time). Call charges may apply

## 9. CHANGE IN YOUR CONSTITUTION, NAME OR STYLE

Where *you* are a partnership, firm, committee, trustee or unincorporated body or any of the *Secured Moneys* are advanced on or are otherwise owing or payable on a joint account *your* obligations under the Terms and Conditions remain effective and binding despite any change in *your* constitution, name or style.

## 10. AUTHORITIES YOU GIVE US

- (a) *You* authorise *us* to act on any of *your* *Notices* (and if there is more than one of *you*, on the *Notices* of any one or more of *you*), the *Notices* of the person who appears to be *your* *Adviser* or the *Notices* of anyone *you* authorise in a *Written Notice* to *us* to act on *your* behalf. *We* will act on the *Notices* given to *us* by any person *you* authorise in writing until *you* give *us* a *Written Notice* not to do so.
- (b) If *you* are a company and there is more than one director, *we* may act on the *Notices* of any one or more directors.
- (c) *You* authorise *us* to act on *Notices* sent to *us* from time to time in accordance with Clause 3, or in writing or by telephone, facsimile transmission, telex, cable or other electronic means permitted under the Terms and Conditions.

## 11. OBLIGATIONS ARE NOT AFFECTED BY UNAUTHORISED INSTRUCTIONS

- (a) Subject to clause 14 in Part 2 of these terms and conditions, if *we* have exercised due care, *your* obligations are not affected or limited by:
- any falsity, inaccuracy, insufficiency or forgery of or in any *Notices* given to *us*; or
  - *our* failure to enquire whether any *Notice* has been transmitted or received accurately or

has been given or sent by an unauthorised person.

- (b) If we act or continue to act on the basis of *your Notices*, you agree as follows:
- (i) All risks of unauthorised *Notices* or fraud lie with you and are not to be borne by us.
  - (ii) You agree to indemnify us and hold us harmless against:
    - A. any and all claims which you or any third party may have against us for any damage, loss, cost or expense which you or that third party may suffer or incur (whether directly or indirectly and whether foreseeable or not); and
    - B. any damage, loss, cost or expense which we may suffer or incur (whether directly or indirectly and whether foreseeable or not), as a result of or in connection with:
      - us acting upon any *Notices* purporting to be from you, your Adviser or your employee (whether made in accordance with Clause 3 or by telephone, facsimile, telex, cable or other electronic means permitted by the Terms and Conditions); or
      - us not acting upon any *Notices* purporting to be from you, your Adviser or your employee (whether made in accordance with Clause 3 or in writing or by telephone, facsimile, telex, cable or other electronic means permitted by the Terms and Conditions) where we (in our subjective determination) consider or suspect that such *Notices* have been communicated to us fraudulently, mistakenly or without authority, or contain material omissions or errors. Nothing in this clause will be construed as requiring us to make enquiries as to the genuineness or validity of a *Notice*.
  - (iii) The indemnity contained in this clause is subject to us acting only upon *Notices* from persons purporting to be you or persons authorised by you from time to time by giving a *Written Notice* to us. For the purposes of this clause a person will be deemed to be a person authorised by you if you have held out that person to us as a person authorised by you and have not given us a *Written Notice* that such person has ceased to be authorised.

## 12. VARIATION

- (a) We may reduce or increase the *Interest Rate* from time to time – except during the period in which the *Interest Rate* for a *Loan* or a portion of a *Loan* is fixed. We will advertise any reduction or increase in the *Interest Rate*, as well as the introduction of any new government charge or the variation in any existing government charge which affects you, by national media or give you a *Written Notice* no later than the day on which the change takes effect. At any time, you can ask us to state the then current *Interest Rate* or any other *Interest Rate* we charge on the *Loan*.
- (b) You may from time to time and at any time request that we fix the *Interest Rate* by providing us with a *Written Notice* in the form set out on the *Online Banking System*. We are not obliged to accept this *Notice* using any other means of delivery, including as an *Electronic Notice*. We will provide you with a *Notice* stating the outcome of your request within a reasonable time period.
- (c) On giving you at least 30 days' *Written Notice*, we may:
  - impose any new fee;
  - vary the amount of any fee;
  - vary the interest and fee charging cycles;
  - vary the basis of calculating and charging of interest; and/or
  - vary any *Interest Rate* or default *Interest Rate* margin.
- (d) From time to time and at any time, we may increase, decrease, add to, delete or otherwise vary our *Borrowing Limits* on any of the *Mortgaged Property* without providing you with a *Notice*.
- (e) We may from time to time change any of the Terms and Conditions to:
  - (i) add change or remove any concessions or benefits;
  - (ii) adopt or implement any legal requirement, decision, recommendation, regulatory guidance or standard of any court, tribunal, ombudsman service or regulator;
  - (iii) accommodate changes in the needs or requirements of our customers, such as new product features or services;
  - (iv) correct errors, inconsistencies, inadvertent omissions, inaccuracies or ambiguities;
  - (v) bring us into line with our competitors, industry or market practice or best practice in Australia or overseas; or
  - (vi) reflect changes in technology or our processes including our computer systems. Each of the changes in paragraphs (i) to (vi) is a separate right and this clause is to be read as if such change was a separately expressed right. Without limiting our rights under paragraphs (i) to (vi), we may from time to time change any of the Terms and Conditions for reasons other than the ones mentioned above (e.g. due to unforeseen events).
- (f) We may notify you of any such changes to the Terms and Conditions by national media or by giving a *Written Notice* no later than the day the change or changes take effect.

Note – If we make a change that is not acceptable to you, you can cancel the *Loan* by repaying it. Depending on these Terms and Conditions an *Early Repayment Adjustment* and fees and charges may be payable.

## 13. EXERCISE OF RIGHTS

- (a) Provided we act reasonably we may exercise any right, remedy or power in any way we consider appropriate in our sole and absolute discretion. If we do not exercise a right, remedy or power fully or at a given time, we can still exercise it later.
- (b) We are not liable for any loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising, a right or remedy.

## 14. NO RESPONSIBILITY FOR MISSED OPPORTUNITIES

- (a) You acknowledge that we are not responsible for missed market opportunities, or any loss or losses you suffer or incur as a consequence of those missed market opportunities, during the time it takes us to follow our internal procedures or take any action or do any thing provided for or in connection with the Terms and Conditions, for example, and without limitation:
  - processing a *Notice* we receive from you or you receive from us;
  - transferring your funds from one of your accounts to another of your accounts in accordance with the Terms and Conditions;
  - determining whether a *Margin Call* has occurred or the resolution of a *Margin Call* (including any failure to give a *Notice* to you of a *Margin Call*); or
  - where you have requested an increase in your *Loan* Limit.
- (b) You acknowledge and accept that there may be delays in applying debits or credits to your *Loan Account*, which may affect your ability to place further orders. You agree to contact us immediately should you wish to trade using the proceeds.

## 15. PAYMENTS UNDER THE TERMS AND CONDITIONS

- (a) After the payment of unpaid fees and charges and interest, we may apply the money we receive under the Terms and Conditions towards payment of any amount then due and payable by you in the order we reasonably determine.
- (b) All payments by you under the Terms and Conditions must be made in Australian dollars without deduction or set-off.
- (c) Unless there is a specific provision to the contrary in the Terms and Conditions regarding payment of an amount owing to us, you must pay that amount on demand.
- (d) If your liability under the Terms and Conditions is merged in any judgment or order, you will pay interest on the amount owing under that judgment or order at the higher of the rate at which default interest is charged under clause 9 of the *Loan Agreement* and the *Interest Rate* charged on the court order.

## 16. ASSIGNMENT

- (a) You can assign your rights under the Terms and Conditions only with our prior written consent, which we will not unreasonably withhold.
- (b) We may assign or otherwise deal with our rights under the Terms and Conditions in any way we consider appropriate free from any equities, set-off or cross claim which you could otherwise set up.
- (c) You authorise us to disclose to any assignee or potential assignee (including any employee, agent or contractor engaged by that assignee or potential assignee) any information relating to you, the *Loan*, the *Mortgage*, the *Mortgaged Property* and the *Guarantee* that we reasonably consider appropriate in the circumstances.

## 17. CONTINUING RIGHTS

- (a) Under law, a trustee in bankruptcy or a liquidator or administrator might demand the refund of a payment we receive pursuant to the Terms and Conditions. To the extent we are obliged to make a refund or we agree to do so, we may treat the original payment as if it had not been made. We are then entitled to our rights against you under the Terms and Conditions as if the payment had never been made.
- (b) Each indemnity you give under the Terms and Conditions is a continuing obligation which survives termination of any other obligation you owe us under the Terms and Conditions.

## 18. COMMISSION

We may pay:

- a commission to any Adviser or other financial intermediary who introduces you to us; and
- CommSec their fees and costs relating to administration.

## 19. TELEPHONE RECORDING

You authorise us to record any telephone conversation between you (including your agents and employees) and us with or without an audible tone warning device.

## 20. GOVERNING LAW



The laws of New South Wales govern the Terms and Conditions and the parties irrevocably and unconditionally submit themselves to the non-exclusive jurisdiction of the courts of that State (and courts of appeal from them) and (subject to *your* right to refer a matter to the Australian Financial Complaints Authority) waive any right they have to object to an action being brought in those courts, to claim that the action has been brought in an inconvenient forum or to claim that those courts do not have jurisdiction.

## 21. ADVISER

- (a) If *you* nominate an *Adviser*, then by nominating them *you* appoint that *Adviser* as *your* attorney and agent and empower *your Adviser* to do anything which *you* are entitled to do under or pursuant to the Terms and Conditions, including but not limited to:
- giving and receiving *Notices* (including *Notices of Margin Call*);
  - transacting;
  - giving instructions.
- (b) *You* agree that *you* are bound by *your Adviser's* acts pursuant to this clause 21.

## Part 2 Loan Agreement

### 1. DRAWINGS ON THE LOAN ACCOUNT

- (a) Subject to the *Loan Agreement*, *you* may draw on *your Loan Account* up to the *Credit Limit* which *we* approve (and may vary) from time to time. *We* will tell *you* the initial *Credit Limit* when *we* tell *you* that *we* have accepted *your* application for a *Loan*.
- (b) *You* can request a drawing on *your Loan Account* by giving *us* a *Notice* telling *us*:
- the amount *you* wish to draw;
  - when *you* want the drawing paid; and
  - the person to whom *you* want the drawing paid for the purpose of acquiring *Financial Products*. Once *you* make a request under this paragraph (b) it is irrevocable.
- (c) *You* must not take any action with respect to *your Loan Account*, including request a drawing, until such time as *you* have provided *us* with:
- each and every *Mortgaged Property* to *our* satisfaction and *we* have given *you* a *Notice* confirming that *we* are so satisfied; and/or
  - *Financial Products* which *we* accept to be *Mortgaged Property* in accordance with the *Mortgage*; and/or
  - *you* have deposited an adequate amount in an *Approved Deposit Account*.
- (d) *We* can fund a drawing on the same *Business Day* as *your* request if *your* request is made before 11 am, or otherwise on the first *Business Day* after *you* request the drawing, provided that:
- *you* are not subject to a *Margin Call* in accordance with clause 10 (whether this has been notified to *you* by *us* or not);
  - *you* are not in breach of *your Credit Limit*; and
  - *we* are satisfied that *you* have satisfied all of *our* internal requirements (as notified to *you* by *us* from time to time) with respect to the drawing to *our* satisfaction
- (e) *We* fund each drawing on *your Loan Account* by electronic transfer or by issuing a cheque as *you* choose. *You* cannot withdraw cash from *your Loan Account* and cannot direct payment to a third party except for the purpose of acquiring *Financial Products*.
- (f) *We* record each drawing on *your Loan Account* by debiting the *Loan Account* at the time *we* make the electronic transfer or issue the cheque for the drawing.
- (g) If *you* are a joint account holder with respect to *your Loan Account*, *you* may only give *us* a *Written Notice* requesting an increase to *your Credit Limit*, despite any forms of *Notices* provided on the *Online Banking System*.
- (h) If *you* have requested a drawing under this *Loan* but for any reason the transaction remains unsettled or for any other reason the funds have not actually been debited to *your Loan Account* then, for the purpose of determining *your Unused Borrowing Capacity*, the amount of the requested drawing will be deemed to have been debited to *your Loan Account*. If such a drawing is no longer required then, upon receiving a *Notice* from *you* to that effect, the amount of the drawing will be regarded as *Unused Borrowing Capacity*.
- (i) If *you* do not draw an amount from the *Loan Account* within six months of the date *we* open the *Loan Account*, *we* may regard the *Loan* as lapsed and any *Financial Products* that *you* and the third party *Mortgagor* (if applicable) have lodged as security will be released at *your* cost (if applicable).
- (j) The *Loan* is provided on a continuing basis – subject to *our* right to require repayment and/or terminate in accord with the Terms and Conditions.
- (k) *We* are not liable for any loss *you* may suffer because the prices of any *Financial Products* *you* plan to buy rise, or they cease to be available, during the time *we* take to lend *you* the money or

forward any commitments on *your* behalf.

- (l) *You* may draw on the *Loan Account* only if *you* give or have given *us* *Financial Products* which *we* accept to be *Mortgaged Property* in accordance with the *Mortgage* and/or *you* have deposited an adequate amount in an *Approved Deposit Account*.
- (m) Any *Notice* given by *you* to *us* requesting a drawing, transfer, increase in *Credit Limit*, or any other change or dealing to *your Loan Account* that is permitted under the Terms and Conditions that is received by *us* after 3:00pm Sydney time on a *Business Day*, or at any time on a non-*Business Day*, will (where applicable) be displayed on the *Online Banking System* on the next *Business Day*. Until the time of execution and confirmation by *us* of such a *Notice*, *you* acknowledge that any updated details provided on the *Online Banking System* in connection with *your Notice* are for *your* information purposes only, and that *you* will not rely on details shown or reflected on the *Online Banking System* until *we* have executed and confirmed *your Notice* by 3:00pm on the next *Business Day*, unless *we* give *you* a *Notice* to the contrary.

### 2. TRANSFERS OF DRAWINGS

*You* may transfer *your* drawings from time to time to any account *you* nominate by giving *us* a *Notice* to this effect. Provided that the *Notice* is acceptable to *us*, *we* will carry out *your* requested transfer and provide *you* with a *Notice* showing *your* updated account details. *We* will also provide *you* with a *Notice* at least every six months from the date of *your Loan Agreement* giving a summary of all transfers *you* have made or which have been made to *you*.

### 3. WHEN WE DO NOT HAVE TO COMPLY WITH YOUR REQUEST FOR A DRAWING

*We* do not have to comply with *your Notice* for a drawing on *your Loan Account* if, despite any previous agreement by *us* to comply with *your Notice*, at the time of *your Notice* or the time at which *we* would otherwise have made the drawing:

- *you* request to draw less than \$500;
- a *Guarantor* (if any) has given *us* a *Notice* in writing limiting the *Guarantor's* liability under the *Guarantee*;
- the sum of the amount *you* wish to draw and the outstanding *Loan Balance* exceeds the *Credit Limit*;
- the sum of the amount *you* wish to draw, the *Loan Balance* and any unsettled transactions would exceed the sum of *your* current *Portfolio Lending Value* and the *Lending Value* of the *Financial Products* which are to be acquired with the drawing;
- *you* or a *Mortgagor* have not complied with any of the Terms and Conditions; or
- any *Default Event* or *Enforcement Event* has occurred and is continuing.

### 4. YOUR UNDERTAKING AND REPRESENTATION

- (a) Where *you* are an individual *you* undertake to use the *Loan* wholly or predominantly for business or investment purposes (excluding residential property investment purposes).
- (b) *You* undertake to provide to *us*, upon request, a *Notice* containing details of any and all financial information in relation to *you*, *your* business, property, management, operations, financial condition and prospects as *we* may reasonably request.
- (c) *You* represent, on each occasion that *you* draw an amount from *your Loan Account*, that *you* are not *Insolvent* and, if *you* are an individual, that *you* are not an undischarged bankrupt and have not assigned *your* estate or entered into any arrangement or composition for the benefit of *your* creditors.
- (d) *You* agree and undertake to actively monitor *your Current LVR* and to manage *your Loan Account* and *Mortgaged Property* to maintain *your Current LVR* at a level that *you*, acting reasonably, believe protects *your* interests.

### 5. APPROVED DEPOSIT ACCOUNT

By way of security for the obligations *you* owe *us* under the Terms and Conditions, *you* agree to give *us* rights of set-off against the *Approved Deposit Account*. So long as any of the *Secured Moneys* remain unpaid *you* acknowledge that *we* are not required to repay moneys standing to the credit of the *Approved Deposit Account* and undertake not to attempt to assign *your* property in the money standing to the credit of the *Approved Deposit Account* and/or any interest accruing on that money.

**6. PORTFOLIO LENDING VALUE**

- (a) From time to time we will determine your *Portfolio Lending Value* as:
- the amount we are willing to lend against the *Mortgaged Property* (calculated by adding the *Lending Values* of all the *Financial Products* in your *Portfolio* that we, at our complete discretion, accept as *Financial Products* for the purpose of determining your *Portfolio Lending Value*);
- (b) Your *Portfolio Lending Value* may change at any time without us providing you with any *Notice* depending on:
- any change in stock market prices and/or redemption prices for the *Financial Products* in your *Portfolio*;
  - any change in the *Borrowing Limits* we set on the *Financial Products* in your *Portfolio*; and/or
  - any change in the products we accept from time to time as *Financial Products* for the purpose of paragraph (a).
- (c) *Borrowing Limits* vary between *Financial Products* comprising the *Mortgaged Property*. We may vary our *Borrowing Limits* at any time without giving you a *Notice* to this effect.
- (d) We will give you a *Notice* or *Notices* containing a list of our then current *Borrowing Limits* on accepted *Financial Products* and our then accepted *Financial Products*, and which will tell you the *Loan Balance* of your *Loan Account*, *Portfolio Lending Value* and the amount of Unused *Borrowing Capacity* available on your *Loan Account*, at the time you:
- open a *Loan Account*; or
  - give us a *Notice* requesting any or all of this information.
- (e) We may change any or all of the currently acceptable *Financial Products* at any time at our complete discretion without giving you *Notice* of this change.

**7. INTEREST ON YOUR LOAN ACCOUNT**

- (a) You must pay interest on all outstanding debit balances on your *Loan Account*. The outstanding debit balance on your *Loan Account* may include interest, fees and charges debited to your *Loan Account*.
- (b) Interest:
- begins to accrue on and from the date we first debit an amount to your *Loan Account*;
  - if we consent to it being prepaid, is calculated and debited to your *Loan Account* on the first day of the period for which the *Interest Rate* is fixed, for the whole of that period, on the basis of a 365 day year;
  - is calculated on any day by applying the *Interest Rate* for that day to the outstanding balance of your *Loan Account* at the end of that day and is debited to your *Loan Account* monthly and on the day your *Loan Account* is repaid in full and the account is closed.
- (c) We charge interest on unpaid interest, fees and charges. However, the interest only becomes part of the principal sum when we make a special entry to that effect in our books of account. We will do this where you have requested it in a *Notice* to this effect but we may do this at any time without informing you, where it is reasonable to do so.
- (d) We do not pay interest on credit balances in your *Loan Account*.
- (e) We do not pay you interest on any balances that are held in our trust accounts.

**8. WHERE WE AGREE THAT INTEREST CAN BE PREPAID**

- (a) We may consent to your *Notice* to prepay interest on a *Loan*. If we consent to your *Notice*, the *Interest Rate* will be fixed for an agreed period and we will debit your *Loan Account* with the interest we charge for the whole of that period on the date the period starts.
- (b) We calculate the interest we charge, for a period during which the *Interest Rate* is fixed, by applying a fixed *Interest Rate* which we set at the date the period starts.
- (c) At the end of any period for which the *Interest Rate* is fixed the interest payable on that *Loan* reverts to the variable *Interest Rate* applicable at that time and clause 7 applies.

**9. DEFAULT INTEREST ON THE LOAN**

You must pay us default interest on any amount you fail to pay on the due date in relation to the *Loan* (including the amount of any *Margin Call* which is not satisfied according to clause 10).

Default interest:

- is charged at the *Interest Rate* then applying to your *Loan Account* plus a margin which we set from time to time and which reflects our reasonable costs incurred as a result of your failure to pay;
- is calculated daily on the overdue amount from the due date for payment of the amount until the amount is paid, is debited to your *Loan Account* monthly (and on the date your *Loan Account* is repaid in full and the account is closed) and is due for payment on the date it is debited to your *Loan Account*.

**10. MARGIN CALL**

- (a) A *Margin Call* occurs if, we determine, at any time on any day that:
- your *Current LVR* exceeds the *Margin Call LVR*; or
  - your *Current LVR* exceeds the *Maximum Gearing Ratio*.
- Subject to clause 10(b), when a *Margin Call* occurs, your *Loan* is in *Margin Call* and remains in *Margin Call* until such time as the *Loan Balance* does not exceed an amount equal to your *Portfolio Lending Value*.
- (b) If a *Margin Call* occurs you must take one of the following actions:
- pay money into your *Loan Account*;
  - give us further *Financial Products* which we accept as *Mortgaged Property* and in accordance with clause 6(a); or
  - sell or ensure the sale of *Mortgaged Property* and apply or ensure the application of the sale proceeds to reduce the *Loan Balance*, so that the *Loan Balance* does not exceed an amount equal to your *Portfolio Lending Value*;
- in the case of (a)(i) above, and where the *Loan* is issued under the 10% Buffer option:
    - where more than 5% by *Market Value* of the *Mortgaged Property* is made up of *Financial Products* listed on the *ASX*, by 2pm (Sydney time) of the *Business Day* immediately after the day on which the *Margin Call* occurs, or such earlier time that we specify in the *Notice of Margin Call*;
    - where more than 95% by *Market Value* of the *Mortgaged Property* is made up of units in unlisted trusts, by 5pm (Sydney time) of the third *Business Day* immediately after the day on which the *Margin Call* occurs, or such earlier time that we specify in the *Notice of Margin Call*;
  - in the case of (a)(i) above, and where the *Loan* is issued under the 5% Buffer option:
    - by 2pm (Sydney time) of the *Business Day* immediately after the day on which the *Margin Call* occurs, or such earlier time that we specify in the *Notice of Margin Call*.
  - in the case of (a)(ii) above, by 2pm (Sydney time) of the *Business Day* immediately after the day on which the *Margin Call* occurs, or such earlier time that we specify in the *Notice of Margin Call*.

If none of the actions specified in (b) above are taken to clear the *Margin Call* by the time specified we will treat this as a *Default Event* under Clause 15 of this Agreement.

You also acknowledge that you will not take any other action or actions other than those actions expressly set out in this paragraph (b) for the purpose of responding to that *Margin Call*, unless we give you a *Written Notice* to the contrary, and that if you do so without having received such a *Written Notice*, we are under no obligation to accept such action or actions for the purposes of rectifying the *Margin Call*. You authorise us to act on any of your instructions in relation to a *Notice of Margin Call* (and if there is more than one of you, on the instructions of any one or more of you, and you release us absolutely from all liability for acting upon any instruction given by any one of you).

- (c) It is your obligation to ensure that a *Margin Call* does not occur. We will take reasonable steps to give you a *Notice of Margin Call*. It is your obligation to ensure you are contactable at all times to receive a *Notice of Margin Call*. This obligation includes ensuring all contact details that we have for you are up to date and accurate. This *Notice of Margin Call* may be in any form or use any method that we choose to use for making such a *Notice* from time to time, despite any other provisions of the Terms and Conditions.
- You acknowledge that such a *Notice of Margin Call*, regardless of how it is given to you, is a *Notice* for the purposes of the Terms and Conditions. You acknowledge that where you are one of two or more individual trustees, *Notice of Margin Call* to a nominated trustee is *Notice* to all of the trustees.
- (d) You acknowledge that any action you take under paragraph (b) and paragraph (c) is at all times subject to Part 1 clause 13 of the Terms and Conditions.
- (e) You and we agree that the purpose of a *Margin Call* is to allow you to take action before we exercise our rights in relation to the *Mortgaged Property*.
- (f) You agree that we are not obliged to take any action to stop or limit your loss while your *Loan* is in *Margin Call*, including (but not limited to) exercising our rights in such a manner as to lessen your exposure to a falling market.

## 11. TERMINATING THE LOAN

- (a) *You* (and if there are more than one of *you*, any of *you*) may terminate the *Loan* at any time if *you* give *us* at least two *Business Days* prior *Notice* and pay the outstanding balance on *your Loan Account* in full.
- (b) If a *Default Event* occurs, *we* may terminate the *Loan* by written notation in *our* books under clause 15(b).
- (c) *We* may, in *our* absolute discretion, terminate the *Loan* upon giving *you* 5 days' prior *Written Notice*.

## 12. PAYMENTS ON YOUR LOAN ACCOUNT

- (a) *You* must pay the outstanding balance on *your Loan Account* in full on the day the *Loan* terminates.
- (b) *You* may pay all or any part of the outstanding balance of *your Loan Account* at any time prior to the day the *Loan* terminates – except in relation to a *Loan* for which the *Interest Rate* is fixed.
- (c) *You* cannot deposit cash into *your Loan Account*. *You* must make all payments by electronic funds transfer or cheque. Cheques must be made payable to “Commonwealth Bank of Australia”. Proceeds are not available until cleared. If *you* make a deposit and the payment is not honoured then *we* treat the payment as if it had never been made.
- (d) Payments made by cheque will only be accepted for the purpose of *you* meeting an obligation to *us* under this facility.

## 13. EARLY REPAYMENT ADJUSTMENT

- (a) If *you* terminate a *Loan* (or part of a *Loan*), for which interest has been prepaid or during a period for which the *Interest Rate* is fixed, then *we* will calculate an *Early Repayment Adjustment*.
- (b) *We* calculate the *Early Repayment Adjustment* as *our* reasonable estimate of *our* cost if any in accordance with a formula which takes into account the difference between:
  - the fixed *Interest Rate* *you* and *we* agreed for that part of the *Loan*; and
  - *our* reinvestment rate to the end of the term *you* and *we* have agreed the fixed *Interest Rate* would apply for.

*Our* calculation does not necessarily reflect actual transactions which *we* may enter into as a result of *your* prepayment or switch or which *we* may have entered into when *you* fixed the *Interest Rate*. There may not be specific transactions referable to *your Loan* because *we* manage *our* funding of *loans* and *Interest Rates* on a *portfolio* basis. (c) If there is a cost to *us*, *we* debit the amount of the *Early Repayment Adjustment* to the *Loan Account* after setting off any interest rebate payable relating to pre-paid interest.

- (d) If *you* or a signatory appears to be a *Proscribed Person*, *we* will provide *you* with a *Notice* in reasonable detail setting out the calculation of the *Early Repayment Adjustment* payment on termination of a *Loan* where the *Interest Rate* is fixed;

## 14. REFUSAL OF SERVICE

Despite any right contained in these Terms and Conditions, in the event that *you* or a signatory appears to be a *Proscribed Person*, then *we* may immediately refuse to process or complete any transaction or dealing of yours; seize or retain the *Mortgaged Property* or *Financial Products*; suspend the provision of a product or service to *you*; refuse to allow or to facilitate any of *your* assets held by *us* to be used or dealt with; refuse to make any asset available to *you* to any other *Proscribed Person* or entity; or terminate these arrangements with *you*. *We* will be under no liability to *you* if *we* do any or all of these things.

If *we* exercise *our* rights under this clause *you* must pay *us* any losses, costs or expenses that *we* incur in relation to any action taken under this clause, including interest adjustments, administrative costs and/or costs of sale or purchase of any transaction or deal put in place for the purposes of meeting *our* obligations under these Terms and Conditions.

## 15. DEFAULT

- (a) A *Default Event* occurs if:
  - *you* fail to pay any sum payable by *you* under the *Loan Agreement* on the date the payment is due;
  - *you* fail to clear a *Margin Call* under the *Loan Agreement*;
  - for any reason the Sponsorship Agreement in Part 4 of these Terms and Conditions is terminated;
  - *your Loan Balance* exceeds *your Credit Limit*; and *you* fail to reduce *your Loan Balance* to the level of or below *your Loan Limit* within 30 days;
  - a judgement of any court or any order of an authority is executed against any *Financial Products* secured by the *Mortgage*;
  - *you* or any *Mortgagor*, without *our* prior written consent, create or purport or attempt to create any *Security Interest* over or affecting *Mortgaged Property* or any part of that property in favour of any person other than *us*;
  - in *our* reasonable opinion a materially adverse change occurs to *your* financial position, or to the financial position of any *Guarantor* or *Mortgagor*, which change may be assessed by reference to (but such assessment is not limited to) the *Market Value* of the *Mortgaged Property*;
  - *you*, a *Guarantor* or a *Mortgagor* make any *Notice*, representation or warranty to *us* in relation to the Terms and Conditions or the *Mortgaged Property* that, in *our* reasonable opinion, is misleading or incorrect in any material respect when made (whether the lack of correctness is apparent at the time or becomes apparent subsequently);
  - at any time on any day your *Current LVR* exceeds 95%;
  - *you* fail to provide financial information which is requested pursuant to clause 4(b).
- (b) If a *Default Event* occurs, *we* may declare, by notation of one of *our* officers or by *our* agent on *our* records to that effect, that *you* are in default and that all amounts owing under the Terms and Conditions are immediately payable without *our* having to make any demand on *you* or serve any prior *Notice* on *you* to that effect.
- (c) *We* may exercise *our* right to make the declaration referred to in paragraph (b) despite any delay in *our* exercising the right or *our* having waived the right previously.
- (d) In addition to any other amount *you* must pay, after *we* make a declaration under paragraph (b) and on *our* demand, *you* must pay *our* estimate of the loss *we* will incur due to the *Loan* not continuing for the whole of the then current period for which the *Interest Rate* is fixed (if any). *We* estimate *our* damage in the same way *we* calculate an *Early Repayment Adjustment* under clause 13, as if:
  - the date of the declaration referred to in paragraph (b) were the date *you* proposed to prepay the *Loan*; and
  - the amount of the prepayment was the money due and payable under the Terms and Conditions at the date of the declaration.

## 16. FEES AND CHARGES

- (a) *You* must pay *us*:
  - *our* fees and charges (as varied from time to time) as soon as they are due and payable, whether or not *you* draw on *your Loan Account*. *We* set out particulars of the current fees and charges *you* must pay, and when they are payable, in *our* Product Disclosure Statement (PDS), and on *Our Online Banking System*. On receipt of *your Notice* to this effect, *we* will supply *you* with a copy of *our* current fees and charges for the *Loan*;
  - any government tax or duty payable in relation to the Terms and Conditions, any *Mortgage* and/or *Guarantee* provided to *us* by way of *Security Interest* or any transaction on the *Loan Account*;
  - all amounts which *we* are charged or charge or pay or incur in connection with establishing and administering the *Loan* or with any transaction contemplated by the Terms and Conditions, terminating the *Loan*, or *our* exercising or enforcing any right, power, claim or remedy of any kind arising out of the Terms and Conditions.
- (b) *We* may debit *your Loan Account* with all unpaid fees and charges *you* must pay *us* under the Terms and Conditions. Any amounts *we* receive from *you* for crediting to *your Loan Account* are applied to pay unpaid fees and charges on the *Loan Account* first.

## 17. MANAGED FUND INVESTMENTS

If you decide that you want to add or change all or part of your *Mortgaged Property* to another investment on the list of accepted *Financial Products*, then you may do so provided that:

- you give us 5 Business Days Written Notice to process your request excluding fund managers' time frames and the time it takes for any uncleared funds to clear;
- you change a minimum of \$2,000 (or in accordance with the fund managers' guidelines) of your *Mortgaged Property* to another currently accepted *Financial Product/s*; and
- you pay us our fee for that investment switch together with any government charges (if applicable).

## 18. REDEMPTION OF SECURITIES BY ERROR

- (a) If, by error, we redeem any security held in your name you agree that we will, without cost to you, reinstate the security as soon as we become aware of the error.
- (b) If, as the result of a redemption by error, you incur an actual capital gains tax liability we will pay to you an amount equal to the actual capital gains tax liability you have incurred. The payment will be made 14 days after you give to us a Notice of assessment of that tax liability and evidence that the capital gain which accrued to you because of the redemption error was included in your taxation return to which the assessment applies.

## 19. UNSETTLED TRANSACTIONS

We will send you a Notice of your *Loan Account* and your *Portfolio* each quarter. If an amount is shown on your statement, in relation to a *Financial Product* you propose to acquire, as an "Unsettled Transaction" then this will not be interpreted as a commitment by us to fund the acquisition of the *Financial Product*.

## 20. DISCLAIMERS

- (a) We take no responsibility for any decision you make to obtain the *Loan*, to enter into any arrangement incidental to the *Loan*, about the *Financial Products* you purchase with the *Loan* proceeds, or the performance of any *Financial Products* secured by the *Mortgage*.
- (b) The fact that we publish *Borrowing Limits* (and variations) or that we accept any particular *Financial Product* as *Mortgaged Property* is not a recommendation of that *Financial Product* or a representation relating to the past or future performance of that *Financial Product* in any market in which the *Financial Product* can be sold.
- (c) In so far as they act on our behalf and not as your *Adviser*, our officers and agents do not have our authority to recommend the purchase or sale of *Financial Products*, make any predictions about what might happen to *Interest Rates* or the *Market Value* of any *Financial Products* or to make any other representation, prediction or statement of opinion about any other matter or thing affecting the Terms and Conditions.

## 21. ADJUSTING YOUR (OUR) INSTALMENT OBLIGATIONS, EQUITY CONTRIBUTIONS AND LOAN INSTALMENTS

You may change the obligations we have agreed to in the following ways, as long as you give us Notice by the 25th calendar day of the month prior to the month in which the change is to take effect:

- (a) You may increase the rate at which you draw the money you have agreed to borrow from us, as long as you increase the rate of your *Equity Contribution* such that the borrowing ratio of your monthly instalment does not exceed the maximum *Borrowing Limit* assigned to your monthly investments.
- (b) You may decrease the rate at which you draw the money you have agreed to borrow from us, to the minimum allowed, without having to decrease your *Equity Contributions* at all.
- (c) If your *Loan Balance* is less than \$10,000, you may elect to temporarily suspend your Regular *Loan Advances* for up to three months (*Equity Contributions* may continue unless you notify us to suspend these also).
- (d) If your *Loan Balance* exceeds \$10,000, you may elect to cancel your Regular *Loan Advances* (*Equity Contributions* may continue unless you notify us to cancel these also).

## 22. SWITCHING INVESTMENTS

If you decide that you want to change all or part of your *Mortgaged Property* to another investment on the list of accepted *Financial Products*, then you may do so provided that:

- you give us 5 Business Days' Written Notice to process your request, excluding fund managers' timeframes;
- you change a minimum of \$2,000 of your *Mortgaged Property* to another currently accepted *Financial Product/s*; and
- you pay us our fee for that investment switch (if applicable).

## Part 3 Mortgage

### 1. PROMISE TO PAY

In return for our entering into the Terms and Conditions and/or making or continuing to make *Loan(s)* available to the *Borrower* at your request, you agree to pay us the *Secured Moneys* and to satisfy any *Margin Call* we make from time to time on the *Borrower*.

### 2. MORTGAGED PROPERTY

- (a) This *Mortgage* comes into effect:
  - in relation to a *Borrower*, when we accept the *Borrower's* application for a *Loan*;
  - in relation to a third party *Mortgagor*, when we accept the third party *Mortgagor's* offer to provide *Financial Products* as *Mortgaged Property* under the Terms and Conditions (excluding Part 2 *Loan Agreement*).
- (b) After the date on which this *Mortgage* comes into effect you may ask us to consider accepting *Financial Products* (including any *Financial Products* offered as the *Borrower's* initial equity in establishing a *Portfolio*) as *Mortgaged Property*. *Financial Products* become *Mortgaged Property* automatically if we provide a *Loan* to assist with their purchase, otherwise when we, in our absolute discretion, decide to accept them as *Mortgaged Property* even if we do not assign a *Lending Value*.
- (c) If we accept *Financial Products* as *Mortgaged Property* or *Financial Products* become *Mortgaged Property* as a result of us providing a *Loan* to assist with their purchase you acknowledge and agree that we are not liable as a result of there being any delay in the *Financial Products* becoming *Mortgaged Property*.
- (d) If any evidence of title to *Financial Products* is delivered on or before the date on which the *Mortgage* comes into effect it will be held by *CommSec* as agent of the person delivering such evidence and not as our agent.
- (e) You charge the *Mortgaged Property* with the payment to us of the money you have agreed to pay according to the Terms and Conditions. We will release the *Mortgaged Property* from the *Mortgage* and discharge the *Mortgage* if you give us a *Written Notice* to this effect, the *Secured Moneys* have been paid to us in full, the *Loan* is terminated and we are satisfied that any payment of the *Secured Moneys* will not be avoided or set aside.
- (f) To the extent a charge is created over *Financial Products* which confer an interest in land in New South Wales on their holder, the charge will operate as a floating charge until expiry of a period of 12 months and one day after the charge is created or, without being obliged first to provide you with a *Notice*, we decide to fix the charge.

### 3. LIMITATION OF LIABILITY

- (a) Without limiting the amount secured by this *Mortgage*, the total amount recoverable from the *Mortgagor* does not exceed the aggregate of:
  - (i) the amount of the *Credit Limit*; plus
  - (ii) all amounts which we are charged or charge or pay or incur in connection with establishing and administering the *Loan* or any transaction contemplated by the Terms and Conditions; plus
  - (iii) all fees and charges you must pay us under the Terms and Conditions; plus
  - (iv) any government tax or duty charged in relation to anything done under or in connection with the Terms and Conditions; plus
  - (v) interest on each amount demanded from the *Mortgagor* at the rate or the highest of the rates charged or chargeable to the *Borrower* from time to time after the date of demand, from that date until payment; plus
  - (vi) interest on that interest by way of compound interest, calculated after the date of demand at such time or times or from time to time as we think fit, at the rate or rates referred to immediately above; plus
  - (vii) all charges, costs and expenses (if any) which we incur, sustain or pay in exercising or enforcing any right, power, claim or remedy of any kind out of the Terms and Conditions or recovering or attempting to recover from the *Mortgagor* the money at (i), (ii) and (iii) above plus interest on those charges, costs and expenses at the rate or rates referred to above.
- (b) If you are a third party *Mortgagor* (excluding a *Guarantor*) your liability under this *Mortgage* is limited to the amount that we receive from the sale of your *Mortgaged Property*.

### 4. YOUR REPRESENTATIONS

- (a) Each time an amount is drawn on the *Loan Account* and we accept *Financial Products* as *Mortgaged Property*, you represent that:
  - you have an absolute and indefeasible title to the *Mortgaged Property*, free from all equities and *Security Interests* other than our *Security Interests*;
  - all the information and *Notices* you have given us in connection with this *Mortgage*

and any *Mortgaged Property* are correct and not misleading; and

- the giving of this *Mortgage* will not breach any law or agreement by which *you* are bound or constitute a default under any other arrangement or *Security Interest* *you* have given.
- (b) *You* indemnify *us* against any loss, damage, costs, claims, proceedings and expense *we* suffer as a result of a representation *you* make under this clause being incorrect or misleading at the time it is made.

## 5. WHAT YOU PROMISE TO DO

*You* will:

- on receipt of *our Notice* to this effect, take up or, in the case of *Nominee Financial Products* which are *Mortgaged Property*, direct the *Nominee* to take up, any new or additional rights or interests of any kind relating to the *Mortgaged Property*;
- pay on time all money which is or becomes payable in respect of the *Mortgaged Property*;
- keep the *Mortgaged Property* valid and subsisting, free from all liability to forfeiture, cancellation, loss, or charge; and
- deposit with *us* and, in relation to any *Nominee Financial Products*, direct the *Nominee* to deposit with *us*, by way of security, all share or stock certificates and any transfers of shares that are issued to *you* or the *Nominee* as a result of the conversion of a holding under the Sponsorship Agreement or any acquisition of *Financial Products* on *your* behalf by the *Nominee*.

## 6. WHAT YOU PROMISE NOT TO DO

*You* will not, without *our* prior consent, deal with all or any part of the *Mortgaged Property*, or create any *Security Interest* over or affecting all or any part of the *Mortgaged Property* unless that *Security Interest* is created for *us*.

## 7. FURTHER ASSURANCE

If *we* give *you* a *Notice* to this effect, *you* will do any reasonable thing *we* ask of *you*, at your cost, to further assure *our Security Interest* in the *Mortgaged Property*. For example, *you* will obtain consents, sign documents, supply information, deliver evidence of title or otherwise give possession or control to enable *our Security Interest* to be fully effective, enforceable and perfected.

## 8. ENFORCEMENT EVENTS

*We* may enforce this *Mortgage* immediately if any one or more of the following events occurs:

- if a *Margin Call* in accordance with clause 10 of the *Loan Agreement* is not satisfied;
- if default occurs in the payment of the *Secured Moneys* or any part of that money;
- if *you* fail to observe or perform any of *your* covenants or agreements contained or implied in this *Mortgage* or under any other of the Terms and Conditions applying to *you*;
- if a *Default Event* occurs under the Terms and Conditions applying to *you*;
- if *you* become *Insolvent* or (in the case of a natural person) become of unsound mind or subject to any legal disability or incapacity;
- if for any reason the Sponsorship Agreement in Part 4 of these Terms and Conditions is terminated; or
- if *your Loan Balance* exceeds *your Credit Limit* and *you* fail to reduce *your Loan Balance* to the level of or below *your Credit Limit* within 30 days.

## 9. OUR RIGHT TO IMMEDIATE PAYMENT

At *our* option, without any demand or *Notice*, all of the *Secured Moneys* become immediately payable if any *Enforcement Event* occurs.

## 10. SET-OFF

- (a) In addition to any general or banker's lien, right of setoff, right to combine accounts or any other rights *we* may have under this *Mortgage* or at law or in equity, if any *Enforcement Event* occurs, *we* may, without any demand or *Notice* being given to *you* or any other person, set off against or appropriate, for the purpose of applying towards payment of the *Secured Moneys*, any liability (whether due, owing, contingent or otherwise) *we* owe to *you* on the *Approved Deposit Account* or any of *your* other accounts held with *us* (whether such accounts are subject to *Notice* or not and whether matured or not).
- (b) At the time:
- (i) if *you* are a company, *your* board resolves to the effect that an administrator of *you* should be appointed;
  - (ii) if *you* are a company, of the first step taken pursuant to which an administrator is appointed by a person who is entitled to enforce a *Security Interest* in the whole or substantially the whole of *your* property;
  - (iii) if *you* are a company, the commencement of any proceedings pursuant to which orders are made for the appointment to *you* of a liquidator or provisional liquidator;

- (iv) if *you* are a company, the commencement of a meeting of *your* members or creditors pursuant to which a resolution for *your* winding up is passed; or
- (v) the first step taken pursuant to which, in breach of clause 6 of Part 3 *Mortgage*, *you* purport to assign, grant any *Security Interest* of any nature over (or purport to allow one to arise) or purport otherwise to transfer or deal in any way with *your* interest in the *Mortgaged Property*;

*you* agree that *your* right, title and interest in the *Approved Deposit Account* or any of *your* other accounts held with *us* is immediately extinguished and released.

## 11. POWER OF SALE AND OTHER ENFORCEMENT POWERS

- (a) When any *Enforcement Event* occurs, *we* or any *Authorised Officer* may, acting reasonably, in addition to the powers conferred on *us* under the Terms and Conditions, at any time and from time to time do all or any of the following:
- sell or concur in selling all or any of the *Mortgaged Property* and do all acts and things for completing any sale of the *Mortgaged Property* as *we* consider necessary. (*We* will endeavour to sell those *Financial Products* with the lowest *Borrowing Limit* first although *we* retain an absolute discretion as to which *Financial Products* *we* will sell, when *we* will sell and the order of sale);
  - demand and recover all the income from the *Mortgaged 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;
  - make any arrangement or compromise which *we* consider expedient in *our* interests;
  - bring or defend any action, suit or legal proceedings in *your* name or otherwise, for all or any of the above purposes.
- (b) For the purpose of any law relating to giving default *Notices* prior to the enforcement of a *Mortgage*:
- which requires that *you* must be in default for a certain period of time before *we* give *you* the default *Notice* and allows the period to be fixed in the *Mortgage*, the period is fixed at one day;
  - which allows this *Mortgage* to limit the period of time in which *you* must fix a default, the period (which must be at least one day) is the period set by the default *Notice*; or
  - which allows the parties to a charge to agree that the charge may be enforced without giving a default *Notice*, *you* agree that *we* need not give *you* a default *Notice* before *we* enforce this *Mortgage*.

## 12. POWER OF ATTORNEY

By way of security for *our* interest in the *Mortgaged Property* and for the obligations owed by *you* to *us* under this *Mortgage*, *you* irrevocably appoint *us*, *CommSec* and each and every *Authorised Officer*, and their respective assigns, severally to be *your* attorney, with full power either in *our* name, *your* name or the respective attorney's name, to do all acts and things:

- which should be done by *you* to clear a *Margin Call*;
- which should be done by *you* under this *Mortgage*; or
- which *we* and *CommSec* are authorised to do under this *Mortgage* or by law, and with full power from time to time to: appoint or remove a substitute attorney; and to fill in blanks, correct errors, sign, seal and deliver and execute all documents (including assurances, identification and address declarations, and other instruments) which *we*, *CommSec* or the attorney consider necessary or expedient.

## 13. PROTECTION OF THIRD PARTIES

On the exercise or purported exercise of any of the licences, powers or authorities under clauses 11 or 12 or by statute conferred on *us* or any of *your* attorneys, no purchaser or other person dealing with *us* or any of *your* attorneys will be concerned to see or inquire whether a case has arisen to authorise the exercise of the licence, power or authority, or whether the licence, power or authority is properly or regularly exercised. The title of the purchaser or other person so dealing with *us* or any of *your* attorneys cannot be impeached on the ground that a case has not arisen to authorise the exercise of the licence, power or authority or that the licence, power or authority was improperly or irregularly exercised.

## 14. APPLICATION OF MONEY

*We* apply all money *we* receive under or by virtue of this *Mortgage* as follows:

- in payment to anyone who has prior claim to the *Mortgaged Property*;
- in payment of all debts, liabilities, costs, charges and expenses *we* incur in or incidental to the exercise or performance or attempted exercise or performance of *our* rights and powers under this *Mortgage*;
- in payment of any other outgoings as *we*, acting reasonably, think fit to pay;
- in payment to *us* of the *Secured Moneys*, and any surplus money or any part of the surplus

money payable to *you* or any other person entitled to the money will not carry interest, and *we* will promptly pay the money to the credit of an account, in *your* name or in the name of any other person entitled to the money, in *our* books. Then *we* are not under any further liability in respect of that money.

## 15. MATTERS WE ARE NOT REQUIRED TO DO

*We* are not required to:

- (a) hold or take any other or further security or *Guarantee* for the payment of the *Secured Moneys*;
- (b) give a *Notice* of this *Mortgage* to any other person or enforce payment of any money payable to *you* relating to the *Mortgaged Property*; or
- (c) resort to any other *Security Interest* or *Guarantee* *we* may hold for payment of the *Secured Moneys* in priority to this *Mortgage* or any other *Security Interest*.

## 16. MATTERS FOR WHICH WE ARE NOT LIABLE

*We* are not liable for any omission or delay in, or for any involuntary losses or irregularities which occur due to *our* exercising or failing to exercise *our* powers, authorities or rights under this *Mortgage* or under any law.

## 17. COMPLETION OF INSTRUMENTS

*We* may complete any instrument executed by *you* or on *your* behalf in blank and deposited with *us* to better assure *our* interests in the *Mortgaged Property* or in the exercise of *our* rights under this *Mortgage*.

## 18. COSTS, CHARGES AND EXPENSES

The *Secured Moneys*, which *you* authorise *us* to debit and charge the *Loan* Account, include all costs, charges, and expenses, legal or otherwise (including solicitor and client as well as party and party costs, duties, taxes and other money paid or payable by *us* or any of *your* attorneys), which *we* pay, incur, sustain or are put to in connection with:

- any of the *Mortgaged Property*;
- this *Mortgage*;
- the preparation, completion, registration or release (partial or in whole) of this *Mortgage*; or
- the exercise or attempted exercise of any right or power given to *us* or any of *your* attorneys under this *Mortgage*, together with interest on all that money at the rate (or the highest of the rates) charged on *Loans* from time to time.

## 19. INDEPENDENCE OF THIS MORTGAGE

This *Mortgage* is in addition to and independent of:

- any other or further security or *Guarantee* *we* hold or take now or in the future;
- any arrangement or transaction between *you* and any other person;
- any loss, release, discharge, abandonment or transfer, either in whole or in part and either with or without consideration, of any other security or *Guarantee* *we* hold from *you* or from any other person now or in the future; or
- any act, forbearance or omission by *us*.

## 20. OTHER SECURITIES NOT AVAILABLE

Any security or *Guarantee* already executed, or which at any time in the future may be executed, by any person in *our* favour, will not be available as security for the payment of the *Secured Moneys* unless it is given specifically to secure the *Borrower's* obligations under a *CommSec Adviser Services Investment Loan*.

## 21. STATUTORY POWERS AND RESTRICTIONS

- (a) The powers, rights and remedies given to *us* under any law now or in the future in force, are in addition to those given to *us* under this *Mortgage* and the covenants, powers and provisions implied in *Mortgages* by virtue of any law for the time being in force are (to the extent permitted by that law) for the purposes of this *Mortgage*, negated, altered or modified only to the extent that they are inconsistent with this *Mortgage*.
- (b) The provisions of all laws now or in the future in force which, but for this paragraph (b), would operate directly or indirectly:
  - to lessen or otherwise modify, vary or affect (in *your* favour) *your* obligations under this *Mortgage* are expressly negated and excluded but only to the extent permitted by that law; or
  - to stay, postpone or otherwise prevent or prejudicially affect (including by any requirement to give a *Notice* or allow for any expiration of time) the exercise of *our* rights, powers or remedies given or implied under or by virtue of this *Mortgage* are expressly negated and excluded but only to the extent permitted by that law; or
  - to impose duties and obligations on *us*, are expressly negated and excluded but only to the extent permitted by that law.

## 22. EXCLUSION OF CERTAIN PPS ACT ENFORCEMENT PROVISIONS

- (a) No right to receive *PPS Act* notices
 

*You* agree that upon enforcement, unless otherwise required by these Terms and Conditions, *we* do not need to give *you* any information in relation to, or any form of notice, which *we* would otherwise be required to provide under the *PPS Act*:

  - (i) if *we* give a notice to any person to pay the proceeds of, or amounts owing in respect of, the *Financial Products* forming part of the *Mortgaged Property* to *us* or if *we* take possession or control of any of those proceeds or amounts;
  - (ii) of any amount paid to another person that holds a *Security Interest* over the *Mortgaged Property*; or
  - (iii) of *our* intention to dispose of the *Mortgaged Property* to the extent that the *PPS Act* requires *us* to give notice to *you*.

Unless otherwise provided in these Terms and Conditions, *you* agree *you* have no right to reinstate or redeem the *Mortgaged Property* prior to *us* disposing of or retaining the *Mortgaged Property*.
- (b) No PPS enforcement obligations while controller
 

*You* agree the provisions of Part 4.3 of the *PPS Act* concerning seizure and disposal or retention of the *Mortgaged Property* do not apply in relation to the *Mortgaged Property* if upon enforcement *we* become a controller (as defined in the Corporations Act 2001 (Cth)) of the *Mortgaged Property*.
- (c) No verification statement regarding PPS registration
 

If the *Mortgaged Property* is commercial property (as defined in the *PPS Act*), *you* waive any right that *you* have at any time to receive notice that *we* have made or amended any registration of the *Mortgage* under the *PPS Act*.

## Part 4 Sponsorship Agreement

### EXPLANATION OF EFFECT OF CHESSE SPONSORSHIP

The Terms and Conditions of CHESSE Sponsorship below constitute a contract that you (The Client) enter into with us (AUSIEX), in which you name us as your CHESSE sponsor and authorise us to create a CHESSE Participant Sponsored Holding in your name and to trade on it as you instruct. Clearing House Electronic Subregister System (CHESSE) is the computer system used by the Australian Securities Exchange to record shareholdings and manage the settlement of share transactions. You can also discuss the Terms and Conditions of CHESSE Sponsorship with us. To do so, please call us on the phone number on the back cover.

### 1. INTERPRETATION

Any term used in this Sponsorship Agreement which is defined in, or given a meaning under, the *Rules* has the meaning given in the *Rules*. (Should *you* require a copy of these definitions please contact *CommSec Adviser Services*.)

### 2. APPOINTMENT

By way of security for *our* interest in the *Mortgaged Property* for the obligations *you* owe *us* under the *Mortgage* and to facilitate use of an *Investment Loan* account:

- (a) *You* appoint AUSIEX to provide (and AUSIEX agrees to provide) transfer and settlement services as agent for *you* in relation to any *Financial Products* which are, or are intended to be, *Participant Sponsored Holdings* under this Sponsorship Agreement.
- (b) *You* irrevocably appoint AUSIEX (and its assigns) and each *Authorised Officer* of AUSIEX (or of its assigns) severally to be *your* attorney, with full power, either in the name of AUSIEX, *your* name or the respective attorney's name, to do all acts and things *you* may lawfully authorise an attorney to do in relation to any *Financial Products* which are, or are intended to be, *Participant Sponsored Holdings*. *Your* attorney may delegate power and revoke a delegation and may exercise powers even if this involves a conflict of interest(s) and/or duty/duties and whether or not a *Default Event* has occurred.

### 3. AUTHORITIES AND DEALINGS

- (a) *You* authorise AUSIEX to effect any transfers and conversions and do all other things necessary or desirable to register the *Financial Products* into *Participant Sponsored Holdings*. AUSIEX must initiate the necessary transfers or conversions within the time prescribed under the *Rules*.
- (b) AUSIEX will notify *you* of the HIN for each of *your* CHESSE *Participant Sponsored Holdings* to which this Sponsorship Agreement relates.
- (c) When *you* propose to add to, substitute or change the *Participant Sponsored Holdings*, *you* must give *us* a *Written Notice* to this effect.
- (d) Where *you* authorise AUSIEX to buy *Financial Products*, on *your* behalf *you* will pay for those *Financial Products* on or before the date agreed with AUSIEX for payment.

- (e) Where *AUSIEX* has received your oral or *Written Notice* to enter into any transaction involving the disposal of *Financial Products* held in a *Participant Sponsored Holding*, *AUSIEX* has authority:
- to initiate and effect a transfer of the *Financial Products*; or
  - to take any other action necessary to bring about the disposal, even if, because of netting arrangements, the transfer or disposal is to a person who is not a party to the transaction.
- (f) *AUSIEX* will initiate any transfer, conversion or other action necessary to give effect to *Withdrawal Instructions* within two *Business Days* of the date of the receipt of the *Withdrawal Instructions*.  
However:
- (g) Any transfer, conversion, disposal or other action under this Sponsorship Agreement must be approved and authorised by us. The form of authorisation must be signed by one of our Authorised Officers and stamped with our stamp in a form disclosed by us to *AUSIEX* from time to time.
- (h) On our being able to exercise our power of sale under the *Mortgage*, we may instruct *AUSIEX* without any reference to you. *AUSIEX* will act on those instructions, and may remove the Holder Record Lock in accordance with the *Rules* to facilitate the exercise of our powers under the *Mortgage*, without confirmation or ratification from you.
- (i) *AUSIEX* is not obliged to transfer *Financial Products* into your *Participant Sponsored Holding* until payment for those *Financial Products* is received.
- (j) Where a contract for the purchase of *Financial Products* remains unpaid, after *AUSIEX* has made a demand of you to pay for the *Financial Products*, *AUSIEX* may sell those *Financial Products* that are the subject of that contract at your risk and expense and that expense will include brokerage.
- (k) Where *AUSIEX* claims that an amount lawfully owed to it has not been paid by you, *AUSIEX* has the right to refuse to comply with your *Withdrawal Instructions*, but only to the extent necessary to retain *Financial Products* of the minimum *Market Value* held in your *Participant Sponsored Holding* (where the minimum *Market Value* is equal to 120% of the current *Market Value* of the amount claimed). Where *AUSIEX* exercises this right, it must give you a *Notice* to this effect within a reasonable period of the action it has taken.

#### 4. INFORMATION ABOUT PARTICIPANT SPONSORED HOLDINGS

- (a) You will supply all *Notices*, information and supporting documentation which is reasonably required to permit *AUSIEX* to comply with the registration requirements, as are in force from time to time, under the *Rules*.
- (b) Where statements of holding balances or other information are obtained by *AUSIEX* from *ASX Settlement* or *Issuers* at your request, you will bear *AUSIEX*'s reasonable costs of obtaining the statements or information.
- (c) You authorise *AUSIEX* to provide information about you and your *Participant Sponsored Holdings* to *ASX Settlement*, the *Market Operator* and *ASIC* as appropriate or necessary from time to time.

#### 5. EXCHANGE TRADED OPTIONS, PLEDGING AND SUB-POSITIONS

- (a) Where you arrange with *ASX Clear* to lodge *Financial Products* in a *Participant Sponsored Holding* as cover for written positions in the Australian Options Market, and inform *AUSIEX* of the arrangement, you authorise *AUSIEX* to take whatever action is reasonably required by *ASX Clear* in accordance with the *Rules* to give effect to that arrangement provided that any arrangement under this paragraph is subject to our consent.
- (b) If we give you prior *Written Notice* for you to give a *Security Interest* over *Financial Products* in a *Participant Sponsored Holding* to another person, you authorise *AUSIEX* to take whatever action is reasonably required by the person in accordance with the *Rules* to give effect to that arrangement.
- (c) You acknowledge that where, in accordance with this Sponsorship Agreement and/or your instructions or *Notices*, and subject to our consent, *AUSIEX* initiates any action which has the effect of creating a *Sub-position* over *Financial Products* in the *Participant Sponsored Holding*, your right to transfer, convert or otherwise deal with those *Financial Products* is restricted in accordance with the terms of the *Rules* relating to *Sub-positions*.
- (d) Nothing in this Sponsorship Agreement operates to override any interest of *ASX Clear* in the *Financial Products*.

#### 6. FEES

- (a) You will pay all brokerage fees and associated transactional costs (including any tax or duty) within the period prescribed by *AUSIEX*.
- (b) To facilitate accounting and payment, you agree to pay the above mentioned brokerage fees and associated transactional costs to us and we will forward them promptly to *AUSIEX*.

#### 7. NOTIFICATIONS AND ACKNOWLEDGEMENTS

- (a) You acknowledge that if *AUSIEX* is not a Market Participant of *ASX*, neither *ASX* nor the *ASX* Group have any responsibility for supervising or regulating the relationship between you and *AUSIEX*, other than in relation to the *Rules* relating to sponsorship agreements.
- (b) You acknowledge that if a transfer is taken to be effected by *AUSIEX* under Section 9 of the *Rules* and the Source Holding for the transfer is a *Participant Sponsored Holding* under this Sponsorship Agreement, then:
- you may not assert or claim against *ASX Settlement* or the relevant *Issuer* that the transfer was not effected by the Sponsoring Participant or that the Sponsoring Participant was not authorised by you to effect the transfer; and
  - unless the transfer is also taken to have been effected by a Participant of *ASX* or a Participant of *ASX Clear*, you have no claim arising out of the transfer against the National Guarantee Fund under Part 7.5, Division 4 of the Corporations Regulations 2001.
- (c) In the event that *AUSIEX* breaches any of the provisions of this Sponsorship Agreement, you may refer that breach to any regulatory authority, including *ASX Settlement*.
- (d) In the event that *AUSIEX* is suspended from *CHES Settlement Facility* participation, subject to the assertion of an interest in *Financial Products* controlled by *AUSIEX*, by the liquidator, receiver, administrator or trustee of *AUSIEX* or by us:
- you have the right, within 20 *Business Days* of *ASX Settlement* giving *Notice* of suspension, to give *Notice* to *ASX Settlement* requesting that any *Participant Sponsored Holdings* be removed either from the *CHES Settlement Facility* Subregister, or from the control of *AUSIEX* to the control of another Participant with whom you have concluded a valid sponsorship agreement pursuant to Rule 12.19.10; or
  - where you do not give *Notice* under this paragraph (d), *ASX Settlement* may effect a change of Controlling Participant under Rule 12.19.11 and you will be deemed to have entered into a new sponsorship agreement with the substitute Participant on the same terms as the existing Sponsorship Agreement. Where you are deemed to have entered into a sponsorship agreement, the new Participant must enter into a sponsorship agreement with you within 10 *Business Days* of the change of Controlling Participant.
- (e) You acknowledge that before you were bound by this Sponsorship Agreement, *AUSIEX* provided you with an explanation of the effect of this Sponsorship Agreement and that you understood the effect of this Sponsorship Agreement.
- (f) You acknowledge that *AUSIEX* will not be required to provide an executed copy of this Sponsorship Agreement to you unless requested by you.
- (g) We acknowledge that you may from time to time instruct *AUSIEX* to register *Financial Products* purchased on your behalf without using a *Loan* ("non-mortgaged shares") into a *Participant Sponsored Holding* which is subject to a separate sponsorship agreement between *AUSIEX* and you in your capacity as a sponsored client. *AUSIEX* will separately record and account to you for the non-mortgaged shares.

#### 8. CHANGE OF CONTROLLING PARTICIPANT

- (a) If you receive a *Participant Change Notice* from the Controlling Participant of the *Participant Sponsored Holding* and the *Participant Change Notice* was received at least 20 *Business Days* prior to the date proposed in the *Participant Change Notice* for the change of Controlling Participant, you are under no obligation to agree to the change of Controlling Participant, and may choose to do any of the things set out in paragraphs (b) or (c).
- (b) You may choose to terminate this Sponsorship Agreement by giving *Withdrawal Instructions* under the *Rules* to the Controlling Participant, indicating whether you wish to:
- transfer your *Participant Sponsored Holding* to another Controlling Participant; or
  - transfer your *Participant Sponsored Holding* to one or more *Issuer Sponsored Holdings*.
- (c) If you do not take any action to terminate this Sponsorship Agreement in accordance with paragraph (b) above, and do not give any other *Notice* to the Controlling Participant which would indicate that you do not agree to the change of Controlling Participant then, on the Effective Date, this Sponsorship Agreement will have been taken to be novated to the New Controlling Participant and will be binding on all parties as if, on the Effective Date:
- the New Controlling Participant is a party to this Sponsorship Agreement in substitution for the Existing Controlling Participant;
  - any rights of the Existing Controlling Participant are transferred to the New Controlling Participant; and
  - the Existing Controlling Participant is released by you from any obligations arising on or after the Effective Date.

- (d) The novation in paragraph (c) will not take effect until *you* have received a *Notice* from the New Controlling Participant confirming that the New Controlling Participant consents to acting as the Controlling Participant for *you*. The Effective Date may as a result be later than the date set out in the Participant Change *Notice*.
- (e) *You* will be taken to have consented to the events referred to in paragraph (d) by the doing of any act which is consistent with the novation of this Sponsorship Agreement to the New Controlling Participant (for example by giving an instruction to the New Controlling Participant), on or after the Effective Date, and such consent will be taken to be given as of the Effective Date.
- (f) This Sponsorship Agreement continues for the benefit of the Existing Controlling Participant in respect of any rights and obligations accruing before the Effective Date and, to the extent that any law or provision of any agreement makes the novation in paragraph (c) not binding or effective on the Effective Date, then this Sponsorship Agreement will continue for the benefit of the Existing Controlling Participant until such time as the novation is effective, and the Existing Controlling Participant will hold the benefit of this Sponsorship Agreement on trust for the New Controlling Participant.
- (g) Nothing in this clause 8 will prevent the completion of *CHES Settlement Facility* transactions by the Existing Controlling Participant where the obligation to complete those transactions arises before the Effective Date and this Sponsorship Agreement will continue to apply to the completion of those transactions, despite the novation of this Sponsorship Agreement to the New Controlling Participant under this clause 8.

## 9. REGULATORY REGIME

- (a) The regulatory regime which applies to *AUSIEX* is the regime established under the Corporations Act 2001 and Corporations Regulations 2001, the Market Operating Rules, the ASIC Market Integrity Rules, the *ASX Settlement* Operating Rules and the *ASX Clear* Operating Rules. *You* can obtain information as to the status of *AUSIEX* from the relevant regulatory authorities under this regime, namely *ASIC*, *ASX*, *ASX Settlement* and *ASX Clear*.
- (b) *You* may lodge a complaint against *AUSIEX* with *ASIC*, *ASX*, *ASX Settlement*, *ASX Clear* or the Australian Financial Complaints Authority (“AFCA”). *You* may lodge any claim for compensation:
- with *AUSIEX* in the first instance and if not satisfied with *AUSIEX*'s response, *you* may refer the claim to AFCA; and
  - in relation to the National Guarantee Fund, with the Securities Exchange Guarantee Corporation Limited. (Refer clause 10 below for further details with respect to claims for compensation.)

## 10. CLAIMS FOR COMPENSATION

- (a) *AUSIEX* maintains professional indemnity insurance for its activities as holder of an Australian Financial Services Licence.
- (b) If *AUSIEX* breaches a provision of this Sponsorship Agreement and *you* make a claim for compensation under that breach, the ability of *AUSIEX* to satisfy that claim will depend on the financial circumstances of *AUSIEX*.
- (c) If a breach by *AUSIEX* of a provision of this Sponsorship Agreement falls within the circumstances specified under Part 7.5, Division 4 of the Corporations Regulations 2001, *you* may make a claim on the National Guarantee Fund for compensation.
- (For more information on the circumstances in which *you* may make a claim on the National Guarantee Fund or for information on the National Guarantee Fund generally, contact the Securities Exchange Guarantee Corporation Limited.)

## 11. DEATH OR BANKRUPTCY

- (a) Without detracting from the *Mortgage*, *you* acknowledge that:
- in the event of *your* death or bankruptcy, a Holder Record Lock will be applied to all *Participant Sponsored Holdings* in accordance with the *Rules*, unless *your* legally appointed representative or trustee elects to remove the *Participant Sponsored Holdings* from the *CHES Settlement Facility* Subregister; and
  - in the event of *your* death, the sponsorship under this Sponsorship Agreement is deemed to remain in operation, in respect of the legally appointed representative authorised to administer *your* estate, subject to the consent of the legally appointed representative, for a period of up to three calendar months after the removal of a Holder Record Lock applied under this paragraph (a).
- (b) If *your* legally appointed representative or trustee elects to remove the *Participant Sponsored Holdings* from the *CHES Settlement Facility* Subregister, then *AUSIEX* must initiate a conversion of *Financial Products* in the *Participant Sponsored Holdings* to another mode of holding. *AUSIEX* has no further obligation to any person in relation to the *Financial Products* in the *Participant Sponsored Holdings*.
- (c) Whilst the *Participant Sponsored Holdings* are subject to the *Mortgage*, *your* legally appointed representative or trustee must ensure that, in giving any consent under paragraph (a), the appointment of *AUSIEX* continues in accordance with clause 2.

## 12. JOINT HOLDINGS

- (a) Where more than one person is bound by this Sponsorship Agreement, *you* acknowledge that in the event of the death of one of them:
- *AUSIEX* will transfer the *Participant Sponsored Holdings* under the joint Holder Record into new *Participant Sponsored Holdings* under a new Holder Record in the name of the survivor(s) of them;
  - the Sponsorship Agreement continues to apply to the new *Participant Sponsored Holdings* under the new Holder Record; and
  - the survivor or survivors continue to be bound by this Sponsorship Agreement.
- (b) *You* acknowledge that if one of *you* is declared bankrupt:
- *AUSIEX* will, unless the legally appointed trustee of the bankrupt person elects to remove the *Participant Sponsored Holdings* from the *CHES Settlement Facility* Subregister, establish a new Holder Record in the name of the bankrupt person, transfer the interest of the bankrupt person into new *Participant Sponsored Holdings* under the new Holder Record and request that *ASX Settlement* apply a Holder Record Lock to the *Participant Sponsored Holdings* under that Holder Record;
  - *AUSIEX* will establish a new Holder Record in the names of the rest of *you* and transfer the interest of the rest of *you* into the *Participant Sponsored Holdings* under the new Holder Record; and the rest of *you* continue to be bound by this Sponsorship Agreement.
- (c) If the legally appointed trustee of the bankrupt *Mortgagor* elects to remove the *Participant Sponsored Holdings* from the *CHES Settlement Facility* Subregister, then clause 11(b) will apply.

## 13. TERMINATION

- (a) Subject to the *Rules*, the sponsorship under this Sponsorship Agreement terminates on the occurrence of any of the following events:
- by a *Written Notice* either from *you* or from *AUSIEX* to the other party to this Sponsorship Agreement (but only with *our* consent);
  - upon *AUSIEX* becoming insolvent; or
  - upon the termination or suspension of *AUSIEX*; or
  - upon the giving of *Withdrawal Instructions* by *you* to a Controlling Participant in accordance with Rule 7.1.10(c).
- (b) Termination by a *Written Notice* under paragraph (a) is effective on receipt of that *Written Notice* by the other party to this Sponsorship Agreement.

## 14. RULES AND VARIATION

- (a) This Sponsorship Agreement is subject to the *Rules* in force from time to time. *You* will not, and we undertake not to, take any action which will prevent or impede *AUSIEX* from complying with its obligations under the *Rules*.
- (b) Should any of the provisions in this Sponsorship Agreement be inconsistent with the provisions in the *Rules*, *AUSIEX* will, by giving *you* not less than seven *Business Days* *Written Notice*, vary this Sponsorship Agreement to the extent to which, in *AUSIEX*'s reasonable opinion, it is necessary to remove any inconsistency.
- (c) Except as provided in paragraph (b), this Sponsorship Agreement may be varied only by a written agreement signed by *AUSIEX* and *you*.

## Part 5 Nominee Agreement

### 1. APPOINTMENT

In the usual course *you* will continue to hold *your Financial Products* in *your* own name. However, in order to better secure payment of the *Secured Moneys* to us, *you* will, if we require, transfer *Financial Products* *you* own to the *Nominee* or have the *Nominee* acquire *Financial Products* to be held in its name on *your* behalf.

### 2. NOMINEE SECURITIES

- (a) If we accept certain *Financial Products* to be *Mortgaged Property* and:
- those *Financial Products* are not *CHES Participant Sponsored Holdings*; or
  - those *Financial Products* are *CHES Participant Sponsored Holdings* which we identify to be so transferred, we require *you* to transfer those *Financial Products* into the *Nominee*'s name to hold them on *your* behalf in accordance with these Terms and Conditions.



- (b) If the *Borrower* wishes to purchase *Financial Products* wholly or partly with the proceeds of any drawing on the *Loan Account* and:
- those *Financial Products* are not *CHES Participant Sponsored Holdings*; or
  - those *Financial Products* are *CHES Participant Sponsored Holdings* which we identify to be so acquired, we require that the *Borrower* instruct the *Nominee* to acquire the *Financial Products* in its name to hold them on the *Borrower's* behalf in accordance with the *Nominee Agreement*.

### 3. NOMINEE'S APPOINTMENT

- (a) You appoint the *Nominee* to act as your *Nominee* and custodian under the *Nominee Agreement* in relation to any *Mortgaged Property* that is:
- transferred to the *Nominee* from time to time by you or your agent or any person holding that *Mortgaged Property* as *Nominee*, trustee or custodian for you; or
  - which the *Nominee* acquires on your behalf in accordance with the *Nominee Agreement*.
- (b) The *Nominee* accepts the appointment and agrees to register in its name and hold the *Nominee Financial Products* as custodian and trustee for you.
- (c) You acknowledge that the *Nominee's* appointment is made solely for our benefit for the purpose of more effectively securing the *Secured Moneys* and to enable us to preserve and exercise our rights over the *Mortgaged Property*.
- (d) The appointment of the *Nominee* as your *Nominee* and custodian is irrevocable at all times while the *Secured Moneys* or any part of the *Secured Moneys* remain outstanding.

### 4. YOUR DIRECTIONS TO THE NOMINEE

You direct the *Nominee* to:

- lodge with us any title documents to the *Nominee Financial Products*;
- act on your instructions in relation to any voting rights attaching to the *Nominee Financial Products*, unless we direct the *Nominee* otherwise;
- pay to you any income derived from holding the *Nominee Financial Products* on your behalf, unless we direct the *Nominee* otherwise;
- take up any new rights relating to the *Mortgaged Property*, unless we direct the *Nominee* otherwise; and
- exercise any other powers or discretions relating to the *Nominee* holding the *Nominee Financial Products* on your behalf with or without seeking your instructions.

### 5. THE NOMINEE'S DEALINGS WITH NOMINEE FINANCIAL PRODUCTS

So long as the *Secured Moneys* or any part of the *Secured Moneys* are outstanding, the *Nominee* will not release, transfer, dispose of or otherwise deal with the *Nominee Financial Products* unless we give a prior *Written Notice*.

### 6. WHAT HAPPENS WHEN THE MORTGAGE BECOMES ENFORCEABLE

- (a) The *Nominee* acknowledges that, on receiving a *Notice* from us that the *Mortgage* has become enforceable, the *Nominee* holds the *Nominee Financial Products* as custodian for us and after that must take any action we reasonably request to notify the Issuer of the *Nominee Financial Products* and any other relevant persons that it holds the *Nominee Financial Products* for our benefit.
- (b) On the *Mortgage* becoming enforceable, we may:
- take any action in relation to the *Nominee Financial Products* as we think fit; and
  - instruct the *Nominee* in relation to the *Nominee Financial*

The *Nominee* will act on our instructions or *Notices* without your confirmation or ratification.

### 7. LIMIT ON THE NOMINEE'S LIABILITY

The *Nominee* is not liable to us or you for any loss or damage allegedly arising from actions taken or omitted to be taken in relation to its appointment under the *Nominee Agreement* except where that loss or damage is caused by its or any of its agents' wilful misconduct, negligence or breach of the *Nominee Agreement*.

### 8. ACKNOWLEDGEMENT IN RELATION TO SEPARATELY MANAGED ACCOUNTS, INVESTOR DIRECTED PORTFOLIO SERVICES, MANAGED DISCRETIONARY ACCOUNTS AND SIMILAR INVESTMENTS

For the avoidance of any doubt, this acknowledgement applies to any investment accepted as *Mortgaged Property* held in a separately managed account (SMA), investor directed *portfolio services* (IDPS), managed discretionary accounts (MDA) or similar structure administered by a responsible entity or custodian (referred to in this clause as an "RE"). You acknowledge that we take a *Mortgage* over your interest managed by the SMA, IDPS, MDA or similar structure as security for your *Loan* and may require your interest to be held in the name of the *Nominee*, subject to the following terms:

The RE is not to sell, realise, dispose of, deal in or otherwise apply any *Financial Products* held for you, without obtaining our prior written consent; and you authorise us or the *Nominee* to do all or any of the following when the *Mortgage* becomes enforceable:

- instruct the RE to sell, realise or otherwise dispose of all or any part of your interest (or any *Financial Products* held for you);
- instruct the RE to pay to us the proceeds of any such sale, realisation or other disposal;
- instruct the RE to pay to us all or any part of the cash held or received for you;
- instruct the RE to pay to us all or any dividends, distributions, income or other amounts received for any *Financial Products* held for you; and
- instruct the RE to transfer to us or the *Nominee* any *Financial Products* held for you.

## SECTION 2 – PRIVACY INFORMATION AND AUTHORISATION

### MEANING OF WORDS

In this Section 2, words in italics are defined words with have the same meaning as in the CommSec Adviser Services Investment *Loan* Terms and Conditions in Section 1.

### FOR ALL BORROWERS AND GUARANTORS

*You* give us permission to collect, use and share *your information* with others as set out in this form and our privacy policy.

The information *you* give us must be correct and complete. If not, *you* may be breaking the law and we may not be able to provide *you* the products, services and/or facility that best serves *your* need in *your* capacity as the *Borrower* or *Guarantor*.

'*Your information*' means the information about *you* that we collect such as:

- Information about *your* identity, such as *your* name and contact details;
- Financial information *you* give us;
- Information about *your* interactions with us, such as *your* transactions, payments and use of our websites;
- *Your* credit history that we collect from credit reporting bodies; and/or
- Information from public registers or third parties, such as service providers, brokers, and employers.

### 1. WHY WE COLLECT YOUR INFORMATION AND WHAT WE USE IT FOR

We collect *your information* and use it to:

- Confirm *your* identity and manage our relationship with *you*;
- Assess whether to accept *you* as a *Guarantor* and/or *your* application as a *Borrower* for credit and minimise risks;
- Design, price, provide, manage and improve our products and services;
- Comply with relevant laws, for example the *Anti-Money Laundering and Counter-Terrorism Financing Act*, state/territory property laws (if *you* take out a mortgage) and the responsible lending provisions of the *National Consumer Credit Protection Act*; and/or
- Let *you* know about products and services *you* might be interested in.

Sometimes we need to collect sensitive information. For example, if *you're* in financial difficulty and ask for hardship relief due to illness, we may ask *your* permission to collect information about *your* health.

### 2. SHARING INFORMATION WITH CREDIT REPORTING BODIES

We share *your information* with credit reporting bodies and get credit reports about *you* from them.

We do this so we and other credit providers can:

- Assess whether to accept *you* as a *Guarantor* and/or *your* application as a *Borrower* for credit; and
- Manage *your* loans and collect overdue payments.

*You* give us permission to:

- Share *your information* with other credit providers;
- Share *your information* with trade insurers so they can assess the risks of providing insurance to us; and
- Get a consumer credit report about *you* from a credit reporting body to assess any application *you* make, including for commercial credit.

The credit reporting bodies (CRBs) we use are Veda ([veda.com.au](http://veda.com.au)), Experian ([experian.com.au/credit-services](http://experian.com.au/credit-services)) and Dun & Bradstreet ([checkYourcredit.com.au](http://checkYourcredit.com.au)). See our privacy policy for key information about credit reporting matters, such as:

- What information about *you* we provide to credit reporting bodies;
- How to get a copy of credit information we obtain from credit reporting bodies, correct this information or make a complaint;
- Where to find each credit reporting body's policy on credit information handling;
- What to do if *you* think *you're* a victim of identity fraud; and/or
- *Your* right to tell credit reporting bodies not to use *your information* for direct marketing.

### 3. WHO ELSE CAN WE SHARE YOUR INFORMATION WITH?

*You* give us permission to share *your information* with other members of our Group, who can use it for any of the purposes that we can. We can also share *your information* with others, such as:

- Current or previous employers (to confirm *your* identity or income);
- Brokers, advisers and people who act on *your* behalf;
- Service providers, such as mortgage insurers, valuers, loyalty program partners and product distributors;
- Businesses who do some of our work for us;
- Debt collectors;
- People or organisations involved in arrangements that provide funding to us;
- Other financial institutions (such as banks), auditors, insurers and re-insurers; and/or
- Government and law enforcement agencies or regulators.

Sometimes we might need to send *your information* overseas, for example:

- Where we outsource particular functions;
- To overseas businesses in our Group;
- If we need to complete a transaction for *you*; and/or
- To comply with laws, and assist government and law enforcement agencies or regulators.

See our privacy policy for information about which countries information may be sent to.

### 4. OUR PRIVACY POLICY AND HOW TO CONTACT US

Visit [commbank.com.au/privacy](http://commbank.com.au/privacy) for our privacy policy or ask for a copy at any branch. It tells *you* about:

- Other ways and reasons we may collect, use or share *your information*;
- How to access *your information* and correct it if it's wrong; and/or
- How to make a privacy-related complaint (including about our compliance with the Australian Privacy Principles and credit reporting rules and codes) and how we'll deal with it.

Sometimes we update our privacy policy. *You* can always find the most up-to-date version on our websites.

Want to speak to us about *your* privacy?



#### Email:

[customerrelations@cba.com.au](mailto:customerrelations@cba.com.au)



#### Phone:

1800 805 605



#### Write to:

CBA Group Customer Relations, Replied Paid 41, Sydney, NSW, 2001

### FOR BORROWERS ONLY

### 5. SHARING INFORMATION WITH GUARANTORS AND OTHER SECURITY PROVIDERS

*You* give us permission to give *Guarantors* or other security providers information about *you*, the relevant credit facility, and any changes to that facility or new facilities. This is so they can decide if they want to be, or continue to be, *your Guarantor* or security provider.

### 6. ADDITIONAL OBLIGATIONS

We may be subject to laws or regulations in Australia or another country that *your* relationship with us (e.g. Laws that address taxation). So that we may comply with our obligations under these laws or regulations, we may:

- Require *you* to provide information about *you* or *your* product;
- Disclose any information we are required to concerning *you* (including sending *your information* overseas)
- Withhold an amount from a payment to *you* if required to do so, and if we do, we will not reimburse *you* for the amount withheld; and/or
- Take such other action as is reasonably required, including, for example, closing *your* account.

## SECTION 3 – INVESTMENT LOAN DIRECT DEBIT/DIRECT CREDIT REQUEST SERVICE AGREEMENT

The reference to “CommSec” in this Section 3 is a reference to Commonwealth Securities Limited as agent for Commonwealth Bank of Australia.

### MEANING OF WORDS

In this Section 3 words in italics are defined words which have the same meaning as the *Loan Terms and Conditions*.

### DEBIT/CREDIT ARRANGEMENTS

1. We reserve the right to charge a dishonour fee if any debit item already debited from *your* nominated account is returned as unpaid by the financial institution.
2. We will keep *your* information about *your* nominated account at the financial institution private and confidential unless this information is required by *us* to investigate a claim made on it relating to an alleged incorrect or wrongful debt, or as otherwise required by law.
3. In the event of a debit returned unpaid we may attempt a redraw on *your* nominated account.
4. We will advise *you* 14 days in advance of any changes to the Direct Debit/Direct Credit arrangements.
5. If *you* provide an incorrect *Bank* account number, *you* may incur a fee if we have processed a transaction to that account.

### YOUR RIGHTS

6. *You* may terminate the Direct Debit/Direct Credit arrangement with *us*, however this termination must be in writing.
7. Where *you* consider the debit is incorrect in either the due date or amount or both, *you* should raise the matter with calling the phone number on the back cover.

### YOUR RESPONSIBILITIES

8. It is *your* responsibility to:
  - check with the financial institution where *your* account is held before completing the Direct Debit/Direct Credit Request (DDR) as Direct Debiting/Direct Crediting through Bulk Electronic Clearing System (BECS) is not allowed on the full range of accounts. *You* should also complete *your* account details, including *Bank* State Branch (BSB) number, directly off a recent account statement from *your* financial institution;
  - ensure sufficient cleared funds are available in the nominated account to meet the debit on the due settlement date of *your* transactions executed by *AUSIEX*;
  - ensure that the authorisation to debit the nominated account is in the same name as the account signing the instruction held by the financial institution where the account is held;
  - advise *us* if the account *you* have nominated to debit/credit is transferred or closed;
  - ensure that suitable arrangements are made if the Direct Debit/Direct Credit is cancelled;
    - by yourself;
    - by *your* nominated financial institution; or
    - for any other reason.

VISIT [commsecadviserservices.com.au](http://commsecadviserservices.com.au)  
CALL 1800 252 351