



NAB

Super Lever

Facility Terms

This document contains important information regarding the terms and conditions which will apply to your NAB Super Lever.

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

Part 1

Loan Terms

1 Overview of facility

- 1.1 Under the *facility*, we may make *loans* to you on the basis that you:
- (a) direct us to pay the proceeds of each such *loan* to the *investment trustee* to purchase for you an *approved investment* nominated by you; and
 - (b) grant us a mortgage over your interest in the *approved investment* acquired with each *loan*.
- 1.2 The *investment trustee* has agreed to provide custodial services to you and to hold the *approved investment* acquired with each *loan* on trust for you.
- 1.3 When all amounts which are or may be payable under the relevant *loan* (including all *secured liabilities*), have been paid in full, you will be able to *instruct* that the *investment trustee* transfer legal title to the relevant *financed investment* or any *distribution* in relation to it to or as directed by you.

2 Loan facility

Application for a facility and for loans

- 2.1 You must be a trustee of a *regulated superannuation fund* to apply for a *facility*.
- 2.2 You may apply for a *facility* on the terms set out in the *transaction documents* by completing an *application form*. You may have more than one *loan* within the *facility*.
- 2.3 You may apply for more than one *loan* using the same *application form*. Provided that no *default event* has occurred and is continuing, you may also apply for further *loans* at a later date by providing us with a *loan request*.
- 2.4 Although you may have more than one *loan* under the *facility*, this *agreement* is a single credit contract covering each such *loan*.
- 2.5 In respect of each *loan*, you may ask us to provide you with:
- (a) a fixed interest rate *loan*;
 - (b) a variable interest rate *loan*; or
 - (c) a combination of fixed interest and variable interest loans in respect of specified amounts of *principal* in respect of such *loan*,
- up to an amount that does not result in the *aggregate secured liabilities* exceeding the *facility limit*. You may later request that your *loan* be split (or consolidated following a split) as set out in clause 5.
- We may impose limits from time to time on the amount that may be at a fixed rate (for avoidance of doubt such a limit imposed by us will only apply to a *loan* entered into after we have imposed the limit).

Loan contribution

- 2.6 We are not required to accept a *loan request* until we have received a *loan contribution* in one of the following ways:
- (a) you pay us an amount that is equal to or exceeds the *required loan contribution* in cleared funds as we direct;
 - (b) a *guarantor* provides us with security over *approved investments* where the market value of such *approved investments* will equal or exceed the *required loan contribution*;

- (c) the *guarantor* provides cash collateral in a *guarantor's cash management account* in an amount which will equal or exceed the *required loan contribution*; or
- (d) in a combination of two or more of the ways set-out in paragraphs (a), (b) and (c) above provided that the aggregate of the amounts received and market value of any security provided as collateral equals or exceeds the *required loan contribution*.

Your acknowledgements

- 2.7 You acknowledge that your obligations under the *transaction documents*, including your obligations to repay the *secured liabilities* and pay costs, fees and charges are not affected by:
- (a) the success or failure of any *financed investment*;
 - (b) the level of return from or loss of money invested in any *financed investment*; or
 - (c) any illegality (or alleged or potential illegality) in connection with a *financed investment* or the *disclosure document* for a *financed investment*.

Variable rate loans

- 2.8 If you ask for a variable interest rate to apply to a *loan* (or a part of a *loan*) and we agree,
- (a) we will make you a *loan* provided that:
 - (i) the total advance does not result in the *aggregate secured liabilities* exceeding the *facility limit*; and
 - (ii) the *current LVR* in respect of that *loan* is less than the *base LVR* in respect of that *loan*.
 - (b) a variable interest rate will apply to the *loan* (or a part of the *loan*).

Fixed rate loans

- 2.9 If you ask for a fixed interest rate to apply to a *loan* (or a part of a *loan*) and we agree,
- (a) we will make you a *loan* provided that:
 - (i) the total advance does not result in the *aggregate secured liabilities* exceeding the *facility limit*; and
 - (ii) the *current LVR* in respect of that *loan* is less than the *base LVR* in respect of that *loan*.
 - (b) a fixed interest rate will apply to the *loan* (or a part of the *loan*).

Facility limit

- 2.10 We may review the *facility limit* for any reason and at any time, including as a result of a request from you.
- 2.11 You must provide us with any information that we reasonably require at the time of any review.
- 2.12 As a consequence of a review we may decrease the *facility limit* or refuse your request for a *facility limit* increase if we consider it appropriate having regard to our lending criteria and obligations under any law (and even if to do so would result in a *default event*).
- 2.13 You must ensure that, within 5 *business days* of receiving notice of a reduction in the *facility limit*, the *secured liabilities* are less than the *facility limit*.

2.14 If you do not comply with your obligations under clause 2.13 then, without limiting our rights under the mortgage terms in part 3 or under the *guarantee*, you will be taken to have requested the *investment trustee* to take all steps we deem necessary to ensure that the *aggregate secured liabilities* are less than the *facility limit*.

Conditions to making an advance

2.15 We are not required to make you an advance if:

- (a) a *default event* has occurred in relation to you or a *guarantor*;
- (b) the advance would cause the *aggregate secured liabilities* to exceed the *facility limit* or would give us the right to make a *margin call* under clause 14;
- (c) the advance would result in the *current LVR* in respect of the *loan* becoming equal to or greater than the *base LVR* in respect of that *loan*;
- (d) we have not received the *loan contribution* in accordance with clause 2.6;
- (e) you request an advance of less than a minimum amount we determine (which may change from time to time);
- (f) we have not received any document or information we reasonably require, in a form satisfactory to us (*including*, where you are an individual, any document or other information that we may require to satisfy ourselves that the advance will not be used for a *Code Purpose*);
- (g) we have asked you to repay the *secured liabilities* under clause 11.2 for any *loan*;
- (h) you are an individual and we have determined that this paragraph applies to that advance, and we are not satisfied that the advance will not be used for a *Code Purpose*;
- (i) we are not satisfied that the representations and warranties in clause 16 are correct and not misleading at the date the advance is to be provided; or
- (j) we consider the sum of:
 - (i) the value of the *investments* to be purchased with the proceeds of that advance (together with the *loan contribution*, if any); and
 - (ii) the aggregate value of the *financed investments* forming part of the *secured property* in respect of all *loans* then outstanding under this *agreement*, may at any time exceed 100% of the value of the *net assets* of the *regulated superannuation fund* of which you are a trustee.

2.16 We may, in our absolute discretion where the law so permits, make a *loan* to you to acquire *approved investments* that would cause the *aggregate secured liabilities* to exceed the *facility limit*. If we do so you acknowledge that:

- (a) your *facility limit* is increased to the amount of the *aggregate secured liabilities* after we have made the advance; and
- (b) we will review your *facility limit* in accordance with clauses 2.10 to 2.14 and as a consequence of such

review we may decrease your *facility limit* which would require you to take steps to ensure that the *aggregate secured liabilities* are less than the decreased *facility limit*.

Loan may be more or less than the amount you request

2.17 If the purchase price of the *approved investment* and the associated brokerage, taxes, costs, charges or commissions incurred in connection with that purchase is not equal to the amount of the *loan* and the *loan contribution* as requested by you, then in our discretion we may increase or decrease the *loan* amount as necessary to pay all such amounts in respect of the purchase of the *approved investment*.

2.18 We will use our reasonable endeavours to arrange the execution of all requests for purchases of your selected *approved investment*. Neither we nor the *investment trustee* accept liability or responsibility for losses or damages incurred as a result of a delay in processing a request for purchase of your selected *approved investment*.

3 Acquirable asset collection

3.1 Where a *financed investment* comprises an *acquirable asset collection*, for the purposes of this *agreement* and section 67A of the *SIS Act*, the relevant *loan* is deemed to comprise a series of separate borrowings on identical terms in respect of each individual *acquirable asset* comprised in the collection (each a *unitised borrowing*) and continues to be so notwithstanding any re-financing or a replacement of the *financed investment*.

3.2 Subject to the terms of this *agreement*:

- (a) each *unitised borrowing* and the related individual *acquirable asset* may be dealt with separately as if the *unitised borrowing* is a *loan* and the individual *acquirable asset* is the *approved investment* and the *financed investment* in respect of that *loan*; and
- (b) clauses 11 and 13 should be applied accordingly in respect of the *unitised borrowing* and the individual *acquirable asset* as the *financed investment*.

3.3 Subject to clause 5, if you request us to change the interest rate features applying to a *loan* under clause 7 then, in the case of *unitised borrowings*, your request is deemed to relate to each *unitised borrowing* comprised in that *loan*.

4 Purchasing investments with loan funds

4.1 A *loan* may be used only:

- (a) to acquire a single *approved investment* (which may comprise an *acquirable asset collection*) in accordance with the *transaction documents* (*including* in meeting expenses incurred in connection with the borrowing or acquisition) and capitalised interest in connection with the borrowing; and
- (b) for a *refinancing*.

4.2 If you wish to acquire more than one *approved investment* you must apply for a separate *loan* in respect of each *approved investment* either on the *application form* or by submitting a *loan request*.

- 4.3 If we provide a *loan* to you, you irrevocably authorise and direct:
- (a) where the *loan* is to be used to acquire an *approved investment*:
 - (i) us to provide the *loan* amount and, where the *loan contribution* is a contribution of cash by you, your *loan contribution* to the *investment trustee* to purchase the nominated *approved investment*; and
 - (ii) the *investment trustee* to apply the proceeds of the *loan* and your *loan contribution* (if applicable) to acquire as legal owner the *approved investment* for you as beneficial owner; and
 - (b) where the *loan* is a *refinancing*,
 - (i) us to provide the *loan* amount and, where the *loan contribution* is a contribution of cash by you, your *loan contribution* to the *investment trustee* to repay the loan that is being refinanced; and
 - (ii) the *investment trustee* to apply the proceeds of the *loan* and your *loan contribution* (if applicable) to repay the *loan* that is being refinanced.
- 4.4 You must provide us with any documents or information that we require as evidence of your intention to acquire an *approved investment*. (For example, a completed application form to acquire *managed fund investments*).
- 4.5 On request we will provide you with a list of *approved investments*. That list may also appear on the *website*. We may remove an *investment* from the approved list at any time, without having to give you prior notice. We will give you notice that an investment has been removed from the approved investment list as soon as practicable after the investment is removed.
- 4.6 *Investments* must be registered in the name of the *investment trustee*.
- 4.7 We may change the *security ratio* used to calculate the *security value* of an *investment* at any time without prior notice to you (*including* by reducing the *security ratio* of an *investment* to zero) as we determine necessary having regard to a range of factors *including*:
- (a) changes or anticipated changes in the market *value* of the *investment*; and
 - (b) our internal risk assessment policies.
- This may result in a *margin call*.
- 4.8 We will give you notice of any change in the *security ratio* used to calculate the *security value* of an *investment* as soon as practicable after the change.

5 Splitting a loan

- 5.1 You may ask us to split a *loan* into further *loans*, or to change the features of existing *loans*, within the *facility*. After any initial split, you may ask us to change the split by creating further *loans* or consolidating *loans*. If we agree to your request, we treat each *loan* separately for various purposes under the *facility* and you authorise us to open a *loan account* for each *loan*. *Economic costs* and other charges

may become payable under clause 10.10 as a result of actions taken under this clause.

- 5.2 A *unitised borrowing* may not be split under clause 5.1.

6 Calculation of interest

- 6.1 You agree to pay us interest at the applicable interest rate on each *loan* advanced to you, calculated daily from (and *including*) the date the *loan* is advanced. We may also charge interest on unpaid interest, fees, charges and any other amount owing in connection with this *agreement* from (and *including*) the date that relevant amount becomes payable.
- 6.2 We may debit any interest on a *loan* to:
- (a) the *loan account* for that loan, if a variable interest rate applies to that *loan* and if to do so would not cause the *aggregate secured liabilities* to exceed the *facility limit*; or
 - (b) an *account* acceptable to us which may include one for which you have provided us with a *direct debit request*.
- 6.3 If we:
- (a) do not, in accordance with clause 6.2, debit your *loan account* because to do so would cause the *aggregate secured liabilities* to exceed the *facility limit* or debit your other *account* we have agreed; or
 - (b) do debit your *loan account* and upon doing so the *aggregate secured liabilities* exceed the *facility limit*, the amount of the interest is immediately due and payable by you and failure to pay will be a *default event*.
- 6.4 If the *aggregate secured liabilities* exceed the *facility limit*, we may charge you *default interest* on the amount by which the *aggregate secured liabilities* exceed the *facility limit*. You must also pay us *default interest* on any amount you fail to pay on the due date (*including*, the amount of any *margin call* which is not satisfied in accordance with clause 14).
- 6.5 Information on current interest rates and charges is available from us on request. This information may also appear on our *website*.

7 Changing interest rate options

- 7.1 You may request us to change the interest rate features applying to a *loan*. This request must be in writing (which must be a letter physically signed by you and posted or faxed to us). We are not obliged to agree to a request.
- 7.2 If you change the interest rate features applying to a *loan* from a fixed interest rate to a variable interest rate during the *fixed rate period* you may have to pay an *economic cost* and other charges under clause 10.10.

8 Variable interest rate loans

- 8.1 If you have a *loan* to which a variable interest rate applies, we may change the interest rate at any time. The reasons why we may change the variable interest rate *include* changes to the cost or risk of providing the *loan* to you. We will notify you in writing or by newspaper advertisement, on or before the date of any change in the variable interest rate.

- 8.2 If a change to the variable interest rate on a *loan* is not acceptable to you, and you give us notice within 5 days of being notified of the change that you intend to repay that *loan* in accordance with clause 11.1, we will not apply the variable interest rate as so changed to that *loan* (although you must pay interest at the previous rate until that *loan* is repaid).

Interest payable in arrears

- 8.3 If you have a *loan* to which a variable interest rate applies, you must pay interest incurred on that *loan* monthly in arrears. Interest must be paid to us as we direct by one of the methods in clause 6.2, on the last *business day* of each month or on any other *business day* we decide and of which we give you notice.
- 8.4 We may debit accrued variable rate interest on a loan to the *loan account* for that loan on a certain day but not debit your nominated *account* under the *direct debit request service agreement* in relation to that interest until a later date. If that happens, interest will accrue for the relevant period on the interest debited to your *loan account*.

Request for capitalisation of interest

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

Effect of debiting interest to *loan account*

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

9 Fixed interest rate loans

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

What happens at the end of the *fixed rate period*?

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

Fixed rate interest payable annually in advance

- 9.3 If you have a *loan* to which a fixed interest rate applies, you may ask us to accept payment of the fixed rate interest annually in advance. If we agree to accept that payment, and you repay or are required by us to repay the *loan* early, we will refund part of the prepaid interest proportionate to the unexpired period in respect of which the interest has been prepaid, but you must pay us our *economic costs* and other charges calculated in accordance with clause 10.10. We may deduct these costs and charges from the interest refund (but you must still pay them if they exceed the refund amount).

Fixed rate interest payable in arrears

- 9.4 If you have a *loan* to which a fixed interest rate applies, and you do not pay interest annually in advance, you must pay us interest incurred on that *loan* monthly and in arrears. Interest must be paid to us in accordance with clause 6.2(b), on the last *business day* of each month or on any other *business day* we decide and of which we give you notice.

Request for capitalisation of interest

- 9.5 You may ask us to advance you the amount of accrued fixed rate interest on a *loan* when due. If we agree, we will debit the amount of fixed interest on a *loan* to the *loan account* for that loan.

Effect of debiting interest to a *loan account*

- 9.6 Debiting an amount to a *loan account* under clause 9.5 may result in a *margin call* or in your *facility limit* being exceeded. Our rights in relation to those events are unaffected by the fact that we have agreed to debit the relevant amount to your *loan account*.

10 Fees and charges

- 10.1 You agree to pay all borrowing fees and costs, *including*:
- (a) all fees, charges payable in connection with this *agreement* and described in the *PDS* and *application form*; and
 - (b) any other amount owing to us in connection with this *agreement* *including* those that you must pay to us and the *investment trustee*.
- 10.2 We may require you to pay any *enforcement expenses* incurred in enforcing this *agreement* or a *security interest* as well as any *economic cost* and other amounts you may be charged under clause 10.10.
- 10.3 You must pay or reimburse us for any charges relating to dishonoured, declined or rejected debits or payments.
- 10.4 We may debit any fees, costs or charges under clause 10.1, clause 10.2, clause 10.3 or clause 10.7 in respect of a *loan* to:
- (a) the variable interest rate *loan account* for that *loan*, if doing so would not cause the *aggregate secured liabilities* to exceed the *facility limit*; or
 - (b) an *account* acceptable to us for which you have provided us with a *direct debit request*.
- We will give you 2 *business days*' notice of any amounts to be debited under this clause 10.4.
- 10.5 If we do not debit the *loan account* or other *account* we have agreed, in accordance with clause 10.4, you must reimburse us and the *investment trustee* within 5 *business days* of receiving a request from us for any costs, fees and charges incurred on your behalf in accordance with the terms of this *agreement*.
- 10.6 Your liabilities under this clause 10 include stamp duty. We can ask you to pay, and you are obliged to pay, these costs and charges within 5 *business days* of receiving a request from us.

- 10.7 You acknowledge that the *investment trustee* may charge us a fee in connection with this *agreement* and you agree to reimburse us for the amount of that fee.
- 10.8 On giving you at least 30 days' notice in writing we may impose any new fee, vary the amount of a fee, vary the frequency of interest and fee charging or the basis of the calculation and charging of fees or interest. This does not apply in connection with:
- (a) the *direct debit request service agreement*, in respect of which see Part 4; or
 - (b) changes to government fees and charges.
- 10.9 Notice of changes to government fees and charges will be given by newspaper advertisement, in writing or electronically as soon as practicable after, but no later than 3 months after, the change takes effect.

Economic costs on prepayments

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

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

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

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

11 Repayments

Repayment at your election

- 11.1 Subject to clause 10.10, you may repay the whole or part of the *secured liabilities*:
- (a) at any time by paying cash into the relevant *loan account*; or
 - (b) at any time after the *settlement date* for the relevant *financed investment* by asking us to instruct the *investment trustee* to *dispose* of the *financed investment* and to apply the proceeds of such *disposal* towards repayment of the *loan* in accordance with the *investment trust terms*.

Compulsory repayment

- 11.2 If in respect of a *loan*:
- (a) a *default event* occurs;
 - (b) a *distribution* is made in respect of a *financed investment* and if we give notice to you; or
 - (c) the *original financed investment* is replaced by or intended to be replaced by a financial product (as defined in the Corporations Act) which is not approved by us as a *financed investment* for the purposes of this *agreement* (an '**unapproved replacement financial product**'), we may (in our absolute discretion) give notice that, in respect of the relevant *loan*:
 - (i) in the case of a *default event*, you must repay (all or part of) the *secured liabilities*;
 - (ii) in the case of a *distribution*, you must repay the *secured liabilities* to the extent we notify you up to the amount of the *distribution* (or, if the *distribution* is not in cash, to the amount of the proceeds of *disposal* of the *distribution*); or
 - (iii) in the case of an *unapproved replacement financial product*, you must repay the *secured liabilities*.
 In each case the repayment is to be made within 2 *business days* after notice is given by us to you requiring the repayment.
- 11.3 It is a *default event* in respect of a *loan* if in respect of that *loan* or any other *loan* under this *agreement*:
- (a) you or a *guarantor* fail to perform or observe any obligation under this *agreement* or under the *guarantee* in a material respect, *including* an obligation to pay an amount on time;
 - (b) you do not pay interest, fees or other amounts due under clause 10;
 - (c) the *aggregate secured liabilities* exceed the *facility limit*;
 - (d) you or a *guarantor* become *insolvent*, (or in the case of a natural person) die or become of unsound mind or subject to any legal disability or incapacity;
 - (e) any provision of this *agreement* or any security created by you or any *guarantor* is or becomes void, voidable or defective;
 - (f) a representation or warranty made by or taken to be made by you or a *guarantor* is incorrect when made or taken to be made;

- (g) you or any *guarantor* without our prior written consent purports or attempts to create any *security interest* over any *secured property* in favour of anyone other than us;
- (h) a *margin call* is not satisfied in accordance with clause 14;
- (i) you take up *new rights* without our consent; or
- (j) any other event occurs which in our opinion may materially affect your or the *guarantor's* ability to meet your or their obligations under this *agreement*.

Repayment at our election

- 11.4 Despite clause 11.2, and even if none of the events described in that clause have occurred, we may ask you to repay the *secured liabilities* at any time by giving you 5 *business days' notice*.
- 11.5 To avoid doubt, if this is a *joint facility*, each of you is liable for the entire *secured liabilities*. Each of you agrees to pay us any amounts which any of the others does not pay on time or in accordance with any arrangement under which it is expressed to be owing, as at the time we demand that you pay them to us. As a separate undertaking, each of you unconditionally and irrevocably indemnifies us against, and you must pay us for the loss we suffer if the *facility* is unenforceable solely because of, the death, insolvency or incapacity of, or any act or omission by, or other circumstances affecting, any of the others.
- 11.6 If this is a *joint facility*, except to the extent any of you have a right conferred by the Code of Banking Practice, none of you can otherwise withdraw from, end or limit each *loan* under the *facility*.
- 11.7 Your rights in respect of a *joint facility* as conferred by the Code of Banking Practice include the right to terminate your liability with respect to future advances or financial accommodation to be made under the *facility*, by giving us written notice. If you give us written notice to this effect, we may choose not to provide further advances under the *facility*.

Pro-rata repayment and prepayment of unitised borrowings

- 11.8 Any repayment or prepayment which does not involve the disposal of the *financed investment* will have the effect of reducing pro rata the *secured liabilities* in respect of the *unitised borrowings* which collectively comprise a *loan*. However, the number of *acquirable assets* which collectively comprise the *financed investment* in respect of a *loan* will remain the same.
- 11.9 Any repayment or prepayment made by applying *disposal proceeds* of the *financed investment* will be applied in accordance with clause 25.2.

Amounts prepaid or repaid may not be reborrowed

- 11.10 Amounts prepaid or repaid in respect of a *loan* may not be reborrowed under that *loan*. For avoidance of doubt, the prepayment or repayment of an amount does not reduce the *facility limit*.

12 Limited recourse

- 12.1 Our recourse in respect of your liability to pay any amount under this *agreement* in respect of a *loan* is limited only to the *financed investment* to which that *loan* relates.
- 12.2 We may not seek to recover any shortfall in the amounts owing to us under this *agreement* by bringing proceedings against you or applying to have you wound up or (if you are an individual) applying to have you declared *bankrupt*. However, we may:

- (a) do anything necessary to enforce our rights in connection with the *financed investment*, including giving a notice under clause 11.2 or taking any action permitted by clause 18;
- (b) take proceedings to obtain:
 - (i) an injunction or other order to restrain any breach of this *agreement* by you; or
 - (ii) declaratory relief or other similar judgment or order including any judgment which it is required by the Code of Banking Practice as it applies to a *guarantee* to obtain before making a claim against a *guarantor* as to your obligations under this *agreement*.

This clause 12 applies notwithstanding any other provision of this *agreement*. However, this clause 12 is to be disregarded for the purposes of determining the amount of any *secured liabilities* or whether a *default event* has occurred because of a failure by you to pay an amount payable by you under any *transaction document*.

13 Giving instructions to the investment trustee

- 13.1 So long as there are any amounts which are or may be payable under a *loan* (including all *secured liabilities*), you irrevocably and unconditionally:
 - (a) authorise us to give to the *investment trustee* instructions or directions in connection with the relevant *financed investment* on your behalf, including:
 - (i) a direction to *dispose* of the *financed investment* in accordance with clause 14;
 - (ii) a direction as to how to vote on any matter on which the holder of the *financed investment* is entitled to vote;
 - (iii) a direction that, if a *distribution* occurs in relation to a *financed investment* and we require a repayment of the *secured liabilities* under clause 11.2, the amount of the *distribution* be paid to us (or, if the *distribution* is not in the form of cash, the *distribution* be *disposed* of and its proceeds applied in accordance with clause 11.2), provided that this clause and any direction given under it does not entitle us to be paid the amount of the *distribution* (or to require its *disposal*) in connection with or as a result of a *default event*; and

- (iv) a direction to *dispose* of an *unapproved replacement financial product* and to apply the proceeds of its *disposal* in accordance with clause 11.2; and
- (b) agree that you will not give the *investment trustee instructions* or directions in connection with the relevant *financed investment* without our consent (which will not be unreasonably withheld). However, if you breach this provision and give any *instruction* to the *investment trustee* which is inconsistent with an *instruction* we give the *investment trustee*, our *instruction* is to prevail. We acknowledge that our right to give *instructions* subsists only so long as there is any amount which is or may be payable under the relevant *loan* (including all *secured liabilities* and amounts owing under clauses 10, 11.5 and 54.3, and that when all such amounts have been paid in full, only you will be entitled to give *instructions* in respect of the relevant *financed investment*).

14 Margin calls

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

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

- 14.2 If we make a *margin call*, we will take reasonable steps to notify you and ask you to do any of the following (as you choose) by the *margin call deadline*:
- (a) repay some or all of the *secured liabilities*;
 - (b) seek that the *guarantor* provides us with security over additional *approved investments*; or
 - (c) seek that the *guarantor* provides cash collateral in a *guarantor's cash management account*,
- in any case, so that the *current LVR* is less than the *base LVR*. In our sole discretion we may agree to an arrangement that may, but need not include any of (a), (b) or (c), so that the *current LVR* is less than the *margin call LVR*.
- 14.3 We will not be liable to you or any *guarantor* for any loss that you or the *guarantor* incur because of any failure to make a *margin call* as soon as we are entitled to, or at all.
- 14.4 Subject to clause 15, if you do not satisfy a *margin call* by the *margin call deadline* (regardless of whether you have actually received the *margin call*), or we have been unable to contact you to give you a *margin call* (having taken reasonable steps to do so):

- (a) you will be taken to have requested the *investment trustee* to take all steps the *investment trustee* deems necessary to *dispose* of any *financed investment*; and
- (b) the *guarantor* will be taken to have requested the *guarantor's attorney* to take all steps the *guarantor's attorney* deems necessary to *dispose* of any of the *guarantor's secured property* that we choose in our absolute discretion,

and apply the net proceeds of disposal in accordance with clause 14.2(a) or (c) (as we deem appropriate, acting reasonably).

- 14.5 The *investment trustee* and, subject to clause 15, the *guarantor's attorney*, acting reasonably, may *dispose* of more of the *secured property* than that required to satisfy the *margin call*.
- 14.6 If the *investment trustee* or the *guarantor's attorney* *disposes* of *secured property*, under this clause 14, each will take all reasonable care to *dispose* of the relevant *secured property* for:
- (a) if, when it is sold it has a market *value*, not less than that market *value*; or
 - (b) otherwise, the best price that is reasonably obtainable, having regard to the circumstances existing when *secured property* is sold.
- 14.7 The *margin call deadline* means the following (unless we specify a later time in writing):
- (a) if, at or around the time a *margin call* is to be made, at least 95% by market *value* of the *secured property* comprises *approved managed fund investments* (as determined by us in our discretion), 2.00 p.m. on the fifth *business day* after the *margin call* is made; and
 - (b) in all other cases, 2.00 p.m. on the *business day* after the *margin call* is made.
- 14.8 We do not need to give notice of a *default event* or a notice to the *guarantor* in order to exercise our rights under this clause 14.

15 Order of enforcement

- 15.1 We will not enforce the *guarantee* (for instance, we will not demand payment or direct the *guarantor's attorney* to *dispose* of any of the *guarantor's secured property*) unless all of the *financed investment* has been *disposed* of and the proceeds are insufficient to payout the *aggregate secured liabilities* and any other money owing to us in respect of the relevant *loan*.

16 Representations, warranties and covenants

- 16.1 You represent and warrant to us that:
- (a) you are the trustee of a *regulated superannuation fund*;
 - (b) you are the only trustee of the *regulated superannuation fund*;
 - (c) no action has to your knowledge, having made due enquiry, been taken or proposed to remove you as trustee of the *regulated superannuation fund*;

- (d) the copies of the trust deed and other documents relating to the *regulated superannuation fund* provided to us disclose all the terms of the *regulated superannuation fund*;
 - (e) the trust deed will not be amended or altered without our prior consent;
 - (f) you will not relinquish your trusteeship without our prior consent;
 - (g) you have power under the trust deed to enter into and observe your obligations under the *transaction documents* to which you are a party and you enter into the *transaction documents* in your capacity as trustee of the trust;
 - (h) you are not, and never have been, in default under the trust deed;
 - (i) our rights under this *agreement* rank in priority to the interests of the beneficiaries of the *regulated superannuation fund*;
 - (j) you have carefully considered the purpose of the *transaction documents* and consider that entry into the *transaction documents* is for the benefit of the beneficiaries and the terms of the *transaction documents* are fair and reasonable;
 - (k) on acquisition of the *financed investment*, the *investment trustee* will be the legal owner of the *financed investment* free from any *security interest* in favour of anyone other than us;
 - (l) where the *loan contribution* is a contribution of cash by you, you have not taken out a loan or other borrowing to fund the *loan contribution*;
 - (m) the *agreement* constitutes valid and binding obligations enforceable in accordance with its terms;
 - (n) if you are a body corporate, you are properly incorporated and validly exist;
 - (o) in entering into and performing the *agreement*, you have not breached (and will not breach) any law or obligation binding on you;
 - (p) you have provided us with all documents and other information relevant to your assessment of whether to establish the *facility*;
 - (q) any documents and information provided under clause 16.1(p) is correct and not misleading and are up to date, and in full force and effect;
 - (r) all information provided is true in all material respects at the time you enter into the *agreement* or, if later, when provided and that information was not or is not misleading, by omission or otherwise;
 - (s) no *default event* or any circumstance that may give rise to a *default event* has occurred;
 - (t) you have obtained independent financial and legal advice as you think fit to enter into the *agreement*;
 - (u) you obtain various benefits by entering into, exercising your rights and performing your obligations under the *agreement*; and
 - (v) you are able to pay your debts as and when they become due and payable.
- 16.2 In addition to clause 16.1, if you are a company (the Company) you represent and warrant to us as follows:
- (a) you have the power to:
 - (i) enter into the *agreement* and perform your obligations under and carry on the transactions contemplated by, the *agreement*;
 - (ii) there is no restriction or condition upon you doing so;
 - (b) no action has been taken or proposed to wind up or dissolve the Company and as far as you are aware no-one intends to take any such action; and
 - (c) the Company complies with all applicable laws.
- 16.3 Each representation and warranty in clause 16.1 and clause 16.2 is taken to be repeated on each date on which we provide a *loan*.
- 16.4 You agree:
- (a) at our request and at your own expense:
 - (i) to execute and cause your successors to execute documents and do everything else necessary or appropriate to bind yourself and your successors under the *transaction documents*; and
 - (ii) to use your best endeavours to cause relevant third parties to do likewise to bind every person intended to be bound under the *transaction documents*;
 - (b) to observe your obligations as trustee of the *regulated superannuation fund*;
 - (c) not, without our consent, to do anything which:
 - (i) effects or facilitates the retirement, removal or replacement of yourself as trustee of the *regulated superannuation fund*;
 - (ii) could restrict your right of indemnity from the *regulated superannuation fund* in respect of obligations incurred as trustee under the *transaction documents*;
 - (iii) could restrict or impair your ability to observe its obligations under the *transaction documents*;
 - (iv) effects or facilitates the termination of the trust;
 - (v) effects or facilitates the variation of the trust deed;
 - (vi) effects or facilitates the resettlement of the trust fund; or
 - (vii) could result in the trust fund being mixed with other property; and
 - (d) to notify us immediately if any representation or warranty made or taken to be made in connection with the *transaction documents* is found to be incorrect or misleading when made or taken to be made.

17 Power of attorney

- 17.1 You (and, if there are more than one of you, each of you severally) appoint us and our authorised officers and agents as your attorneys. If we ask, you must formally approve anything an attorney does under clause 17.2 (*including* in writing). You may not revoke these appointments until all of the *financed investment* is released from this *agreement*.
- 17.2 An attorney may do any act or thing and execute, sign or deliver any document which an attorney reasonably considers necessary or desirable for the purpose of:
- (a) doing anything which you may authorise an attorney to do or request an attorney to do (*including* a request you are taken to have made under clause 14.4) in connection with the *financed investment* (*including* executing a deed, disposing of or otherwise dealing with the *financed investment*, starting, conducting and defending legal proceedings, applying the proceeds or dealing with the *financed investment* to repay all or part of the *secured liabilities*, or sending messages or communications by which the *financed investment* can be *disposed of*);
 - (b) delegating their powers (*including* this power and the power to revoke a delegation);
 - (c) exercising their powers even if this involves a conflict of duty or if they have a personal interest in doing so; and
 - (d) exercising their powers regardless of whether a *default event* has occurred.
- 17.3 Neither we nor an attorney are liable for any loss or penalty incurred by you as a result of:
- (a) any delay by an attorney in exercising their powers; or
 - (b) an attorney not exercising their powers, except if caused by our fraud or gross negligence.
- 17.4 You indemnify each attorney against any reasonable loss or costs they suffer or incur in exercising powers under this power of attorney. We may debit any such loss or cost to:
- (a) your *loan account*, if a variable interest rate applies to your *loan* and if to do so would not cause the *aggregate secured liabilities* to exceed the *facility limit*; or
 - (b) an *account* acceptable to us for which you have provided us with a *direct debit request*.
- We will give you 2 *business days*' prior notice of any amounts to be debited under this clause 17.4.
- 17.5 If we do not debit your *loan account* or other *account* we have agreed, in accordance with clause 17.4, you must pay us within 2 *business days* of receiving a request from us the amount of any loss or cost referred to in clause 17.4.

18 Consequences of a *default event*

General consequences of a *default event*

- 18.1 If a *default event* occurs in respect of a *loan* we may, without being obliged to do so and despite any waiver of any previous *default event*, and in addition to any other rights or remedies conferred by the *transaction documents* or by law:
- (a) declare all *secured liabilities* and all other sums which are accrued or due under the *transaction documents* (whether or not presently payable) in respect of the loan to be due and payable, whereupon they are immediately due and payable without further demand, notice or other legal formality of any kind;
 - (b) declare the *loan* terminated, in which case our obligations under this *agreement* in respect of the *loan* immediately cease; and/or
 - (c) give the *investment trustee instructions to dispose* of the *financed investment* in respect of the *loan*.

Acknowledgements in relation to *investment trust*

- 18.2 You:
- (a) consent to the *investment trustee* complying with its obligations under (and, where applicable, executing) the *transaction documents*; and
 - (b) waive any right you have to claim that the *investment trustee's* execution of, or compliance with obligations under, the *transaction documents* is in breach of the *investment trust*.

Part 2

Investment Trust Terms

19 Trust

Acknowledgement

19.1 We and the *investment trustee* have entered into the *trust deed* under which the *investment trustee* holds the *trust property* for you in respect of a *loan* as a bare trustee on the terms set out in the *investment trust terms* on a *separate trust* for you solely and so that you are beneficially entitled to the *trust property*.

20 Holding trust property

20.1 The *investment trustee* must segregate in its books the *trust property* being held for you from any trust property being held for others. The *investment trustee* must hold all *trust property* in an account that does not include any assets of the *investment trustee* other than assets held as a fiduciary, custodian or otherwise for customers. A *financed investment* held by the *investment trustee* pursuant to the *trust deed* and the *investment trust terms* may be treated as fungible with any other *financed investment* having the same market value as each other and being identical to each other. You are entitled to the *financed investment* credited to you in the records of the *investment trustee*, without regard to the certificate numbers of the *financed investment* certificates. The *investment trustee's* obligation to you with respect to your entitlement to *trust property* is limited to effecting such entitlement.

21 Income, distributions and disposal proceeds

Entitlements to income

21.1 You are presently entitled to the *income* of all *trust property* held by the *investment trustee* for you.

Distributions and disposal proceeds

21.2 Subject to the *investment trust terms*, you irrevocably direct the *investment trustee*:

- (a) to direct payment or distribution of *distributions* in respect of the *financed investment* directly to you, unless subject to clause 21.3, we request the *investment trustee*:
 - (i) to direct the payment of the *distributions* (or, where the *investment trustee* receives the *distribution*, to then pay); or
 - (ii) if the *distribution* is not in the form of cash, to *dispose* of the *distribution* and to pay the *disposal proceeds*, directly to us, to be applied by us in payment of *secured liabilities* in respect of the relevant *loan* in accordance with clause 25.2; and
- (b) to pay the *disposal proceeds* in respect of any *financed investment* directly, and without deduction, to us to be applied by us in payment of *secured liabilities* in respect of the relevant *loan* in accordance with clause 25.2.

Distributions following a default event

21.3 If a *default event* is subsisting in respect of the *loan*, we may not give a direction to pay *distributions* in accordance with clause 21.2(a) and any such direction given before the *default event* occurred is taken to be revoked, it being intended that when a *default event* is subsisting our recourse to the *trust property* with respect to the *loan* is limited to the *financed investment*.

22 Your rights and obligations

- (a) Each person who is a *client* from time to time has the benefit of the obligations of the *investment trustee*.
- (b) Each person who becomes a *client* is bound by the *investment trust terms*.
- (c) You are not responsible for the obligations of the *investment trustee* or for our obligations.
- (d) Where more than one person is a *client* in respect of a *loan* (and hence a beneficiary in respect of the relevant *separate trust*):
 - (i) those *clients* are jointly entitled to the *trust property*; and
 - (ii) any liability of the *clients* under the *investment trust terms* in respect of that *loan* is joint and several.

23 Investment trustee's powers, responsibilities and rights

Powers

- 23.1 In respect of the *trust property* of a *separate trust*, the *investment trustee* may:
- (a) register the *financed investment* of that *separate trust* in the *investment trustee's* name or in the name of a nominee of the *investment trustee*;
 - (b) *dispose* and otherwise deal with the *documents* and the *financed investment* on *instructions*;
 - (c) receive, collect, pay and distribute any *distributions* in relation to the *financed investment*, and take any action which the *investment trustee* considers, at its absolute discretion, to be necessary or desirable in connection with the *distribution*; and
 - (d) do such other things as the *investment trustee* considers necessary or desirable in order to give effect to these powers.

Investment trustee's responsibilities and rights

- 23.2 In exercising its powers in clause 23.1, the *investment trustee*:
- (a) agrees to exercise due care in respect of custody of the *documents*;
 - (b) need not supervise your *investments* generally or advise on them;
 - (c) is not liable for any damage, loss, cost or expense arising from an act or omission of any other person (not being an employee of the *investment trustee*) or corporation, or from any electronic or mechanical fault

beyond the *investment trustee's* control or for any act or omission arising from, or despite, compliance by the *investment trustee* with any law or customary market practices; and

- (d) is not liable to you for earnings foregone on money held for you by the *investment trustee*, except to the extent that the *investment trustee* fails to obey *instructions* where required under the *investment trust terms*.

Exercise of rights on *instructions*

- 23.3 Despite the fact that legal title to the *trust property* of a *separate trust* is held by the *investment trustee* for you, subject to the *investment trust terms*, any rights which attach to the ownership of that *trust property* may be exercised by the *investment trustee* only in accordance with any *instructions* and otherwise only in accordance with the *investment trust terms*.

24 *Instructions*

Action on *instructions*

- 24.1 The *investment trustee* agrees to act, or cause any nominee appointed in accordance with the *investment trust terms* to act, on *instructions* which it (or its nominee) has no reason to doubt are genuine and properly given, in accordance with the *investment trustee's* obligations under the *investment trust terms*. Neither the *investment trustee* nor its nominee need conduct any enquiry as to this.
- 24.2 In particular, both the *investment trustee* and you acknowledge that, subject to clause 13 and clause 21.3, you have irrevocably authorised us to give *instructions* on your behalf in respect of any *financed investment*, and any *distribution* in relation to it so long as there is any *secured liabilities* in respect of the *loan* relating to that *financed investment*. The *investment trustee* (or its nominee) may act on *instructions* from us without seeking confirmation of these *instructions* from, or otherwise notifying, you.
- 24.3 You agree that, if any *instruction* given by you to the *investment trustee* is inconsistent with an *instruction* we give the *investment trustee*, subject to clause 21.3, our *instruction* is to prevail.
- 24.4 We acknowledge that our right to give *instructions* subsists only so long as there is any amount which is or may be payable under the relevant *loan* (including all *secured liabilities*), and that when all such amounts have been paid in full, only you will be entitled to give *instructions* in respect of the relevant *financed investment* or any *distribution* in relation to it which *instructions* may include that the *investment trustee* transfer legal title to any *financed investment* or any *distribution* in relation to it to or as directed by you.
- 24.5 Where a *financed investment* comprises an *acquirable asset collection*, *instructions* may be given, and the *investment trustee* shall act in accordance with this clause, in relation to any individual *acquirable asset* comprising the *acquirable*

asset collection and for this purpose a reference to the relevant *loan* is a reference to a *unitised borrowing* in respect of such *acquirable asset*.

Form of *instructions* from you

- 24.6 *Instructions* from you must be communicated promptly:
 - (a) by notice in writing to the *investment trustee* with a copy to us in accordance with clause 55; and
 - (b) by properly completing such forms and doing such things as the *investment trustee* requires.

Form of *instructions* from us

- 24.7 *Instructions* from us must be communicated by a notice to the *investment trustee* which is given in accordance with clause 55 and which is signed by such person or persons as we may from time to time notify the *investment trustee* (in a form reasonably acceptable to the *investment trustee*) is an authorised person for the purposes of giving *instructions* under the *investment trust terms*.

25 Dealing with trust property

Transfers and payments or distributions of trust property

- 25.1 On receipt of *instructions* in accordance with the *investment trust terms* to transfer a *financed investment*, or to pay or distribute a *distribution* in relation to that *financed investment*, to you or at your direction, the *investment trustee* agrees (unless otherwise *instructed* by us in accordance with the *investment trust terms*) immediately to procure the transfer, payment or *distribution* to you or at your direction.

Any power or duty of the *investment trustee* to transfer, pay or distribute any *trust property* under the *investment trust terms* may be exercised or satisfied by, at the *investment trustee's* election, doing those things which a transferor is required to do for the purpose of effecting a transfer, payment or a *distribution* pursuant to the *investment trust terms* and the Corporations Act (to the extent applicable). Compliance by the *investment trustee* with this clause 25.1 is a complete discharge of the *investment trustee's* obligations with respect to the transfer, payment or *distribution* of the relevant *trust property*.

Disposals of trust property

- 25.2 When the *investment trustee* (whether on *instructions* or under the *investment trustee's lien*) exercises a power to *dispose of trust property*, the *investment trustee*:
 - (a) has no liability to you for any delay in the *disposal* of, or any failure to obtain a particular price for, any item of *trust property* or for obtaining different prices on different items of *trust property* *disposed of* under the *investment trust terms* (in the absence of gross negligence or wilful misconduct by the *investment trustee*); and
 - (b) agrees to apply the *disposal proceeds* promptly in the following order:
 - (i) **first**: in payment of all costs, charges, liabilities

and expenses of the *investment trustee* which have been incurred in or are incidental to the exercise or performance or attempted exercise or performance of a power or duty under the *investment trust terms* in connection with the *trust property, tax (including amounts payable by us under clause 30.1(a))* and any other amount payable to the *investment trustee* from the applicable *separate trust* in accordance with the *investment trust terms* other than:

(A) amounts in respect of the *secured liabilities*; and
(B) amounts payable by us under clauses 30.1(b), and 30.2; and

- (ii) **second:** in payment of the *secured liabilities* in respect of the *loan* relating to the *trust property* that has been disposed (whether or not demand has been made for them); and
(iii) **third:** any balance to you.

Distributions and disposal proceeds

25.3 Any *distribution or disposal proceeds* received by the *investment trustee* in cash pending application under this clause will be banked by the *investment trustee* in an account with us.

26 Indemnity and lien of investment trustee

Investment trustee's right to be indemnified

26.1 You acknowledge that obligations incurred by the *investment trustee* under the *investment trust terms, including* in connection with obligations the *investment trustee* incurs in its capacity as trustee of the relevant *separate trust, are expenses of each such separate trust for which the investment trustee is entitled to be indemnified out of the financed investment of the applicable separate trust and that the investment trustee has a lien over the financed investment of the applicable separate trust and the disposal proceeds of that financed investment.*

Exercise of lien

26.2 You acknowledge that if we make a demand on the *investment trustee* under this *agreement, the investment trustee (under its lien) is entitled to (without first notifying you) dispose of the financed investment applicable to that separate trust and having done so shall promptly apply its disposal proceeds to satisfy that demand.*

Lien unaffected

26.3 The *investment trustee* may exercise its right of indemnity or *lien* to satisfy a liability to any creditor of the *investment trustee* in its capacity as trustee of the *separate trust* notwithstanding the trust may have suffered a loss or may have diminished in value as a consequence of any unrelated act, omission or breach of trust by the *investment trustee* or any delegate or agent appointed by it.

No further recourse

26.4 The recourse of the *investment trustee* and any creditor of a *separate trust (including us)* is limited to the *financed investment of the relevant separate trust.*

Attribution of expenses

26.5 Where the *investment trustee* incurs expenses in the administration of the trusts established pursuant to the *investment trust terms* (other than fees or expenses which we are liable to pay under clause 30.1) and the expense is not referable to a particular *separate trust, the investment trustee may apportion them amongst the separate trusts using such method as it considers appropriate.*

No Limitation of rights

26.6 Except as set out in clause 26.4, clause 27 and as required by the *SIS Act, nothing in this agreement limits the investment trustee's rights arising by operation of law to be indemnified out of trust property of each separate trust.*

27 Limitation on investment trustee's liability

Limitation of liability

27.1 In the execution of the trusts and powers under this *agreement, the investment trustee is not liable to you or us in connection with a separate trust to a greater extent than the extent to which the liability can be lawfully satisfied in accordance with the investment trust terms out of trust property of the separate trust or (if it is a lesser amount) an amount exceeding the value of the separate trust, nor to any other person under this agreement for:*

- (a) any losses or liabilities except losses or liabilities arising from its own dishonesty or the dishonesty of its officers or the wilful commission or omission by it or its officers of any act known to it or them to be a breach of trust, or from its own gross negligence;
- (b) the neglect, dishonesty or default of us, you or any other person *including* any solicitor, attorney, banker, accountant, auditor, stockbroker, investment adviser or other agent or adviser employed or retained in good faith by the *investment trustee;*
- (c) any losses or liabilities caused because the *investment trustee* acted or failed to act on advice received from any agent, or adviser; or
- (d) any losses or liabilities caused because the *investment trustee* acted or failed to act on a direction or advice from us or you.

Independent investigation

27.2 You confirm that you have made and will continue to make, independently and without reliance on the *investment trustee* or any other *client:*

- (a) your own investigations into our affairs and any *financed investment* which is acquired at your discretion; and
- (b) your own analysis and decisions whether to take or not take action in respect of any *financed investment* or otherwise under this *agreement.*

No monitoring

25.3 The *investment trustee* need not keep itself informed as to, or monitor the performance or financial condition of, any *financed investment* or the *issuer* of any *financed investment* and other than as required by this *agreement, need not take any action without instructions.*

Information

27.4 The *investment trustee* has no obligation or liability to you in respect of the provision of copies of any financial statements, reports, circulars or any other *documents* relating to the affairs of any *financed investment* which have been sent to the *investment trustee*. The *investment trustee* may, if it is lawful to do so, provide to us information concerning any *financed investment* in accordance with our reasonable requests from time to time.

Exclusion of further obligations

27.5 Despite any other provision of this *agreement*:

- (a) the *investment trustee* is not required to do or omit to do anything or incur any liability unless the *investment trustee's* liability is limited in a manner satisfactory to the *investment trustee*;
- (b) the *investment trustee* need not advance or use its own funds for the payment of any costs, expenses or liabilities;
- (c) a liability or obligation of the *investment trustee* in connection with this *agreement* is limited to the extent to which (and can be enforced against the *investment trustee* only to the extent to which) the *investment trustee* is actually indemnified for the liability by us or the liability or obligation can lawfully be satisfied in accordance with this *agreement* out of property of a *separate trust*;
- (d) the *investment trustee* has no liability for the acts or omissions of any brokers or other agents whose acts or omissions are not reasonably capable of supervision by the *investment trustee*;
- (e) the *investment trustee* has no responsibility for our performance or in connection with the performance of any *financed investments*, and the *investment trustee* has no liability arising as a result of or in connection with any our acts or omissions;
- (f) the *investment trustee* has no liability arising as a result of or in connection with any act or omission of a nominee appointed under clause 23.1(a), *including* for any breach of the *investment trust terms* caused by any act or omission of the nominee; and
- (g) the *investment trustee* has no obligation to prepare accounts or *tax returns* in respect of *separate trusts*.

Knowledge of the *investment trustee*

27.6 The *investment trustee* is only considered to have knowledge, awareness or notice of a thing, or grounds to believe any thing, by virtue of the officers of the *investment trustee* having day to day responsibility for the administration of the *separate trusts* having actual knowledge, actual awareness or actual notice of that thing, or grounds to believe that thing (and similar references are interpreted in this way).

Provision of *disclosure documents*

27.7 We acknowledge that *application forms* must not be provided to any person unless at the same time access is given to the *product brochure* and *disclosure document* which is related to the underlying *approved investment*.

28 Delegation of *investment trustee's* powers

- 28.1 The *investment trustee* may whenever it thinks fit delegate by power of attorney or otherwise to any person or persons (whether being a joint trustee of the *investment trust*) all or any of its trusts, powers, authorities and discretions under the *agreement*. Such delegation may be made upon such terms and subject to such conditions and regulations as the *investment trustee* may think to be in your interests.
- 28.2 The *investment trustee* may instead of acting personally employ and pay an agent (whether or not a lawyer or other professional person) to transact or conduct, or concur in transacting or conducting, any business and to do, or concur in doing, all acts required to be done in connection with this *agreement* (*including* the receipt and payment of money).
- 28.3 The *investment trustee* may appoint and pay any person to act as a custodian or nominee on any terms in relation to such assets of the *investment trust* as the *investment trustee* may determine.

29 Replacement of *investment trustee*

Resignation and removal

- 29.1 You expressly authorise your attorney appointed under clause 17, at any time we request it, to replace the *investment trustee* by terminating on your behalf that appointment and instead appointing another person to act in that capacity in accordance with clause 29.4. You authorise your attorney to do all things the attorney deems necessary or desirable on your behalf to effect that replacement, *including* directing the transfer of any *trust property* held by the retiring trustee to the replacement trustee. We will notify you in writing after this has occurred.
- 29.2 Without limitation to clause 29.1 but subject to the appointment of a replacement *investment trustee* under clause 29.4:
 - (a) the *investment trustee* may resign at any time by giving us not less than 30 days' written notice; and
 - (b) we may remove the *investment trustee* from office if the *investment trustee* breaches any of its obligations under the *agreement* and the breach remains unremedied after we have given not less than 30 days' written notice to the *investment trustee*.
- 29.3 The replacement, resignation or removal of a trustee in accordance with clauses 29.1 and 29.2 will not take effect until a replacement trustee has been appointed in accordance with clause 29.4 and the replacement trustee or its nominee obtains title to the *trust property*.

Appointment of replacement

- 29.4 On notice of resignation or removal in accordance with clause 29.1 or 29.2 (as the case may be), we must appoint a replacement *investment trustee*. The replacement *investment trustee* may only be appointed with our consent and must be a person acceptable to us.
On its appointment:
 - (a) the replacement *investment trustee* has all the rights, powers and obligations of the retiring *investment*

trustee (except liabilities arising from defaults of the retiring *investment trustee*); and

- (b) the retiring *investment trustee* is discharged from its rights, powers and obligations (except liabilities arising from its defaults).

The retiring *investment trustee* agrees to execute and deliver all *documents* or agreements which are necessary or desirable in its opinion to transfer to the replacement *investment trustee* the *investment trustee's* rights and obligations under this *agreement* and any *trust property* or to effect the appointment of the replacement *investment trustee* (subject to satisfaction of all liabilities owed to the *investment trustee* on its own account under this *agreement* or for which the *investment trustee* may be personally liable).

Retiring *investment trustee's* rights and obligations

- 29.5 After any retiring *investment trustee's* resignation or removal, the terms of this *agreement* continue in effect in respect of anything done or omitted to be done by it while it was acting as *investment trustee*, and the retiring *investment trustee* retains the rights and remedies available to it under this *agreement* or at law in relation to the performance and exercise of its powers, duties and functions while *investment trustee*.

30 Payment and reimbursement to the *investment trustee*

Reimbursement

- 30.1 We agree to reimburse the *investment trustee* in respect of the costs, charges and expenses incurred in connection with the administration of the *separate trusts* under the *investment trust terms* including:
- (a) the amount of any *tax* paid (excluding any *GST*), whether or not on your behalf; and
 - (b) fees payable to solicitors retained by the *investment trustee*, including legal expenses on a full indemnity basis.

***Investment trustee* fees**

- 30.2 We agree to pay the *investment trustee* fees as separately agreed between the *investment trustee* and us from time to time.

GST

- 30.3 The *investment trustee* shall be entitled to be reimbursed or indemnified for the amount of any *GST* it must pay on any supply made under this *agreement* out of the *trust property*.

31 Payments

Payment to Beneficiaries

- 31.1 The *investment trustee* agrees to pay all money payable to you under the *investment trust* terms by electronic funds transfer or by cheque marked 'not negotiable', and to post or deliver it to your address as last known to the *investment trustee* or (with your consent) by an electronic funds transfer to an account nominated by you.

Unclaimed money

- 31.2 Any payments made to you but remaining unclaimed for more than 12 months after the date of payment may, at the discretion of the *investment trustee* but subject to applicable laws, be paid to us, for our sole benefit and you have no claim to any amount paid to us under this clause 31.2.

Set-off

- 31.3 So far as is permitted by the *SIS Act*, the *investment trustee* may set-off or withhold any amount payable to it by us or by you against or from any amount payable by the *investment trustee* to us or to you (as the case may be).

No Agency

- 31.4 The *investment trustee* performs its obligations under this *agreement* and in connection with any *instructions* as trustee of each *separate trust* and not as agent of any person.

32 No requisition

- 32.1 Nothing in this *agreement* authorises or entitles you (alone or, if there is more than one of you, together) to requisition any of your meetings as beneficiaries for the consideration of any resolution.

33 Disclosure by *investment trustee*

- 33.1 Without limiting Part 6, you acknowledge that the *investment trustee* may reveal details of the *trust property* or information regarding the acquisition of any *financed investment* bought at your direction to the Australian Securities and Investments Commission, any *exchange*, any person entitled to such details or information because of an order or direction of any court or to any other person legally entitled.

34 Termination

- 34.1 Each *separate trust* terminates on the first to occur of:
- (a) the entirety of the *trust property* being transferred to you in accordance with this *agreement*; or
 - (b) the *trust property* being *disposed* and the proceeds of that disposal being dealt with in accordance with clause 25.2(b).

35 Certificates

- 35.1 The *investment trustee* may give you a certificate about an amount payable or other matter in connection with this *agreement*. The certificate is sufficient evidence of the amount or matter, unless it is proved to be incorrect.
- 35.2 We may give the *investment trustee* a certificate about an amount payable or other matter in connection with this *agreement*. The certificate is conclusive evidence of the amount or matter in the absence of manifest error.

Part 3

Mortgage Terms

36 Agreement to mortgage

Mortgage

- 36.1 In respect of a *loan*, you agree to mortgage, and do mortgage, to us as security for the payment of the *secured liabilities* the *financed investment* acquired after the date of this *agreement*.
- 36.2 This mortgage is limited in respect of a *loan* as provided in clause 12.

Registration

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

37 Power of sale

- 37.1 If a *default event* occurs, we may, in addition to any other powers conferred on us by this *agreement*, do all or any of the following:
- (a) *dispose* of the *financed investment* and do all acts and things that we consider necessary to complete the disposal of the *financed investment*;
 - (b) demand and recover all of the proceeds from the *financed investment* by action or otherwise in your name or our name to the full extent of the estate or interest which you could *dispose* of;
 - (c) make any arrangement or compromise which we consider expedient in our interests; or
 - (d) bring or defend any action, suit or legal proceedings in your name or otherwise, for all or any of the above purposes.

38 Investments

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

- (a) any documents or certificates evidencing title in relation to the *financed investment*; and
- (b) any transfers that we request.

39 Obligations in relation to the *financed investment*

- 39.1 You must ensure that a *default event* under this *agreement* does not occur. You must also carry out on time all of your obligations *including* obligations to pay the *secured liabilities*. Your obligations under this *agreement* continue even if we release the *financed investment* from this *agreement*.
- 39.2 You may request us to release the *financed investment* from this *agreement* when there is no amount owing in respect of *secured liabilities*. However, even if the *secured liabilities* are paid, the *financed investment* remains mortgaged to us until we actually release it from this *agreement*. We will act reasonably in releasing the *financed investment*.
- 39.3 You are liable for all of your obligations under this *agreement* both separately on your own and jointly with any one or more other persons named in this *agreement* as a *client*.

40 Restrictions on dealing with the *financed investment*

- 40.1 You must not, without our consent:
- (a) *dispose* of, deal with or part with the possession of any interest in the *financed investment*;
 - (b) create or allow to come into existence any *security interest* which affects the *financed investment* in favour of anyone other than us;
 - (c) take up *new rights*;
 - (d) abandon, settle, compromise or discontinue or become nonsuited in respect of any proceedings against any person (other than us) in respect of any of your rights in connection with the *financed investment*; or
 - (e) waive any of your rights or release any person from their obligations in connection with the *financed investment*.
- 40.2 You must do anything we reasonably require in connection with the *financed investment including* obtaining consents, signing and producing documents, producing receipts, getting documents completed and signed and paying any duties, taxes and other imposts to allow us to perfect or register any *security interest* created under this *agreement* or enforce our rights under this *agreement* or protect the *value* of, or perfect our interest in, or to otherwise improve our position in relation to the *financed investment*.
- 40.3 You must do anything we reasonably consider necessary for the purpose of:
- (a) providing more effective security over the *financed investment*, for the payment of the *secured liabilities including*:
 - (i) if it is possible under *CHES*S for the *financed investment* to be subject to a reserved *subposition* or similar restriction in our favour or for our benefit you must execute any further documents that we ask you to so as to make the *financed investment* subject to such a *subposition* or similar restriction; and
 - (ii) if for any reason any *CHES*S-eligible *investment* that forms part of the *financed investment* becomes an *investment* that is not a *CHES*S-eligible *investment* you must procure that all certificates issued in respect of those *investments* are deposited with us or a person nominated by us;
 - (b) ensuring that any *security interest* created under this *agreement* is enforceable, perfected or otherwise effective;
 - (c) ensuring that we have control (as that term is defined under the *PPSA*) of each item of *financed investment* at all times;
 - (d) enabling us to apply for any registration, or give any notification, in connection with any *security interest* created under this *agreement* so that the *security interest* has the priority we require;

- (e) enabling us to exercise our rights in connection with the *financed investment*;
- (f) enabling us to register the power of attorney described in clause 17 or a similar power; or
- (g) showing whether you are complying with this *agreement*.

40.4 You must:

- (a) provide to us immediately after becoming aware of *new rights*, particulars and documentary evidence of *new rights*;
- (b) pay all instalments, calls or other moneys payable in respect of the *financed investment* if we determine that it is reasonably necessary to protect the *value* of the *financed investment*. If funds are not provided, we may, at our discretion, pay or authorise and direct the *investment trustee* to take up such calls, instalments and other amounts as may be necessary and that payment will form part of the *secured liabilities*;
- (c) take up *new rights* if we ask you to (but you may decline to take up *new rights* for which you have a present or future obligation to make a payment to acquire the *new rights* or in connection with those *new rights*);
- (d) assist us in exercising any power of sale or disposal that we have in respect of the *financed investment*; and
- (e) without limiting anything in clause 40.1, enter into a *priority agreement* in a form acceptable to us if you create or allow to exist any *security interest* over the *financed investment* in favour of anyone other than us without our consent.

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

41 Preservation of our rights

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

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

Part 4

Direct Debit Request Service Agreement

42 Debiting your account

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

43 Changes by us to direct debits

We may vary any details of the *direct debit request service agreement* or a *direct debit request* at any time by giving you at least 14 days' written notice. To avoid doubt, clause 63 does not apply in relation to the *direct debit request service agreement*.

44 Changes by you to direct debits

- 44.1 Subject to clause 44.2 and 44.3, you may change the arrangements under a *direct debit request* by contacting us on **1300 135 145** (Client Service Representative(s) – NAB Equity Lending).
- 44.2 If you wish to stop or defer a *debit payment* you must notify us or your *financial institution* in writing (which must be in a letter physically signed by you and posted or faxed to us or your *financial institution*) at least 14 days before the next *debit day*. If you first notify your *financial institution*, please promptly let us know.
- 44.3 You may also cancel your authority for us to debit your *account* at any time by giving us or your *financial institution* 14 days' notice in writing (which must be in a letter physically signed by you and posted or faxed to us or your *financial institution*) before the next *debit day*. If you first notify your *financial institution*, please promptly let us know.

45 Your obligations regarding direct debits

- 45.1 It is your responsibility to ensure that there are sufficient clear funds available in your *account* to allow a *debit payment* to be made in accordance with the *direct debit request*.
- 45.2 You should check your *account* statement to verify the amounts debited from your *account*.

46 Disputes about direct debits

- 46.1 If you believe that there has been an error in debiting your *account*, you should notify us directly on **1300 135 145** and confirm that notice in writing (which must be in a letter physically signed by you and posted or faxed to us) with us as soon as possible so that we can resolve your query more quickly.

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

47 Accounts for direct debits

You should check:

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

48 Confidentiality around direct debits

- 48.1 We will keep any information (including your *account* details) in your *direct debit request* confidential. We will make reasonable efforts to keep any such information that we have about you secure and to ensure that any of our employees or agents who have access to information about you do not make any unauthorised use, modification, reproduction or disclosure of that information.

49 Notices regarding direct debits

- 49.1 If you wish to notify us in writing about anything relating to this *direct debit request service agreement*, you should write to:

NAB Equity Lending
GPO Box 5350
MELBOURNE VIC 3001.

- 49.2 We may notify you by sending a notice in the ordinary post to the address you have given us in the *application form*.
- 49.3 Unless proven otherwise, any notice will be deemed to have been received 2 *business days* after it is posted.

Part 5 General Terms

50 Attribution

50.1 Where any amount payable to us under or in connection with this *agreement* is not referable to a particular *loan* (or *unitised borrowing*) we may apportion it among the *loans* (and any *unitised borrowings*) using such method as we consider appropriate.

51 Code of Banking Practice

We have adopted the Code of Banking Practice and relevant provisions of the Code apply to this *agreement* if you are an individual or small business customer (as defined by the Code).

51.1 You can obtain from us upon request:

- (a) information on current interest rates and fees;
- (b) general descriptive information concerning our banking services, *including*:
 - account opening procedures;
 - our obligations regarding the confidentiality of your information;
 - complaint handling procedures;
 - bank cheques;
 - the advisability of you informing us promptly when you are in financial difficulty; and
 - the advisability of you reading the terms and conditions applying to each banking service we provide to you;
- (c) general descriptive information about:
 - the identification requirements of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth); and
 - the options available to you under the tax file legislation; and
- (d) a copy of the Code of Banking Practice.

52 Declarations by you

52.1 You declare that:

- (a) you have told us about all rights that affect, or are proposed or likely to affect, the *secured property*;
- (b) you have not breached any law or any obligation to any other person by becoming party to this *agreement*;
- (c) all the information you have given us is correct and not misleading;
- (d) you have not withheld any information which might have caused us not to enter into this *agreement*;
- (e) all amounts owing to any other person which could affect the *secured property* have been paid or will be paid before or immediately after you sign this *agreement*;
- (f) a *default event* has not occurred; and
- (g) if you are an individual, the proceeds of each *loan* has not and will not be used for a *Code Purpose*.

52.2 You must notify us if anything has happened which would prevent you from repeating all the declarations in clause 52.1 before you ask us for an advance.

53 How we and the *investment trustee* may exercise rights

- 53.1 In this clause 53, “we”, “us” and “our” includes us and the *investment trustee*.
- 53.2 We may exercise a right or remedy or give or refuse our consent or approval in any way we consider appropriate, *including* by imposing reasonable conditions, but we may not refuse our consent or approval unreasonably.
- 53.3 We may enforce any part of this *agreement* before we enforce other rights or remedies.
- 53.4 If we do not exercise a right or remedy fully or at a given time (*including* a right to make a *margin call*), we may still exercise it later.
- 53.5 We are not liable for loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising a right or remedy except to the extent caused by our fraud or gross negligence.
- 53.6 Our rights and remedies under this *agreement* are in addition to other rights and remedies provided by law independently of this *agreement*.
- 53.7 Our rights and remedies under this *agreement* may be exercised by any person we authorise.

54 Authorised representatives, and authorised brokers

- 54.1 You agree that each of the persons notified by you to us as your *authorised representative* is authorised in your name to:
 - (a) access all information, and receive statements of account, in relation to the *facility*, *including* electronically;
 - (b) give *instructions* to us, and, subject to clause 13, to the *investment trustee* in relation to the *secured property*;
 - (c) direct us to deal with the proceeds from a dealing by us with the *secured property*;
 - (d) gain, create or perfect security over any *secured property* and
 - (e) any other actions necessary to give effect to this *agreement*.
- 54.2 You agree to ratify (*including*, if we request, in writing) anything done by an *authorised representative* or an *authorised broker* or any actions taken by us on your behalf on the *instructions* of an *authorised broker* or *authorised representative*.
- 54.3 You agree to indemnify and hold harmless us, and our directors, officers, agents and employees from and against all liabilities, losses, damages, costs, expenses directly or indirectly incurred or suffered by us or any of our directors, officers or employees as a result of complying with the *instructions* of an *authorised representative* or *authorised broker*. The indemnity under this clause is reduced proportionally to the extent that we have acted fraudulently or with gross negligence and caused or contributed to foreseeable liabilities, losses, damages, costs or expenses.

55 Notices and other communications

- 55.1 Unless otherwise specified in this *agreement*, notices, certificates, consents, approvals, requests and other communications to us or to the *investment trustee* in connection with this *agreement* must be in writing (unless we agree otherwise) and may be sent by post, facsimile, or electronic mail to the address indicated in the *application form*, or any other address we notify you in writing.
- 55.2 Unless otherwise specified in this *agreement*, notices, certificates, consents, approvals, requests and other communications in connection with this *agreement* for you may be given to you by:
- delivering it personally;
 - leaving it at or sending it by post to the postal address nominated by you;
 - electronic communication to a device (*including* by way of SMS), electronic equipment or electronic address nominated by you;
 - displaying information on our *website* (after notifying you by electronic communication that the information is available for retrieval on the *website* and the nature of this information); or
 - in the case of a notification of a *margin call* under clause 14, telephoning the number you nominate (*including* leaving the *margin call* details on any voicemail or other recording device on that number).

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

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

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

- 55.3 Communications to us from a company must be signed by an *authorised representative* or a director.
- 55.4 For the purposes of this *agreement* a communication is taken to be given:
- in the case of a communication given personally – on the date it bears or the date it is received by the addressee, whichever is the later;
 - in the case of a communication sent by post – on the date it bears or the date when it would have been delivered in the ordinary course of post, whichever is the later;
 - in the case of a transmission sent by electronic means the date that it is sent unless the sender's machine received a report that indicates there was a failure in delivering the communication; or
 - in the case of anything we publish in the metropolitan daily press, or on a *website*, on the date of publication.
- 55.5 Where there is more than one of you, each of you irrevocably authorises and directs us and the *investment trustee* to act on *instructions* or accept notices from any of you and may assume without further enquiry that each of you has authorised and agreed to such *instruction* or notice.

- 55.6 We will send you statements of *account* for your *facility* every three months. Unless prevented from doing so by law or under the Code of Banking Practice, we may:
- choose to vary the frequency of the statements we provide to you; or
 - vary the means by which we make statements available to you.

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

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

56 General indemnities, releases and disclaimers

- 56.1 We will only disclose information that we have about you, the *secured property*, the *facility* and this *agreement*:
- to the extent specifically required by law;
 - for the purposes of this *agreement* (*including* disclosing information in connection with any query or claim);
 - to the extent we decide, where disclosure to third parties without your consent is permitted by laws relating to privacy;
 - with your consent.

You consent to us giving, from time to time, to:

- any of our related entities;
- a *guarantor*;
- where this is a *joint facility*, to any *client*;
- an *authorised representative* or *authorised broker*; or
- the *investment trustee*,

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

- 56.2 You release us, our directors and employees from any and all liability, costs, losses and expenses (*including* indirect and consequential losses) arising from this *agreement* (except to the extent, and only to the extent, arising from our gross negligence or fraud).
- 56.3 You acknowledge that we are not responsible for any missed market opportunities or any loss or losses you may suffer or incur as a consequence of a missed market opportunity caused by us taking any action in accordance with this *agreement*.
- 56.4 You acknowledge that there may be a delay between the time you give *instructions* and when they are effected. In particular (but without limitation), there will be a delay

between when we accept funds from you or advance a *loan* to you and when those funds are used to acquire *investments*. We are not in any way liable to you, and you release us, our directors and employees from, any liability for any movement in the *value* or price of any *investment* between:

- (a) on the one hand, the date you give *instructions* to effect a transaction, or the date we receive funds, or the date we advance a *loan*; and
- (b) on the other hand, the date the instructed transaction is effected or the date the relevant investment is acquired.

- 56.5 If an error is made by us in relation to the recording, effecting or processing of any transaction in connection with this *agreement*, we will not in any circumstances be liable, except to the extent caused by our fraud or gross negligence, for, and you expressly release us from any liability for, any tax consequences suffered by you, and any indirect or consequential damages or losses you may incur.
- 56.6 We are not responsible for any decision you make to obtain the *facility*, to enter into any arrangement incidental to the *facility*, to purchase *investments* in connection with the *facility* or the performance of any *investments*.
- 56.7 The fact that we have included an investment on our list of *approved investments* is not a recommendation of that investment or a representation relating to the past or future performance of it.
- 56.8 Where our officers or agents are acting on our behalf, they do not have our authority to recommend the purchase or sale of, or make a prediction or offer an opinion in relation to *investments*.
- 56.9 All indemnities in this *agreement* are continuing indemnities and they survive termination of this *agreement*.

57 Personal Property Securities Act

PPSA further steps

- 57.1 If we determine that a *transaction document* (or a transaction in connection with it) is or contains a security interest for the purposes of the *PPSA*, the *investment trustee* and you agree to do anything (such as obtaining consents, signing and producing *documents*, getting *documents* completed and signed and supplying information) which we ask and consider necessary for the purposes of:
- (a) ensuring that the security interest is enforceable, perfected and otherwise effective;
 - (b) enabling us or the *investment trustee* to apply for any registration, or give any notification, in connection with the security interest so that the security interest has the priority required by us or by the *investment trustee*; or
 - (c) enabling us or the *investment trustee* to exercise rights in connection with the security interest.

Exclusion of PPSA provisions

- 57.2 If a *transaction document* (or a transaction in connection with it) is or contains a security interest for the purposes of the *PPSA*, each party agrees that to the extent the law permits them to be excluded:
- (a) sections 142 and 143 of the *PPSA* are excluded and the relevant secured party need not comply with the following provisions of the *PPSA*: sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4) and any other provision of the *PPSA* notified to the grantor by the relevant secured party after the date of this *agreement*; and
 - (b) neither the *investment trustee* nor we need give any notice required under any provision of the *PPSA* (except section 135).

This clause applies despite any other clause in a *transaction document*.

58 Interpretation

- 58.1 In this *agreement* unless the contrary intention appears:
- (a) a reference to this *agreement* or another instrument includes any variation or replacement of any of them, except to the extent prohibited by a *transaction document*;
 - (b) a reference to a statute, ordinance, code or other law, or business rules, includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
 - (c) the singular includes the plural and vice versa;
 - (d) a gender includes all genders;
 - (e) the word 'person' includes a firm, body corporate, an unincorporated association or an authority;
 - (f) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes and assigns;
 - (g) a reference to a party includes the party's successors and permitted substitutes or assigns;
 - (h) a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually;
 - (i) a requirement for us to give you a notice or any other information in writing may be done by means of an electronic communication or displaying information at our *website*;
 - (j) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
 - (k) a reference to writing includes a facsimile transmission and any means of reproducing words in a tangible and permanently visible form;
 - (l) a reference to conduct includes an omission, statement or undertaking, whether or not in writing;
 - (m) a reference to the Corporations Act means the *Corporations Act 2001* (Cth);

- (n) a word or phrase defined in the Corporations Act has the same meaning when used in this *agreement* unless the context requires otherwise or unless otherwise defined in this *agreement*;
 - (o) 'for example' and cognate expressions indicate what is included without limiting what may be included;
 - (p) anything to be done on a day that is not a *business day* may, at our discretion, be done on either the immediately preceding *business day* or the following *business day*;
 - (q) references to a date or time are to dates and times in Melbourne; and
 - (r) our obligations and the obligations of the *investment trustee* under this *agreement* are several only and not joint.
- 58.2 Unless the contrary intention appears, in a transaction document, where the following terms are used in the context of the *PPSA*, they have the meanings they have in the *PPSA*: account, perfect, verification statement.
- 58.3 Headings are inserted for convenience and do not affect the interpretation of this *agreement*.
- 58.4 This *agreement* is governed by the law in force in Victoria and you and we submit to the jurisdiction of courts (including courts of appeal) of that place.

59 Payments and effective date

- 59.1 If a day on which a payment must be made is not a *business day*, then the payment must be made no later than the next *business day*.
- 59.2 We will use and apply any payment or moneys we receive to pay fees, charges, interest and the unpaid balance of your *loan* or *loans* in any order we deem appropriate unless we have expressly agreed with you otherwise in relation to any particular payment.
- 59.3 For the purposes of payments under this *agreement*, a day ends at 4.00 pm.
- 59.4 Payments made by you under this *agreement* must be made without counterclaim or set off.
- 59.5 We may assign any date we reasonably consider appropriate to any payment you make (but in the case of a debit, that date must not be earlier than the date on which the relevant transaction occurred).

60 Giving and receiving instructions

- 60.1 We may act on the instructions of any person you notify to us as authorised to give us instructions (including your *authorised broker* or *authorised representative*) until you give us written notice not to do so. If you are a company, we may also act on the instructions of any one or more of your directors. You must notify us of any change in your directors.

- 60.2 We are authorised to act on any instructions which appear to have been properly created or communicated to us by you, your *authorised representative* or *authorised broker*, and we will not be liable to you for effecting those instructions. We are under no duty to enquire as to whether instructions are issued by you or with your authority if they reasonably appear to be issued with such authority. We will not be liable to you for instructions that we act upon which are a result of forgery, fraud or error unless we have acted fraudulently or with gross negligence.
- 60.3 We will not be liable to you for failing to act on any instructions which we reasonably consider to be communicated to us fraudulently, mistakenly, without authority or containing material omissions or errors.
- 60.4 If this is a *joint facility*, each *client* separately has full authority to deal with and instruct us in connection with the *facility* and this *agreement* without the other or others, unless you advise us otherwise (in writing signed by each *client* and posted or faxed to us). We may deal with, and may accept and act upon instructions from, any one of the *clients* without having to make enquiry of any others of them. If we receive conflicting instructions from two or more of the *clients*, or we are notified of a dispute between any of the *clients*, we are entitled not to comply with any of those instructions until the matter is clarified to our satisfaction, and we may require each of you to sign an authority with respect to the *facility* and this *agreement*.

61 Commission

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

62 Recovery of GST

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

63 Amendments

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

Unless otherwise specified in this *agreement*, we will notify you of that amendment in writing or by newspaper advertisement, no later than the day the amendment takes effect, but the amendment is effective on its terms even if we do not.

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

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

This clause 63 does not apply where clause 43 applies.

64 Assignment and novation

- 64.1 The rights and obligations of the *client* are personal and may not be assigned, transferred, novated or delegated by the *client* without our prior written consent.
- 64.2 We may assign, novate, transfer or otherwise deal with any or all of our rights and/or obligations under the *agreement* in whole or in part on one or more occasions, to one or more persons. Any person to whom our rights and/or obligations are assigned, novated or otherwise transferred (*including* a securitisation vehicle) will have to the extent of the assignment, novation or transfer, the same rights and/or obligations that we do under the *agreement* and may exercise any such right or perform any such obligation as if that person had been named in the *agreement* in place of us. You agree that we may disclose any information or documents we consider necessary to help us exercise this right.
- 64.3 While there is an amount outstanding, you irrevocably authorise each attorney appointed in the power of attorney contained in the *application form* to execute on your behalf any document necessary to give effect to an assignment, novation, transfer or other dealing with our rights and/or obligations in accordance with clause 64.2.
- 64.4 We will give you notice of any exercise of our rights under clauses 64.2 and 64.3 as soon as is practicable.

65 Termination

- 65.1 We may at any time give you a notice of no less than 5 *business days* to terminate the *agreement*.
- 65.2 You may at any time give us notice of no less than 5 *business days* to terminate the *agreement*.
- 65.3 Termination under this clause 65 will be effective upon expiry of the notice period referred to in clauses 65.1 and 65.2.
- 65.4 Notwithstanding clause 65.3, the *agreement* will only terminate when:
- (a) the *aggregate secured liabilities* have been fully repaid in accordance with the *agreement*; and
 - (b) we have fully released the mortgage you granted to us on the mortgage terms contained in Part 3 of the *agreement*.

66 General

Obligation to provide information

66.1 You agree to provide information reasonably requested by us or by the *investment trustee*.

Other documents

66.2 A document does not become part of this *agreement* by reason only of that document referring to this *agreement* or vice versa, or any electronic link between them.

Serving documents

66.3 Without preventing any other method of service, any document in a court action may be served on a party by being delivered to or left at that party's address for service of notices under clause 55.

Counterparts

66.4 This *agreement* may consist of a number of copies, each signed by one or more parties to the *agreement*. If so, the signed copies are treated as making up the one document.

Time is of the essence

66.5 Time is of the essence in respect of your obligation to pay money.

Supervening legislation

66.6 Subject to clause 66.13, any present or future legislation which operates to vary your obligations in connection with this *agreement* with the result that any of our or the *investment trustee's* rights, powers or remedies are adversely affected (*including* by way of delay or postponement) is excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.

Inconsistent law

66.7 To the extent permitted by law, this *agreement* prevails to the extent it is inconsistent with any law.

Conflict of interest

66.8 The *investment trustee's* and our rights and remedies under this *agreement* may be exercised even if this involves a conflict of duty or the *investment trustee* or we have a personal interest in their exercise.

Prompt performance

66.9 Subject to clause 66.5:

- (a) if this *agreement* specifies when you agree to perform an obligation, you agree to perform it by the time specified; and
- (b) you agree to perform all other obligations promptly.

Waiver

66.10 No failure to exercise and no delay in exercising any power, right, remedy or privilege operates as a waiver. Nor does any single or partial exercise of any power, right, remedy or privilege preclude any other or further exercise of that power, right, remedy or privilege or any other power, right, remedy or privilege. The powers in this *agreement* are in addition to and do not exclude or limit any right, power or remedy provided by law.

Severability

66.11 Subject to clause 66.13, if the whole or any part of a provision of this *agreement* is void, unenforceable or illegal in a jurisdiction, or would result in us being in breach of any industry code to which we have agreed to be bound, it is severed for that jurisdiction. The remainder of this *agreement* has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of the document or is contrary to public policy.

Governing Law

66.12 This *agreement* is governed by the laws applying in Victoria. Each of us, the *investment trustee* and you irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria.

Saving provision

66.13 If a provision of this *agreement*, or an exercise of a right under this *agreement*, would otherwise be invalid in part or in whole because of the operation of the *SIS Act* or cause a *loan* not to comply with the *SIS Act*, then to the extent to which it causes such invalidity or non-compliance, that provision or exercise of a right is of no effect. This clause applies despite any other provision of any *transaction document*.

67 Meaning of words

account means the *account* in your name as trustee of a *regulated superannuation fund* held at *your financial institution* from which we are authorised to arrange for funds to be debited.

acquirable asset has the meaning given in section 67A of the *SIS Act*.

acquirable asset collection means a collection of *acquirable assets* having the same market *value* and being identical to each other.

aggregate secured liabilities means the sum of all *secured liabilities* relating to each *loan*.

agreement means Part 1 (Loan Terms), Part 2 (Investment Trust Terms), Part 3 (Mortgage Terms), Part 4 (Direct Debit Request Service Agreement), Part 5 (General Terms) and Part 6 (Your Personal Information and Privacy).

application form means the application form for the NAB Super Lever Facility which is submitted to us by the *client*.

approved investments means *approved stocks* and *approved managed fund investments* and which in respect of a *loan* is an *acquirable asset* or an *acquirable asset collection*. The current list of *approved stocks* and *approved managed fund investments* at any time will be available from us, and we will endeavour to keep that list published on the *website*.

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

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

ASTC means ASX Settlement Pty Limited (ABN 49 008 504 532).

ASX means Australian Securities Exchange (ABN 98 008 624 691) or the securities exchange operated by it, as the context requires.

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

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

bankrupt has the meaning has the meaning given to 'insolvent under administration' in the Corporations Act.

base LVR in respect of a *loan*, means the percentage calculated as follows:

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

buffer in respect of a *loan*, means 15% of the aggregate value of the *investments*, except any credit balance held in a *guarantor's cash management account*, forming part of the *secured property*.

business day means any day in which banks and each *exchange* are open for business in Melbourne.

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

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

Chi-X means Chi-X Australia Pty Limited (ABN 47 129 584 667) or the securities exchange operated by it, as the context requires.

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

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

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

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

current LVR in respect of a *loan* and at any time means the percentage calculated as follows:

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

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

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

default event means any of the events set out in clause 11.3.

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

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

direct debit request service agreement means the terms of the *agreement* set out in Part 5 of this *agreement*.

disclosure document means the product disclosure statement, offering memorandum or other analogous document identified in the *product brochure* relating to the offer of the relevant *approved investment*.

disposal proceeds means, in respect of a *financed investment* or a *distribution*, the proceeds of *disposal* of that *financed investment* or *distribution*.

dispose means to sell, *transfer*, assign, declare trusts over, redeem, convert, surrender, buy back, cancel or otherwise alienate, whether for valuable consideration or not. 'disposed and disposal' have a corresponding meaning.

distribution means all dividends, interest, and other distributions, whether in cash, shares, units, securities or other property or rights to property, whether of the *issuer* or another entity, and whether by way of rights, in connection with a takeover or scheme of arrangement in respect of the *issuer*, a redemption, buy-back or return of capital or otherwise, *including* without limitation any bonus shares or units, rights issues, options, warrants, notes, convertible instruments, securities or other instruments, whether of the *issuer* or another entity, paid, issued or delivered in respect of any *financed investment*.

documents means any documents evidencing title to the *trust property*.

economic cost means the amount calculated in accordance with clause 10.10 that you must pay us to cover our reasonable estimate of costs if you terminate a fixed interest rate *loan* early.

enforcement expenses means any:

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

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

exchange means each of ASX and Chi-X.

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

facility limit means the aggregate amount that we are prepared to lend you under this *agreement*, which we notify to you. The *facility limit* is an overall limit in respect of the *facility* and not in respect of individual *loans* under the *facility*.

financed investment means each of:

- (a) an *approved investment* the acquisition of which has been financed or re-financed by a *loan* to you under this *agreement* (an '**original financed investment**'); and
- (b) a financial product (as defined in the Corporations Act) which has replaced (*including* as a result of a previous application of this paragraph) the *original financed investment* in circumstances permitted by the *SIS Act*.

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

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

guarantee means the guarantee and indemnity granted by a person as security for the performance of your obligations under the *facility*.

guarantor means each person who *guarantees* your obligations under the *facility* and, if there is more than one of them, means each of them separately and every two or more of them jointly. It includes lawful assigns and successors.

guarantor's attorney means the attorney appointed by the guarantor in connection with the *guarantee* and the *agreement*.

guarantor's cash management account means an account opened with us in the name of a *guarantor* forming part of the *guarantor's secured property*.

guarantor's secured property means property provided by a *guarantor* under the *guarantee*, *including*:

- (a) any *investments* held in a *guarantor's* name, or held on behalf of a *guarantor*;
- (b) any *investments* which are registered in a *participant sponsored holding* maintained with NMS;
- (c) any *investments* for which we hold the share certificate, unit certificate, other scrip or indicia of title; or
- (d) any *investments* in relation to which we are recorded in a *Fund Register* as the mortgagee; or
- (e) any *investments* which have been accepted by us as forming part of the *guarantor's secured property* by notice in writing to you;
- (f) *new rights*;
- (g) any credit balance in a *guarantor's cash management account*; and
- (h) and any other property which we agree to include in the *guarantor's secured property*.

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

income means all *distributions* which may be received or other income derived in respect of *trust property* in an income year which would be assessable income for the purposes of the Tax Act of that income year.

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

instruction means an instruction from you or on your behalf in accordance with this *agreement*.

investment trust means the trust declared in your favour by the *investment trustee* over, among other things, the *financed investment* purchased with the proceeds of a *loan*.

investment trust terms means the terms set out in Part 2 and Part 5.

investment trustee means NMS Nominees Pty Limited (ABN 62 088 233 792) in its capacity as trustee of the *investment trust* or its replacement, and references to the *investment trustee* include any nominee described in clause 23.1(a) as the context requires.

investments means:

- (a) *stocks* or *managed fund investments* that form part of the *financed investment*; and
- (b) *stocks*, *managed fund investments* and the credit balance in any *cash managed account* that forms part of the *guarantor's secured property*.

issuer in respect of an *approved investment* or a *financed investment*, means the issuer (as defined under Chapter 7 of the Corporations Act) of the *approved investment* or *financed investment*.

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

lien means the equitable lien upon the *financed investment* in respect of liabilities, costs and expenses properly incurred by the *investment trustee* in the course of carrying out its duties as a trustee of the *separate trust* in respect of that *financed investment*.

loan means each fixed or variable interest rate loan forming part of the *facility* that we make available to you.

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

loan contribution means the cash or security over *approved investments* to be provided in accordance with clause 2.6.

loan request, in respect of a *loan*, means a request setting out:

- (a) the amount that you require; and
- (b) the nominated *approved investment* that you wish to purchase.

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

margin call means a margin call made under clause 14 of this *agreement*.

margin call deadline has the meaning given in clause 14.7.

margin call LVR in respect of a *loan*, means the percentage calculated as follows:

base LVR + buffer

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

net assets means, in respect of a *regulated superannuation fund* at any time, the amount by which its assets exceed its liabilities at that time as determined in accordance with applicable accounting standards.

new rights means:

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

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

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

PDS means the Product Disclosure Statement for the NAB Super Lever Facility.

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

principal means, in respect of a *loan*, the total of all amounts drawn down under it.

product brochure means the brochure describing the *approved investments* which may be purchased using the proceeds of a *loan*.

refinancing means, on one or more occasions, a borrowing to which clause 4.1(a) applied when it was first made.

regulated superannuation fund has the meaning given to that term in the *SIS Act*.

required loan contribution means an amount equal to the difference between the *security value* of the *approved investment* that is to be the *financed investment* and the acquisition cost (including any brokerage and other fees) of that *approved investment*.

secured liabilities means:

- (a) in respect of a *loan*, its *principal* plus any accrued but unpaid interest on it and any costs, expenses and indemnities relating to that *loan* which are payable by you under this *agreement*; and
- (b) in respect of a *unitised borrowing* and an *acquirable asset*, an amount equal to:
 - (i) the *secured liabilities* under the *loan* of which the *unitised borrowing* forms part; *divided by*
 - (ii) the number of *acquirable assets* which comprise the *financed investment* in respect of that *loan*.

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

secured property means, in respect of a *loan*,:

- (a) the *financed investment*; and
- (b) the *guarantor's secured property*.

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

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

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

security value means, at any relevant time:

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

separate trust means each trust established under the declaration of trust.

settlement date means:

- (a) for *stock*, the date on which the *stock* is delivered to the *investment trustee's* Holder Identification Number on *CHESS*; and
- (b) for *managed fund investments*, the date on which the *investment trustee* receives confirmation from the relevant fund manager that it has been entered in the records of the fund manager as the owner of those investments.

settlement rules means the *settlement rules* of *ASTC*.

SIS Act means the Superannuation Industry (Supervision) Act 1993 and any regulations made under it.

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

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

tax includes any tax, levy, impost, deduction, charge, rate, duty, compulsory loan or withholding which is levied or imposed by a government or government agency, and any related interest, penalty, charge, fee or other amount, excluding stamp duty payable on this *agreement*.

Tax Act means the Income Tax Assessment Act 1936 (Cth) (the '**1936 Act**') or the Income Tax Assessment Act 1997 (Cth) (the '**1997 Act**') or both the 1936 Act and the 1997 Act, as appropriate.

transaction documents means:

- (a) the *agreement*;
- (b) the *guarantee*; and
- (c) any document which we and you agree is a 'transaction document'.

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

trust deed means the deed entitled "NAB Super Lever Trust Deed" between us and the *investment trustee*.

trust property means, in relation to a *loan*:

- (a) the *financed investment* in respect of that loan;
- (b) any *distribution* in relation to the *financed investment*; and
- (c) the *disposal proceeds* in respect of the *financed investment* and in respect of any *distribution* in respect of the *financed investment*.

unitised borrowing has the meaning given to that term in clause 3. **value** of:

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

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

we or **us** means National Australia Bank Limited (ABN 12 004 044 937 AFSL 230686), its lawful assigns and successors.

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

you means the *client* unless otherwise stated.

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

Part 6

Privacy Notification

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

How we collect information from you

We'll collect your personal information from you directly whenever we can, for example when you fill out a form with us, when you've given us a call, used our websites (including via cookies) or mobile applications or dropped into one of our branches. (See our Cookies Policy www.nab.com.au/cookies for more information). Sometimes we collect your personal information from third parties. You may not be aware that we have done so. If we collect information that can be used to identify you, we will take reasonable steps to notify you of that collection.

How we collect your information from other sources

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

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

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

When the law authorises or requires us to collect information

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

NAB believes that by applying for this account, you're not a US citizen or tax resident. If you are a US citizen or tax resident, you'll

need to advise NAB by calling 1300 550 316 between 9am and 5pm (AEST/ADST) Monday to Friday.

How we use your information

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

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

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

How we use your credit information

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

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

- assess whether to securitise loans and to arrange the securitising of loans.

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

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

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

Sharing your information

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

Sharing with the Group

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

Sharing with MLC Limited

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

- your insurance premium is calculated correctly (balance information may be required to be shared so your insurance can be calculated) and where authorised, make payments on your behalf to MLC Limited;
- insurance claims and benefits are paid;
- insurance products are viewable to service customer contact (this includes showing your insurance products in NAB Internet Banking if you have a NAB Internet Banking ID);
- NAB and MLC Limited can both tell you about our respective marketing and products offers (including ensuring customers who hold MLC Limited products are excluded from NAB Group campaigns marketing MLC Limited products);
- a smooth customer experience when you contact us, including:
- we can transfer you to the right service centre;
- where appropriate, NAB and MLC Limited can cooperate in order to handle your complaint;
- being able to provide assistance should you wish to speak about your MLC Limited products held (for example, where possible, we may assist by updating contact details on request).

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

Sharing at your request

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

Sharing with Credit Reporting bodies

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

Some of the information that we give to credit reporting bodies may reflect adversely on your credit worthiness, for example, if you fail to make payments or if you commit a serious credit infringement (like obtaining credit by fraud). That sort of information may affect your ability to get credit from other lenders. With your consent, personal information may also be shared with credit reporting bodies or other approved third parties who are authorised to assess the validity of identification information. These checks help us verify whether your identity is real and are not a credit check.

Sharing with third parties

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

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

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

Sharing outside of Australia

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

We may store your information in cloud or other types of networked or electronic storage. As electronic or networked

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

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

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

Accessing your information

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

Correcting your information

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

Complaints

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

Contact us

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

You can contact us by:

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

Contact details for credit reporting bodies

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

Dun & Bradstreet Australia www.checkyourcredit.com.au

- Dun & Bradstreet's credit reporting policy is set out at www.dnb.com.au/Header/About_Us/Legal/Privacy_policy/index.aspx

Phone: 1300 734 806 **Mail:** Public Access Centre Dun & Bradstreet Australia
PO Box 7405
St Kilda Rd VIC 3004

Experian Australia www.experian.com.au

- Experian's credit reporting policy is set out at www.experian.com.au/legal/credit-services-privacy.html

Phone: 1300 783 684 **Mail:** Consumer Support Experian Australia
PO Box 1969
North Sydney NSW 2060

Veda Advantage Business Information Services Ltd

www.mycreditfile.com.au

- Veda Advantage's credit reporting policy is set out at www.veda.com.au/privacy

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

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

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

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

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

Want more information?

Just call

1300 135 145

8.30am – 5.30pm EST, Monday to Friday

Email equity.lending@nab.com.au

or visit us at nab.com.au/equitylending