



NAB Equity Builder

Facility Terms

This document contains important information regarding the terms and conditions which will apply to your NAB Equity Builder. You should read this document carefully and retain it for future reference.

Contents

Part 1 Loan Terms	3	Part 5 Direct Debit Request Service Agreement	19
1 Overview of <i>facility</i>	3	33 Debiting your <i>account</i>	19
2 Loan <i>facility</i>	3	34 Changes by us to direct debits	19
3 Purchasing <i>investments</i> with <i>loan</i> funds	5	35 Changes by you to direct debits	19
4 Calculation of interest	5	36 Your obligations regarding direct debits	20
6 Fees and charges	6	37 Disputes about direct debits	20
8 The Loan Account	8	38 Accounts for direct debits	20
10 Giving <i>instructions</i> to <i>Nominees</i>	10	39 Confidentiality around direct debits	20
11 Representations, warranties and covenants	10	40 Notices regarding direct debits	20
12 Power of attorney	11	Part 6 General Terms	21
Part 2 Mortgage Terms	12	41 Attribution	21
13 Agreement to mortgage	12	42 Banking Code of Practice	21
14 Power of sale	12	43 Declarations by you	21
15 <i>Investments</i>	12	44 Our commitment to be fair when we are liable	21
16 Obligations in relation to the <i>secured property</i>	12	44A Unacceptable conduct	22
17 Restrictions on dealing with the <i>secured property</i>	13	45 <i>Authorised representatives, and authorised brokers</i>	22
18 Preservation of our rights	14	46 Notices and other communications	22
Part 3 CHESS Sponsorship Terms	14	47 General indemnities, releases and disclaimers	23
19 Appointment of NMS as your sponsor	15	48 Personal Property Securities Act	24
20 Authority of NMS	15	49 Interpretation	24
21 Your rights	15	50 Payments and effective date	25
22 Your responsibilities and acknowledgements	16	51 Giving and receiving instructions	25
23 Death or bankruptcy	16	52 Commission	26
24 Suspension of NMS	17	53 Recovery of GST	26
25 Change of sponsor	17	54 Amendments	26
26 Indemnity	17	55 Assignment and novation	26
27 Termination	17	56 Termination	27
28 Variation	17	57 General	27
29 General rights and obligations	17	58 Meaning of words	28
Part 4 Nominee Terms	18	Part 7 Privacy Notification	32
30 Appointment (and replacement) of nominee	18		
31 Indemnity to Nominee	18		
32 Authority to mortgage and dispose	19		

Part 1 Loan Terms

1 Overview of facility

- 1.1 Under the *facility*, we may make variable interest rate *loans* to you on the basis that you:
- direct us to pay the proceeds of each such *loan* to an account held in your name or that of *Nominees* such that you may purchase the *approved investments*; and
 - grant us a mortgage over your interest in the *approved investments* acquired with each *loan* (and other *secured property*).
- 1.2 NMS has agreed to sponsor your investments in the *approved investments* on the CHES Sponsorship terms set out in Part 3.
- 1.3 Alternatively, *Nominees* has agreed to provide custodial services to you and to hold the *approved investments* acquired with each *loan* for you on the terms of Part 4.
- 1.4 When all amounts which are or may be payable under the relevant *loan* (including all *secured liabilities*), have been paid in full, then (if applicable) you will be able to instruct that *Nominees* transfer legal title to the relevant *financed investments*, or any *distributions* relating to the *financed investments* which have not already been received by you, to or as directed by you.

2 Loan facility

Application for a facility and for loans

- 2.1 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*.
- 2.2 If your *application form* is accepted by us, you may then apply for *loans* by providing us with a *loan request*.
- 2.3 The *loan request* must set out:
- the value of *financed investment(s)* to be purchased
 - your requested *loan* amount;
 - your requested *loan term*;
 - the nominated *approved investments* to be acquired with the *loan*;
 - whether you request the *home loan method* or the *straight line method* for *loan* repayment (see clauses 7.2 to 7.5);
 - the amount and type of *loan contribution* you propose;
- 2.4 We are not required to accept a *loan request*. If we accept a *loan request*, we will provide you with the *transaction confirmation* for that *loan*.

- 2.5 Although you may have more than one *loan* under the *facility*, this *agreement* is a single credit contract covering each such *loan*.

Loan contribution

- 2.6 We may not accept a *loan request* until we have received the required *loan contribution* in one of the following ways:
- you pay us an amount that is equal to or exceeds the *required loan contribution* in cleared funds as we direct;
 - you or a *guarantor* provides us with security (in form and substance satisfactory to us) over *approved investments* where the value of such *approved investments* will equal or exceed the *required loan contribution*;
 - in a combination acceptable to us of the ways set-out in paragraphs (a) and (b) above provided that the aggregate of the amounts received and *value* of any security provided as collateral equals or exceeds the *required loan contribution*.

Loan acceptance

- 2.7 If you ask for either a new *loan*, a *reset* of an existing *loan* or an aggregation of your existing *loans* such that they become a single *loan facility*, and we agree to this request, we will make you the *loan* provided that:
- the advance of the *loan* does not result in the *secured liabilities* exceeding the *facility limit*; and
 - the *current LVR* in respect of that *loan* is less than the *base LVR* in respect of that *loan*.

We may advance the *loan* to you at the times and in the instalments which we choose at our discretion, including for the purposes of managing the acquisition of the *approved investments* nominated by you.

Your acknowledgements

- 2.8 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:
- the success or failure of any *financed investment*;
 - the level of return from or loss of money invested in any *financed investment*; or
 - any illegality (or alleged or potential illegality) in connection with a *financed investment* or the disclosure document for a *financed investment*.

Facility limit

- 2.9 We may acting reasonably review the *facility limit* from time to time including for any reason, including as a result of a request from you.
- 2.10 You must provide us with any information that we reasonably require at the time of any review.
- 2.11 As a consequence of a review we may decrease the *facility limit* or refuse your request for a *facility limit* increase if we consider it appropriate having regard to

our legitimate business interests, lending criteria and prudential or regulatory obligations (and even if to do so could result in a *default event*).

2.12 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*.

However, if you are an individual, a small business referred to in the Banking Code of Practice, or this is a Small Business Contract we will give you a reasonable period (consistent with any notice period we would have to give you under clause 56.1 of this agreement for termination) but this does not limit our rights under clause 2.13A.

2.13 If you do not comply with your obligations under clause 2.12 then, without limiting our rights under the mortgage terms in part 2 or under any *guarantee*, you will be required to take all steps reasonably necessary to ensure that the *secured liabilities* are less than the *facility limit*.

2.13A Without reducing any other rights we might have, there are some other instances where we may reduce or cancel your *facility limit*, or block or suspend your use of the *facility*, without your permission, including:

- (a) if you have defaulted on the agreement or any other *agreement* you have with us;
- (b) where we have good reason to believe that your existing *facility limit* is more than you can manage without financial difficulty;
- (c) we are notified that you are deceased (however if you are a joint account holder, please contact us if you need to access the *facility*);
- (d) you are subject to any legal incapacity;
- (e) your *guarantor*, if any, limits the amount they guarantee (meaning you will not be able to draw above that limit);
- (f) action is reasonably required to prevent an anticipated breach of the law of Australia or another country;
- (g) to protect you, or us, or any other person from potentially fraudulent activity or a scam, or other losses; or
- (h) it is reasonable for us to do so because of things we might consider listed under clause 44.1A.

2.13B It may not be possible for us to detect and prevent all transactions referred to in (f) and (g) above. We may take any action or actions under this section separately or concurrently and for as long as is reasonably required to protect our legitimate business interests and to manage any risk. Subject to clause 44.4, we will incur no liability to you where we do so.

2.13C Where we take action under clause 2.13A, we may not give you advance notice (for example if it is reasonably necessary for us to act quickly to manage a risk). If appropriate, we will give you a general reason for doing so. If we do not give you advance notice, and where it is

reasonable to do so, we will advise you within a reasonable time of exercising our discretion under clause 2.13A.

Conditions to making an advance

2.14 We are not required to make you an advance if, having regard to legitimate business interests, or prudential or regulatory reasons:

- (a) we choose not to accept your *loan* request;
- (b) a *default event* has occurred in relation to you or a *guarantor*;
- (c) the advance would cause the *secured liabilities* to exceed the *facility limit*;
- (d) immediately after the advance was made, the *target loan balance* for the relevant *loan* would be greater than the portfolio *security value* of the *secured property* in respect of that *loan*;
- (e) we have not received the *loan contribution* in accordance with clause 2.6;
- (f) you request an advance of less than a minimum amount we determine (which may change from time to time) and will be notified to you;
- (g) 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*);
- (h) we have asked you to repay the *secured liabilities* under clause 7.13 for any *loan*;
- (i) you are an individual and we reasonably believe that this paragraph applies to that advance, and we are not satisfied that the advance will not be used for a *Code Purpose*; or
- (j) we are not reasonably satisfied that the representations and warranties in clause 11 are correct and not misleading at the date the advance is to be provided.

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

- (a) your *facility limit* is increased to the amount of the *secured liabilities* after we have made the advance; and
- (b) we will review your *facility limit* in accordance with clauses 2.9 to 2.13 and as a consequence of such review we may decrease your *facility limit* which would require you to take steps to ensure that the *secured liabilities* are less than the decreased *facility limit*.

Loan may be more or less than the amount you request

- 2.16 If the purchase price of the *approved investments* 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 we may acting reasonably increase or decrease the *loan* amount as necessary to pay all such amounts in respect of the purchase of the *approved investments*.
- 2.17 We will use our reasonable endeavours to arrange the execution of all requests for purchases of your selected *approved investments*. Neither we nor Nominees (if applicable) undertake to make any purchase at any particular time or for any particular price, and neither we nor *Nominees* (if applicable) accept liability or responsibility for the purchase price of, or losses or damages incurred as a result of a delay in processing a request for, purchase of your selected *approved investments*, except to the extent of our *Nominees'* fraud, negligence or misconduct.

3 Purchasing investments with loan funds

- 3.1 A loan may be used only:
- (a) to acquire *approved investments* in accordance with the *transaction documents* (including in meeting expenses incurred in connection with the borrowing or acquisition); and
 - (b) for a *refinancing*.
- 3.2 A loan may be used to acquire more than one *approved investment*. However, you may only give one *approved investment* purchase instruction for a *loan*.
- 3.3 If we provide a *loan* to you, you irrevocably authorise and direct:
- (a) where the *loan* is to be used to acquire *approved investments*:
us to use the *loan* amount and, where the *loan contribution* is a contribution of cash by you, your *loan contribution* to purchase (or to provide to *Nominees* to purchase) the nominated *approved investments*; 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 *Nominees* to repay the *loan* that is being refinanced; and
 - (ii) *Nominees* to apply the proceeds of the *loan* and your *loan contribution* (if applicable) to repay the *loan* that is being refinanced.
- 3.4 You must provide us with any documents or information that we reasonably require as evidence of your intention to acquire *approved investments*. (For example, a completed application form to acquire *managed fund investments*).

- 3.5 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 list of *approved investments* at any time, without having to give you prior notice. Having regard to our legitimate business interests, or prudential or regulatory obligations, we will give you notice that an *investment* has been removed from the list of *approved investments* as soon as practicable after the *investment* is removed.
- 3.6 All *investments* accepted as *loan* security, must be either held in your account with *NMS* as *sponsoring participant* or registered in the name of *Nominees*.
- 3.7 Having regard to our legitimate business interests, or prudential or regulatory obligations, we may change the *security ratio* used to calculate the *security value* of an *investment* at any time without prior notice to you (including by reducing the *security ratio* of an *investment* to zero) as we determine necessary having regard to a range of factors *including*:
- (a) changes or anticipated changes in the *value* of the *investment*; and
 - (b) our internal risk assessment policies.
- 3.8 We will not require you to take any action as a direct result of a reduction in the *security ratio* of an *investment* in respect of the *loan* but it may impact your right to redraw amounts in respect of the *loan* in accordance with clause 9.
- 3.9 We will give you notice of any change in the *security ratio* used to calculate the *security value* of an *investment* as soon as practicable after the change.

4 Calculation of interest

- 4.1 You agree to pay us interest for each day on the balance of each *loan* advanced to you at the applicable interest rate, calculated daily from (and *including*) the date the *loan* is advanced, and on the basis of a 365 day year. 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.
- 4.2 We will debit any interest on a *loan* to your *loan account*. You must make a repayment to the *loan account* for an amount that is not less than the amount of debited interest. You must make this payment by the due date for payment (see clause 5.4 for details of when interest is required to be paid under a variable loan). To facilitate payment of interest you must agree to a *direct debit* request for interest payments from a *nominated account* (or make other similar arrangements reasonably acceptable to us for paying your interest). If you do not make the interest payment under these arrangements then we may debit any other *account* that you have with us to make the payment.

- 4.3 If we:
- (a) do not receive payment under from the *nominated account* and are not reasonably able to debit any other *account* (including because there are insufficient funds) and you do not make alternative arrangement for payment by the due date then your failure to make a payment by the due date will be a *default event*; and
 - (b) Without limiting (a), if we debit your *loan account* and upon doing so the *secured liabilities* exceed the *facility limit* there will be a default event. You should monitor the balance of your *nominated account* to ensure that you have sufficient funds to meet your interest repayment obligations. You should monitor your *loan account* balance to that ensure that it does not exceed the *facility limit* and to avoid paying *default interest* under clause 4.4.
- 4.4 If the *secured liabilities* exceed the *facility limit*, we may charge you *default interest* on the amount by which the *secured liabilities* exceed the *facility limit*. You must also pay us *default interest* on any amount you fail to pay on the due date.
- 4.5 Information on current interest rates and charges is available from us on request. This information may also appear on our *website*.

5 Variable interest rate loans

- 5.1 All *loans* made by us under the *facility* will be variable interest rate *loans*.
- 5.2 We may change the interest rate for a *loan* at any time. The reasons why we may change the 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 interest rate.
- 5.3 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 7.1, 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

- 5.4 You must pay interest incurred on each *loan* monthly in arrears. Interest must be paid to us as we direct by one of the methods in clause 4.2, on the last *business day* of each month or on any other *business day* we reasonably decide and of which we give you notice, and on the day when that *loan* must be fully repaid.
- 5.5 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*.

Effect of debiting interest to loan account

- 5.6 Debiting an amount to a *loan account* may result 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 the *loan account*.

6 Fees and charges

- 6.1 You agree to pay all borrowing fees and costs, *including*:
- (a) all fees, charges payable in connection with this *agreement* and described in the *application form*; and
 - (b) any other amount owing to us in connection with this *agreement including* those that you must pay us, *NMS* and *Nominees* (if applicable).
- 6.2 We may require you to pay any reasonable *enforcement expenses* incurred in enforcing this *agreement* or a *security interest*.
- 6.3 You must pay or reimburse us for any charges relating to dishonoured, declined or rejected debits or payments.
- 6.4 We may debit any fees, costs or charges under clause 6.1, clause 6.2, clause 6.3 or clause 6.7 in respect of a loan to:
- (a) the *loan account* for that *loan*; or
 - (b) an *account* of yours 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 6.4.

- 6.5 If we do not debit the *loan account* or other *account* we have agreed, in accordance with clause 6.4, you must reimburse us, *NMS* and *Nominees* (if applicable) 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*.
- 6.6 Your liabilities under this clause 6 *include* stamp duty, registration and other fees and charges associated with *CHES*. 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.
- 6.7 You acknowledge that *NMS* and *Nominees* (if applicable) may charge us a fee in connection with this *agreement* and you agree to reimburse us for the amount of that fee. You agree that we may pay *NMS* and *Nominees* on your behalf any cost, fee, charge, or other amount that you owe *NMS* or *Nominees* in connection with this *agreement* and you agree to reimburse us for the amount of any such payments.
- 6.8 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 5; or

- (b) changes to government fees and charges.
- 6.9 For government charges, in accordance with law and industry codes we may give a shorter period of notice of a government charge if we give notice with reasonable promptness after we are notified by the government, by newspaper advertisement, in writing or electronically, and we need not give notice if the government publicises the change to fees and charges.

7 Repayments

Repayment at your election

7.1 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 either disposing of, or *asking us to instruct Nominees to dispose of*, the *financed investment* and to apply the proceeds of such disposal towards repayment of the *loan*.

If you repay early only part of a *loan*, your *monthly repayment* does not change unless we agree otherwise.

Scheduled Repayment

7.2 Scheduled *loan* repayments are calculated as follows:

- (a) principal and interest must be paid monthly (unless we have agreed to apply *principal suspension*) by paying the *monthly repayment* as set out in the *transaction confirmation*
- (b) if *principal suspension* applies during a month, no principal repayment is required for that month (but interest must still be paid under clause 5.4),

7.3 Loan repayments are determined by either the *home loan method* or the *straight line method*. You must indicate which method you wish to apply to the loan in the *loan request*.

7.4 Under the *straight line method*, the amount of your *monthly repayment* payable each month for the period up to, but not including, the last month of the *loan term* will be the sum of:

- (a) any unpaid interest charges which have accrued on the *loan* under clause 5 up to and including the day before the last *business day* of that month; and
- (b) a principal repayment in an amount approximately equal to the original loan advance divided by the number of months in the *loan term*.

The *monthly payment* for the last month of the *loan term* will be the sum of the amount required to satisfy all interest obligations under clause 5 and to fully amortize the *loan* by the last day of the *loan term*, and the last remaining principal repayment calculated in accordance with subclause (b).

7.5 Under the *home loan method*, the amount of your *monthly repayment* payable each month for the period up to, but not including, the last month of the *loan term*

will be equal monthly payments comprising principal and interest components. The *monthly payment* for the last month of the *loan term* will be calculated so as to satisfy all interest obligations under clause 5 and fully amortize the *loan* by the last day of the *loan term*.

7.6 We may:

- (a) change the amount of the *monthly repayment* for the *loan* in line with changes to the interest rate for that *loan*, changes to fees or charges, *principal suspension* starting and ceasing to apply under clause 7.10 or 7.11 or otherwise as necessary to ensure that the *loan* is repaid within the *loan term*;

- (a) on or about each anniversary of the *settlement date* for a *loan* (or the end of any longer period we choose), review the amount of any *monthly repayment* for that loan.

7.7 We will notify you in writing before making any change to a *monthly repayment* amount if you an individual, a small business referred to in the Banking Code of Practice, or this is a Small Business Contract or we are required by law or an industry code to give you this notice.

7.8 Repayments must be made in the following way:

- (a) Your first repayment for a *loan* is due as described in the *transaction confirmation*;

- (b) All following repayments for a *loan* are then due monthly on the last *business day* of each month or on any other *business day* we decide of and which we give you notice; and

- (c) payments that are due on a day that is not a *business day* may be made on the next *business day*.

7.9 We may debit any *monthly repayment*, or any principal or interest component of a *monthly repayment*, to any *account* nominated by you which is acceptable to us for which you have provided us with a *direct debit request*. If we are not reasonably able to debit your *loan account* or any other agreed *account* (including because there are insufficient funds) and you do not make alternative arrangement for payment by the due date then your failure to make a payment by the due date will be a *default event*. You should monitor the balance of your nominated account to ensure that you have sufficient funds to meet your monthly repayment obligations.

Principal suspension

7.10 If during the *loan term*, the *current LVR* in respect of a *loan* is less than 30, you may request that *principal suspension* apply to that *loan*. If we agree to your request, *principal suspension* will apply from the start of the following calendar month.

7.10A If you consider that at any time during the *loan term* you are experiencing hardship, you may request *principal suspension* if the *current LVR* in respect of a loan is equal to or greater than 30. If your request is approved, the *principal suspension* will commence from the start of the following calendar month and will apply for the period of time that is determined at our absolute discretion.

7.11 If at any time during the *loan term*, *principal suspension* applies to the *loan* and we determine that the *current LVR* in respect of the *loan* is 40 or higher, we may terminate the application of *principal suspension*. Where possible we will give you prior notice of your obligation to recommence principal repayments before the first scheduled *monthly repayment* for which a principle repayment is required.

7.12 If at any time during the *loan term*, *principal suspension* applies to the *loan* and we determine that since our last determination of the *current LVR* the *current LVR* in respect of the *loan* has risen from below 35 to 35 or higher, or has risen from below 40 to 40 or higher, we will promptly notify you of this. We will make *current LVR* determinations as we consider reasonably necessary. Failure to give notice under this clause does not affect our rights under clause 7.10 or otherwise in respect of the *loan*.

7.12A If at any time during the *loan term*, a *loan* with *principal suspension* is *reset*, you will be required to recommence making principal repayments on the loan. If you wish to retain the *principal suspension* in respect of the loan, you will need to submit a new request in accordance with either clause 7.10 or 7.10A.

Compulsory repayment

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

7.14 It is a *default event* if:

- (a) you or a *guarantor* fail to perform or observe any obligation under the *transaction documents* in a material respect, *including* an obligation to pay an amount on time;
- (b) you do not pay when due any principal, interest, fees, or other amounts due under clause 6;
- (c) the *secured liabilities* exceed the *facility limit*;
- (d) you or a *guarantor* become *insolvent*, or lose legal capacity or, in the case of a natural person, die.
- (e) any provision of any *transaction document* 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; or
- (h) any other event occurs which in our opinion may materially affect your or the *guarantor's* ability to meet your or their obligations under the *transaction documents*. If you are a small business referred to in the Banking Code of Practice, this subclause 7.14(h) does not apply to you

We may sell secured property to fund repayments

7.15 If you do not pay when due any principal, interest, fees or other amounts due under clause 6, then you will be taken to have requested your attorney appointed under clause 12 to take all steps reasonably necessary to *dispose* of any *secured property*, having regard to our legitimate business interests, or prudential or regulatory obligations and apply the net proceeds of *disposal* in paying those amounts due. This is without limitation to any of our other remedies in respect of the non-payment.

Joint facility

7.16 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.

7.17 If this is a *joint facility*, except to the extent any of you have a right conferred by the Banking Code of Practice and having regard to clause 44.1A, none of you can otherwise withdraw from, end or limit each *loan* under the *facility* except to the extent of our fraud, negligence or misconduct.

7.18 Your rights in respect of a *joint facility* as conferred by the Banking Code of Practice include the right to terminate your liability with respect to future advances or financial accommodation to be made under the *facility*, by giving us written notice. If you give us written notice to this effect, we may choose not to provide further advances under the *facility*.

8 The Loan Account

8.1 Each *loan* under the *facility* is made available to you through a *loan account* established by us. The *loan account* will remain open until the end of the *loan term* unless we receive your written instructions to close the *loan account* where it has a zero or credit balance and no money is payable to us in connection with the *facility*.

8.2 Unless otherwise agreed we will record in the *loan account* all *monthly repayments* payable in connection with the *loan account*, and all payments of those amounts.

8.3 Where the payment type applicable to a *loan* changes (for example, principal suspension starts or stops applying), any interest which accrues while the first payment type applies, but which is not *payable* or due to be debited until the second payment type begins to apply, will be *payable* and if relevant, debited, while the second payment type applies.

8.4 We may have regard to our legitimate business interests, or prudential or regulatory obligations debit amounts *payable* in connection with this *agreement* to any *account* we decide or to the *loan account*.

9 Redraw, security transfer, and switching

9.1 You have an automatic right to redraw amounts in respect of the *loan* subject to the conditions in clauses 9.2 to 9.4. Otherwise redraw is at our discretion. Any amount you redraw becomes part of the outstanding principal balance of the *loan*. You may view the available redraw amount through your online account.

9.2 If:

- (a) the *target loan balance* for a *loan* on a day is more than the amount of the *loan* on that day (excluding any uncleared funds which have been credited to the *loan account*); and
- (b) the *target loan balance* on that day is less than the portfolio security value of *secured property* in respect of that *loan*, then you may redraw on that day up to an amount determined by us to be the lower of:
 - (a) the difference between the *target loan balance* and the current *loan balance*; or
 - (b) an amount we determine; or
- (c) the portfolio *security value* of *secured property* is less than the *target loan balance* in respect of that *loan*, then you may redraw on that day up to an amount determined by us to be the lower of:
 - (a) the difference between the portfolio *security value* and the current *loan balance*; or
 - (b) an amount we determine, having regard to our legitimate business interests, or prudential or regulatory obligations.

9.3 However, you may redraw only if:

- (a) this option has not been cancelled;
- (b) if this is a *joint facility*, none of you have cancelled your authority for us to exercise the redraw option on instructions of any one of you;
- (c) the redraw amount is at least a minimum amount which we determine from time to time;
- (d) you are not in default of this *agreement* when you request the redraw;
- (e) your *loan request* for a redraw has been received by us in a form and in a manner, satisfactory to us acting reasonably;
- (f) you have conducted the *loan account* in a manner satisfactory to us acting reasonably;
- (g) any consent required by us from any *guarantor* has been received by us in a form, and in a manner satisfactory to us, acting reasonably;

- (h) no other interest in, or power over, any *secured property* has been granted to any other person unless there is an agreement acceptable to us regarding the priority between our *security* and the other person's *security*;
- (i) the redraw amount is not to be used for Code Purposes
- (j) you are not aware of anything which could adversely affect your ability to repay the *loan* as a result of the redraw.

9.4 Subject to clause 44, we may cancel this automatic right to redraw at any time without prior notice to you but will give you notice after we do so. Examples of when we may do this *include*, but are not limited to, where you are in default under this agreement or where we believe on reasonable grounds that continued operation of the redraw may cause loss to you or us, or where a *guarantor* of this *agreement* exercises their right to limit the amount they guarantee. These examples are for guidance only and do not limit our ability to cancel redraw for any other reason.

9.5 If the condition in clause 9.2 is satisfied but any of the conditions in clause 9.3 are not, you may request a redraw at our discretion, which we may exercise having regard to our legitimate business interests, or prudential or regulatory obligations.

Security transfer/removal

9.6 If the portfolio *security value* of *secured property* in respect of a *loan* exceeds the *target loan balance* for that *loan* on a day, you may request that (to the extent of that excess) we treat some of the *investments* forming part of the *mortgaged investments* in respect of that *loan* as mortgaged investments in respect of a different *loan*. This re-allocation is at our discretion, having regard to our legitimate business interests, or prudential or regulatory obligations. This may have consequences for the original *loan*, for example it may affect when we permit, or terminate, *principal suspension* to that original *loan*.

Switching

9.7 You may request that we sell some *investments* forming part of the *secured property* in relation to a *loan* and use those sale proceeds to purchase replacement *approved investments*. Those replacement *investments* will continue to be *mortgaged investments* in respect of that *loan*. This sale and purchase is at our discretion, having regard to our legitimate business interests, or prudential or regulatory obligations and without limitation is subject to:

- (a) us receiving written instructions from you in form and substance satisfactory to us acting reasonably; and
- (b) us being satisfied with the portfolio *security value* (as estimated by us) of the *secured property* in respect of the *loan* that will apply after the sale and purchase has taken place. Unless agreed otherwise, a switch transaction should always be into an *investment* with the same or higher *security* ratio.

10 Giving instructions to Nominees

10.1 If you have elected to, or have been required to, hold your *secured property* with *Nominees*, then for 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 *Nominees* instructions or directions in connection with the relevant *secured property* on your behalf, including:
 - (i) a direction to *dispose* of the *secured property* in accordance this *agreement*;
 - (ii) a direction as to how to vote on any matter on which the holder of the *secured property* is entitled to vote;
 - (iii) a direction that, if a *distribution* occurs in relation to *secured property* and we require a repayment of the *secured liabilities* under clause 7.13, the amount of the *distribution* be paid to us if it has not already been sent directly to you (or, if the *distribution* is not in the form of cash, the *distribution* be *disposed* of and its proceeds applied in accordance with clause 7.13.)
- (b) agree that you will not give *Nominees instructions* or directions in connection with the relevant *secured property* without our consent (which will not be unreasonably withheld). However, if you breach this provision and give any *instruction* to *Nominees* which is inconsistent with an *instruction* we give *Nominees*, 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 6, 7.16 and 45.4 and that when all such amounts have been paid in full, only you will be entitled to give *instructions* in respect of the relevant *secured property*.

11 Representations, warranties and covenants

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

- (a) you are the only trustee of the trust;
- (b) no action has to your knowledge, having made due enquiry, been taken or proposed to remove you as trustee of the trust;
- (c) the copies of the trust deed and other documents relating to the trust provided to us disclose all the terms of the trust;
- (d) the trust deed will not be amended or altered without our prior consent;
- (e) you will not relinquish your trusteeship without our prior consent;

- (f) you have power under the trust deed to enter into and observe your obligations under the *transaction documents* and you enter into the *transaction documents* in your capacity as trustee of the trust;
- (g) you are not, and never have been, in default under the trust deed;
- (h) our rights under the *transaction documents* rank in priority to the interests of the beneficiaries of the trust; and
- (i) 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.

11.2 Each representation and warranty in clause 11.1 is taken to be repeated on each date on which we provide a *loan*.

11.3 You agree:

- (a) if you are a trustee, 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) if you are a trustee, to observe your obligations as trustee of the trust;
- (c) if you are a trustee, not, without our consent, to do anything which:
 - (i) effects or facilitates the retirement, removal or replacement of yourself as trustee of the trust; or
 - (ii) could restrict your right of indemnity from the trust fund in respect of obligations incurred as trustee under the *transaction documents*; or
 - (iii) could restrict or impair your ability to observe your obligations under the *transaction documents*; or
 - (iv) effects or facilitates the termination of the trust; or
 - (v) effects or facilitates the variation of the trust deed; or
 - (vi) effects or facilitates the resettlement of the trust fund; or
 - (vii) could result in the trust fund being mixed with other property; and

(d) to notify us promptly (and in any event by no later than the end of the *next business day*) 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.

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

12 Power of attorney

12.1 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 12.2 (*including in writing*). You may not revoke these appointments until all of the *secured property* is released from this *agreement*.

12.2 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 in connection with the *secured property* (*including* executing a deed, disposing of or otherwise dealing with the *secured property*, starting, conducting and defending legal proceedings, applying the proceeds or dealing with the *secured property* to repay all or part of the *secured liabilities*, or sending messages or communications by which the *secured property* 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.

12.3 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.

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

- (a) your *loan account*, if a variable interest rate applies to your *loan* and if to do so would not cause the *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 12.4. A loss under this clause will not be a reasonable loss to the extent that it is caused by our fraud, negligence or misconduct.

12.5 If we do not debit your *loan account* or other *account* we have agreed, in accordance with clause 12.4, 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 12.4.

Part 2

Mortgage Terms

13 Agreement to mortgage

Mortgage

- 13.1 You agree to mortgage, and do mortgage, to us as security for the payment of the *secured liabilities*:
- (a) all *mortgaged investments* held in the name of, or on behalf of, any one or more or all of you, automatically and immediately that they become *mortgaged investments*; and
 - (b) all *new rights*, automatically and immediately that they are acquired by or on behalf of any one or more or all of you.
- 13.2 In enforcing our security under this *agreement*, we are entitled to resort to any *secured property* we hold from any one or more or all of you.

Registration

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

14 Power of sale

- 14.1 If a *default event* occurs, we may, in addition to any other powers conferred on us by this *agreement*, do all or any of the following:
- (a) *dispose* of all or any of the *secured property* either separately or together with other property of the same type belonging to other clients or their guarantors, having regard to our legitimate business interests, or prudential or regulatory obligations and do all acts and things that we consider necessary to complete the *disposal* of the *secured property*;
 - (b) demand and recover all of the proceeds from the *secured property* by action or otherwise in your name or our name to the full extent of the estate or interest which you could dispose of;
 - (c) make any arrangement or compromise which we consider expedient in our interests; or
 - (d) bring or defend any action, suit or legal proceedings in your name or otherwise, for all or any of the above purposes.
- 14.2 We may allocate the *disposal* proceeds of combined *disposals* under clause 14.1(a) according to the proportion which the number of *investments* comprised in the *secured property* sold on your behalf bears to the overall number of *investments* of the same type in the combined *disposal*.

15 Investments

- 15.1 In relation to any *investments*:
- (a) where a *sponsorship agreement* is required by us, you must at all times be a party to such an agreement which is in a form that is reasonably acceptable to us, covering those *investments*;
 - (b) you must promptly inform us when any *investments* included in the *secured property* are, or are proposed to be, converted into *CHESSE-eligible investments* and at our request enter into a *sponsorship agreement* in respect of those *investments*; and
 - (c) if any *CHESSE-eligible investments* subject to this *agreement* are replaced with *investments* that are not *CHESSE-eligible investments*, you must ensure the relevant *certificates* are promptly deposited with us or *Nominees*.
- 15.2 You must deposit with us or cause to be deposited with us by giving an irrevocable direction to any company, broker, share register or other person specified by us:
- (a) any documents or certificates evidencing title in relation to the *secured property*; and
 - (b) any transfers that we request.

16 Obligations in relation to the secured property

- 16.1 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 *secured property* from this *agreement*.
- 16.2 You may request us to release *secured property* from this *agreement* when there is no amount owing in respect of *secured liabilities*. However, even if the *secured liabilities* are paid, the *secured property* remains mortgaged to us until we actually release it from this *agreement*. We will act reasonably in releasing *secured property*.
- 16.3 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*.
- 16.4 We may at any time require that:
- (a) *secured property*; or
 - (b) any *approved investment* which is refinanced, or which is provided as a *loan contribution*;

which is held in your name, be transferred into the name *Nominees* as your nominee to allow us to perfect or register this mortgage or enforce our rights under this *agreement* or protect the value of, or protect our interest in, the *secured property* or to otherwise improve our position in relation to the *secured property*. You authorise

your attorney appointed under clause 12 to execute all documents and do all other things necessary to effect any such transfer.

16.5 We may require *NMS* to transfer any *secured property* held in a *participant sponsored holding* in your name into a *participant sponsored holding* of *Nominees* as your nominee to allow us to perfect or register this mortgage or enforce our rights under this *agreement* or protect the value of, or protect our interest in, the *secured property* or to otherwise improve our position in relation to the *secured property*.

17 Restrictions on dealing with the secured property

17.1 You must not, without our consent:

- (a) *dispose of*, deal with or part with the possession of any interest in the *secured property*; (or direct or allow *Nominees* or *NMS* to do the same);
- (b) create or allow to come into existence any *security interest* which affects the *secured property* in favour of anyone other than us;
- (c) convert any *CHESSE-eligible investment's* that form part of the *secured property* to *investments* which are not *CHESSE-eligible investments*; or
- (d) in relation to any *CHESSE-eligible investments* that form part of the *secured property*, change the *controlling participant*, shareholder name or shareholder address; or
- (e) abandon, settle, compromise or discontinue or become nonsuited in respect of any proceedings against any person (other than us) in respect of any of your rights in connection with the *secured property*; or
- (f) waive any of your rights or release any person from their obligations in connection with the *secured property*.

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

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

- (a) providing more effective security over the *secured property*, for the payment of the *secured liabilities including*:

- (i) if it is possible under *CHESSE* for the *secured property* to be subject to a reserved *subposition* or similar restriction in our favour or for our benefit you must execute any further documents that we ask you to so as to make the *secured property* subject to such a *subposition* or similar restriction; and
- (ii) if for any reason any *CHESSE-eligible investment* that forms part of the *secured property* becomes an investment that is not a *CHESSE-eligible investment* you must procure that all certificates issued in respect of those *investments* are deposited with us or a person nominated by us;
- (iii) if the *controlling participant* under the *sponsorship agreement* becomes unable or ineligible to continue to perform its obligations under the *sponsorship agreement* or the *controlling participant* resigns, you must enter into a *sponsorship agreement* on terms, and with another person, both reasonably acceptable to us;
- (b) ensuring that any *security interest* created under this *agreement* is enforceable, perfected or otherwise effective;
- (c) ensuring that we have control (as that term is defined under the *PPSA*) of each item of *secured property* at all times;
- (d) enabling us to apply for any registration, or give any notification, in connection with any *security interest* created under this *agreement* so that the *security interest* has the priority we require;
- (e) enabling us to exercise our rights in connection with the *secured property*;
- (f) enabling us to register the power of attorney described in clause 12 or a similar power; or
- (g) showing whether you are complying with this *agreement*.

17.4 You must:

- (a) provide to us as soon as possible and in any event by no later than the end of the next business day after becoming aware of *new rights*, particulars and documentary evidence of *new rights*;
- (b) pay all instalments, calls or other moneys payable in respect of the *secured property* if we determine that it is reasonably necessary to protect the *value* of the *secured property*. If funds are not provided, we may, at our discretion, pay or authorise *NMS* or (if applicable) and direct *Nominees* 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 *secured property*; and
- (e) without limiting anything in clause 17.1, enter into a *priority agreement* in a form acceptable to us if you create or allow to exist any *security interest* over the *secured property* in favour of anyone other than us without our consent.

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

18 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 3 CHESS Sponsorship Terms

Explanation of CHESS Sponsorship Terms

The CHESS Sponsorship Terms set out the terms on which *NMS* will sponsor your investments which are able to be held in CHESS if you elect to hold *secured property* in your own name rather than in the name of *Nominees*.

CHESS is a system of electronic registration of shareholders in listed companies. Under CHESS there are no share certificates and transfers are effected electronically. Only persons admitted as participants have access to CHESS.

For you to have your investments registered on CHESS you must have your shareholding sponsored by a participant.

The CHESS Sponsorship Terms contain special provisions to better protect us as mortgagee of the investments. In particular, *NMS* will only transfer or otherwise deal with the investments at the direction of us or with our consent.

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

- a statement that the regulatory regime that applies to the participant is set out in the Corporations Act and the *settlement rules*. Accordingly, the participant is regulated by the Australian Securities and Investments Commission and *ASTC*;
- a statement that if the participant breaches the sponsorship agreement, you may refer that breach to any regulatory body, including *ASTC*;
- a statement that you may lodge a complaint against the participant with any appropriate regulatory authority or other body, including *ASTC* and the Australian Financial Complaints Authority;
- the participant's obligations to give effect to your withdrawal instructions and not to initiate any transfer or conversion without the authority of us;
- a statement that in some circumstances *NMS* may change your sponsor by giving you 20 business days' notice. You may terminate the CHESS Sponsorship Terms on receipt of such a notice;
- a statement that if you make a claim for compensation against the participant, the ability of *NMS* to satisfy that claim will depend on its financial circumstances. In certain circumstances you may make a claim on *ASTC*;
- a statement of your right to remove your investments from the CHESS subregister or from the control of the participant if the participant is suspended from participation in CHESS;
- each party's rights to terminate the CHESS Sponsorship Terms; and

- a statement outlining the procedures which are put in place in respect of the investments which are held in CHES if you die or become bankrupt.

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

19 Appointment of NMS as your sponsor

- 19.1 You appoint NMS, and NMS agrees, to be your *sponsoring participant for the participant sponsored holdings* that have the Holder Identification Number(s) listed in the HIN Schedule on the CHES Sponsorship Terms.
- 19.2 Subject to clauses 24 and 27, the appointment of NMS as your sponsor under clause 19.1 is irrevocable until we notify you otherwise in writing.

20 Authority of NMS

- 20.1 NMS may:
- do anything necessary to register the CHES-eligible investments that form part of the secured property as a participant sponsored holding with NMS as the controlling participant;
 - on our instructions, do everything necessary to transfer and register the CHES-eligible investments that form part of the secured property; and
 - do anything that is necessary or convenient for the purpose of acting as controlling participant in relation to the CHES-eligible investments that form part of the secured property. For example if the settlement rules require that any of the CHES-eligible investments be converted from a participant sponsored holding (for example, because the issuer will no longer have uncertificated holdings) NMS will initiate the conversion as required by the settlement rules.
- 20.2 NMS will not initiate any transfer or conversion of CHES-eligible investments into or out of your participant sponsored holding, or comply with any other instruction you give in relation to the secured property, without our express authority.
- 20.3 NMS is under no duty to enquire whether we may validly give any consent or instruction.
- 20.4 NMS may refuse to take action in relation to the CHES-eligible investments sponsored by it unless NMS is satisfied that to do so:
- will not affect our security interest; or
 - will not cause or result in a default event.
- 20.5 Subject to clauses 20.3 and 20.4, NMS will initiate any action necessary to give effect to a request by you to withdraw your CHES-eligible investments from sponsorship by NMS, within two business days of the date of the request.

- 20.6 NMS may dispose of secured property in accordance with our instructions where we are acting as your attorney under clause 12. Without limiting this authorisation, NMS will act on our instructions in sending any messages or communications by which secured property can be disposed of.

21 Your rights

Exchange Traded Options

- 21.1 You may ask us to permit you to lodge, with ACH, CHES-eligible investments that form part of the secured property, as cover for written positions in the Australian Options Market.
- 21.2 If we agree under clause 21.1 to allow you to lodge CHES-eligible investments with ACH you must execute additional documentation, and enter into further arrangements, satisfactory to us. The additional documentation will be in addition to and may amend the CHES Sponsorship Terms, and will comprise part of the CHES Sponsorship Terms.
- 21.3 We may charge (and you agree to pay) fees in relation to any arrangement under clauses 21.1 and 21.2.

Complaint procedures

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

Compensation arrangements

- 21.6 In accordance with the settlement rules, NMS has lodged a sponsorship bond with ASTC.
- 21.7 You may apply in writing to ASTC for compensation under the sponsorship bond if:
- NMS breaches a provision of the settlement rules; and
 - you suffer loss, damage, costs or expense as a result of that breach; and
 - there is no real prospect of you obtaining adequate compensation other than by making an application to ASTC.
- 21.8 An application for compensation to ASTC must be made:
- within the time specified in a notice published by ASTC advertising for claims; or
 - if no notice is published, within 6 months of you becoming aware that you suffered or incurred any loss, damage, cost or expense; or
 - any later date that ASTC allows.
- 21.9 You are not entitled to make a claim under the statutory compensation arrangements specified in the Corporations Act and Corporations Regulations.

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

22 Your responsibilities and acknowledgements

Explanation of the effect of these Terms

22.1 You acknowledge that:

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

Copy of CHES

S Sponsorship Terms

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

NMS must be controlling participant

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

Supply of information

- 22.4 You agree to supply all information and supporting documentation that is reasonably required by *NMS* to permit *NMS* to comply with the registration requirements under the settlement rules.
- 22.5 If any information that you have previously supplied changes, you must notify *NMS* of the change (and supply any necessary supporting documentation) as soon as possible.
- 22.6 You authorise *NMS* to obtain statements of the *CHES*S-eligible investments that form part of the secured property and other information in relation to your *CHES*S-eligible investments from *ASTC* on your request, or at such times as *NMS* reasonably thinks necessary.

Subpositions

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

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

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

Section 9 transfers

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

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

23 Death or bankruptcy

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

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

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

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

- (a) establish a new holder record in the name of the bankrupt, transfer the interest of the bankrupt into the new holdings under the new holder record and request that *ASTC* apply a holder record lock to all holdings under that holder record (unless the bankrupt's legally appointed representative removes the *CHES*S-eligible investments from the *CHES*S Subregister); and
- (b) establish a new holder record in the name of the remaining joint participant sponsored holders and transfer the interest of the remaining joint participant sponsored holders into the new holdings under the new holder record.

24 Suspension of NMS

- 24.1 If NMS is suspended from the *settlement facility*, then subject to NMS's liquidator, receiver, administrator or trustee asserting an interest in the *CHESS-eligible investments* controlled by NMS:
- (a) you may, within twenty *business days* of ASTC giving NMS notice of its suspension, give notice to ASTC requesting that ASTC remove any *CHESS-eligible investments* that are sponsored by NMS from either
 - (i) the *CHESS Subregister*; or
 - (ii) NMS's control to the control of another participant in the *settlement facility*; or
 - (b) if you do not give the request specified in clause 24.1(a), then ASTC may change your sponsor and you will be taken to have entered into a new sponsorship agreement with that sponsor on the *CHESS Sponsorship Terms*.

25 Change of sponsor

- 25.1 NMS may give you notice of its intention to change the participant that sponsors your *CHESS-eligible investments* in *CHESS*.
- 25.2 You are under no obligation to agree to a change of sponsor and you may, within twenty *business days* of receiving a notice from NMS under clause 25.1, terminate the *CHESS Sponsorship Terms* in accordance with clause 39.1(d).
- 25.3 If you do not terminate the *CHESS Sponsorship Terms*:
- (a) your new sponsor will send you a notice confirming that they consent to act as your sponsor; and
 - (b) NMS's rights under the *CHESS Sponsorship Terms* will be novated to the new sponsor on the date you receive a notice under clause 25.3(a).
- 25.4 If you continue to use the *facility* after receiving a notice under clause 25.3(a) you will be taken to have consented to the novation of the *CHESS Sponsorship Terms*.
- 25.5 The *CHESS Sponsorship Terms* continue for the benefit of NMS in respect of any rights and obligations accruing before notice is given under clause 25.3(a).
- 25.6 To the extent that any law or provision of any agreement makes the novation in clause 25.3(b) not binding or effective, the *CHESS Sponsorship Terms* continue for NMS's benefit until such time as the novation is effective.
- 25.7 Nothing in this clause 25, prevents the completion of *transfers* or *conversions* by NMS where the obligation to complete those *transfers* or *conversions* arose before notice was given under clause 25.3(a) and the *CHESS Sponsorship Terms* will continue to apply to the completion of those *transfers* or *conversions*, notwithstanding the novation of the *CHESS Sponsorship Terms* to the new sponsor.

26 Indemnity

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

27 Termination

- 27.1 The *CHESS Sponsorship Terms* terminate immediately:
- (a) by notice in writing from either you or NMS to the other;
 - (b) if NMS becomes *insolvent*;
 - (c) if NMS is suspended from the *settlement facility* or its rights under the *settlement facility* are terminated; or
 - (d) if NMS gives you notice under clause 25.1, by you instructing NMS to transfer the *CHESS-eligible investments* sponsored by NMS from your *participant sponsored holding*.
- 27.2 If the *CHESS Sponsorship Terms* terminate under clause 27.1 you must, at our request, immediately enter into a *sponsorship agreement* in relation to the *CHESS-eligible investments* that form part of the secured property on terms and with a *controlling participant* acceptable to us.
- 27.3 You may terminate the *CHESS Sponsorship Terms* in relation to any *CHESS-eligible investments* when we specify in writing that we no longer rely on the mortgage of those *CHESS-eligible investments* as security.

28 Variation

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

29 General rights and obligations

- 29.1 The sponsorship agreement in the *CHESS Sponsorship Terms* replaces any prior sponsorship agreement between you and NMS, without affecting any rights or obligations that accrued under that prior agreement.

29.2 The *CHES*S Sponsorship Terms are subject to the *market rules*, the clearing rules and the settlement rules. You may not take any action that will prevent or impede NMS from complying with its obligations under the *market rules*, the clearing rules or the *settlement rules*.

29.3 NMS is:

- (a) an *ASTC* General Settlement Participant; and
- (b) a wholly owned subsidiary of us.

29.4 NMS is not an Authorised Deposit Taking Institution and its obligations do not represent deposits or other liabilities of ours. We do not guarantee the obligations or performance of NMS or the services it offers.

29.5 Neither *ASX* nor its subsidiaries and controlled entities have any responsibility for supervising or regulating the relationship between you and NMS other than in relation to the *settlement rules* relating to sponsorship agreements.

29.6 The regulatory regime that applies to NMS is set out in the Corporations Act. Accordingly, NMS is regulated by the Australian Securities and Investments Commission. Information as to NMS's status may be obtained from the Australian Securities and Investments Commission. In addition, the regulatory regime established by the *settlement rules* applies to NMS. Accordingly, NMS is regulated by *ASTC*.

Part 4 Nominee Terms

30 Appointment (and replacement) of nominee

- 30.1 Subject to clause 30.3, if you do not elect to hold, or it is not possible for you to hold, your *secured property* via NMS under the *settlement rules*, then you must appoint *Nominees* to hold on your behalf:
- (a) *secured property* which is *financed investments*;
 - (b) *secured property* which is not *CHES*S-eligible *investments*;
 - (c) *secured property* which was held in a *participant sponsored holding* but was transferred to *Nominees* under clause 16.4 or 16.5 or was converted to another mode of holding (whether required by us or the *settlement rules*); and
 - (a) any other *secured property* or property which is intended to become *secured property*, as we require.
- 30.2 The appointment will continue until we transfer the *secured property* into your name where we consider it necessary or this *agreement* terminates.
- 30.3 Nothing in this Agreement qualifies the investor's absolute entitlement at law, as against *Nominees*, to bring the relationship between it and *Nominees* to an end by requiring a transfer of the *secured property*. For the avoidance of doubt, the investor has separately undertaken in favour of NAB only not to seek a transfer of the *secured property* from *Nominees* pursuant to that absolute entitlement, or to limit its exercise of that entitlement, prior to the discharge of all *secured liabilities*, only to provide additional security to NAB for satisfaction of those liabilities.
- 30.4 You expressly authorise your attorney appointed under clause 12, at any time we request it, to replace the nominee appointed under clause 19.1 by terminating on your behalf that appointment and instead acting reasonably appointing another person to act in that capacity, and the expression '*Nominees*' in this *agreement* is interpreted accordingly. You authorise your attorney to do all things the attorney deems necessary or desirable on your behalf to effect that replacement, including directing the transfer of any *secured property* held by the terminated nominee to the new nominee. We will notify you in writing after this has occurred.

31 Indemnity to Nominee

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

32 Authority to mortgage and dispose

- 32.1 You authorise *Nominees* to mortgage on terms we specify in our favour all interests in mortgage *investments* and *new rights* which are held by *Nominees*, to secure the *secured liabilities*.
- 32.2 You authorise *Nominees* to pay the proceeds of disposal of any *secured property* held on your behalf towards satisfaction of *secured liabilities* or by way of deposit into an *account*, as we direct.
- 32.3 You authorise *Nominees* to *dispose of secured property* in accordance with our instructions where we are acting as your attorney under clause 12. Without limiting this authorisation, *Nominees* will act on our instructions in sending any messages or communications by which *secured property* can be *disposed of*.
- 32.4 You:
- (a) consent to *Nominees* complying with its obligations under (and, where applicable, executing) the *transaction documents*; and
 - (b) waive any right you have to claim that *Nominees'* execution of, or compliance with obligations under, the *transaction documents* is in breach of any trust or duty *Nominees* owes to you, except to the extent caused by the fraud, negligence or misconduct of *Nominees*.
- 32.5 *Nominees* may only exercise a power of sale it has in relation to *secured property*:
- (a) in accordance with our instructions in our capacity as secured creditor; and
 - (b) at your discretion (but you agree not to give a direction in breach of clause 17.1).
- 32.6 *Nominees* waives any lien or other right it has to recover any amounts owed to it by you directly from *secured property* held by it.

Part 5 Direct Debit Request Service Agreement

33 Debiting your account

- 33.1 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.
- 33.2 We will only arrange for funds to be debited from your *account* as authorised in the *direct debit request*.
- 33.3 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*.

34 Changes by us to direct debits

We may vary any details of the *direct debit request service agreement* or a *direct debit request* at any time by giving you at least 30 days' written notice but we may give you shorter notice (of not less than 14 days) where a shorter period is reasonably required to help us manage a risk. To avoid doubt, clause 54 does not apply in relation to the *direct debit request service agreement*.

35 Changes by you to direct debits

- 35.1 Subject to clause 35.2 and 35.3, you may change the arrangements under a *direct debit request* by contacting us on **1300 135 145** (Client Service Representative(s) – NAB Equity Lending).
- 35.2 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.
- 35.3 You may also cancel or suspend your authority for us to debit your *account* at any time by giving us or *your financial institution* 14 days notice in writing (which must be in a letter physically signed by you and posted or faxed to us or *your financial institution*) before the next *debit day*. If you first notify *your financial institution*, please promptly let us know.

36 Your obligations regarding direct debits

- 36.1 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*.
- 36.1A If there are insufficient clear funds in your *account* to meet a *debit payment*:
- (a) you may be charged a fee and/or interest by your *financial institution*;
 - (b) we may charge you reasonable costs incurred by us on account of there being insufficient funds; and
 - (c) you must arrange for the debit payment to be made by another method or arrange for sufficient clear funds to be in your *account* by an agreed time so that we can process the *debit payment*.
- 36.2 You should check your *account* statement to verify the amounts debited from your *account*.

37 Disputes about direct debits

- 37.1 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.
- 37.2 If we conclude as a result of our investigations that your *account* has been incorrectly debited we will respond to your query by arranging within a reasonable period of time 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.
- 37.3 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.
- 37.4 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.

38 Accounts for direct debits

You should check:

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

39 Confidentiality around direct debits

- 39.1 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.

40 Notices regarding direct debits

- 40.1 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
- 40.2 If we notify you about anything relating to the *direct debit request service agreement* we will do so in accordance with clause 46.2.
- 40.3 If we notify you by post and unless proven otherwise, that notice will be deemed to have been received *2 business days* after it is posted.

Part 6

General Terms

41 Attribution

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

42 Banking Code of Practice

We have adopted the Banking Code of Practice and relevant provisions of the Code apply to this *agreement* if you are an individual or a small business customer referred to in the Code.

- 42.1 You can obtain information from us upon request, including:
- (a) information on current interest rates and fees;
 - (b) general descriptive information concerning our banking services, *including*:
 - account opening procedures;
 - our obligations regarding the confidentiality of your information;
 - complaint handling procedures;
 - bank cheques;
 - the advisability of you informing us promptly when you are in financial difficulty; 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 Banking Code of Practice.

43 Declarations by you

- 43.1 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*.

43.2 You must notify us if anything has happened which would prevent you from repeating all the declarations in clause 32.1 before you ask us for an advance.

44 Our commitment to be fair when we are liable

- 44.1 When we exercise a right or discretion under this *agreement* (like considering a request you make or deciding whether or not to do something), we will do it in a way that is fair and reasonable. This includes where we change a term of this *agreement* under clause 43, exercise enforcement or set-off rights, incur expenses that are payable by you or cancel your automatic right to redraw under clause 9.
- 44.1A We can take a range of things into account when exercising our rights and discretions. These can include:
- (a) our legal obligations, industry codes, payment scheme rules and regulator expectations;
 - (b) protecting our customers, staff and systems and the personal information we hold;
 - (c) what you have told us about yourself and how you will use our products and services (including if it's misleading, incorrect or you haven't provided us with all of the information we reasonably need when asked);
 - (d) how our products and services are intended to be used (and how you have used them);
 - (e) our public statements, including those relating to protecting vulnerable persons, the environment or sustainability;
 - (f) community expectations and any impact on our reputation;
 - (g) whether we need to take any action to protect you or another person from a potential fraud or scam; and
 - (h) risk management, including sanctions risk management.
- 44.1B If we impose any conditions or requirements to any consent we give, or agree to any request that you make subject to condition, then you'll need to comply with those conditions or requirements.
- 44.2 We may enforce any part of this *agreement* before we enforce other rights or remedies.
- 44.3 If we do not exercise a right or remedy fully or at a given time we may still exercise it later. This includes where we delay or defer doing so, or we temporarily wave a requirement.

- 44.4 We are not liable for any loss or damage:
- (a) caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising a right or remedy where:
 - (i) there is no breach of a legal duty of care owed to you by us, or by any of our employees or agents;
 - (ii) if there is a breach of such a duty, such loss or damage could not have been reasonably foreseen as a result of any such breach; or
 - (iii) we reasonably exercise the discretion, including because of one or more of the factors set out at clause 44.1A; or
 - (b) that results from a breach by you of any term of this *agreement*, except to the extent caused by our fraud, negligence or misconduct.

44.5 Our rights and remedies under this *agreement* are in addition to other rights and remedies provided by law independently of this *agreement*.

44.6 Our rights and remedies under this *agreement* may be carried out by any of our officers or employees, or be exercised by any person we authorise.

44A Unacceptable conduct

44A.1 We seek to protect our customers from harm arising from unlawful use of, or financial abuse conducted through, our products. We recognise financial abuse may happen to anyone and can include forms of family and domestic violence or elder abuse.

44A.2 We will investigate instances where we identify or are made aware that a product is being used in a financially abusive manner, including:

- (a) coercive or controlling behaviour to limit a person's access to or use of funds;
- (b) making profane, derogatory, discriminatory or harassing comments to any person;
- (c) making or promoting threatening or abusive language to any person; or
- (d) making or threatening physical or psychological harm to any person.

44A.3 We may reasonably exercise one or more of our rights in this agreement to suspend, cancel or deny your access to credit, including to reduce a credit limit, if we reasonably consider it appropriate to protect a customer or another person from financial abuse.

44A.4 If you are concerned about your banking safety call our NAB Customer Support Hub on 1300 308 175 or refer to Domestic and family violence | Support and assistance -nab.com.au/bankingsafety

45 Authorised representatives, and authorised brokers

- 45.1 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, NMS and Nominees 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*.

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

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

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

46 Notices and other communications

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

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

- (a) delivering it personally;
- (b) leaving it at or sending it by post to the postal address nominated by you;

- (c) electronic communication to a device (*including* by way of SMS), electronic equipment or electronic address nominated by you;
- (d) displaying information on our *website* (after notifying you by electronic communication that the information is available for retrieval on the *website* and the nature of this information); or
- (e) in the case of a notification of a failure to make a required principal repayment or interest payment under this agreement, telephoning the number you nominate (*including* leaving the 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.

- 46.3 Communications to us from a company must be signed by an *authorised representative* or a director.
- 46.4 For the purposes of this *agreement*, unless you are able to reasonably demonstrate otherwise, a communication is taken to be given:
- (a) in the case of a communication given personally – on the date it bears or the date it is received by the addressee, whichever is the later;
 - (b) in the case of a communication sent by post – on the date it bears or the date when it would have been delivered in the ordinary course of post, whichever is the later;
 - (c) in the case of a transmission sent by electronic means the date that it is sent unless the sender's machine received a report that indicates there was a failure in delivering the communication; or
 - (d) in the case of anything we publish in the metropolitan daily press, or on a *website*, on the date of publication.
- 46.5 Where there is more than one of you, each of you irrevocably authorises and directs us 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.
- 46.6 We will send you statements of *account* for your *facility* every three months. Unless prevented from doing so by law or under the Banking Code of Practice, we may:
- (a) choose to vary the frequency of the statements we provide to you; or
 - (b) vary the means by which we make statements available to you.

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

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

47 General indemnities, releases and disclaimers

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

To the extent it is reasonably necessary to provide you with the *facility*, you consent to us giving, from time to time, to:

- (a) any of our related entities;
- (b) a *guarantor*;
- (c) where this is a *joint facility*, to any *client*;
- (d) an *authorised representative* or *authorised broker*; or
- (e) *NMS* and *Nominees*, any information in our possession about you, the *secured property*, the *facility* and this *agreement* which they may request from time to time. We may also give such information to fund managers, *ASTC*, any *exchange* and any related bodies corporate of any *exchange* to the extent reasonably 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, arising from our fraud, negligence or misconduct).

- 47.2 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, arising from our fraud, negligence or misconduct).
- 47.3 You acknowledge that we are not responsible for any missed market opportunities or any loss or losses you may suffer or incur as a consequence of a missed market opportunity caused by us taking any action in accordance with this *agreement*, except to the extent of our fraud, negligence or misconduct.
- 47.4 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. The exclusion under this clause is reduced to the extent of our fraud, negligence or misconduct.

47.5 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 of our fraud, negligence or misconduct and you expressly release us from any liability for any tax consequences suffered by you, and any indirect or *consequential loss* or losses you may incur.

47.6 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*.

47.7 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.

47.8 Where our officers or agents are acting on our behalf, they do not have our authority to recommend the purchase or sale of, or make a prediction or offer an opinion in relation to *investments*. You should seek separate advice in relation to these matters if needed.

47.9 All indemnities in this *agreement* are continuing indemnities and they survive termination of this *agreement*.

47.10 Where this *agreement* refers to our fraud, negligence or misconduct, then for the removal of doubt, unless otherwise state that clause will be taken to include a reference to the fraud, negligence and misconduct of our officers, employees, contractors and agents.

48 Personal Property Securities Act

PPSA further steps

48.1 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*, *NMS*, *Nominees* 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 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
- (c) enabling us to exercise rights in connection with the security interest.

Exclusion of PPSA provisions

48.2 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) we need not give any notice required under any provision of the *PPSA* (except section 135).

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

49 Interpretation

49.1 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) to the extent permitted by a relevant law, a requirement for us to give you a notice or any other information in writing may be done by means of an electronic communication or displaying information at our *website*;

- (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.
- 49.2 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.
- 49.3 Headings are inserted for convenience and do not affect the interpretation of this *agreement*.
- 49.4 This *agreement* is governed by the law in force in Victoria. Any court cases involving this *agreement* can be held in the courts of any State or Territory of Australia with jurisdiction. We will give any legal protections available to you in the State or Territory in which you live.

50 Payments and effective date

- 50.1 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*.
- 50.2 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 reasonably determine appropriate unless we have expressly agreed with you otherwise in relation to any particular payment.
- 50.3 For the purposes of payments under this *agreement*, a day ends at 4.00 pm.
- 50.4 Payments made by you under this *agreement* must be made without counterclaim or set off, unless you have a right to set off granted by law which cannot be excluded (for example, where a court order permits or where you have established that a payment is not due and payable).

- 50.5 We may, acting reasonably, assign any date we reasonably consider appropriate to any payment you make (but in the case of a debit, that date must not be earlier than the date on which the relevant transaction occurred).

51 Giving and receiving instructions

- 51.1 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.
- 51.2 We are authorised to act on any instructions which appear to have been properly created or communicated to us by you, your *authorised representative* or *authorised broker*, and we will not be liable to you for effecting those instructions, except to the extent of our fraud, negligence or misconduct. We are under no duty to enquire as to whether instructions are issued by you or with your authority if they reasonably appear to be issued with such authority. We will not be liable to you for instructions that we act upon which are a result of forgery, fraud or error to the extent we did not contribute to the issue (for example, because you shared your *account* details with a third party who was not authorised on your *account*, or you unreasonably delayed notifying us after becoming aware of *account* security issues), unless we have acted fraudulently, negligently or with misconduct.
- 51.3 We will not be liable to you for failing to act on any instructions which we reasonably consider to be communicated to us fraudulently, mistakenly, without authority or containing material omissions or errors to the extent we did not contribute to the issues, unless we have acted fraudulently, negligently or with misconduct.
- 51.4 If this is a *joint facility*, each *client* separately has full authority to deal with and instruct us in connection with the *facility* and this *agreement* without the other or others, unless you advise us otherwise (in writing signed by each *client* and posted or faxed to us). Subject to clause 44.1A, 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*.

52 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.

53 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.

54 Amendments

54.1 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 notice is given in this way after the change takes effect. If the Banking Code of Practice applies to you and we believe the change is unfavourable to you, we usually

give 30 days prior notice, however we can give shorter notice, or no notice, if this is in accordance with law and industry codes. For example, it may be reasonable for us to give shorter notice to manage an immediate and material risk.

54.2 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 54 does not apply where clause 34 applies.

55 Assignment and novation

55.1 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.

55.2 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 having regard to our legitimate business interests, or prudential or regulatory obligations. 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.

55.3 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 44.2.

55.4 We will give you notice of any exercise of our rights under clauses 44.2 and 44.3 as soon as is practicable.

56 Termination

- 56.1 We may at any time give you a notice of no less than *5 business days* to terminate the *agreement*. However, if you are an individual, a small business referred to in the Banking Code of Practice, or this is a Small Business Contract we will give you a reasonable notice period (consistent with any notice period required under the Banking Code of Practice), but this does not limit our rights under clause 2.13A
- 56.2 You may at any time give us notice of no less than *5 business days* to terminate the *agreement*.
- 56.3 Termination under this clause 56 will be effective upon expiry of the notice period referred to in clauses 56.1 and 56.2.
- 56.4 Notwithstanding clause 56.3, the *agreement* will only terminate when:
- (a) the *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 2 of the *agreement*.

57 General

Obligation to provide information

- 57.1 You agree to provide any information that we reasonably request connected with the *facility* and any relevant transactions. We may continue any action under clause [2.13 A] until we receive a satisfactory response. You acknowledge that if we are not satisfied with your response or you fail to respond in a timely manner then we may take this into account when deciding whether or not to cancel your *facility limit*.

Other documents

- 57.2 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

- 57.3 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 57.

Counterparts

- 57.4 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

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

Supervening legislation

- 57.6 Subject to clause 57.12, 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

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

Conflict of interest

- 57.8 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

- 57.9 Subject to clause 57.5:
- (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

- 57.10 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

- 57.11 Subject to clause 57.12, if the whole or any part of a provision of this *agreement* is void, unenforceable or illegal in a jurisdiction, or would result in us being in breach of any industry code to which we have agreed to be bound, it is severed for that jurisdiction. The remainder of this *agreement* has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of the document or is contrary to public policy. If a term of this *agreement* or is capable of more than one interpretation, an interpretation which is fair is to be preferred over an interpretation which is unfair.

Saving provision

- 57.12 If a provision of this *agreement*, or an exercise of a right under this *agreement*, would otherwise be invalid in part or in whole, 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.

58 Meaning of words

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

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

agreement means Part 1 (Loan Terms), Part 2 (Mortgage Terms), Part 3 (CHESS Sponsorship Terms), Part 4 (Nominee Terms), Part 5 (Direct Debit Request Service Agreement), Part 6 (General Terms), Part 7 (Privacy Notification).

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

approved investments means *approved stocks* and *approved managed fund investments*. 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.

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

bankrupt has the meaning 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:

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

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

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

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

CHESS Sponsorship Terms means the terms set out in Part 3 of this Agreement.

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

clearing rules means the clearing rules of *ACH*.

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

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

- a 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*.

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

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

conversion or convert 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:

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

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 7.14.

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*.

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 *secured property*.

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 the *facility* in 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 investments means an *investment* the acquisition of which has been financed or re-financed by a *loan* to you under *this agreement*.

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

guarantee means any 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.

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

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

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

home loan method means the method of determining principal repayments set out in clause 7.5.

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.

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*.

investments means *stocks* or *managed fund investments*.

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

loan means the outstanding principal amount of each 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 the items listed in clause 2.3.

loan term, in respect of a *loan*, means the term proposed by you in the *loan request* and accepted by us (as extended to provide for any periods of *principal suspension*).

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*.

market rules means the market rules of the ASX.

monthly repayment is the repayment schedule for both interest and principal set out in the *transaction confirmation*.

mortgaged investments means any *investments* from time to time held in any one or more or all of your names (as the case may be), or held on behalf of any one or more or all of you (as the case may be):

- (a) which is a financed investment;
- (b) which replaces a financed investment under clause 9.7; or
- (c) which is held in your name; or
- (d) which are registered in a participant sponsored holding maintained with NMS; or
- (e) for which we hold the share certificate, unit certificate, other scrip or indicia of title; or
- (f) in relation to which we are recorded in a Fund Register as the mortgagee; or

- (g) which have been accepted by us as forming part of the secured property by notice in writing to you.

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

new rights means:

- (a) your 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 rights consequent on any conversion, redemption, cancellation, reclassification, forfeiture, consolidation or subdivision in connection with the secured property; or
- (c) your 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*.

Nominees means NMS Nominees Pty Ltd (ABN 62 088 233 792), or any replacement appointed under clause 30.3. NMS Nominees Pty Limited (ABN 62 088 233 792) is a wholly owned subsidiary of National Australia Bank Limited (ABN 12 004 044 937). NMS Nominees Pty Limited is not an Authorised Deposit Taking Institution and its obligations do not represent deposits or other liabilities of National Australia Bank Limited. National Australia Bank Limited does not guarantee the obligations or performance of NMS Nominees Pty Limited or the products or services this subsidiary offers.

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

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

principal suspension means the suspension of the obligation to pay principal under clause 7.10.

refinancing means, on one or more occasions, a borrowing to which clause 3.1(a) applied when it was first made.

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

reset means, in relation to a *loan*, the resetting of the principal and interest configuration parameters (including adopting a higher starting limit or altering the length of the *loan term*).

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

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

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

secured property means:

- (a) *mortgaged investments*, *new rights*, and any other property which we agree to include in the *secured property*;
- (b) in the case of a joint facility, any stocks which any one or more of you provide as collateral for the loan, and any other property of any one or more of you which we agree to include in the secured property;
- (c) any other property which is subject to a security interest in our favour which secures obligations under the transaction documents.

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 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, the *value* of that *investment* at that time, as determined by us, multiplied by that *investment's security ratio*; and
- (b) in relation to any other *secured property*, the value which we assign to that *secured property* in our discretion .

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

settlement rules means the settlement rules of ASTC.

small business contract has the meaning of that term when used in the Australian *Securities and Investments Act 2001* (Cth) (**ASIC Act**) from time to time. With effect from 9 November 2023 small business contracts under the ASIC Act include contracts which are entered into or renewed after that date where the upfront price payable (which includes the total amount of principal that is owed under a contract for the provision of credit) does not exceed \$5,000,000 and either (or both) of the following apply:

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

This Agreement may be a Small Business Contract where it meets these requirements.

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

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

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

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

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

straight line method means the method of determining principal repayments set out in clause 7.4.

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 the *transaction documents*.

target loan balance in respect of a *loan* and at any time means that part of the *loan* which would have been outstanding at that time if the repayments owing under this *agreement* in respect of the *loan* had been paid on the due date required and no additional repayments had been made.

transaction confirmation means, for a *loan*, the confirmation we provide you after accepting a *loan request*, which will set out:

- (a) confirmation and details of the purchase of the *approved investments* with the proceeds of that *loan*; and
- (b) details of the loan, including the loan amount, the loan term, the principal and interest repayments and other repayment information,

transaction documents means:

- (a) this *agreement*;
- (b) any guarantee, and any security interest or other document signed by a guarantor in connection with this *agreement*; and
- (c) any document which we and you agree is a 'transaction document'.

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

value of:

- (a) a *stock* at a particular time means the market value of that *stock*;
- (b) a managed fund investment at a particular time means the market value of that managed fund investment;
- (c) an investment at a particular time means the market value of that investment, as determined by us in good faith using commercially reasonable procedures. This may include considering any market prices (which need not be mid-market) we consider relevant from either internal or external sources.

we or **us** means National Australia Bank Limited (ABN 12 004 044 937 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 7

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 or used our online or mobile banking services (including collection of information about your use of technology when you access these services, such as location data and information about how you use your devices). (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 detection and prevention purposes;
- we are checking the security you are offering;
- we can learn insight about your financial needs, such as through property information;
- you have consented to third parties sharing it with us, such as organisations we have loyalty programs with or we sponsor;
- at your request, we exchange information with your legal or financial advisers or other representatives.

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

When the law authorises or requires us to collect information

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

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

How we use your information

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

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

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

How we use your credit information

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

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

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

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

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

Sharing your information

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

Sharing with the Group

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

Sharing with MLC Limited

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

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

- a smooth customer experience when you contact us, including;
- we can transfer you to the right service centre;
- where appropriate, NAB and MLC Limited can cooperate in order to handle your complaint;
- being able to provide assistance should you wish to speak about your MLC Limited products held (for example, where possible, we may assist by updating contact details on request).

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

Sharing at your request

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

Sharing with Credit Reporting bodies

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

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

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

Sharing with third parties

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

- those involved in providing, managing or administering your product or service;
- authorised representatives of the NAB Group who sell products or services on our behalf;
- credit reporting bodies or other approved third parties who are authorised to assess the validity of identification information;
- insurance, investment, superannuation and managed funds organisations, and their advisers and service provider;

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

Sharing outside of Australia

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

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

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

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

Accessing your information

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

Correcting your Information

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

Complaints

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

Contact us

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

You can contact us by:

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

Contact details for credit reporting bodies

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

Illion

www.checkyourcredit.com.au

Illion's credit reporting policy is set out at <https://www.illion.com.au/legal/illion-credit-reporting-policy-australia>

Phone: 1300 734 806

Mail: Public Access Centre Illion Australia
PO Box 7405 St Kilda Rd VIC 3004

Experian Australia

www.experian.com.au

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

Phone: 1300 783 684

Mail: Consumer Support Experian Australia PO Box 1969 North Sydney NSW 2060

Equifax Australia Information Services and Solutions Pty Limited

www.mycreditfile.com.au

Equifax's credit reporting policy is set out at <https://www.equifax.com.au/credit-reporting-policy>

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

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

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

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

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

Want more information?

Just call

1300 135 145

Email us equity.lending@nab.com.au

Visit us nab.com.au/equitylending



Hearing impaired customers
with telephone typewriters
can contact us on **1300 363 647**