

**It pays to specialise.**



**Leveraged Equities  
does not provide  
financial planning or  
stockbroking services.**

**It focuses on doing one  
thing and doing it better  
than anyone else.**

**We believe  
it pays to specialise.**

# The Leveraged Equities Investment Loan.

## Structure of the Booklet.

### Introduction: What are the features of the Leveraged Equities Investment Loan?

#### Section 1: Mortgage Terms.

These are the terms and conditions which will apply to the Mortgage if the Offer of Mortgage, contained in the Application Form, is accepted by us.

#### Section 2: Investment Lending Facility Agreement.

##### Part A - Loan Agreement.

The terms and conditions on which we make the Loan available to you.

##### Part B - Nominee and Sponsorship Agreements.

You giving us control over certain parts of the Secured Property (e.g. your interest in the Investment) by:

- (a) appointing a person or persons (referred to in the Agreement as the Nominee) as the holder of the legal title to the Secured Property; and
- (b) appointing a person (referred to in the Agreement as the Sponsor) as your CHESSE Sponsor in relation to some or all of the Investment (if the Investment is a listed security).

##### Part C - Guarantee.

A guarantee from another Person (referred to in the Agreement as the Guarantor) that the Borrower will pay all of the Guaranteed Money.

##### Part D - General Provisions.

General legal provisions (including representations, undertakings, events of default, indemnities and other protections) which apply to each Part of the Agreement and to the Mortgage. Where required by law or otherwise necessary or convenient, we may (without giving you any Notice) treat one or more parts or sections of the Agreement as a separate agreement.

### Section 3: Privacy Disclosure and Consent and Risk Disclosure Statement.

### Section 4: Power of Attorney and Direct Debit Service Agreement.

# What are the features of the *Leveraged Equities Investment Loan*?

## What is the *Leveraged Equities Investment Loan*?

The *Leveraged Equities Investment Loan (Loan)* enables you to borrow to invest in the *Investment*.

## Percentage of Purchase Price borrowed.

*Leveraged Equities* will determine the maximum percentage of the purchase price of the *Investment* which it is prepared to lend to you and will in respect of some *Investments* lend you the application fee (if any) for the *Loan*. If you borrow less than 100% of the purchase price you must provide the remaining amount of the purchase price in cash.

## Loan minimum.

The minimum loan size will be determined by *Leveraged Equities* in relation to each *Investment*.

## Full recourse loan.

The *Leveraged Equities Loan* is a loan with recourse. Accordingly, although the redemption proceeds of the *Investment* will be applied towards repayment of the *Loan*, if you receive less than the amount you placed into the *Investment* for any reason (whether because of early redemption or otherwise) you will be responsible to *Leveraged Equities* for any shortfall necessary to repay the *Loan*.

## No margin calls.

Regardless of what the market value of the *Investment* is doing prior to repayment of the *Loan*, you won't be required to pay a margin call.

## Loan security.

All of your *Investment* being both your own contributions and the amount borrowed from *Leveraged Equities*, will be required as the security for your *Loan*. **If you are a corporation in addition to all of your interest in the *Investment*, all of your other present and future assets will be required as a security for the *Loan*.** If the *Investment* is held in a master trust, wrap account, managed investment scheme or other similar investment vehicle, all of your interest in the relevant vehicle will also be required by *Leveraged Equities* as security.

## Nominee.

Your interest in the *Investment* will be registered under a *Leveraged Equities* controlled nominee company, however, you remain the beneficial owner of the *Investment*. All communication from the issuers of the *Investment* registered under the name of the nominee will be sent or forwarded directly to you as appropriate.

Please note that any instructions relating to your *Investment* should be directed to *Leveraged Equities* to ensure appropriate actioning of your request.

## Purpose of Loan.

Your *Loan* can only be used to purchase the *Investment*.

## Making repayments.

The *Loan* is repayable on the maturity of the *Investment* on the date fixed by *Leveraged Equities* if there is no maturity date, on redemption or transfer of any part of the *Investment* held by *Leveraged Equities* as security for your *Loan* prior to its maturity date or on breach by you of any of your obligations under your *Loan* agreement or mortgage arrangements with *Leveraged Equities*.

## No early repayment.

You do not have the right to repay your *Loan* prior to the *Repayment Date* without the consent of *Leveraged Equities* if the *Investment* includes a *Capital Guaranteed Date*. If *Leveraged Equities* allows early repayment or if for any other reason the *Loan* becomes repayable prior to the *Repayment Date* you will be liable for any *Break Costs*.

An *Exit Fee* may be charged by *Leveraged Equities* if it consents to repayment of the *Loan* before the *Repayment Date* or if for any other reason the *Loan* is repaid before the *Repayment Date*.

## Interest rates.

We offer a choice of interest rate structures:

- A variable rate with interest payable monthly in arrears. The interest rate is advised to *you* from time to time. This rate may vary within the month.
- A fixed rate for 1 year with interest payable annually in advance.

We may from time to time offer other interest rate structures.

Interest is calculated on *your* outstanding loan balance.

## Commissions.

*Leveraged Equities* may pay an upfront or trailing commission to another party.

## Guarantor risk.

The *Guarantor* will be required to read this brochure including the risk of the *Guarantor* losing assets. Should a default occur where a *Guarantee* of the obligations of a borrower is in place, we may call on the *Guarantor* (either instead of, or in addition to the *Borrower*) to pay the amounts that are owing.

A *Guarantor* is also exposed to the actions of the *Borrower*, who may increase a *Guarantor's* risk such as (by borrowing more or entering into new arrangements with us) without reference to the *Guarantor*.

A *Guarantor* may not terminate his or her obligations to us prior to the *Borrower* repaying all monies owing. *Leveraged Equities* is not obliged to notify of increases or changed arrangements. We strongly recommend any *Guarantor* to obtain independent legal and financial advice prior to entering into a *Guarantee*. See the *Guarantee* on page 14 for more details.

## Investment risk and financial advice.

*Leveraged Equities* does not advise, nor make any representation to *you*, as to the appropriateness or suitability of any securities *you* purchase. It is not a representation to *you* of *our* views as to the financial suitability or projected income level of an investment. We do not guarantee the performance of any securities.

*Leveraged Equities* strongly recommends that *you* obtain *your* own independent professional advice on the risks and suitability of this type of product and the taxation implications as they apply to *your* individual circumstances.

## How do I apply?

The information contained in this brochure, and the legal documents found at the end of this booklet set out comprehensive details of this facility. Please read these documents carefully.

Step 1. Complete the application documents for the *Loan*.

Step 2. Attach any supporting documentation required as per the application checklist.

Step 3. Enclose the application form and any supporting documentation in the envelope provided and either post directly to *Leveraged Equities* Limited or lodge them through *your* Adviser.

For a copy of the Solicitor's Trust Opinion, please email [trustopinion@leveraged.com.au](mailto:trustopinion@leveraged.com.au)

## What are the conditions of approval?

*You* will be required to provide *Leveraged Equities* with a statement of *your* position and of any *Guarantor's* position (assets, liabilities and income). A satisfactory credit reference check conducted by *Leveraged Equities* in addition to the provision by the applicants and any *Guarantor* of an acceptable form of identification will also be required.

## What happens when I sign up?

*Leveraged Equities* will review *your* application and normally open an *Account* in an individual name within 3 *Business Days* of receipt of a correctly completed application form and satisfactory statement of position. For company and trust applicants, please allow at least 4 *Business Days*. Company applicants should note that *Leveraged Equities* will register a fixed charge with the Australian Securities and Investment Commission. Should the company already have a charge to an existing lender, we will require signed documentation from the other lender before approval can be given. This may result in a significant time delay.

## What happens when the Account is approved?

*You* will receive notification from us confirming *your* details and providing *you* with *your* *Account* number.

## Section 1: Mortgage Terms.

The following terms and conditions will apply to the Borrower who makes an Offer of Mortgage which is accepted by us.

In the Mortgage Terms:

- “you” and “your” means the Person who makes the Offer of Mortgage.
- “we”, “us” or “our” means Leveraged Equities, its successors and anyone it assigns its rights to.

The full meaning of the above words and other words printed like This are explained in Clause 80 of the Agreement (although these Mortgage Terms do not form part of the Agreement) and the Mortgage Terms are to be interpreted according to any other provisions set out in Clause 80 of the Agreement.

### 1. The Mortgage you offer to give us.

#### 1.1 What you offer to mortgage.

You mortgage to us all of your right, title and interest, both present and in the future, to, under or derived from the Secured Property in accordance with these Mortgage Terms.

#### 1.2 What is the Secured Property.

The Secured Property will consist of:

- (a) all of your interest in the Investment;
- (b) all Securities that are transferred to the Nominee to be held on your behalf (including without limitation, all of your interest in the Investment);
- (c) if you invest in the Investment through a master trust, wrap account, managed investment scheme or other similar investment vehicle, all of your interest in such master trust, wrap account, or other similar investment vehicle;
- (d) all Securities that are transferred into, or registered under, a Holder Identification Number with the Sponsor;
- (e) all New Rights at any time attaching to, or arising out of any Secured Property (including those arising out of or attaching to other New Rights);
- (f) all rights to repayment or redemption of money in any Deposit Account, including rights to interest and rights to distributions of income and property whether or not the interest or distribution is credited to the Deposit Account;
- (g) any other asset agreed from time to time by you and us to be part of the Secured Property; and
- (h) if you are a corporation, in addition to the above, all of your other present and future rights, assets and property and undertaking (with the exception that during the period of thirteen months after the Offer of Mortgage is accepted by us, Secured Property will not include real property).

#### 1.3 What the Mortgage secures.

The Mortgage secures the due and punctual payment of the Total Amount Owning.

#### 1.4 Continuing security.

The Mortgage is a continuing security, despite any settlement of account, intervening payment or anything else, until we have given you a final discharge of the Mortgage.

#### 1.5 Other Securities, judgements, rights or remedies do not effect the Mortgage.

No Power and nothing in the Mortgage merges in, or in any other way prejudicially affects or is prejudicially affected by, any other

Encumbrance or any judgement, right or remedy against any Person that we may have at any time.

#### 1.6 How we identify your Secured Property.

Where Secured Property is contributed by more than one person whether under this Mortgage or under another Mortgage taken to secure the Total Amount Owning, then we may:

- (a) identify the Secured Property as relating to any Person, by any method we determine from time to time; and
- (b) enforce the Mortgage against the Secured Property of any Person in such order as we determine from time to time.

## 2. How the Mortgage affects you and the Secured Property.

### 2.1 Total Amount Owning.

You must duly and punctually pay the Total Amount Owning; and if an Event of Default occurs, we may demand that you pay all or any of the Total Amount Owning at any time we request it.

### 2.2 Registration of us as holder of the Secured Property.

We may at any time procure the registration of ourselves or any other Person on our behalf as the registered holder of any of the Secured Property.

### 2.3 Possession and exercise of rights.

While the Mortgage is in effect, you must give us or the Nominee possession of all documents of title to interests in (or that evidence title) the Secured Property.

### 2.4 Maintaining the Secured Property.

You must:

- (a) carry out on time all of the obligations in connection with the Secured Property and comply with all directions, requests or requirements of government agencies relating to the Secured Property;
- (b) immediately after becoming aware of any New Rights, provide us or a Person we nominate with particulars of the New Rights;
- (c) take up New Rights in respect of the Secured Property if we ask you (we will only ask you to do this if we believe failure to take up New Rights would make the Secured Property significantly less valuable);
- (d) if we ask, give us a copy of all documents you receive as holder of, or in connection with the Secured Property;
- (e) if you become aware of any defect in your ownership of the Secured Property, immediately take steps to rectify it;
- (f) not do anything, or fail to do anything, that we think would have a material adverse effect on our interest in the Secured Property;
- (g) if we ask, ensure that the Person we nominate becomes and remains a joint signatory to any Deposit Account; and
- (h) comply with any conditions we attach to any approvals or consents we give to you in connection with the Mortgage.

### 2.5 Dealing with the Secured Property.

(a) Unless we consent first in writing, you may not:

- (i) create or allow to exist any Security Interest over any Secured Property; or
- (ii) in any other way:
  - (A) dispose of;
  - (B) create or allow any interest in; or
  - (C) part with possession of, any Secured Property.

Provided that nothing in this Clause 2.5(a)(ii) prevents you from disposing of or parting with possession of *Floating Secured Property* in the ordinary course of your ordinary business for fair value.

- (b) Where by law we may not restrict the creation of any *Security Interest* over an asset ranking after the *Mortgage*, paragraph (a) will not restrict that creation. You must ensure that before that *Security Interest* is created the holder of that *Security Interest* enters into a deed of priority in accordance with Clause 5 of these *Mortgage Terms*.
- (c) You must get our written consent before you:
  - (i) take steps to change any of the *Secured Property* that are *Certificated Securities* to uncertificated securities (or vice versa);
  - (ii) close, vary the terms of, or change the signatories to, any *Deposit Account*; or
  - (iii) waive any of your rights or release any *Person* from its obligations in connection with the *Secured Property*.
- (d) In respect of any warrant or option (being a warrant or option over *Securities*) which forms part of the *Secured Property*:
  - (i) you acknowledge that we will not be, and cannot be held to be, aware of the terms of issue nor any requirement upon you to act or do anything prior to the expiry of the warrant or option held as *Secured Property*; and
  - (ii) you acknowledge that we will not assume any obligations of the issuer of the warrant, option or other *Security*, including, but not limited to, seeking any instruction from you regarding any action required in dealing with the warrant, option or *Security* prior to expiry or otherwise.

#### 2.6 Completion of documents.

We, any of our *Authorised Officers*, any *Receiver* or *Attorney* may complete any document which at any time is executed by you or on your behalf and deposited with us or the *Nominee*. Such documents may be completed in favour of any *Person*.

#### 2.7 Our Powers under the Mortgage.

If an *Event of Default* occurs, we may do anything that the absolute beneficial owner of the property could do including the following:

- (a) sell without notice, appropriate or otherwise deal with part or all of the *Secured Property* in any manner we consider fit (you agree that any such disposal is not open to challenge for any reason);
- (b) complete, sign, seal, deliver and register any transfers or other documents that are required to enable the transfer of the *Secured Property*;
- (c) deliver any certificates relating to the *Secured Property*;
- (d) effect the transfer of any *Securities* from a *Participant Sponsored Holding* to a purchaser or other relevant *Person*;
- (e) employ or discharge any *Person* as professional adviser, consultant or broker for any purpose on such terms as we think fit;
- (f) exercise any voting or other rights or powers in respect of any *Security* in the *Secured Property*;
- (g) receive any cash dividend in respect of any *Security* in the *Secured Property*;
- (h) operate the *Deposit Account* without signature, and give notice to the *Deposittee* that we now have this right and that you no longer have such a right;
- (i) apply the balance in the *Deposit Account* towards the *Total Amount Owed*; and

- (j) make any arrangement or compromise which we consider expedient in our interests;
- (k) bring or defend any action, suit or legal proceedings in your name or otherwise, for all or any of the above purposes;
- (l) take any other action that the absolute beneficial owner or *Receiver* of the *Secured Property* could;
- (m) retain the *Investment* until the *Repayment Date*; or
- (n) appoint a *Receiver* to do any of those things.

#### 2.8 Statutory Powers.

The Powers conferred on us by law:

- (a) are in addition to the Powers conferred under the *Agreement*;
- (b) to the extent permitted by law, may be exercised immediately an *Event of Default* occurs and at any time subsequently; and
- (c) are excluded or varied to the extent that they are inconsistent with the express terms of the *Agreement*.

#### 2.9 Notice not required to enforce Mortgage.

- (a) To the extent permitted by law:
  - (i) you dispense with any notice or lapse of time required by law before we may enforce the *Mortgage* or exercise any *Power*;
  - (ii) we are not required to give notice to any *Person* before enforcement or exercise; and
  - (iii) any law requiring the giving of notice or the compliance with a procedure or the lapse of time before enforcement or exercise is excluded.
- (b) Where a law cannot be excluded and requires a period of notice to be given, if the law allows the period to be specified or changed, that period is one day.

#### 2.10 You must assist us.

If we ask you to do anything:

- (a) for more satisfactorily mortgaging, assuring or securing the *Secured Property* to us in a manner consistent with the *Agreement*; or
- (b) for aiding in the execution of any *Power*, you must do it immediately at your cost. It may include registering us (or our *Nominee*) as the registered holder of any part of the *Secured Property*, registering the *Mortgage* or any transfer of the *Fixed Secured Property*, registering the power of attorney or a similar power, executing and delivering blank transfers, or granting us and the *Nominee*, Powers that the *Agreement* intended and appears to grant to us or the *Nominee*.

#### 2.11 Prospective Liability.

- (a) Subject to Clause 2.12 below, for the purpose of the *Corporations Act*, the maximum prospective liability (as defined in the *Corporations Act*) secured by the *Mortgage* is A\$20,000,000 or its equivalent.
- (b) The nature of that prospective liability is advances, interest, fees, costs, indemnities and other amounts included in the definition of *Total Amount Owed*.

#### 2.12 Increase in prospective liability.

From time to time, we may lodge a notice under s268(2) of the *Corporations Act* on your behalf specifying an increase in the maximum prospective liability secured by the *Mortgage*. From the date of lodgement the sum specified in Clause 2.11 above will be taken to be varied to the sum specified in the notice.

### 3. Priority of Mortgage.

The *Mortgage* takes priority over all *Security Interests*, except those to which we have consented in writing.

### 4. Amounts and property secured by other Security Interests.

- (a) The holder of another *Security Interest* affecting the *Secured Property* may give us a certificate stating the amount and property secured by the *Security Interest* they hold. We and any *Receiver* or *Attorney* may rely on that certificate.
- (b) We or any *Receiver* may pay or agree to pay the amount the holder of a *Security Interest* certifies as necessary to discharge the *Security Interest* or some of the indebtedness secured by it or to acquire it. From the date we pay that amount, it will be part of the *Secured Property* and you must indemnify us and the *Receiver* against that amount. This applies whether that *Security Interest* was valid or prior to, equal to or has a subsequent ranking, or the property or moneys stated in the certificate were secured by it.

### 5. What if we consent to a subsequent Security Interest?

- (a) If we consent to a subsequent *Security Interest* over the *Secured Property* and if we ask, then you must get an agreement acceptable to us regarding the priority between the *Mortgage* and the other *Security Interest*.
- (b) If you do not get both our consent and an agreement acceptable to us, we:
  - (i) need not make money available under the *Agreement*; and
  - (ii) may exercise any other rights that arise because you do not do so, such as the right to sell or otherwise deal with the *Secured Property*.
- (c) You must ensure that the amount secured under any other *Security Interest* over the *Secured Property* is not increased without our written consent.
- (d) You must comply on time with any obligation in connection with any other *Security Interest* over the *Secured Property*.

### 6. What happens to the money we receive on enforcing the Mortgage?

#### 6.1 Order money is applied.

All money we receive under or by virtue of the *Mortgage* will be applied in the manner and order we determine. Any surplus will not carry interest. If we pay the surplus to the credit of an account in your name with any bank carrying on business in Australia, neither we, the *Receiver* or *Attorney* (as the case may be) will be under any further liability in respect of it.

#### 6.2 Moneys actually received.

In applying any money towards the satisfaction of the *Total Amount Owing*, you will be credited only with the money available for that purpose which we actually receive. The credit will date from the time of receipt.

### 7. Protection of third parties to dealings with the Secured Property.

#### 7.1 Direction to Comply.

If any of the *Fixed Secured Property* is not registered in the name of

the *Nominee* (eg if you invest in the *Investment* through a master trust or wrap account) you irrevocably instruct the holder of the *Fixed Secured Property* to comply with any instructions from us in relation to the *Fixed Secured Property* notwithstanding any instruction from you to the contrary. Such holder of the *Fixed Secured Property* is entitled to rely on this authorisation from you.

#### 7.2 No enquiry.

No third party to any *Dealing* (as defined below), and no *Person* asked to register a *Dealing*:

- (a) is bound to enquire:
  - (i) whether an *Event of Default* has occurred or whether the *Mortgage* has become enforceable;
  - (ii) whether a *Person* who is, or purports to be, or is purported to be, a *Receiver* or an *Attorney* is duly appointed;
  - (iii) as to the amount of *Total Amount Owing* and whether *Total Amount Owing* is due and payable; or
  - (iv) in any other way as to the propriety or regularity of the *Dealing*.
- (b) is affected by express notice that the *Dealing* is unnecessary or improper.

For the protection of any third party, to a *Dealing* or a *Person* registering a *Dealing*, the *Dealing* will be taken to be authorised by the *Mortgage* and will be valid, even if there is any irregularity or impropriety in the *Dealing*.

We are not required to notify any prospective or actual purchaser of the reason or circumstances of the sale of, or dealing with, the *Secured Property*.

In this clause a *Dealing* is:

- (a) any payment, or any delivery or handing over of an asset, to
- (b) any acquisition, incurring of *Finance Debt*, receipt, sale, lease, disposal or other dealing, by, you or any *Receiver* or *Attorney*, or any *Person* who purports or is purported to be a *Receiver* or *Attorney*; or
- (c) compliance with any instruction under Clause 7.1.

#### 7.3 Receipt.

The receipt of any of your *Authorised Persons* or any *Receiver* or *Attorney* (or *Person* who purports, or is purported, to be a *Receiver* or *Attorney*) for any moneys or assets payable to or receivable or received by it exonerates the *Person* paying those moneys or handing over that asset from being concerned as to their application, or from being liable or *Accountable* for their loss or misapplication.

### 8. Appointment of Receiver.

#### 8.1 Appointment.

To the extent permitted by law, at any time after an *Event of Default*, we or any of our *Authorised Officers* may:

- (a) appoint any *Person(s)* together or separately (or together and separately) to be a *Receiver* or *Receiver* and manager of all or any of the *Secured Property*;
- (b) remove any *Receiver*;
- (c) appoint another *Receiver* in addition to or in place of a *Receiver*; and
- (d) fix or vary the remuneration of a *Receiver*.

#### 8.2 Your agent.

Subject to Clause 8.4 below, every *Receiver* is your agent not ours.

You are solely responsible for the acts and omissions of the Receiver and you must pay the Receiver's Costs and remuneration.

### 8.3 Receiver's Powers.

Unless specifically excluded by the terms of its appointment, every Receiver has Power to do anything in respect of the Secured Property that you could do in addition to any Powers granted by law.

### 8.4 Receiver appointed after commencement of winding up.

The power to appoint a Receiver may be exercised even if an order is made or a resolution is passed to wind you up. A Receiver appointed in those circumstances may not, or may not in some respects, act as your agent.

### 8.5 Powers exercisable by us.

Whether or not a Receiver has been appointed, we may exercise any Power of a Receiver at any time after an Event of Default in addition to any Power we may have, and without giving notice.

We may exercise those Powers and our Powers:

- (a) without taking possession or being liable as mortgagee in possession; and
- (b) directly or through one or more agents. Anything done or incurred by an agent will be taken to be done or incurred by us.

### 8.6 Withdrawal.

We may give up possession of any Secured Property and withdraw any receivership at any time.

## Section 2: Investment Lending Facility Agreements.

This Section contains the terms and conditions of your Loan. If you complete and sign the Application Form and deliver it to us, you:

- (a) accept these terms and conditions and agree to be bound by them; and
- (b) make us the Offer of Mortgage.

You do not have to sign any legal documents other than the Application Form if you are only applying for a Loan. If we accept your application, we will sign the Agreement on your behalf and on behalf of the Guarantor under the power of attorney which you and the Guarantor provide to us in the Application Form. Once we execute the Agreement, you will be bound by its terms, and it will form a single agreement (consisting of the Loan Agreement, the Nominee Agreement, the Sponsorship Agreement and the Guarantee between:

- (a) you (as Borrower);
- (b) any Guarantor (if applicable);
- (c) the Nominees;
- (d) the CHESS Sponsor; and
- (e) us.

It is important that both you and the Guarantor fully understand the nature of the documents you are entering into as well as your respective rights and obligations under the documents.

#### Please read these documents carefully.

If you have any questions about these documents, you should consult your solicitor, Accountant or other professional adviser.

#### Meaning of words and expressions.

In these terms and conditions, reference to:

- (a) a "person" includes both an individual and a corporation;
- (b) "you" and "your" means

- (i) in the Loan Agreement, each applicant for a Loan which we accept and whose details are set out in the Application Form; and
  - (ii) in the Nominee Agreement, the Sponsorship Agreement and the Mortgage Terms, each Person who makes us the Offer of Mortgage; and
  - (iii) in the Guarantee, each Guarantor.
- (c) "we", "us" and "our" means Leveraged Equities Limited (ABN 26 051 629 282), its successors and anyone it assigns its rights to.

The full meaning of the above words and other words printed like This are explained in Clause 80 of Part D of the Agreement.

#### Capacity in which you enter the Agreement.

You and the Guarantor enter the Agreement in your personal or corporate capacity (as applicable), unless you have told us that you enter the Agreement as trustee of a trust. If you have told us that this is the case, you enter the Agreement as trustee of that trust for all your Secured Property subject to the trust and you also enter the Agreement in your personal or corporate capacity (as applicable).

## Section 2: Part A - Loan Agreement.

This Part A sets out the terms and conditions on which we will make a Loan to the Borrower.

### 1. Loan and Account.

#### 1.1 Loan.

We will advance money to you on the terms of the Agreement. How you borrow money from us (and the conditions you need to satisfy) is set out in Clause 2. The requirement for you to repay the money advanced by us (and all other money owing by you to us) is set out in Clause 3. The requirement for you to pay us interest is set out in Clause 4. How you make payments to us is set out in Clause 5.

#### 1.2 Account.

If you borrow money under the Agreement, we will establish one or more Accounts that will record all money owing by you to us under the Agreement.

### 2. How to borrow money.

#### 2.1 Borrowing request.

- (a) We require the details for a borrowing request to be provided to us in writing. However, we may in our absolute discretion accept notification from you other than by way of writing.
- (b) Unless we agree, you may not cancel a borrowing request once it is made.
- (c) If we receive a contract note or confirmation from your Nominated Financial Adviser, a Form or an invoice involving you, it will constitute a deemed borrowing request under Clause 2.1 and you need not make a separate borrowing request in those circumstances unless you wish to change or cancel the assumptions that we are entitled to make under those clauses (see below).
- (d) We are not liable for any loss, Cost, damage or expense which you may suffer or incur because the price of any of the Investment you plan to buy rises, or because they cease to be available, before we advance any money to you.
- (e) We are entitled to assume that you have read the relevant

prospectus, product disclosure statement or other document relating to the *Investment* (as the case may be) and that *you* agree to be bound by their terms.

- (f) If we receive an application form or other document indicating your agreement to apply for the *Investment* (the *Form*), we are entitled (unless *you* notify us otherwise):
- (i) to treat the *Form* as a borrowing request from *you* under Clause 2.1 on the basis that the details on the *Form* set out the amount, date, payment and purpose details of your borrowing request (as required in Clause 2.1); and
  - (ii) subject to Clause 2.2:
    - (A) we will advance funds necessary to purchase the *Investment* in accordance with the borrowing request; and
    - (B) *you* must direct the *Issuer* specified in the *Form* to register the *Investment* to become *Secured Property* or *New Rights* in the manner required by us.
- (g) If the *Investment* is traded on a *Financial Market* (for example, the ASX):
- (i) *you* cannot instruct us, the *Nominee* or the *Sponsor* to act as your *Broker* to purchase the *Investment* for *you*. However, *you* can instruct a *Broker* to purchase the *Investment* for *you* and to settle the purchase with us;
  - (ii) if we receive a contact note or confirmation from your *Nominated Financial Adviser* relating to your purchase of the *Investment*, we are entitled to treat the contract note or confirmation as a borrowing request from *you* under Clause 2.1 (unless *you* notify us otherwise) on the basis that the details on the contract note or confirmation set out the amount, date, payment and purpose details of your borrowing request (as required in Clause 2.1);
  - (iii) subject to Clause 2.2:
    - (A) we will advance funds on or before the settlement date by paying the *Loan* to your *Nominated Financial Adviser* or other party specified in the contract note or confirmation in accordance with the deemed borrowing request; and
    - (B) *you* must direct your *Nominated Broker* (if *you* have one) or other party specified in the contract note or confirmation to register the *Investment* in a *Participant Sponsored Holding* with the *Sponsor* in accordance with Clause 10 of Part B of this *Agreement*.
- (h) If *you* wish to change or cancel a borrowing request under this Clause 2.1, *you* must provide separate written instructions to us in accordance with this Clause 2.1 and referring to, and attaching a copy of, the *Form*.
- (i) If the application referred to in Clause 2.1(f) is wholly or partly unsuccessful, we will apply the refunded application money towards the repayment of the *Total Amount Owing* in accordance with Clause 3, less our own *Costs* incurred to date. Interest is payable to us on the money advanced to fund the application until we receive the refunded application money.

## 2.2 Conditions you must satisfy to borrow.

- (a) We do not have to advance any money to *you* under the *Agreement*, unless, in our opinion:
- (i) *you*, and if relevant, the *Guarantor*, have completed and signed the *Application Form* and the details *you* have provided in the *Application Form* are satisfactory to us;
  - (ii) your *Statement of Position* and the *Statement of Position* of the *Guarantor* is satisfactory to us;

- (iii) where the money borrowed is not enough to cover the full *Costs* of any property which is to be *Secured Property*, *you* will pay or have paid the balance remaining;
  - (iv) *you* have paid us any fees we require;
  - (v) your representations and warranties in the *Agreement* were true when made (or when deemed to be repeated on the date of any borrowing request);
  - (vi) an *Event of Default* has not occurred and is unlikely to occur; and
  - (vii) *you* have provided us with all relevant notices, approvals, certificates, opinions or documents:
    - (A) required by the *Agreement* or the *Mortgage*; or
    - (B) that we have otherwise requested from *you*, and we are satisfied with these documents.
- (b) Even if *you* have done everything required under Clause 2.2(a), we may in our absolute discretion decline to advance the *Loan* on the day the *Loan* is to be made.
- (c) If we decline to advance the *Loan*, we will not be liable to *you* for any loss, *Cost*, damage or expense which *you* may incur or suffer as a result.

## 3. Repayment.

### 3.1 No early repayment without consent.

*You* have no right to repay the *Loan* prior to the *Repayment Date* without our consent if the *Investment* includes a *Capital Guaranteed Date*. Our consent may be withheld at our discretion and if given may be subject to such conditions as we determine, including a requirement to pay us *Break Costs* and an *Exit Fee*.

### 3.2 Repayment.

(Subject to Clause 54.2) *you* must repay to us all of the *Total Amount Owing* on the *Repayment Date*. We may apply the redemption proceeds of the *Investment* towards satisfaction of the *Loan* however *you* will be responsible to us for any shortfall between such redemption proceeds and the *Total Amount Owing*. If there is a shortfall we will give *you* a *Notice* requiring *you* to repay, in which case *you* must repay such shortfall specified in the *Notice* before 4pm on the 5th *Business Day* after receiving the *Notice*.

## 4. Interest.

### 4.1 What you must pay and when.

- (a) *You* must pay us interest calculated on the *Account Balance* in accordance with the rate we specify. We may change this rate at any time in the manner referred to in Clause 4.1(g) unless *you* have elected to fix the interest on the *Account Balance* or any part of it. Clause 4.4 sets out the terms and conditions for the fixed interest option.
- (b) *You* must also pay us the fees and charges which we specify from time to time. We may change those fees and charges at any time.
- (c) Interest on the *Account Balance* accrues daily from the date we advance money to *you*, up to and including the date *you* fully repay the *Total Amount Owing*.
- (d) Interest is calculated daily on the *Account Balance*.
- (e) We may provide *you* with a statement regarding the interest we have charged each month. This information, as well as the amount of daily accrued interest, may also be accessed through our *Online Service*.

- (f) Unless you pay interest in advance (with our consent) or annually in arrears (with our consent), you:
  - (i) must pay us interest on the *Account Balance* in arrears on the last *Business Day* of each month; and
  - (ii) agree that if you do not do so or if we allow you to capitalise the interest instead we may (without prejudice to our rights to demand the payment of any interest due but unpaid) add the interest payable to your *Account Balance* and you will then be liable for interest on that increased *Account Balance*, (this is known as “capitalising” or “compounding” the interest).
- (g) Notwithstanding anything in this Clause 4.1, we may change the rate (for variable rate loans) amount, method of calculation, frequency or time for payment of interest, fees and charges at any time in our absolute discretion and without your consent. We may notify any change to you through our *Online Service* or by sending you a *Notice*. Such changes may be retrospective to the extent of not more than 40 days prior to such notification or the date of such *Notice*.
- (h) Your obligation to pay interest, fees and charges:
  - (i) is in addition to your obligation to pay the *Costs*, charges and expenses set out in Clause 69 of Part D; and
  - (ii) is not affected by Clause 63 of Part D, and your obligation to pay interest, fees and charges does not depend on us notifying you or obtaining your consent.

#### 4.2 Interest on overdue money.

Details regarding interest that you and the *Guarantor* must pay to us on amounts that fall due for payment but are unpaid is set out in Clause 65 of Part D.

#### 4.3 Prepayment of interest.

- (a) If we agree, you may pay interest on the *Account Balance* in advance. That interest is payable on the date we agree.
- (b) Any prepayment of interest:
  - (i) is charged the day before the commencement of the next interest period;
  - (ii) will take effect at the commencement of the next interest period; and
  - (iii) will continue for the period for which interest has been prepaid.
- (c) Prepaid interest is not refundable.

#### 4.4 Fixed interest.

- (a) If you ask and we agree, we will determine a *Fixed Rate (Fixed Rate)* applicable for a period (*Term*) to an amount (*Fixed Amount*) that you have borrowed or intend to borrow from us under the *Agreement*. We will confirm the *Fixed Rate*, the *Term* and the *Fixed Amount* to you in writing. There may be more than one *Fixed Amount* and *Fixed Rate* agreed between us at any time.
- (b) Interest calculated on a day on the *Account Balance* will, during the *Term*, be calculated at the *Fixed Rate* on that part of the *Account Balance* as is equal to the *Fixed Amount*. If on that day a *Term* is continuing with respect to more than one *Fixed Amount*, the *Account Balance* is to be treated as subject to the *Fixed Rate* (in respect of the applicable *Fixed Amount*) first agreed between us under paragraph (a) and then successively each subsequently agreed *Fixed Rate* (in respect of the applicable *Fixed Amount*).
- (c) Paragraph (b) does not apply to that part of the *Account Balance* outstanding on any day as is subject to a different agreement as to interest.

- (d) If on any day the *Account Balance* subject to interest in accordance with paragraph (b) is less than the aggregate of the *Fixed Amounts* applicable on that day, you must pay us a fee. That fee:
  - (i) is to be calculated on the daily balance of the amount by which the *Account Balance* subject to interest in accordance with paragraph (b) is less than the aggregate of the *Fixed Amounts* applicable on that day;
  - (ii) is to be calculated at the applicable *Fixed Rate* for all or such part of each *Fixed Amount* applicable on that day as is or are not subject to interest in accordance with paragraph (b) on that day;
  - (iii) accrues from day to day and is to be calculated on the number of days elapsed; and
  - (iv) is payable on the last *Business Day* of each month.
- (e) If you do not pay us a fee under paragraph (d) on the due date, we may add that fee to the amount of the *Account Balance*, and you will then be liable for interest on the total amount in the same manner as the *Account Balance*.
- (f) If you ask and we agree, an agreement between us as to a *Fixed Rate* for a *Fixed Amount* may be Terminated during the applicable *Term* upon the terms and conditions which we specify (including, without limitation, as to any amount payable by you to us in connection with our hedging, funding and swap arrangements).

## 5. Payments.

You must pay any money you owe under the *Agreement* as follows:

- (a) **(Place for payment.)** A payment must be made into the *Account* or at the place we specify from time to time (and we may specify different places or accounts for different payments).
- (b) **(Date.)** A payment must be made on or before the date it is due. If that date is not a *Business Day*, then you must pay us on the previous *Business Day*.
- (c) **(Time.)** If no other time is specified by us in the *Agreement* or otherwise, we must receive payment by 10am (Australian Eastern Standard Time) on the date that payment is due. If we receive a payment from you after 10am, we may treat it as having been received on the next *Business Day*.
- (d) **(Full payment.)** A payment must be made in full immediately available funds without set-off, counterclaim or any withholding deduction of any kind.
- (e) **(Payment Currency.)** All payments must be in cleared funds and in Australian dollars.
- (f) **(Direct Debit.)** All payments of interest must be made by way of direct debit pursuant to a direct debit service agreement in the form of the *Direct Debit Service Agreement*.

## 6. Additional Guarantors.

- (a) In addition to the *Guarantee*, we may require a new *Person* to provide us with additional security. If this happens, the *Borrower* must make sure that the new *Person* signs an *Application Form* and becomes a *New Guarantor*, and gives us any document or information we reasonably request and that document or information is satisfactory to us.
- (b) Once the new *Person* has signed the *Application Form*, then the new *Person* will be treated as though they had been an original *Guarantor*, and will be bound by all the obligations in the *Guarantee*.

## 7. Other provisions.

Other terms and conditions affecting the *Loan*, when you can borrow and what you must pay are set out in Part D (General Provisions).

## Section 2: Part B - Nominee and Sponsorship Agreements.

Explanation of the *Nominee Agreement* and the *Sponsorship Agreement*.

This Part B deals with two distinct legal relationships. These are the *Nominee* arrangement under which a nominee company may hold *Fixed Secured Property* owned by the *Borrower* and mortgaged to us, and the arrangement under which Pirie Street Custodian Limited will act as your *Sponsoring Participant* in relation to any of your *Securities* which have been converted to the *CHESS* system of registration. This Part B helps us to administer the secured loan and protect our position as lender. The sponsorship part of this document (Clauses 10 to 18 inclusive) relates to the *CHESS* system of computer registration of shareholdings without the issue of share certificates. The *CHESS* system is operated by ASX Settlement and Transfer Corporation Pty Ltd (**ASTC**).

Only certain people (**Participants**) can access the *CHESS* system. Therefore, in order to buy or sell shares which have been converted to the *CHESS* system, you or any nominee that holds shares (**Holder**) need to be sponsored by someone who is a *Participant* in *CHESS*. Pirie Street Custodian Limited is a *General Settlement Participant* in *CHESS* and can act as your *Participant*. The effect of the *Sponsorship Agreement* is to appoint Pirie Street Custodian Limited as your *Controlling Participant* in *CHESS* in relation to *Securities* you mortgage to *Leveraged Equities*.

The *Sponsorship Agreement* also contains special provisions to better protect *Leveraged Equities* as mortgagee of your shares. In particular, it stipulates that the *Sponsoring Participant* will only act in accordance with instructions received from *Leveraged Equities*, not from you. Otherwise, this part of the *Agreement* contains the standard provisions required by the *ASTC Settlement Rules* for *CHESS*.

These include:

- A statement of the *Holder's* ability to make a complaint to the regulatory body or *ASTC*.
- An acknowledgment by the *Holder* that if a transfer is effected by the *Participant*, the *Holder* may not claim against *ASTC* or the issuing company that it was not authorised by the *Holder*.
- A statement that in the event the *Holder* makes a claim for compensation against the *Participant*, the ability of the *Participant* to satisfy the claim will depend on its financial stability. The *National Guarantee Fund* does not cover breaches by the *Participant* under the *Agreement*.
- A statement of the *Holder's* right to remove the shares from the *CHESS Subregister* or from the control of the *Participant* if the *Participant* is suspended from participation in *CHESS* (this right is subject to some control by *Leveraged Equities* as mortgagee over the shares).
- A statement that *ASTC* takes no responsibility for and has not approved the abilities or qualifications of the *Participant*. We are required by these same rules to have explained the effect of the *Sponsorship Agreement* to you before it is signed. Our explanation to you is contained in these paragraphs, so if you are unclear on the effect of the *Nominee Agreement* and the *Sponsorship Agreement* please contact *Leveraged Equities* on 1300 307 807.

## *Nominee and Sponsorship.*

This Part B sets out certain arrangements under which the *Fixed Secured Property* will, if we require:

- (a) be held on your behalf in the name of a nominee or nominees (the **Nominee**); and
- (b) be controlled in the *CHESS* system by a *Sponsoring Participant* (the **Sponsor**).

In each case, the *Nominee* or *Sponsor* will be the person specified by us. These arrangements are intended to protect our position as lender and mortgagee in relation to the *Fixed Secured Property*.

## 8. Appointment of Nominee and what your Nominee can do.

### 8.1 Appointment of Nominee.

If, in accordance with the *Agreement*, you are required to hold any of the *Fixed Secured Property* in the name of the *Nominee*, then:

- (a) you will transfer the *Fixed Secured Property* you own to the *Nominee*; or
- (b) if you do not yet own the *Fixed Secured Property*, you will have the *Nominee* acquire the *Fixed Secured Property*;
- (c) you accept that the *Nominee* will hold the *Fixed Secured Property* on your behalf in accordance with the terms of the *Master Nominee Deed*; and
- (d) you must pay the *Nominee* the full amount of the purchase price of any *Fixed Secured Property* that the *Nominee* acquires on your behalf.

### 8.2 What your Nominee can do.

If the *Nominee* holds *Securities* on your behalf, it may, but is not obliged to:

- (a) hold and register any of the *Fixed Secured Property* under its own name;
- (b) hold any documents of title for any of the *Fixed Secured Property*, or deposit them with us in accordance with the *Mortgage*;
- (c) give us any information it obtains from you or that relates to the *Fixed Secured Property*;
- (d) exercise the voting power in respect of the *Fixed Secured Property* it holds on your behalf in the manner you instruct, unless we direct otherwise;
- (e) pay to you income earned on the *Fixed Secured Property* it holds on your behalf, unless we direct otherwise;
- (f) take up any *New Rights* relating to the *Fixed Secured Property* it holds on your behalf unless we direct otherwise (if our consent is required by the *Agreement*, the *Nominee* must obtain our consent first);
- (g) participate in any *Plan* in respect of the *Fixed Secured Property* (whether or not you request the *Nominee* to do so);
- (h) appoint us or any of our *Authorised Officers* as its attorney for the purpose of doing anything in relation to the *Fixed Secured Property* which the *Nominee* could do;
- (i) apply any money held by it on your behalf to satisfy any amount of money that you owe the *Sponsor* or us; and
- (j) do anything else (or refrain from doing anything else) that is necessary for the *Nominee* to comply with its obligations under the *Mortgage* or the *Master Nominee Deed*.

## 9. Your obligations in relation to the Nominee.

In addition to any other obligations you have under the *Agreement*:

- (a) you must pay the *Nominee* upon request:

- (i) its fees and charges as specified from time to time; and
  - (ii) its Costs and expenses in acting on *your* behalf (this may include taxes, duties, fees or penalties);
- (b) if *you* are obliged to do anything in relation to the *Fixed Secured Property* under the *Agreement*, then *you* must direct the *Nominee* to do anything necessary to ensure *you* comply with that obligation; and
- (c) *you* must not direct the *Nominee* to do anything which is inconsistent with *your* obligations under the *Agreement* or its obligations under the *Master Nominee Deed* (for example *you* must not direct the *Nominee* to transfer the *Fixed Secured Property* to *you* or to another *Person*).

For the purposes of this Clause 9, any reference in the *Master Nominee Deed* to “Securities” shall be deemed to include a reference to any of the *Fixed Secured Property*.

## 10. Appointment of Sponsor as Controlling Participant.

### 10.1 Meaning of Words in the ASTC Settlement Rules.

The meaning of words printed like *This* are defined in Clause 80 of Part D of this *Agreement*. To the extent that a word is not defined, the word has the meaning given in the *ASTC Settlement Rules*.

### 10.2 Sponsorship Agreement.

If, in accordance with the *Agreement*, *you* are required to hold *your Securities* in a *Participant Sponsored Holding* for the purposes of *CHESS*:

- (a) *you* and the *Nominee* appoint the *Sponsor* to be the *Controlling Participant* for the purposes of *CHESS* in respect of the *Securities*;
- (b) *you* direct the *Sponsor* to convert or transfer the *Securities* to a *Participant Sponsored Holding*; and
- (c) *your Participant Sponsored Holding* will be identified by the *Holder Identification Number (HIN)* notified to *you* by *CHESS*.

### 10.3 Termination of prior Sponsorship Agreement.

Any prior *Sponsorship Agreement* or arrangement between any of *you*, the *Nominee* and the *Sponsor* in relation to the *Securities* being a *Sponsorship Agreement* or arrangement which is in *your* name as shown on the *Application Form* is terminated when the *Agreement* begins without affecting adversely any rights or obligations that arose before its termination.

## 11. Declaration by and information concerning the Sponsor.

- (a) The *Sponsor* declares that, as a *General Settlement Participant* in the settlement facility operated by *ASTC*, it is the holder of an Australian Financial Services Licence (Number 240521) under the *Corporations Act* which authorises it to carry on such business.
- (b) The regulatory regime which applies to the *Sponsor* is the regulation of the clearing and settlement facility operated by *ASTC* and *ACH* under the *Corporations Act*, the *ASTC Settlement Rules* and the operating rules of *ACH* and the regulation of financial services licensees under the *Corporations Act*.
- (c) *ASTC* has not approved, and takes no responsibility for, abilities or qualifications of the *Sponsor* as a *General Settlement Participant*.
- (d) Information about the status of the *Sponsor* (as a financial services licensee and a *General Settlement Participant*) can be obtained from the Australian Securities and Investments Commission and *ASTC*.

## 12. Instructions.

### 12.1 Power of the Sponsor.

- (a) **(Your instructions.)** *You* and the *Nominee* authorise the *Sponsor* as each of *your* agent to do any act under *CHESS* relating to *your Participant Sponsored Holding*.
- You* and the *Nominee* direct and authorise the *Sponsor* to sell, transfer, convert or take other action under *CHESS* in respect of *your Participant Sponsored Holding*, so long as it acts in accordance with the *ASTC Settlement Rules* and:
- (i) the *Sponsor* has received instructions from *you*, the *Nominee*, *your Nominated Financial Adviser* or anyone else appearing to be authorised by *you*;
  - (ii) the *Sponsor* has received instructions from *us* in relation to the *Sponsorship Agreement* or the *Mortgage*; or
  - (iii) otherwise under this *Sponsorship Agreement* or the *Mortgage*.
- (b) **(Our instructions.)** The *Sponsor* must comply with any of *our* instructions in connection with this *Sponsorship Agreement* or the *Mortgage*.
- (c) **(Power of sale.)** The circumstances in which the *Sponsor* can exercise a power of sale in respect of *your Participant Sponsored Holding* are set out in this Clause 12 and Clause 13.
- (d) **(Australian Options Market Cover.)** Where *you* or the *Nominee* arrange with *ACH* to lodge *Securities* in a *Participant Sponsored Holding* as cover for written positions in the Australian Options Market, and *you* or the *Nominee* inform the *Sponsor* of the arrangement, *you* authorise the *Sponsor* to take whatever action is reasonably required by *ACH* in accordance with the *ASTC Settlement Rules* to give effect to that arrangement.
- (e) **(Charges and other interests.)** Without limiting Clause 13, where *you* or the *Nominee* arrange with any person to give a charge or any other interest in *Securities* in a *Participant Sponsored Holding*, *you* authorise the *Sponsor* to take whatever action is reasonably required by the person in accordance with the *ASTC Settlement Rules* to give effect to that arrangement.

### 12.2 Reliance.

Both we and the *Sponsor* may rely on any instruction given by a *Financial Adviser* and which purports to be given on *your* behalf or the *Nominee*'s behalf without the need to make any enquiry or otherwise verify the authority of that *Financial Adviser*. It is *your* responsibility to ensure that *your Nominated Financial Adviser* acts only in accordance with *your* instructions and we accept no liability for the *Nominated Financial Adviser* acting without *your* authority.

### 12.3 Right not to implement instructions.

The *Sponsor* may refuse to act on any instruction given by *you*, the *Nominee*, *your Nominated Financial Adviser* or anyone else, if:

- (a) any amount is due by *you* in connection with this *Sponsorship Agreement*;
- (b) we have not consented in writing to the *Sponsor* acting on such instruction;
- (c) following the instruction would cause *you* or anyone else to breach this *Sponsorship Agreement*;
- (d) following the instruction would be contrary to the *ASTC Settlement Rules*;
- (e) any condition in Clause 2.2(a) is not satisfied; or
- (f) the instruction is not capable of being implemented, for

example because *your Participant Sponsored Holding* does not contain sufficient *Securities* to implement the instruction.

- (g) In the event of *your* death or bankruptcy, the *Sponsor* may request any information it reasonably requires in order to identify the person legally appointed to administer the estate.
- (h) The *Sponsor* is not obliged to Transfer *Securities* into *your Participant Sponsored Holding*, where payment for those *Securities* has not been received, until payment is received.

#### 12.4 Transfer, Conversion and Withdrawal Instructions.

- (a) Subject to this *Sponsorship Agreement*, the *Sponsor* will not initiate any *Transfer* or *Conversion* into or out of *your Participant Sponsored Holding* without *your* express authority.
- (b) Subject to Clause 12.1, Clause 12.4(c) and Clause 13, the *Sponsor* will initiate any *Transfer*, *Conversion* or an action necessary to give effect to any *Withdrawal Instructions* within the *Scheduled Time*.
- (c) Where the *Sponsor* claims that an amount lawfully owed to it has not been paid by *you*, the *Sponsor* has the right to refuse to comply with *your Withdrawal Instructions*, but only to the extent necessary to retain *Securities* of the minimum value held in *your Participant Sponsored Holding* (where the minimum value is equal to 120% of the current value of the amount claimed).

### 13. Protection of our Security Interest.

#### 13.1 Exercise of your rights and the Nominee's rights.

*You* and the *Nominee* must exercise all of *your* respective rights in respect of *your Participant Sponsored Holding* in a manner that will preserve *our Security Interest* in *your Participant Sponsored Holding* and under the *Agreement* generally. If the *Sponsor* requests, *you* and the *Nominee* must:

- (a) take whatever action is reasonably required by *us* (as mortgagee under the *Mortgage*) in accordance with the *ASTC Settlement Rules* to give effect to the *Mortgage*;
- (b) direct that *your Participant Sponsored Holding* be transferred to or at the direction of the *Sponsor* (or anyone else that the *Sponsor* nominates);
- (c) direct that *your Participant Sponsored Holding* be converted to a holding that is not controlled by the *Sponsor*, but that is subject to a reserved *Subposition* in *our* favour and on the terms it specifies; or
- (d) do or refrain from doing anything in connection with the *Agreement* or *your Participant Sponsored Holding*.

#### 13.2 Subpositions.

*You* and the *Nominee* must seek the *Sponsor's* written consent before exercising a right to reserve or release *Securities* into or out of a *Subposition*.

#### 13.3 Sale by the Sponsor.

- (a) Any sale of or other dealing in a *Participant Sponsored Holding* by the *Sponsor* under this Clause 13 will be as *your* or the *Nominee's* attorney. The *Sponsor* is not *our* agent.
- (b) The *Sponsor* is not under any obligation or duty to *you* or the *Nominee* to sell any *Participant Sponsored Holdings* when it is able to under this *Sponsorship Agreement* or to postpone selling. In particular:
  - (i) if the *Sponsor* does not sell when it is able and the market value of the *Securities* continues to fall; or
  - (ii) if the *Sponsor* sells any of *your Participant Sponsored Holdings* and the market value of the *Securities* subsequently rises, the *Sponsor* will not be liable to *you* or

the *Nominee* for any losses, *Costs*, damages or expenses which may be suffered by *you* or the *Nominee*.

### 14. Acknowledgements by you and the Nominee.

#### 14.1 Acknowledgements by you and the Nominee.

*You* acknowledge that:

- (a) **(ASX no responsibility)** neither *ASX* nor a Related Party of *Australian Stock Exchange Limited (ASX)* (including *ASTC*) has any responsibility for supervising or regulating the relationship between *you*, the *Nominee* and the *Sponsor* other than in relation to the *ASTC Settlement Rules* relating to *Sponsorship Agreements*; and
- (b) **(Explanation of Sponsorship Agreement)** *you* have read and understood the explanation of this *Sponsorship Agreement* which was provided to *you* at the time *you* signed the *Application Form* before *you* and the *Nominee* authorised the signing of this *Agreement*;
- (c) **(Holder Record Lock in the event of your death or bankruptcy)** in the event of *your* death or bankruptcy, a *Holder Record Lock* will be applied to all of *your Participant Sponsored Holdings*, unless *your* legally appointed representative or trustee elects to remove *your Participant Sponsored Holdings* from the *CHESS Subregister*; and
- (d) **(Sponsorship Arrangement in the event of your death)** in the event of *your* death, the *Sponsorship Agreement* is deemed to remain in operation, in respect of the *Person* legally appointed to administer *your* estate, for a period of up to three calendar months after the removal of the *Holder Record Lock* under the *ASTC Settlement Rules*, unless *your* legally appointed representative elects to remove *your Participant Sponsored Holding* from the *CHESS Subregister*; and
- (e) **(Sponsorship Arrangement applying to joint holdings)** where the *Sponsorship Agreement* applies to a joint *Participant Sponsored Holding* and:
  - (i) **(in the event of death of one joint holder)** one of *you* dies:
    - (A) all *Participant Sponsored Holdings* under the joint *Holder Record* will be transferred into new *Participant Sponsored Holdings* under a new *Holder Record* in the name of the surviving *Participant Sponsored Holder(s)*; and
    - (B) the *Sponsorship Agreement* shall be valid for the new *Participant Sponsored Holdings* under the new *Holder Record*; and
  - (ii) **(in the event of bankruptcy of one joint holder)** one of *you* becomes bankrupt, the *Controlling Participant* will:
    - (A) unless the legally appointed representative of the bankrupt *Participant Sponsored Holder* elects to remove the bankrupt's *Participant Sponsored Holding* from the *CHESS Subregister*:
      - (1) establish a new *Holder Record* and transfer the interest of the bankrupt *Holder* into new *Participant Sponsored Holdings* under the new *Holder Record* established for that purpose; and
      - (2) request the *ASTC* to apply a *Holder Record Lock* to all *Participant Sponsored Holdings* under that *Holder Record*; and
    - (B) establish a new *Holder Record* and transfer the interest of the remaining joint *Participant Sponsored Holders* into new *Participant Sponsored Holdings* under the new *Holder Record* established for that purpose; and

- (f) **(Transfer of holding)** if the *Sponsor* makes a transfer from your *Participant Sponsored Holding* under the *Sponsorship Agreement* pursuant to section 9 of the *ASTC Settlement Rules*, then:
- (i) you may not assert or claim against the *ASTC* (or the relevant *Issuer*) that the *Sponsor* either was not authorised to make the transfer or did not make it; and
  - (ii) you do not have a claim arising out of the transfer against the *National Guarantee Fund* under Part 7.5, Division 4 of the *Corporations Regulations* unless the transfer is also taken to have been effected by a *Market Participant* of *ASX* or a *Clearing Participant* of *ACH*.
- (g) In the event of your death or bankruptcy the *Sponsor* may request any information it reasonably requires in order to identify the person legally appointed to administer the estate.

#### 14.2 Acknowledgement to ASTC and Issuer.

The *Sponsor* holds the benefit of your acknowledgement in Clause 14.1(f) in trust for the benefit of itself, *ASTC* and the relevant *Issuer*.

### 15. Obligations of the Sponsor.

#### 15.1 Suspension of Sponsor.

In the event that the *Sponsor* is suspended from the *Settlement Facility*, subject to an assertion of an interest in *Securities* controlled by the *Sponsor*, where the assertion is made by either a liquidator, receiver, administrator or trustee of the *Sponsor*:

- (a) you have the right, within 20 *Business Days* of *ASTC* giving *Notice* of suspension, to give *Notice* to *ASTC* requesting that your *Participant Sponsored Holdings* be removed either:
  - (i) from the *CHESS Subregister*; or
  - (ii) from the control of the suspended *Sponsor* to the control of another *Sponsoring Participant* with whom you have entered into a valid *Sponsorship Agreement* pursuant to Rule 12.19.10 of the *ASTC Settlement Rules*; or
- (b) where you do not give *Notice* under Clause 15.1(a), *ASTC* may effect a change of *Controlling Participant* under Rule 12.19.11 of the *ASTC Settlement Rules*, and you will be deemed to have entered into a new *Sponsorship Agreement* with the substitute *Sponsoring Participant*, on the same terms as the existing *Sponsorship Agreement*. Where you are deemed to have entered into a *Sponsorship Agreement*, the *Sponsoring Participant* must enter into a *Sponsorship Agreement* with you within 10 *Business Days* of the change of *Controlling Participant*.

#### 15.2 Breach by Sponsor and complaints.

If the *Sponsor* breaches the *Sponsorship Agreement*, or if you have a complaint against the *Sponsor*, you may refer the breach or complaint to the Australian Securities and Investments Commission (ASIC), *ASTC*, or the Financial Industry Complaints Service Limited (FICS).

#### 15.3 Obligations of the Sponsor.

The *Sponsor* must:

- (a) comply with the *Corporations Act*, all other relevant laws and the *ASTC Settlement Rules*;
- (b) exercise all due care in carrying out its duties and obligations; and
- (c) immediately notify us as the mortgagee if it becomes aware of any fact that might render it unable or ineligible to carry out its duties and obligations.

### 16. Claims for Compensation.

- (a) No compensation arrangements apply to you as *Participant Sponsored Holder*.
- (b) If the *Sponsor* breaches this *Agreement*, you are not entitled to make a claim on the *National Guarantee Fund* for compensation.
- (c) If you make a claim for compensation against the *Sponsor* as your *Controlling Participant*, the *Sponsor's* ability to satisfy that claim will depend on its financial circumstances.
- (d) The *Sponsor* has lodged a *Sponsorship Bond* with *ASTC* and you may be entitled to make a claim under that *Sponsorship Bond*.

### 17. Information and Disclosure.

#### 17.1 Provision of information.

You must provide all information and documents which the *Sponsor* reasonably requires to:

- (a) establish a *Holder Record*;
- (b) establish your *Participant Sponsored Holding* in *CHESS* under this *Sponsorship Agreement*;
- (c) conduct the *Participant Sponsored Holding* as set out in the *Agreement* and the *ASTC Settlement Rules*;
- (d) enforce the *Mortgage* or any other right under this *Sponsorship Agreement*; and
- (e) update any information.

We and the *Sponsor* may give each other and your *Nominated Broker* information concerning you and the *Nominee*. You and the *Nominee* each irrevocably consent to this.

#### 17.2 Disclosure of tax file number.

If you have given your tax file number to us, the *Nominee* or the *Sponsor*, you authorise us, the *Nominee* and the *Sponsor* to disclose your tax file number (as well as your full name (including your title) and postal address) to *ASTC* or any relevant *Issuer* for any purpose relating to *CHESS*, your *Participant Sponsored Holding* or the payment of dividends, distributions or other benefits.

### 18. Variation, Termination and Novation.

#### 18.1 Variation.

To the extent any provision of this *Sponsorship Agreement* is inconsistent with the *ASTC Settlement Rules* (due to an amendment of the *ASTC Settlement Rules* or otherwise), the *Sponsor* may vary this *Sponsorship Agreement* to the extent necessary in its reasonable opinion to remove the inconsistency. The *Sponsor* must give you and the *Nominee* at least 7 *Business Days* notice in writing of the variation.

#### 18.2 Termination.

- (a) Subject to the *ASTC Settlement Rules*, the *Sponsorship Agreement* will be terminated upon the occurrence of any of the following events:
  - (i) by notice in writing from either you or the *Nominee* (as applicable) to the *Sponsor*;
  - (ii) by notice in writing from the *Sponsor* to either you or the *Nominee* (as applicable);
  - (iii) upon the *Sponsor* becoming *Insolvent*;
  - (iv) upon the termination or suspension of the *Sponsor*; or
  - (v) upon the giving of *Withdrawal Instructions* by you to the *Sponsor* under Clause 18.3.

- (b) Termination under Clause 18.2(a)(i) or (ii) will be effective upon receipt of notice by the other party to the *Sponsorship Agreement*.
- (c) Notwithstanding Clause 18.2(a) and (b) or anything else in the *Agreement*, for so long as the *Mortgage* is in force, you undertake to us that you will not give notice of termination under Clause 18.2(a)(i).
- (d) If the *Sponsorship Agreement* is terminated, you and the *Nominee* must immediately enter into a replacement *Sponsorship Agreement* on terms and with a *Controlling Participant* acceptable to us.
- (e) This Clause 18.2 has effect notwithstanding any other provision of the *Agreement*.

### 18.3 Change of Controlling Participant and Novation of Sponsorship Agreement.

- (a) If you receive a *Participant Change Notice* from the *Controlling Participant* of your *Participant Sponsored Holding* and the *Participant Change Notice* was received at least 20 *Business Days* prior to the date proposed in the *Participant Change Notice* for the change of *Controlling Participant*, you are under no obligation to agree to the change of *Controlling Participant*, and may choose to do any of the things set out in paragraphs (b) or (c) below.
- (b) You may choose to terminate the *Sponsorship Agreement* by giving *Withdrawal Instructions* under the *ASTC Settlement Rules* to the *Controlling Participant*, indicating whether you wish to:
  - (i) transfer your *Participant Sponsored Holding* to another *Controlling Participant*; or
  - (ii) transfer your *Participant Sponsored Holding* to one or more *Issuer Sponsored Holdings*.
- (c) If you do not take any action to terminate the *Sponsorship Agreement* in accordance with paragraph (b) and do not give any other instructions to the *Controlling Participant* which would indicate that you do not agree to the change of *Controlling Participant* then, on the *Effective Date*, the *Sponsorship Agreement* will have been taken to be novated to the *New Controlling Participant* and will be binding on all parties as if, on the *Effective Date*:
  - (i) the *New Controlling Participant* is a party to the *Sponsorship Agreement* in substitution for the *Existing Controlling Participant*;
  - (ii) any rights of the *Existing Controlling Participant* are transferred to the *New Controlling Participant*; and
  - (iii) the *Existing Controlling Participant* is released by you from any obligations arising on or after the *Effective Date*.
- (d) The novation in Clause 18.3(c) will not take effect until you have received a notice from the *New Controlling Participant* confirming that the *New Controlling Participant* consents to acting as the *Controlling Participant* for you. The *Effective Date* may as a result be later than the date set out in the *Participant Change Notice*.
- (e) You will be taken to have consented to the events referred to in Clause 18.3(d) by the doing of any act which is consistent with the novation of the *Sponsorship Agreement* to the *New Controlling Participant* (for example by giving an instruction to the *New Controlling Participant*), on or after the *Effective Date*, and such consent will be taken to be given as of the *Effective Date*.
- (f) The *Agreement* continues for the benefit of the *Existing Controlling Participant* in respect of any rights and obligations accruing before the *Effective Date* and, to the extent that any law or provision of any agreement makes the novation in

Clause 18.3(c) not binding or effective on the *Effective Date*, then the *Sponsorship Agreement* will continue for the benefit of the *Existing Controlling Participant* until such time as the novation is effective, and the *Existing Controlling Participant* will hold the benefit of the agreement on trust for the *New Controlling Participant*.

- (g) Nothing in this Clause 18.3 will prevent the completion of *CHESS* transactions by the *Existing Controlling Participant* where the obligation to complete those transactions arises before the *Effective Date* and the *Sponsorship Agreement* will continue to apply to the completion of those transactions, notwithstanding the novation of the *Sponsorship Agreement* to the *New Controlling Participant* under this Clause 18.3.

## Section 2: Part C - Guarantee.

This Part C sets out the terms and conditions on which a *Guarantor* gives a guarantee of the obligations of the *Borrower*.

### IMPORTANT NOTE

**This document means that you may be required to cover the debts of the Borrower referred to below as well as or instead of the Borrower.**

**Before you sign we recommend that:**

- **You read it carefully**
- **You check for yourself whether the Borrower can pay those debts**
- **You see your own solicitor and Financial Adviser.**

### 19. Summary of Guarantee.

- (a) Words used in this *Guarantee* and printed like *This* are explained in Clause 80 of Part D. Where an example is given in this *Guarantee* it does not limit what else might be included.
- (b) By entering into this *Guarantee*, you guarantee to us that the *Borrower* will:
  - (i) pay us all the *Guaranteed Money* described in Clause 20 below; and
  - (ii) comply with the *Arrangements* described in Clause 20 below.
- (c) Your liability under this *Guarantee* is unlimited unless we have otherwise agreed in writing with you that your liability is limited.
- (d) You also agree to other matters relating to the *Arrangements* and the *Guarantee* set out below.
- (e) If the *Borrower* does not pay us any amount of the *Guaranteed Money* when it is due, we can demand that you pay that amount to us. You must then immediately pay us that amount, along with any loss, Cost, damage or expense we suffer if you or the *Borrower* do not pay us that amount.
- (f) This can happen as often as the *Borrower* does not pay us. It can happen even if we do not take action to recover the *Guaranteed Money* from the *Borrower*.
- (g) If you do not pay an amount when we demand it, then among other things we can sue you (or if there is more than one of you, sue any one or more of you).
- (h) You give us this *Guarantee* and make the promises set out below because we have agreed to enter the *Arrangements*.

## 20. What does this Guarantee cover?

- (a) The *Arrangements* covered by this *Guarantee* are as follows:
- (i) the *Borrower* applies for a *Loan* and offers to mortgage or charge to us certain of its existing assets as security in anticipation of the *Loan* which we will give to the *Borrower*;
  - (ii) at a later stage, the *Borrower* may also be required to use the assets it purchases with the money we lend it as further security for the *Loan*;
  - (iii) if we accept the *Borrower's* application for a loan and its *Offer of Mortgage*, we will lend money to the *Borrower* so that the *Borrower* may buy shares or other investments or use the money for other business or investment purposes; and
  - (iv) the *Borrower* agrees to repay this money to us (and all other money it owes us) when it is due.
- (b) The *Arrangements* may be changed from time to time in accordance with our agreement with the *Borrower*. We may also enter into new *Arrangements* with the *Borrower* and the new *Arrangements* will also be covered by this *Guarantee*. If you agree in writing that any other arrangement is to be covered by this *Guarantee*, then that also will be included as part of the *Arrangements*.
- (c) **This Guarantee relates to all money which the Borrower may owe to us now or in the future for any reason under or in respect of the Arrangements.**  
This is the *Guaranteed Money*.
- (d) At any time the *Guaranteed Money* will include the following, so long as it arises under or in respect of the *Arrangements*.
- (i) Money which the *Borrower* actually does owe or will owe us. Examples of this include money which we have loaned to the *Borrower*, or agreed to pay for the *Account* of the *Borrower*, and interest, fees and charges and damages.
  - (ii) Money which the *Borrower* contingently owes us at that time. Money is contingently owed where the *Borrower* has an obligation to pay us if something happens or becomes known. Examples of this include a guarantee or indemnity given by the *Borrower*, a promise by the *Borrower* to pay the legal costs we might pay if the *Borrower* defaults, or a promise to pay us if we suffer a loss or have to make a payment to someone else.
  - (iii) Money which the *Borrower* may owe us after that time if something happens or becomes known. This applies even if at that time there is no existing obligation to pay it, so long as it arises in relation to circumstances which at that time either exist or can reasonably be foreseen or contemplated. Examples of this include where we may later be able to sue the *Borrower* for damages because of something that may happen arising out of the *Arrangements*.
  - (iv) Money which the *Borrower* owes or will owe us as a result of a transfer to us of an obligation owed by the *Borrower*. This includes money contingently owed and money which may become owed later as described in paragraph (iii).
  - (v) Money (including money of the type set out in the above paragraphs) which the *Borrower* would have owed us but for some reason as described in Clause 21 below.

It includes in each case any money which the *Borrower* may owe together with others.

## 21 What happens if there is a legal problem with the Borrower or the Guaranteed Money?

- (a) For some reason we might have no legal right to recover an amount of the *Guaranteed Money* from the *Borrower*, or the *Borrower* might not owe us an amount that otherwise would have been included in the *Guaranteed Money*.
- (b) If for any reason that happens, you promise (or if there is more than one of you, each of you promise) to pay that amount to us whenever we ask. You also promise whenever we ask, to pay us for loss or costs we suffer:
  - (i) if that happens; or
  - (ii) if you do not have to pay us that amount.
- (c) Everything described in Clause 21 applies even if we knew of the problem, or should have known. It applies even if, because of the problem, the *Borrower* could never have been required to pay us the amount.

## 22. What difference does it make if there is more than one of you?

- (a) Each of you is individually liable under this *Guarantee* for the full amount of the *Guaranteed Money* up to the limit of your liability as specified in Clause 19, even if:
  - (i) we have not signed on behalf of one or more of the others;
  - (ii) one or more of the others is not bound by it; or
  - (iii) one or more of the others in the future stops being liable (for example, because we release him or her).
- (b) We can demand payment from one or more of you without demanding it from the others.

## 23. What if there is a limit on your liability?

If there is a limit on your liability under this *Guarantee* as mentioned in Clause 19 then:

- (a) you are not released from any of your obligations under this *Guarantee* (it only limits the amount you must pay);
- (b) the limit on your liability will not apply if you have made incorrect statements or have acted fraudulently in connection with this *Guarantee*; and
- (c) you may also be required to pay other amounts under Clause 24 of this Part C.

## 24. Other amounts you may be required to pay.

In addition to the amount that you are required to pay in respect of the *Guaranteed Money*, we may require you to pay (whether or not your liability is limited):

- (a) interest under Clause 35 on any amount you owe us; and
- (b) expenses and government charges like stamp duty and other amounts under Clause 36.

## 25. Can you get out of this or stop your liability?

Once we have signed this *Guarantee* on your behalf, you cannot get out of it unless we agree in writing to cancel or modify your obligations. *Guaranteed Money* will include any money which becomes owing even if you want to stop your liability.

**26. Your obligations are not affected by anything else which happens.**

Your obligations under this *Guarantee* are unconditional. They are not affected by anything which might release you from all or part of your obligations, or limit them, if you had not agreed to this Clause. For example, you (or if there is more than one of you, each of you) continue to be liable even if:

- (a) we do not exercise any of our rights against the *Borrower* or anyone else;
- (b) we give the *Borrower* or anyone else time to pay or any other concession;
- (c) we make any arrangement or compromise with the *Borrower* or anyone else;
- (d) we give the *Borrower* or anyone else any discharge, or release or limit our rights;
- (e) we do not take security or accept an offer of security (for example, a mortgage or another guarantee) or do not have security, even if that security was mentioned to you;
- (f) this or any other document or security is not signed by any *Person* or is not binding on any *Person*;
- (g) we are negligent or mistaken, or break any agreement;
- (h) you (or if there is more than one of you, any of you), the *Borrower* or anyone else:
  - (i) who is an individual, dies or goes into some form of *Administration*; or
  - (ii) who is not an individual (for example, a corporation or partnership), has a change in its constitution or membership or goes into some form of *Administration*; or
- (i) the *Borrower* or anyone else has any claim against us.

**27. Can the Arrangements be changed?**

The *Arrangements* may be changed from time to time in accordance with our *Agreement* with the *Borrower*. We do not have to get your consent. This *Guarantee* will cover the changed *Arrangements* or new *Arrangements* (which may include new loan agreements or credit contracts with the *Borrower*), even if it means that the amount of the *Guaranteed Money* is increased.

**28. What if we hold other security?**

If we hold any other security or right for the *Guaranteed Money* (for example, a mortgage or another guarantee):

- (a) we do not have to enforce it;
- (b) we can change it or release or give up all or part of it;
- (c) the value or effectiveness of that security or right can be reduced or lost, and your obligations under this *Guarantee* will not be affected. This applies even if that security or right was mentioned to you. We need not consider your position. Nor will your obligations be affected if the security or right is lost, or cannot be enforced.

When we have received all of the *Guaranteed Money* and all other money the *Borrower* owes us, you may get the benefit of any security or rights we then hold. Until then, you have no right to it.

**29. What happens if the Borrower dies or goes into Administration?**

If the *Borrower* or anyone else dies or goes into *Administration*, and we can make a claim in the estate or *Administration*, then:

- (a) you promise (or if there is more than one of you, each of you promise) not to make a claim in that estate or *Administration* until we have been paid all of the *Guaranteed Money*; and
- (b) if we receive any amount as a result of making a claim, or for any other reason, we can put it to one side.

We need not use it to pay the *Guaranteed Money* until we have received enough in respect of the *Guaranteed Money* to pay the *Guaranteed Money* in full. Until that happens, you (or if there is more than one of you, each of you) are fully liable for the *Guaranteed Money* as though we had received nothing up to the limit of your liability as specified in Clause 19.

**30. Can you still be liable after the Borrower makes a payment?**

Your obligations under this *Guarantee* are continuing. They apply to all of the *Guaranteed Money* from time to time even though some of it may have been paid by the *Borrower* or you (or if there is more than one of you, by any of you) or anyone else in the meantime.

**31. What do we have to tell you?**

We do not have to tell you anything about the *Borrower* or anyone else, nor do we have to tell you whether anything happens in relation to the *Guaranteed Money* or the *Arrangements* or any security or rights.

For example, we do not have to tell you:

- (a) if the *Borrower* or anyone else defaults or what action we take or do not take; or
- (b) whether the *Borrower* or anyone else is in financial difficulty; or
- (c) whether there is a problem with any security.

You should review the *Arrangements* and the *Borrower's* circumstances regularly so that you are aware of any possible enforcement of this *Guarantee* by us and any changed or new *Arrangements*.

**32. Do we have to do anything else?**

We only have to do what we expressly promise to do in writing as set out in the *Arrangements* and this *Guarantee* - nothing else. You confirm (or if there is more than one of you, each of you confirm) that when you decided to enter into this *Guarantee*, you did not rely on any other promise, statement or conduct of any kind by us or any of our officers or representatives.

**33. Do we have to apply money we receive for your benefit?**

If we receive or recover any money in respect of debts of the *Borrower* or anyone else, we may use it to pay off whichever part of those debts we choose. We do not have to apply it for your benefit.

**34. What happens if we have to refund a payment?**

For some reason we might be required to refund or give up money which the *Borrower* or anyone else has paid to us or which we have recovered in any way. For example, this might happen because of a law about *Administration* or about the duties or powers of mortgagees, trustees, directors or officers, or because the money belonged to someone else. If that happens for any reason, you (or if there is more than one of you, each of you) will owe us all the money you would have owed if the amount refunded or given up had never been paid or recovered. You promise to do everything you

can to restore us to all security and rights which we held immediately before we received the money we later had to refund or give up.

### **35. Is interest payable?**

You promise to pay to us interest on any amount which you must pay (but do not pay) under this *Guarantee*, including interest. Clause 65 in Part D sets out your obligations to pay interest in more detail.

### **36. Do you have to pay government charges and our costs?**

- (a) You promise to pay all amounts which we spend or incur in connection with:
  - (i) preparing this *Guarantee*;
  - (ii) enforcing this *Guarantee* or considering enforcing it; and
  - (iii) all stamp duty and other government duties and charges on this *Guarantee* and payments and receipts under it.
- (b) Clause 69 in Part D sets out your obligations to pay charges and costs in more detail.

### **37. GST.**

Clause 70 in Part D sets out the treatment of GST.

### **38. Statements.**

A written statement by one of our *Authorised Officers*, or one of our lawyers, about a matter or setting out an amount owing under this *Guarantee* is sufficient proof of the matter or that you owe the amount stated, unless you prove it is wrong.

### **39. How, where and when do you make payments?**

You promise to make all payments under this *Guarantee* when we demand them and without deducting amounts you claim from us as follows.

- (a) **(Place for payment).** You must make all payments under this *Guarantee* into the *Account* or at the place we may tell you from time to time.
- (b) **(Date).** You must pay on or before the date it is due. If that date is not a *Business Day*, then you must pay us on the previous *Business Day*.
- (c) **(Time).** If no other time is specified by us in this *Guarantee* or otherwise, we must receive payment by 10am (Australian Eastern Standard Time) on the date that payment is due. If we receive a payment from you after 10am, we may treat it as having been received on the next *Business Day*.

### **40. Can either you or we transfer our rights?**

We are able to transfer our rights, but you are not able to do so. Clause 71 in Part D sets out our respective rights to make such a transfer in more detail.

### **41. Can our rights be reinstated?**

If we are required to refund or re-transfer money to a trustee in bankruptcy or liquidator, our rights to the payment of that money by the *Borrower* or *Guarantor* are reinstated. Clause 58 in Part D sets out the reinstatement of our rights in further detail.

### **42. Confidentiality.**

We can share all the information you give us, or that we collect about you in connection with this *Guarantee* with certain people. Clause 60 in Part D sets out who these people are.

### **43. Instructions must be given directly.**

We must receive instructions directly from you. We will not accept instructions given to us by a person on your behalf. You can not appoint an *Authorised Person* to act on your behalf for the purposes of this *Agreement*.

### **44. Can we use money in your accounts?**

If you have (or, if there is more than one of you, any one or more of you has) any money in any account with us or any related body corporation, we can use it to pay money you owe us under this *Guarantee*, but we need not do so.

### **45. How do we give you notices and demands?**

Any of our *Authorised Officers* can give a demand or notice for us. Clause 75 in Part D sets out methods for sending notices, and when they will be taken to be received.

### **46. Effect of law.**

This *Guarantee* is subject to laws limiting us which cannot be excluded. Otherwise all laws which limit our power or require notices to be given are excluded as far as possible. If any part of this *Guarantee* is prohibited or unenforceable, it will not affect the remaining parts.

### **47. Governing law and jurisdiction.**

This *Guarantee* is governed by the laws of New South Wales. You (or if there is more than one of you, each of you) accepts the jurisdiction of the courts exercising jurisdiction there.

### **48. Telephone recording.**

- (a) We, the *Nominee* and the *Sponsor* may record any telephone conversation between you and any of us for any purpose permitted by law from time to time and may use these recordings as we see fit.
- (b) To the extent permitted by law, we, the *Nominee* and the *Sponsor* may keep the recordings for as long as any of us wish.
- (c) Clause 72 in Part D sets out our rights to record your telephone conversations in further detail.

### **49. What declarations and undertakings do you make?**

You make the same representations and warranties, and make the same undertakings:

- (a) as if you were named in Clauses 52.1, 53.1, 53.4 and 53.5 of Part D instead of the *Borrower*;
- (b) if you are a company, as if you were named in Clauses 52.2 and 53.2 of Part D instead of the *Borrower*; and
- (c) if you are trustee of a trust, as if you were named in Clauses 52.3 and 53.3 of Part D instead of the *Borrower*.

## 50. Joint and several liability.

When more than one *Person* enters into this *Guarantee*, the obligations of those *Persons* under this *Guarantee* will be joint and several. This means that we can enforce those obligations (including any liability to pay us money) fully against any one or more *Person*.

## 51. Inclusion of other terms and conditions.

This *Guarantee* includes the terms and conditions in Part D of the *Agreement*, and the terms and conditions in Part D are incorporated by reference. Together these terms and conditions form a single guarantee.

## Section 2: Part D - General Provisions.

This Part D applies to the *Agreement* as a whole and also applies separately to Part A (*Loan Agreement*), Part B (*Nominee and Sponsorship Agreement*) and Part C (*Guarantee*) as if they were separate agreements. For this purpose:

- a reference to “you” or “your” in this Part D is a reference to the *Borrower* or the *Guarantor* as applicable; and
- references to the *Guarantor* in this Part D only apply to the extent that you are someone other than the *Guarantor* referred to (for example the *Borrower* or another *Guarantor*).

## 52. Representations and warranties.

### 52.1 Representations and warranties for all Persons.

You represent and warrant as follows.

- (a) **(Document binding.)** This *Agreement* and the *Mortgage* are your valid and binding obligations enforceable in accordance with their respective terms and the *Guarantee* is the *Guarantor's* valid and binding obligation enforceable in accordance with its terms.
- (b) **(Compliance with all laws.)** In entering into and performing this *Agreement* and the *Mortgage*, you have not breached (and will not breach) any law or obligation binding on you and in entering into and performing the *Guarantee*, the *Guarantor* has not breached (and will not breach) any law or obligation binding on it.
- (c) **(Provision of all relevant information.)** You and the *Guarantor* have provided us with all documents and other information relevant to our assessment of whether to:
  - (i) accept the *Offer of Mortgage*;
  - (ii) enter into this *Agreement* with you; and
  - (iii) enter into the *Guarantee* with the *Guarantor*.

These documents and information are correct and not misleading. Any documents provided are up to date, and in full force and effect.

- (d) **(No misrepresentation.)** All information provided by you or the *Guarantor* to us is true in all material respects at the time you enter into this *Agreement* or, if later, when provided. Neither that information nor your conduct, the conduct of the *Guarantor* or the conduct of your *Authorised Person* was or is misleading, by omission or otherwise.
- (e) **(No adverse circumstances.)** There is no circumstance current or, to your knowledge, threatened, that is likely to have a *Material Adverse Effect*.
- (f) **(No litigation.)** No litigation, arbitration, claim, dispute or administrative or other proceeding is current or pending, or as far as you know, threatened, which may have a *Material Adverse Effect*.

- (g) **(No Event of Default.)** You are not aware of any *Event of Default* or any circumstance that may give rise to an *Event of Default*.
- (h) **(No reliance.)** You have not made the *Offer of Mortgage* or entered into this *Agreement*, and the *Guarantor* has not entered into the *Guarantee*, in reliance on, or as a result of, any statement or conduct of any kind by us, the *Nominee*, the *Sponsor* or any of our officers or representatives or any officer or representative of the *Nominee* or *Sponsor*, except as expressly set out in this *Agreement* or the *Guarantee* (as the case may be).
- (i) **(Independent advice.)** You and the *Guarantor* have obtained independent financial and legal advice as you and the *Guarantor* think fit prior to you making the *Offer of Mortgage* and entering into this *Agreement*, and the *Guarantor* giving the *Guarantee*.
- (j) **(Interests in Secured Property.)** Unless you are making the *Offer of Mortgage* or entering into this *Agreement* in the capacity of trustee of a trust (in which case the representations in Clause 52.3 will apply), the *Secured Property* is beneficially owned by you solely (including held by someone solely on your behalf) and no one else has any rights affecting the *Secured Property*, other than those under this *Agreement*, the *Mortgage* or which we have consented to in writing.
- (k) **(No other Encumbrance.)** The *Secured Property* is free from any *Encumbrance* other than the *Mortgage* and any *Encumbrance* of which you have notified us in writing prior to making the *Offer of Mortgage*.
- (l) **(No default.)**
  - (i) You are not in default under a document or agreement (including an *Authorisation*) binding on you or your assets which relates to *Finance Debt* or is material.
  - (ii) Nothing has occurred which constitutes an event of default, cancellation event, prepayment event or similar event (whatever called) under those documents or agreements, whether immediately or after notice or lapse of time or both.

### 52.2 Representations and warranties for companies.

If you are a company, you represent and warrant as follows.

- (a) **(Status.)** You are a corporation validly existing under the laws of your place of incorporation.
- (b) **(Corporate Power and authorisation.)** You have the power to make the *Offer of Mortgage*, enter into this *Agreement*, and perform this *Agreement* and the *Mortgage*, and have taken all corporate and other action necessary to authorise the making of the *Offer of Mortgage*, entry into and performance of this *Agreement* and the *Mortgage* and to carry out the transactions contemplated by this *Agreement* and the *Mortgage*.
- (c) **(Company Accounts.)**
  - (i) Your most recent audited *Company Accounts* give a true and fair view of the matters with which they deal.
  - (ii) There has been no change in your state of affairs since that date which may have a *Material Adverse Effect*.
  - (iii) Those *Company Accounts* comply with current *Accounting* practice except to the extent disclosed in them and with all applicable laws.
  - (iv) All *Finance Debt* and other material contingent liabilities are disclosed in those *Company Accounts*.
- (d) **(Benefits.)** You obtain various benefits by entering into, exercising your rights and performing your obligations under this *Agreement*.

- (e) **(Solvency.)** You are able to pay your debts as and when they become due and payable.

### 52.3 Trustee representations.

If you are a trustee of a trust (the **Trust**), you represent and warrant in your capacity as trustee of a trust and in your own right as follows.

- (a) **(Personal and trustee capacity.)** You are making the *Offer of Mortgage* and entering into this *Agreement* in your personal capacity and also as trustee of the *Trust*, and for the benefit of the beneficiaries.
- (b) **(Power.)** You have the power under the trust deed (the **Trust Deed**) to:
- (i) make the *Offer of Mortgage*;
  - (ii) enter into this *Agreement* and perform your obligations under, and carry on the transactions contemplated by, this *Agreement* and the *Mortgage*;
  - (iii) carry on your business as it is now conducted or contemplated; and
  - (iv) own the assets of the *Trust*, in your capacity as trustee of the *Trust*. There is no restriction or condition upon you doing so.
- (c) **(Authority.)** All necessary resolutions have been passed and all consents, approvals and other procedural matters have been obtained or attended to as required by the *Trust Deed* for you to make the *Offer of Mortgage*, enter into this *Agreement*, and perform this *Agreement* and the *Mortgage*.
- (d) **(Sole trustee.)** You are the only trustee of the *Trust* (unless you are a joint trustee) and no action has been taken or proposed to remove you as trustee, revoke any of your powers, or to appoint additional or alternative trustees. As far as you know, no one intends to take any such action.
- (e) **(Property of the Trust.)** No property of the *Trust* has been resettled or set aside or transferred to any other trust.
- (f) **(No termination.)** No action has been taken or proposed to terminate the *Trust* and as far as you are aware no-one intends to take any such action. No event for the vesting of the assets of the *Trust* has occurred.
- (g) **(Indemnity from Trust.)** Your right of indemnity out of, and lien over, the assets of the *Trust* have not been limited in any way. Without limitation, you have no liability which may be set off against that right of indemnity.
- (h) **(Compliance with all laws.)** The *Trust Deed* complies with all applicable laws.
- (i) **(Compliance with Trust Deed.)** You have complied with your obligations and duties under the *Trust Deed* and at law, and no one has alleged that you have not complied.
- (j) **(Priority.)** Our rights under this *Agreement* and the *Mortgage* have priority over the interests of the beneficiaries.
- (k) **(Accounting.)** If you have made the representation contained in Clause 52.2(c), there has been no change in the *Trust's* state of affairs since that date which may have a *Material Adverse Effect*.

### 52.4 Repetition of representations and warranties.

The representations and warranties set out in Clauses 52.1 to 52.3 are made when you sign the *Application Form* (and make the *Offer of Mortgage*), when you enter into this *Agreement* and are repeated each time you make a borrowing request under Clause 2.

### 52.5 Obligation to update representations and warranties.

You must tell us immediately if anything happens to make the representations and warranties no longer true and correct or makes them misleading.

## 53. Undertakings.

### 53.1 Undertakings for all Persons.

Except to the extent we otherwise consent in writing, you undertake as follows.

- (a) **(Event of Default.)** You will notify us as soon as you become aware of any *Event of Default* or of any circumstance that may give rise to an *Event of Default*.
- (b) **(Change in Authorised Persons.)** You must notify us as soon as you become aware of any change in your *Authorised Persons*, giving us specimen signatures of any new *Authorised Persons* appointed, and if we ask, evidence of the authority of any *Authorised Person* that is satisfactory to us.
- (c) **(Change of circumstances.)** You will notify us as soon as you become aware of any circumstance that may have a *Material Adverse Effect*.
- (d) **(No other Encumbrance.)** You will not create or allow to exist any *Encumbrance* over any of the *Secured Property*, other than those expressly permitted under this *Agreement*, the *Mortgage* or any charge arising by statute in favour of a *Government Agency*.
- (e) **(Disposal of assets.)** You will not sell, otherwise dispose of, part with possession of, or create an interest in, any of the *Fixed Secured Property*, or agree or attempt to do so.
- (f) **(Use of money advanced.)** The *Loan* will only be used for the purchase of the *Investment*.
- (g) **(No trust.)** Unless you are entering into this *Agreement* in the capacity of trustee of a trust (in which case the undertakings in Clause 52.3 will apply), you will not hold any assets at any time forming part of the *Secured Property* as the trustee of any trust.
- (h) **(Compliance with law.)** You will fully comply with all laws binding on you.
- (i) **(Payment of all calls, instalments and other amounts payable.)** You will pay punctually all calls, instalments and other payments which are payable in respect of the *Secured Property*.
- (j) **(Continuance of Nominee Agreement and Sponsorship Agreement.)** Subject to Clause 52.1, you will not terminate the *Nominee Agreement* or the *Sponsorship Agreement*.
- (k) **(Prejudicing the Secured Property.)** You will not knowingly do or omit to do anything or allow another *Person* to do or omit to do anything that may lessen the value of, or prejudicially affect, the *Secured Property*.
- (l) **(No early redemption of Investment.)** You will not make any requests for redemption of the *Investment* before the *Repayment Date*.

### 53.2 Undertakings for companies.

If you are a company, except to the extent that we otherwise consent in writing, you undertake as follows.

- (a) **(Corporate existence.)** You and the *Guarantor* will do everything necessary to maintain your corporate existence in good standing. You will not transfer your jurisdiction of incorporation or enter any merger or consolidation.
- (b) **(Authorisations.)** You will ensure that each authorisation required under Section 52.2(b) is obtained and promptly renewed and maintained in full force and effect. You will provide copies promptly to us of any such authorisation upon request.

### 53.3 Undertakings for trustees.

If you are trustee of a trust (the **Trust**), except to the extent that we otherwise consent in writing, you undertake in your capacity as trustee of the *Trust* and in your own right as follows.

- (a) **(Authorisations.)** You and the *Guarantor* will ensure that each authorisation required under Section 52.3(c) is obtained and promptly renewed and maintained in full force and effect. You will provide copies promptly to us of any such authorisation upon request.
- (b) **(Trust Deed.)** You will ensure that the trust deed (the **Trust Deed**) is not amended, terminated or revoked.
- (c) **(Transfer of Trust property.)** You will ensure that there is no resettlement, setting aside or transfer of any of the property of the *Trust* other than a transfer that complies with the *Trust Deed*, this *Agreement* and the *Mortgage*.
- (d) **(Compliance with trustee obligations.)** You will comply fully with your obligations under the *Trust Deed* and at law.
- (e) **(Continuance as sole trustee.)** You will ensure that no other *Person* is appointed trustee of the *Trust*.
- (f) **(Continuance as trustee.)** You will not do anything that would cause or enable your removal, nor retire or cease to act, as trustee of the *Trust*.
- (g) **(Vesting of Trust.)** You will ensure that the vesting date is not determined, and not otherwise alter, shorten or fix the vesting date under the *Trust Deed*.
- (h) **(Right of subrogation or indemnity.)** You will ensure that there is no restriction or limitation on or derogation from your right of subrogation or indemnity (whether or not arising under the *Trust Deed*) and that your lien over the property of the *Trust* will have priority over the rights of the beneficiaries of the *Trust*. If you agree to exercise your right of indemnity from the trust fund and beneficiaries if you need to, in order to meet your obligations under this *Agreement* and the *Mortgage*; and
- (i) **(Notices and documents.)** You will promptly give us copies of all documents and notices received by you from any beneficiary or manager of the *Trust* or that you give to a beneficiary or manager of the *Trust*.

#### 53.4 Undertakings relating to Secured Property.

Except to the extent we otherwise consent in writing, you undertake as follows.

- (a) **(Preservation and protection of security.)** You will promptly do everything necessary or that we reasonably require:
  - (i) to preserve and protect the *Security Value*; and
  - (ii) to protect and enforce your title and our title as mortgagee to the *Secured Property*.
- (b) **(Other Security Interests.)** You will comply fully with all *Security Interests* affecting the *Secured Property* and the obligations secured by those *Security Interests*.

#### 53.5 Term of undertakings.

Each undertaking in this Clause continues from the date of this *Agreement* until the *Total Amount Owning* is fully and finally paid.

### 54. Events of Default.

#### 54.1 Events of Default.

Each of the following is an *Event of Default* (whether or not it is in your control).

- (a) **(Failure to comply.)** You or the *Guarantor* do not:
  - (i) pay an amount payable under this *Agreement* or the *Mortgage* when due;
  - (ii) comply with any non-monetary obligation under this

*Agreement* or the *Mortgage* within the period specified, or if no period is specified, within 2 days; or

- (iii) satisfy within the stipulated time anything that we made a condition of waiving a breach of this *Agreement* or the *Mortgage*.
- (b) **(Early redemption of the Investment.)** If any part of the *Investment* comprised in the *Secured Property* is redeemed for any reason (whether voluntarily by you or otherwise) prior to the *Repayment Date*.
- (c) **(Misrepresentation.)** A representation, warranty or statement by you or by the *Guarantor* in this *Agreement*, or in connection with this *Agreement* or the *Mortgage*, is not true in a material respect or is misleading when made or repeated.
- (d) **(Material adverse change.)** Any event or series of events, whether related or not, occurs that in our opinion may have a *Material Adverse Effect*.
- (e) **(Default to another Person.)** Any money you borrowed or raised from another *Person* is not paid when due (or within an applicable grace period), or becomes due and payable (or capable of being declared due and payable) before its stated maturity or expiry.
- (f) **(Death or incapacity.)** We are of the opinion that you are not capable of managing its affairs or, if you are a natural person, you die or we are of the opinion that you are not capable of managing your affairs.
- (g) **(Winding up, arrangements, Insolvency, bankruptcy.)** You or the *Guarantor* are Insolvent or steps are taken to make you or the *Guarantor* Insolvent, or, if you and the *Guarantor* are natural persons you and the *Guarantor*, commit an act of bankruptcy.
- (h) **(Enforcement against assets.)** If you are a company:
  - (i) a controller (within the meaning of Section 9 of the *Corporations Act*) or similar officer is appointed to;
  - (ii) an *Encumbrance* becomes enforceable or is enforced over; or
  - (iii) a distress, attachment or other execution is levied or enforced over;
 all or any of your assets and undertaking.
- (i) If you make the *Offer of Mortgage* or enter into this *Agreement* in your capacity as a trustee of a trust (the *Trust*):
  - (i) **(New trustee.)** A new or additional trustee of the *Trust* is appointed;
  - (ii) **(Trust is terminated.)** A resolution is passed to wind-up the *Trust* or the winding-up or termination of the *Trust* otherwise commences;
  - (iii) **(Trust not properly constituted.)** The *Trust* is held to be, or you concede that it has not been, constituted or to have been imperfectly constituted;
  - (iv) **(Cessation of your powers.)** You cease to be authorised under the *Trust* to hold property of the *Trust* in your name or to perform your obligations under this *Agreement*; or
  - (v) **(Cessation of your indemnity.)** You cease to be entitled to be indemnified out of the assets of the *Trust* in respect of your obligations under this *Agreement*.
- (j) **(Termination or invalidation of this Agreement.)** All or any part of this *Agreement* or the *Mortgage* is terminated or is or becomes void, illegal, invalid, unenforceable or of limited force and effect or you or the *Guarantor* allege or claim that this is the case.
- (k) **(Government Agency Secured Property.)** Any *Government Agency* seizes, confiscates, or compulsorily acquires (whether

permanently or temporarily and whether with payment of compensation or not) any of the *Secured Property*.

- (l) (**Revocation of Authorisation.**) Any *Authorisation* referred to in Section 52.2(b) or 52.3(c) is repealed, revoked or terminated or expires, or is modified or amended or conditions are attached to it in a manner which is unacceptable to us, and is not replaced by another authorisation which is acceptable to us.
- (m) (**Termination of Direct Debit Service Agreement.**) The *Direct Debit Service Agreement* is terminated, stopped or deferred without our consent.
- (n) (**Responsible Entity.**) The responsible entity of any master trust, wrap account, managed investment scheme or similar investment vehicle in which any of the *Secured Property* is held breaches any agreement between us and it in relation to the dealing with or control of any of the *Secured Property*.

#### 54.2 Consequences of an Event of Default.

In addition to any other rights provided by law or by this *Agreement* or the *Mortgage*, at any time after an *Event of Default*, we may do any or all of the following:

- (a) by notice to you declare all or an amount of the *Total Amount Owning* immediately due and payable;
- (b) by notice to you, cease to make funds available under this *Agreement*;
- (c) enforce the *Mortgage* and take any action permitted by the *Mortgage* upon an *Event of Default*;
- (d) employ or discharge any *Person* as professional adviser, consultant or broker for any purpose on such terms as we think fit;
- (e) make any arrangement or compromise which we consider expedient in our interests;
- (f) bring or defend any action, suit or legal proceedings in your name or otherwise, for all or any of the above purposes;
- (g) appoint a *Receiver* to do any of those things; or
- (h) exercise any of our rights under Clause 2.8 of the *Mortgage Terms*.

We are not obliged to take any action, but may do so notwithstanding any waiver of any previous default, and in addition to any other rights or remedies conferred by this *Agreement* or by law.

### 55. Indemnities.

#### 55.1 Indemnity.

You indemnify us, the *Nominee*, the *Sponsor* and each *Receiver* and *Attorney* for any loss (including consequential or economic loss and loss relating to hedging, funding or swap arrangements), *Costs*, *Break Costs*, liability or expense (including legal costs on a full indemnity basis) that we may suffer or incur as a result of:

- (a) (**Event of Default**) any *Event of Default*;
- (b) (**Enforcement of Mortgage**) any actual or contemplated enforcement of the *Mortgage* or failure to enforce the *Mortgage*;
- (c) (**Exercise of Power**) any exercise of any *Power* or failure to exercise any *Power*;
- (d) (**No payment by Guarantor**) the *Guarantor* not being obliged to pay us an amount under the *Guarantee*;
- (e) (**Payment to trustee in bankruptcy or liquidation**) us being obliged, or agreeing, to pay an amount to a trustee in bankruptcy or liquidator (or a bankrupt person or Insolvent

company) in connection with a payment by you or by the *Guarantor*;

- (f) (**Instructions from Authorised Person**) us acting in good faith on instructions we think have come from you, the *Guarantor* or your *Authorised Person*; and
- (g) (**Prepayment**) you prepaying the *Loan* (whether or not you are permitted to do so under this *Agreement*) or the *Loan* becoming repayable pursuant to Clause 54.2.

#### 55.2 Payment of indemnified money.

It is not necessary for us, the *Nominee*, the *Sponsor*, a *Receiver* or an *Attorney* to incur any loss or expense before we demand you pay us under the indemnities you have given us.

#### 55.3 Continuing and independent indemnities and protections.

The indemnities and protections in this Clause are continuing indemnities and protections and are independent of your other obligations under this *Agreement* and the *Mortgage* (i.e. they do not affect, and are not affected by, your other obligations). They continue after we release the *Mortgage* and after the termination or expiry of this *Agreement*.

#### 55.4 Benefit of the indemnity.

Where this indemnity is given in favour of a *Receiver* or an *Attorney* then the *Receiver* or *Attorney* is entitled to the benefit of this Clause 55 which is entered into and may be enforced on behalf of the *Receiver* or *Attorney* by us, and we will be taken to be acting as the agent and on behalf of each *Receiver* or *Attorney* for that purpose.

### 56. Inspection.

We or any *Person* we authorise may inspect and copy your records related to the *Secured Property* at any time. You will do everything in your power to assist that inspection and copying and ensure that your employees and officers do the same.

### 57. Exercising our rights.

#### 57.1 Who may exercise our rights.

Our rights and remedies under this *Agreement* and the *Mortgage* may be exercised by any of our *Authorised Officers* or any other *Person* we authorise, including a *Receiver* or *Attorney*.

#### 57.2 Waivers, Remedies Cumulative.

- (a) No failure to exercise and no delay in exercising a *Power* operates as a waiver. Nor does any single or partial exercise of a *Power* preclude any other or further exercise of that or any other *Power*.
- (b) Powers in this *Agreement* and the *Mortgage* are in addition to, and do not exclude or limit, any right, power or remedy provided by law.

#### 57.3 Consents and Opinion.

Except to the extent expressly stated:

- (a) we may give or withhold, or give conditionally, approvals and consents;
  - (b) where a provision requires us to be satisfied as to something, then we may decide whether or not we are satisfied;
  - (c) we may form opinions; and
  - (d) we may exercise our *Powers*,
- in each case in our absolute discretion and without giving reasons for doing so.

#### 57.4 No liability.

We are not liable for loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising a right or remedy, whether or not caused by *our* negligence.

#### 58. Reinstatement of rights.

Under law, a trustee in bankruptcy or liquidator may ask us to refund or retransfer a payment or transfer we have received in connection with this *Agreement* and the *Mortgage*. To the extent we are obliged to, or we agree to, make a refund or retransfer, we may treat the original payment or transfer as if it had not been made. We are then entitled to *our* rights against *you* under this *Agreement* and the *Mortgage* as if the payment or transfer had never been made and, if we ask, *you* must do everything necessary to restore to us any *Security Interest* we held immediately prior to the payment or transfer.

#### 59. Our certificates.

We may give *you* or the *Guarantor* a certificate signed by us or *our* solicitors about a matter or about an amount payable in connection with this *Agreement* or the *Mortgage*. The certificate is sufficient evidence of the matter or amount, unless it is proved to be incorrect.

#### 60. Confidentiality.

We may share all the information *you* or the *Guarantor* give us, or that we collect about *you* or the *Guarantor*, in connection with this *Agreement* and the *Mortgage*, with the following people:

- (a) a corporation that is related to us; and
- (b) a corporation that enters into financial arrangements with us; and
- (c) any party to this *Agreement*, any *Authorised Person* and your *Nominated Financial Adviser*; and
- (d) any *Person*, if required or allowed by law or by a stock exchange or required by the constituent documents of any entity (*Securities* in or of which comprise or may comprise *Secured Property*).

More information about privacy is contained in the Privacy Disclosure and Consent which was given to *you* at the time *you* signed the *Application Form*.

#### 61. Anti-money laundering and counter terrorism financing

You agree that we may:

- (a) require *you* to provide to us, or otherwise obtain, any additional documentation or other information and perform any acts to enable us to comply with any laws relating to anti-money laundering and counter terrorism financing (**AML**) or any other law;
- (b) at *our* absolute discretion and without notice to *you* take any action we consider appropriate, including suspending, blocking or delaying transactions and refusing to provide services to *you* to comply with any law relating to AML or any other law;
- (c) in *our* absolute discretion and without notice to *you* report any, or any proposed transaction or activity to any body authorised to accept such reports relating to AML or any other law.

#### 62. Charges and commissions.

We may share any money *you* give us, or pay a commission to, any *Person* we choose, including your *Authorised Person* or any *Financial Adviser* or agent. If *you* have been referred to *our* lending product by a *Person*, the *Person* may receive a benefit in relation to the provision of the *Loan* to *you*. The amount of this benefit will be determined by us and the *Person*. The benefit will have no impact on the amount *you* owe. Generally, that *Person* should disclose to *you* the amount of any such benefit.

#### 63. Variation.

##### 63.1 Variation of the Agreement and the Mortgage Terms (other than the Sponsorship Agreement).

Subject to Clause 13.1 of the *Sponsorship Agreement*, we may amend the *Agreement* and the *Mortgage Terms* by notice in writing to *you* provided that:

- (a) in *our* reasonable opinion we consider the amendment necessary to comply with any legal requirement; or
- (b) the amendment is to be made for the purpose of curing any ambiguity, manifest error or curing, correcting or supplementing any defective provision or for making any other amendment which does not materially prejudice the interests of either the *Borrower* or a *Guarantor*.

#### 64. Authorised Persons.

- (a) *You* may give us notice of any person authorised to give us instructions or to receive notices from us or to do anything that *you* are entitled to do under this *Agreement* or the *Mortgage*. *You* must provide us with a name and specimen signatures of any such persons that are authorised. *You* can limit the authorisation *you* give that person by notifying us in writing.
- (b) If *you* want to change or remove an *Authorised Person*, the revocation is effective only when it is given to us in writing.
- (c) If *you* are a company, then unless *you* tell us otherwise, we will assume that *you* have authorised your directors jointly and each of them severally to act as your *Authorised Persons*, and that there is no limit on this authorisation, whether or not *you* give us notice of such person being an *Authorised Person*.
- (d) We may act upon the electronic, written or oral instructions we receive from *you* or the *Guarantor*.

All instructions from an *Authorised Person* must be in writing (including by facsimile transmission), bearing the signature of an *Authorised Person*, unless we give *you* a *Notice* that we will accept instructions by some other means. *You* are bound by anything we do relying on instructions we receive from an *Authorised Person*.

#### 65. Interest on overdue money.

##### 65.1 Interest on overdue money.

*You* and the *Guarantor* must pay to us interest on all amounts that from time to time fall due for payment under this *Agreement* or the *Mortgage* but are unpaid, both before and (as a separate and independent obligation) after any judgment. Such interest will accrue each day from and including the date such amounts fall due for payment until they are paid or satisfied. We will calculate daily the amount of interest on such overdue amounts on the basis of the *Overdue Money Rate*. *You* and the *Guarantor* must pay such interest on demand and on the last *Business Day* of each month.

## 65.2 Payments.

You are still required to make payments on time. Our rights to interest under this Agreement do not affect your obligations or the Guarantor's obligations to make payments to us on time.

## 66. Termination.

### 66.1 Termination of Agreement.

This Agreement will only terminate when:

- (a) the Total Amount Owing has been fully repaid in accordance with this Agreement; and
- (b) we have discharged the Mortgage.

### 66.2 Termination does not affect existing rights or obligations.

Termination of this Agreement does not affect any rights or obligations arising before termination.

### 66.3 Clause survives termination.

Clause 66.2 survives termination of this Agreement.

## 67. Hedging.

- (a) You and the Guarantor acknowledge that we may hedge or otherwise control any liability or risk we have or might have under this Agreement or in relation to the Secured Property by entering into options, futures, contracts, derivatives or any other transaction or financial product.
- (b) If we have any right, interest in or entitlement to any Security or New Right as a result of paragraph (a) above, we:
  - (i) hold that right, interest or entitlement and any deposit derived from it on our own behalf, and not for you or on your behalf or for the Guarantor or on the Guarantor's behalf;
  - (ii) can deal with that right, interest or entitlement and any profits derived from it according to our discretion; and
  - (iii) are under no duty to account to you or the Guarantor in relation to that right, interest or entitlement or any deposits derived from it.

## 68. Set-off.

- (a) All payments to be made to us must be made without deduction or withholding. If you or the Guarantor are obliged by law to deduct or withhold any amount from any payment to be made under this Agreement or the Mortgage, you and the Guarantor will at the same time pay to us such additional amount as will result in us receiving the full amount which would have been received if the reduction or withholding had not been made.
- (b) In addition to any rights which we may have at law, you and the Guarantor irrevocably authorise us to set-off and apply any credit balance in any currency (whether or not matured) in any of your or the Guarantor's Accounts with us or any related corporation towards satisfaction of any sum at any time due and payable by you or the Guarantor to us under or in relation to this Agreement or the Mortgage. We may exchange currencies to make that application and do not have to give you or the Guarantor notice before making that application.

## 69. Charges and Expenses.

When we ask, you and the Guarantor must pay and/or reimburse us, the Nominee and the Sponsor for:

- (a) the Costs and any expenses we and the Nominee may incur or become liable to pay in connection with the preparation and execution of this Agreement, including any taxes, duties, fees or fines we have to pay in connection with this Agreement or the Mortgage, and any amounts we pay to any independent consultant, agent, Receiver or solicitor;
- (b) Costs incurred by us, the Nominee or Sponsor, and any Receiver's Costs and remuneration, in exercising any of our rights or any Receiver's rights under this Agreement or the Mortgage including enforcement and termination costs;
- (c) our Costs or the Nominee's or Sponsor's Costs in responding to any inquiry about you from any Government Agency; and
- (d) any increase in our Costs of supplying each Loan to you;
- (e) any bank accounts, debit tax or other duty or charge on receipts or loans under this Agreement; and
- (f) our or the Nominee's or Sponsor's administrative charges in relation to the Security or certain applications of the money you borrow from us.

## 70. GST.

- (a) Other than in respect of Application Fees, all payments to be made in connection with this Agreement or the Mortgage have been calculated without regard to GST.
- (b) If all or part of any such payment is the consideration for a taxable supply for GST purposes then, when you or the Guarantor make the payment:
  - (i) you or the Guarantor must pay us an additional amount equal to that payment (or part) multiplied by the appropriate rate of GST (currently 10%); and
  - (ii) we will promptly provide you or the Guarantor with a tax invoice complying with the relevant GST legislation.
- (c) Where under this Agreement or the Mortgage, you or the Guarantor are required to reimburse or indemnify us for an amount, you or the Guarantor will pay the relevant amount (including any sum in respect of GST) less any GST input tax credit we determine that we are entitled to claim in respect of that amount.

## 71. Assignment.

- (a) Your rights or obligations and the Guarantor's rights and obligations under this Agreement and the Mortgage are personal and may not be assigned or transferred by you or the Guarantor without our written consent.
- (b) We may assign our rights or transfer our obligations under this Agreement and the Mortgage without giving you or the Guarantor any notice. You and the Guarantor agree that we may disclose any information or documents we consider necessary to help us exercise this right. If we assign this Agreement or the Mortgage, the Total Amount Owing will include all of your and the Guarantor's actual and contingent liability to the assignee, whether or not it was incurred before the assignment or in contemplation of it.

## 72. Telephone recording.

- (a) We and the *Nominee* and *Sponsor* may record *your* telephone conversation with *us* or the *Nominee* or the *Sponsor* and may use these recordings as we see fit.
- (b) Without limiting paragraph (a) we, the *Nominee* and the *Sponsor* may record *your* telephone conversation for any purpose permitted by law from time to time including for quality assurance, as evidence of information we have provided to *you* or of instructions which *you* have given to *us* or as evidence of business transactions with or without an audible tone warning device.
- (c) We, the *Nominee* and the *Sponsor* may act on telephone instructions before receipt of any written confirmations and *our* records of telephone conversations shall be conclusive evidence of such instructions.
- (d) To the extent permitted by law, we, the *Nominee* and the *Sponsor* may keep the recordings for as long as we wish.

## 73. Use of Online Service.

Use of *our Online Service* is subject to the following terms and conditions:

- (a) the *Online Service* will be provided via the internet, but can be expanded to include other modes of electronic communication;
- (b) access to this *Online Service* will be restricted by use of *your* personal code and a password to log onto the *Online Service*, or by such other security procedure we may have in place from time to time;
- (c) *you* are responsible for the confidentiality of *your* password;
- (d) any action or request made via the *Online Service* will be taken to have been made by *you*, and we may rely on that action or request;
- (e) *your Loan* and investment balances may not reflect recent transactions;
- (f) we are not obliged to update or correct any errors in the information after the date of publication;
- (g) specific terms of use will be published on the *Online Service* in relation to any transactions that may be conducted via the *Online Service*. Use of those transaction services will be evidence of acceptance of those terms of use;
- (h) we may vary these terms of use at any time after giving *you* *Notice* which may be given by giving the information through the *Online Service*; and
- (i) we may also suspend access at any time without notice.

## 74. Joint and several liability.

When more than one *Person* makes the *Offer of Mortgage* or enters into this *Agreement*, the obligations of those *Persons* under this *Agreement* and the *Mortgage* will be joint and several. This means that we can enforce those obligations (including any liability to pay *us* money) fully against any one or more *Person(s)*.

## 75. Notices and other communications.

- (a) Subject to paragraph (b), notices, certificates, demands, consents and other communications in connection with this *Agreement* or the *Mortgage* (a **Notice**):
  - (i) must be in writing and signed by a person duly authorised by the sender;
  - (ii) must be delivered to the intended recipient by prepaid post (or where posted to an address in another country,

by registered airmail) or by hand or fax to the address or fax number last notified by the intended recipient to the sender;

- (iii) will be taken to have been made or received:
  - (A) if they are delivered in person, when delivered;;
  - (B) if they are sent by post, on the 3rd day after posting;
  - (C) if they are sent by fax, on receipt by the sender of a transmission control report from the despatching machine showing the relevant number of pages and the correct destination fax machine number or name of recipient and indicating that the transmission has been made without error.
- (b) We may give *Notices* to *you* and the *Guarantor* under this *Agreement* and the *Mortgage* by email to the email address *you* and the *Guarantor* completed in the *Application Form* or last notified to *us* in writing. An email notification need not be signed in handwriting by the sender. An email notification will be deemed to be received where the sender does not receive a delivery failure report.
- (c) If this *Agreement* says so, we may also notify or specify things by providing the information on *our Online Service* and the information will be deemed to have been received 24 hours after it has been provided on *our Online Service*.
- (d) *You* must:
  - (i) tell *us* if *you* change *your* contact details so that *you* continue to receive any *Notices* we may give *you*; and
  - (ii) access *our Online Service* at reasonable intervals to receive information we provide through *our Online Service*.

## 76. Complaints.

Should *you* have a concern about *our* products or services please contact *Leveraged Equities* on 1300 307 807. *You* will receive a response within 24 to 48 hours.

There are additional procedures in place to deal with written complaints. If *you* wish to make a written complaint *you* can write to:

Reply Paid 1048  
Customer Relations Centre  
*Leveraged Equities*  
GPO Box 1048  
Adelaide SA 5001

If *your* complaint relates to Pirie Street Custodian Limited, and is not resolved to *your* satisfaction, *you* can contact Financial Industry Complaints Service Ltd (FICS) by writing to:

Financial Industry Complaints Services Ltd  
PO Box 579  
Collins Street West  
Melbourne Vic 3007  
Telephone 1300 780 808

The role of FICS is to formally investigate cases only after customers have exhausted the internal complaints procedures.

If *your* complaint relates to *Leveraged Equities* Limited or Pirie Street Nominees Pty Ltd, and is not resolved to *your* satisfaction, *you* can contact the Banking and Finance Ombudsman (BFSO) at:

Banking and Finance Services Ombudsman  
GPO Box 3A Melbourne Vic 3001  
Telephone 1300 780 808

The role of the BFSO is to formally investigate cases only after customers have exhausted the internal complaint procedures.

## 77. Moratorium legislation.

To the full extent permitted by law, all legislation that at any time directly or indirectly:

- (a) lessens, varies or affects in favour of *you* any obligation under this *Agreement* or the *Mortgage*; or
- (b) delays, prevents or prejudicially affects *us* or the *Attorney* exercising any *Power*;

is excluded from this *Agreement* and the *Mortgage*.

## 78. Accuracy of information.

All the information we provide to *you* in writing or through our *Online Service* is provided in good faith and has been derived from sources which we believe to be reliable and accurate but we have not verified all of the information, which may not be complete or accurate for *your* purposes. However, subject to the provisions of any law which limits *us* and cannot be excluded (for example, in certain circumstances, the Trade Practices Act (1974) (Cth):

- (a) we make no representation or warranty of any kind for the accuracy or completeness of the information we provide in the statements we issue to *you* or which we provide through our *Online Service*;
- (b) we are under no obligation to update or correct any errors or omissions in the information we provide after it has been provided to *you*;
- (c) we and our directors, employees and associates do not accept any responsibility arising in any way (including by reason of negligence) for errors in, or omissions from, the information we provide to *you* and we do not accept any loss or damage however caused, as a result of any person relying on any information we provide; and
- (d) *you* must check any information which we provide to *you* in respect of the lending facility or the Arrangements and advise *us* promptly if the information is incorrect or inaccurate.

## 79. Applicable law and serving documents.

- (a) This *Agreement* and the *Mortgage Terms* are governed by the law in force in New South Wales. All the parties to this *Agreement* submit to the non-exclusive jurisdiction of the courts of New South Wales.
- (b) Any document in a court action may be served on any party to this *Agreement* by delivering it to, or leaving it at, the address given to the party taking the action, or such other address as is agreed by the party being served. This clause does not prevent any other method of service.

## 80. Definitions and Interpretations.

### 80.1 Definitions.

**Account** means the loan *Account* established by *us* under Clause 1.2 to reflect the *Total Amount Owning*.

**Account Balance** means the aggregate principal amount of all *Loans* outstanding from time to time under this *Agreement* including interest and any other amount added to the *Loans* in accordance with this *Agreement*.

**ACH** or **Australian Clearing House** means *Australian Clearing House Pty Ltd* (ABN 48 001 314 503) or any other body performing substantially the same functions as the *Australian Clearing House Pty Ltd*.

**Administration** includes bankruptcy, administration arising out of mental illness or incapacity, administration of an *insolvent* estate, administration or liquidation of a corporation, scheme of arrangement, receivership or winding up or anything similar.

**Agreement** means:

- (a) Section 2, which contains the *Loan Agreement*, the *Nominee Agreement*, the *Sponsorship Agreement*, the *Guarantee* and the general provisions in Part D;
- (b) the *Application Form* (except to the extent it includes the *Offer of Mortgage*); and
- (c) any other document contemplated by and executed in connection with these documents and any document which we agree is a "transaction" document under this *Agreement*.

**Application Fees** means the fees payable by company borrowers and guarantors, and trustee borrowers and guarantors at the time of applying for a *Loan*.

**Application Form** means the form for applying for a *Loan* required by *us* from time to time.

**Arrangements** has the meaning given in Clause 20 of the *Agreement*.

**ASTC** means ASX Settlement and Transfer Corporation Pty Ltd (ABN 49 008 504 532) or any other body performing substantially the same function as the ASX Settlement and Transfer Corporation Pty Ltd.

**ASTC Settlement Rules** means the operating rules of the settlement facility ASX Settlement and Transfer Corporation Pty Ltd.

**ASX or Australian Stock Exchange** means the *Australian Stock Exchange Limited* (ABN 98 008 624 691) or any other body performing substantially the same functions as the *Australian Stock Exchange Limited*.

**Attorney** means an *Attorney* appointed under this *Agreement*, when *you* sign the *Application Form*.

**Authorisation** includes any consent, authorisation, registration, filing, lodgement, agreement, notarisation, certificate, permission, licence, approval, authority or exemption from, by or with a *Government Agency*.

**Authorised Officer** means the *Nominee* or the *Sponsor*, any

- (a) director or secretary;
- (b) employee, agent or contractor whose title includes the word "director", "manager", "team leader" or "supervisor";
- (c) legal adviser whose title includes the word "partner"; of the relevant party or of a related body corporate of the relevant party; or *your Financial Adviser*.

**Authorised Person** means the person or persons *you* have nominated in the *Application Form* or otherwise notified to *us* from time to time as each of *your Authorised Persons*, or any person we are entitled to assume is an *Authorised Person* under Clause 64 but does not include any person whose authorisation *you* have revoked by notifying *us* in writing;

**Borrower** means the applicant for a *Loan* which we accept and whose details are set out in the *Application Form*.

**Break Costs** means the costs referred to in paragraph (d) of the definition of *Costs* in this Clause 80 and *our* estimate of all other losses incurred by *us* in respect of *you* breaking out of a fixed interest facility or repaying the *Loan* early, whether voluntarily or otherwise.

**Business Day** means a day other than a Saturday or Sunday on which the ASX and banks are open for business in Sydney (other than a weekday that the ASX declares is not a *Business Day*).

**Broker** means a *Market Participant* as defined in the *ASTC Settlement Rules*. Generally, it means a stockbroker admitted to participate in *CHESS* under the *ASTC Settlement Rules*.

**Capital Guaranteed Date** means the date which the *Issuer* requires (as at the date of the *Loan* is advanced to *you*) the *Investment* to be held until the capital originally invested in the *Investment* is guaranteed to be repaid to the holder of the *Investment*.

**Certificate** means a share certificate or other document evidencing title for a *Security*.

**Certificated Security** means a *Security*, title to which is evidenced by a *Certificate*.

**CHESS** has the meaning in the *ASTC Settlement Rules*. Generally it stands for the Clearing House Electronic Subregister System, which is a system of registration on computer of shareholdings in certain companies.

**CHESS Subregister** has the meaning in the *ASTC Settlement Rules*. Generally it means the part of the securities register of an entity that is administered by the *ASTC*.

**Company Accounts** means profit and loss *Accounts*, balance sheets and cashflow statements together with any statements, reports (including any directors' and auditors' reports) and notes attached to or intended to be read with any of them.

**Controlling Participant** has the meaning in the *ASTC Settlement Rules*. Generally it means the person that has the capacity in *CHESS* to Transfer or convert *Securities* from a *Holding*.

**Conversion** has the meaning given in the *ASTC Settlement Rules*.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Costs** includes:

- (a) charges and expenses;
- (b) costs, charges and expenses in connection with legal, financial and other advisers on a full indemnity basis;
- (c) a proportionate share of *our* costs and expenses (including administration costs and expenses); and
- (d) any costs, charges and expenses incurred by *us* in connection with entering into or terminating any hedging, funding or swap arrangements.

**DDR** means the direct debit request signed by *you* in relation to the *Direct Debit Service Agreement*.

**Dealing** has the meaning given to it in Clause 7 of the *Mortgage Terms*.

**Deposit Account** means any *Account*, term deposit, debenture, managed investment scheme or other financial product which *you* have requested to be identified as a *Deposit Account* and which we identify as being a *Deposit Account* through *our Online Service* and/or by giving *you* a *Notice* identifying the *Deposit Account*.

**Depositee** means the financial institution with whom a *Deposit Account* is held.

**Direct Debit Service Agreement** means the direct debit service agreement in Section 4 of this Booklet or such other direct debit service agreement as may be approved by *us* in *our* sole discretion.

**Encumbrance** means any security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust or power.

**Event of Default** means any of the events specified in Clause 54.

**Exit Fee** means any fee charged by *us* in relation to the repayment of the *Loan* prior to the *Repayment Date* (other than *Break Costs*).

**Financial Market** has the same meaning as in the *Corporations Act*.

**Finance Debt** means material indebtedness (whether actual or contingent) in respect of money borrowed or raised or other financial accommodation.

**Financial Adviser** means a *Broker* or a *Person* who holds an Australian Financial Services Licence authorising the *Person* to give financial product advice.

**Fixed Secured Property** means the property referred to in paragraphs (a) to (g) inclusive of the definition of *Secured Property* in this Clause 80.

**Floating Secured Property** means the property referred to in paragraph (h) of the definition of *Secured Property* in this Clause 80.

**Form** has the meaning given to it in Clause 2.1 of Part A.

**General Settlement Participant** has the meaning in the *ASTC Settlement Rules*. Generally it covers *Participants* admitted to participate in the settlement facility of *ASTC*.

**Government Agency** means any government or any governmental, semigovernmental or judicial entity or authority. It also includes any selfregulatory organisation established under statute or any stock exchange.

**GST** means the Goods and Services Tax as referred to in the *A New Tax System (Goods and Services Tax) Act 1999*.

**Guarantee** means the agreement between *us* and the *Guarantor*, the terms and conditions of which are set out in Part C and Part D.

**Guaranteed Money** has the meaning given in Clause 20 of Part C.

**Guarantor** means each party referred to as the *Guarantor* in the *Application Form* signed by the *Borrower*.

**HIN or Holder Identification Number** has the meaning given to the term "HIN" in the *ASTC Settlement Rules*.

**Holder Record** has the meaning in the *ASTC Settlement Rules*.

Generally it means the details recorded by the *ASTC* in *CHESS* for the purpose of operating one or more *Holdings* on the *CHESS Subregister*.

**Holder Record Lock** has the meaning in the *ASTC Settlement Rules*. Generally it means a facility in *CHESS* for preventing securities from being deducted from any current *Holding* pursuant to a *Transfer* or *Conversion* from a *Holding* to which the relevant *Holder Record Lock* applies.

**Holding** has the meaning in the *ASTC Settlement Rules*. Generally it means a holding of securities by a *Person*.

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

**Investment** means the investment referred to in the *DDR* or the *Application Form* and where the context permits, *your* interest in the *Investment*.

**Issuer** has the same meaning as in the *ASTC Settlement Rules*. Generally, it means an entity that issues or makes *Securities* or other *Secured Property* available (or proposes to do so).

**Leveraged Equities** means *Leveraged Equities Limited* (ABN 26 051 629 282)

**Loan** means loans which we advance to *you* under this *Agreement* and where the context so permits, all or part of the principal amount we advance to *you* under this *Agreement*.

**Loan Agreement** means the *Loan Agreement* between *us* and *you*, the terms and conditions of which are set out in Part A and Part D.

**Master Nominee Deed** means the deed so entitled between *us* as the mortgagee and the *Nominee*, entered into prior to the date of this *Agreement*. A copy may be inspected at *our* offices.

**Material Adverse Effect** means a material adverse effect on:

- (a) *your* ability to perform *your* obligations under this *Agreement* or the *Mortgage*, or on *your* financial condition or business; and

(b) the *Guarantor's* ability to perform its obligations under the *Guarantee* or on the *Guarantor's* financial condition or business.

**Mortgage** means the mortgage that will come into existence if we accept *your Offer of Mortgage*.

**Mortgage Terms** means the terms and conditions titled "*Mortgage Terms*" set out in the booklet which accompanies the *Application Form*.

**National Guarantee Fund** has the meaning given to it in section 889A of the *Corporations Act*.

**New Guarantor** means a *Person* who has signed an *Application Form* after the date of the *Agreement*, and agrees to be a party to the *Agreement* in the capacity of *Guarantor*.

**New Rights** means all assets, rights, powers and proceeds of any nature at any time attaching to, or arising out of any holding in, any *Security* or any other new right in the *Secured Property*, including:

- (a) all money, distributions, interest and dividends;
- (b) any proceeds from any disposal, share buyback, redemption, compulsory acquisition, liquidation or scheme or arrangement;
- (c) any *Security* resulting from the conversion, consolidation or subdivision of a *Security*;
- (d) any or right to take-up or *Security* resulting from an allotment, offer, bonus issue, dividend reinvestment plan; and
- (e) any certificate or other evidence of title to any of the above.
- (f) the benefit of any guarantee or guarantee and indemnity (and the proceeds thereof ) given by any person.

**Nominated Account** means the *Account* with a bank or financial institution which *you* specify in the *Application Form* (or subsequently vary by *Notice* to us) as being *your Nominated Account* for receipt of borrowing under the *Agreement*.

**Nominated Broker** means the *Financial Adviser* nominated by *you* in the *Application Form* where that *Financial Adviser* is a *Broker*.

**Nominated Financial Adviser** means the *Financial Adviser* nominated in the *Application Form*.

**Nominee** means any or all of:

- (a) Pirie Street Custodian Limited (ABN 64 004 742 581);
- (b) Pirie Street Nominees Pty Ltd (ABN 69 077 851 622); and
- (c) any other person from time to time nominated by us.

**Nominee Agreement** means the agreement between *you* and the *Nominee*, the terms and conditions of which are set out in Part B and in Part D.

**Notice** means any notice given in writing and delivered pursuant to Clause 75 in Part D.

**Offer of Mortgage** means the offer of mortgage contained in the *Application Form*.

**Online Service** means the service through which we provide *you* with access to information regarding *your* margin lending facility.

**Overdue Money Rate** means, at any time,:

- (a) the rate certified by one of *our Authorised Officers* to be *our* rate for overdue moneys in respect of the *Investment Loan* applicable from time to time (expressed as a per centum per annum); or
- (b) any other rate notified (and varied) by us from time to time.

**Participant** has the meaning in the *ASTC Settlement Rules*. Under the *ASTC Settlement Rules*, it means a person who has the capacity on *CHESS* to Transfer or convert *Securities* from a *Holding*.

**Participant Sponsored Holding** has the meaning in the *ASTC Settlement Rules*. Generally it means a holding of securities on *CHESS* of a person that has a current sponsorship agreement with a participant on *CHESS*.

**Person** includes both an individual or a corporation.

**Plan** means any dividend reinvestment plan or interest reinvestment plan.

**Power** means any power, right, authority, discretion or remedy that is conferred on us, the *Nominee*, the *Sponsor* or an *Attorney* or *Receiver* by this *Agreement*, the *Mortgage* or by law in relation to this *Agreement* and the *Mortgage*.

**Receiver** means receiver or receiver and manager.

**Repayment Date** means the date determined by *Leveraged Equities* as the repayment date in relation to loans offered by *Leveraged Equities* for purchases of the *Investment* or the date determined by *Leveraged Equities* on the basis of the preferred term (if any) referred to in the *Application Form*.

**Secured Property** means:

- (a) all of *your* interest in the *Investment*;
- (b) all *Securities* that are transferred to the *Nominee* (including, without limitation, all of *your* interest in the *Investment*;
- (c) if *you* invest in the *Investment* through a master trust, wrap account, managed investment scheme or other similar investment vehicle, all of *your* interest in such master trust, wrap account, managed investment scheme or other similar investment vehicle;
- (d) all *Securities* that are transferred into, or registered under, the *Holden Identification Number* of the *Sponsor*;
- (e) all *New Rights*;
- (f) all *your* rights to repayment or redemption of money in a *Deposit Account*, including rights to interest and rights to distribution of income and property, whether or not the interest or distribution is actually credited to the *Deposit Account*;
- (g) any other asset agreed from time to time by *you* and us to be part of the *Secured Property*; and
- (h) if *you* are a corporation, in addition to the above all of *your* other present and future rights, assets, property and undertaking (with the exception that during the *period* of thirteen months after the *Offer of Mortgage* is accepted by us, *Secured Property* will not include real property).

**Securities Licence** means a securities dealers licence or an Australian Financial Services licence (as applicable) as required under the *Corporations Act*.

**Security or Securities** means:

- (a) shares, stock units or units in the capital of a corporation;
- (b) debentures, debenture stock, bonds, notes, convertible notes, units, warrants or other securities created, issued or granted by any corporation, government, unincorporated body or other entity;
- (c) a unit or other interest in a trust or partnership;
- (d) any interest in a managed investment scheme (as defined in the *Corporations Act*) and any other interests the subject of a disclosure document or product disclosure statement under the *Corporations Act*;
- (e) a negotiable instrument; and
- (f) any right or option in respect of any of the above (whether issued or unissued).

**Security Interest** means any security for the payment of money or performance of obligations including a mortgage, charge, lien, pledge, trust or power.

**Settlement Participant** has the meaning given in the *ASTC Settlement Rules*. Generally it covers persons that are not *Brokers* but who satisfy certain eligibility criteria in the *ASTC Settlement Rules*.

**Sponsor means** Pirie Street Custodian Limited (ABN 64 004 742 581).

**Sponsorship Agreement** means the agreement between *you* and the *Sponsor* setting out the terms of sponsorship of securities under CHESS in Part B and in Part D.

**Sponsoring Participant** has the meaning given in the *ASTC Settlement Rules*. Under the *ASTC Settlement Rules* it means a *Participant* that establishes and maintains a *Participant Sponsored Holding*.

**Statement of Position** means the statement of *your* assets, liabilities and income in a form required by *us* to be enclosed with the *Application Form*.

**Subposition** has the meaning in the *ASTC Settlement Rules*. Generally it means the facility in CHESS restricting certain activities in relation to securities under CHESS.

**Total Amount Owing** means the *Account Balance* plus any interest, fees, costs, expenses and other amounts (including indemnity amounts) payable by *you* under this *Agreement*.

**We, us or our** means *Leveraged Equities Limited* (ABN 26 051 629 282), its successors and anyone it assigns its rights to.

**Withdrawal Instructions** has the meaning in the *ASTC Settlement Rules*. Generally, it means written or oral instructions from *you* to the *Sponsor* for the withdrawal of *Securities* from a *Participant Sponsored Holding*.

**You or your** means:

- (a) in the *Loan Agreement*, the *Borrower*;
- (b) in the *Nominee Agreement*, the *Sponsorship Agreement* and the *Mortgage Terms*, the *Person* who makes *us* the *Offer of Mortgage*;
- (c) in the *Guarantee*, the *Guarantor*; and
- (d) in the *Application Form*, as specified in the *Application Form* itself.

#### 80.2 *ASTC Settlement Rules and Corporations Act*.

As certain definitions refer to the *ASTC Settlement Rules* and the *Corporations Act*, *you* should read these *Rules* and this *Act* for the full terms of the definition. The definition may change from time to time if the *ASTC Settlement Rules* or the *Corporations Act* is altered.

#### 80.3 *Interpretation*.

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural and the converse.
- (b) A gender includes all genders.
- (c) Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a *Person*, trust, partnership, unincorporated body or other entity includes any of them.
- (e) A reference to a clause, annexure or schedule is a reference to a clause of, or annexure or schedule to, this *Agreement*.
- (f) A reference to a party to this *Agreement* or another agreement or document includes the party's successors and permitted substitutes or assigns.
- (g) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (h) A reference to writing includes a facsimile transmission and any means of reproducing words in a tangible and permanently visible form.
- (i) A reference to conduct includes an omission, statement or undertaking, whether or not in writing.

- (j) The meaning of terms is not limited by specific examples introduced by including, or for example, or similar expressions.
- (k) All references to time are to Australian Eastern Standard time.
- (l) Nothing in this *Agreement* is to be interpreted against a party on the ground that the party put it forward.
- (m) Where this *Agreement* says that *we* may do something then *we* may choose to do or not do that thing in *our* absolute discretion, unless this *Agreement* says otherwise.

#### 81. **Capacity in which you enter the Agreement.**

*You* and the *Guarantor* enter the *Agreement* in *your* personal or corporate capacity (as applicable), unless *you* have told *us* that *you* enter the *Agreement* as trustee of a trust. If *you* have told *us* that this is the case, *you* enter the *Agreement* as trustee of that trust for all *your Secured Property* subject to the trust and *you* also enter the *Agreement* in *your* personal or corporate capacity (as applicable).

#### 82. **Part of Agreement may be treated as separate agreement.**

If required by law or if otherwise necessary or convenient *we* may (without giving *you* any notice and without obtaining *your* consent, treat one or more Parts of the *Agreement* as a separate agreement.

#### 83. **Execution by Attorney.**

Each *Attorney* executing this *Agreement* states that he or she has no notice of revocation or suspension of his or her power of attorney.

#### **THIS IS WHERE THE SIGNING CLAUSES WOULD APPEAR IN THE SIGNATURE COPIES OF AGREEMENT.**

### **Section 3: Privacy Disclosure and Consent and Risk Disclosure Statement.**

Clause 80 of the *Agreement* applies to the interpretation of this Section 3 (including the meaning of words printed like *This*).

#### **I. Privacy Disclosure and Consent.**

*You*, being the person(s) whose names appear in the *Application Form* as:

- (a) the *Borrower(s)*; or
- (b) the *Guarantor(s)* of the obligations of the *Borrower*.

give the following acknowledgements, consents and authorities in conjunction with and in relation to the application being made by the *Borrower*.

##### *1.1 Notice of disclosure of credit information to a credit reporting Agency.*

Under the *Privacy Act*, *we* or a *Service Provider* (as defined in 1.3 below) or *your Broker* or *Financial Adviser* acting on *our* behalf are allowed to give a credit reporting agency personal information about *you*. The information which may be given to an agency is covered by the *Privacy Act* and includes, to the extent applicable:

- (a) permitted information about *you* which will allow *you* to be identified;
- (b) details of any cheques drawn by *you* for an amount not less than \$100 which have been dishonoured more than once;
- (c) in specified circumstances, whether in *our* opinion, *you* have committed a serious credit infringement;
- (d) where *you* are the *Borrower*:

- (i) the fact that *you* have applied for credit and the amount of credit applied for;
  - (ii) the fact that we are a current credit provider to *you*;
  - (iii) payments which are overdue for more than 60 days and for which collection action has commenced;
  - (iv) advice that payments are no longer overdue; and
  - (v) whether credit provided to *you* by *us* has been paid or otherwise discharged;
- (e) where *you* are the *Guarantor*:
- (i) the fact that *you* have offered to act as guarantor in respect of credit or an application for credit; and
  - (ii) the fact that *you* have failed to pay an amount due by *you* as *Guarantor* where, amongst other things:
    - (A) *you* have received notice of default by the *Borrower* and have not paid for 60 days after that notice; and
    - (B) we have in addition to that notice, commenced action to recover the amount due from *you*.

This information may be given before, during or after the assessment is made of whether to accept the application of the *Borrower*.

### 1.2 Agreement that we may obtain and provide credit reports and other information about your credit worthiness.

*You* agree to *us*, for the purpose of assessing this *Application* (and any other application or request *you* may make in relation to the *Agreement* and assessing whether to provide credit to the *Borrower* or accept *you* as *Guarantor* in respect of credit applied for, or provided to the *Borrower*):

- (a) obtaining from a credit reporting agency a credit report containing information about *your* personal credit worthiness for the purpose of assessing the application of the *Borrower* and/or the application by *you* to act as *Guarantor* for the *Borrower* and for the purpose of assisting in collecting overdue payments in respect of any credit we provide as a result of this application;
- (b) obtaining a report about *your* commercial activities or commercial credit worthiness from any business which provides information about the commercial credit worthiness of persons, *your* accountant or any supplier to *you*; and
- (c) giving to and obtaining from any credit provider named in this *Application Form* or in a credit report on *you* issued by a credit reporting agency, information about *your* credit arrangements for the purposes of:
  - (i) assessing the application of the *Borrower* and/or the application by *you* to act as *Guarantor* for the *Borrower*;
  - (ii) notifying a failure by *you* to observe *your* obligations (if any) as *Borrower* or *Guarantor* (as applicable);
  - (iii) allowing another credit provider to ascertain the status of *your* obligations to *us* where *you* are in default with one or more other credit providers; and
  - (iv) generally assessing *your* credit worthiness.

*You* understand the information exchanged can include any information about *your* personal and/or commercial credit worthiness, credit standing, credit history or credit capacity which the Privacy Act allows credit providers to give to or receive from each other. *You* agree that if we approve the *Borrower's* application this agreement remains in force until all facilities we have with the *Borrower* cease.

### 1.3 Other privacy consents and acknowledgments.

*You* agree that:

- (a) we and the *Nominee* and any company which is related to *us*;
  - (b) ASX Settlement and Transfer Corporation Pty Ltd and any person appointed by *us* as the *Sponsor*;
  - (c) where *you* are not the *Borrower* - the *Borrower* and any officer or employee of the *Borrower* (where it is a company);
  - (d) any proposed *Guarantor* of the obligations of the *Borrower* whether or not named in the *Application Form* and any representative, adviser or broker of the *Guarantor*;
  - (e) where *you* are not the *Borrower* - the *Broker* of the *Borrower* and any employee of the *Broker*;
  - (f) where *you* are the *Borrower* - *your* *Broker* or *Financial Adviser* and any other person through whom *you* have applied, or by whom *you* are introduced to *us*, and any of their respective employees;
  - (g) *your* *Authorised Person*;
  - (h) any *Attorney*;
  - (i) any organisation acquiring an interest in *your* *Loan* facility or involved in managing *our* corporate risk and funding functions (for example organisations involved in securitisation);
  - (j) any payment systems operators and participants in the payment system;
  - (k) master trust and wrap providers, where *you* wish to lodge a wrap as security on the loan facility;
  - (l) any provider of a *Deposit Account*;
  - (m) any person with whom we enter into an arrangement in relation to *Securities* in connection with *your* *Loan*;
  - (n) any person referred to in this *Application Form* (or any other application or request) or any other person whose details *you* give *us*;
  - (o) any valuer of *Secured Property*;
  - (p) *CHESS* and any entity through which we interface with *CHESS*; and
  - (q) *Australian Clearing House* Pty Ltd,
- (each referred to as a **Recipient**) may exchange with each other any personal information about *you* including:
- (r) any insurer to which we apply for lenders mortgage insurance;
  - (s) any other personal information *you* provide to any *Recipient* or which any *Recipient* otherwise lawfully obtains about *you*;
  - (t) any transaction details or transaction history arising out of *your* arrangements with any *Recipient*;
  - (u) where the Privacy Act allows, or allows provided *you* agree, any information referred to in sections 1.1 and 1.2 above.

*You* agree that if we engage anyone (a **Service Provider**) to do something on *our* behalf (for example a mailing house, a provider of information technology services, a debt collection agency, auditor or a solicitor), then we and the *Service Provider* may exchange with each other any personal information referred to above and any other personal information the *Service Provider* lawfully obtains about *you* in the course of acting on *our* behalf.

*You* agree that any personal information referred to above may be used by any *Recipient* and *Service Provider* for any purpose related to the lending facility to which the *Application Form* relates and to carry out any associated payments, transactions, administration and account servicing. In addition, such information can be used to assess any application *you* make for a different product or service, for planning, product development and research purposes and to seek *your* feedback on *our* products and services. Such information

may also be used by *Leveraged Equities* from time to time to contact you about various product offers and special promotions.

We may give any personal information about you to entities other than the *Recipients* and the *Service Providers* referred to above where it is required or allowed by law where it is required by a *Government Agency* or where you have otherwise consented.

You understand that:

- (a) if you fail to provide any information requested in any lending documents, or do not agree to any of the possible exchanges or uses of such information as set out above, the application of the *Borrower* may not be accepted; and
- (b) you can access most personal information that we and our related companies hold about you by contacting *Leveraged Equities* on 1300 307 807. Sometimes that access will not be possible, in which case you will be told why. You can also obtain a copy of our privacy statement at leveraged.com.au or by requesting it from us.

## 2. Risk Disclosure Statement.

Borrowing funds, and mortgaging your assets as security for a loan, exposes you to risks. If you guarantee someone else's obligations under a loan, you are exposed to those same risks. In addition you do not have control over the loan. In deciding whether to enter into the *Agreement* and make the *Offer of Mortgage*, you should bear in mind your particular financial position and your ability to perform your obligations under the *Agreement*. You should read the terms and conditions of the *Agreement* and the *Mortgage Terms* carefully before signing the *Application Form*. In assessing the risks you face, you should consider the following:

### 2.1 Early repayment.

If a *Loan* is paid out prior to the *Repayment Date* (whether voluntarily or whether due to an *Event of Default* occurring, there may be an *Exit Fee* charged by us or additional costs payable to us for the early termination of the funding arrangement or any associated hedging arrangements we enter into in relation to the *Investment*).

### 2.2 Early Redemption of the Investment.

Early redemption of the *Investment* (whether voluntarily by you or otherwise) may result in the redemption proceeds being less than the purchase price. You will be responsible to pay us any shortfall between the *Total Amount Owing* and the redemption proceeds.

### 2.3 Investment Risks and Financial Advice.

*Leveraged Equities* does not advise, nor make any representation to you, as to the appropriateness or suitability of the *Investment* you purchase. It does not guarantee the performance of the *Investment*. *Leveraged Equities* strongly recommends that you obtain your own independent professional advice on the risks and suitability of this type of product and the taxation implications as they apply to your individual circumstances.

### 2.4 Independent advice.

You should take independent financial, legal and tax planning advice before borrowing money to purchase the *Investment*. This should include advice on the risks involved and the taxation implications of borrowing for investment purposes. In providing the *Loans* to you, we are not advising you in any way whether the *Agreement* is appropriate in your financial circumstances. Further, we are not making any representations or warranties about the taxation implications of the *Agreement*.

### 2.5 No recommendation of the Investment.

The fact that we are prepared to lend on the security of the *Investment* and the amount that we are prepared to lend against them

is not an indication of the financial stability or expected performance of the *Investment*. You should not use it as an indicator of stability or expected performance when purchasing the *Investment*.

### 2.6 Repayment.

You must repay the *Total Amount Owing* when required under the *Agreement* in all circumstances, ie even if the *Investment* becomes worthless or if the proceeds from the sale or redemption of the *Investment* do not satisfy the *Total Amount Owing*.

### 2.7 Guarantee

If you guarantee the obligations of a *Borrower*, we may (if there is a default) call on you as a *Guarantor* (either instead of the *Borrower* or as well as the *Borrower*) to pay the amounts that are owing. The giving of the *Guarantee* therefore involves risks, including the risk of losing any property that has been given as security. A *Guarantor* is also exposed to the actions of the *Borrower*, who may increase or reduce a *Guarantor's* risks (such as by borrowing more) without reference to the *Guarantor*.

A *Guarantor* may not terminate its obligations to us prior to the *Borrower* repaying the *Total Amount Owing*. If you are borrowing and investing through a company, you will (if you are a director of the Company), be asked to sign a *Guarantee* guaranteeing the obligations of your company with regard to the arrangements entered into by it with us. By virtue of the *Guarantee* you will assume personal liability for your company's obligations (including any debts) to us and will bear the risks that have been outlined above.

### 2.8 Interest Rate Risk.

Interest rates on your *Loan* can increase or decrease.

If you elect to pay a fixed interest rate for all or part of your *Loan*, then you may be paying more interest than you would have if you had chosen a variable rate, if interest rates decrease.

This statement does not disclose all the risks that you may face if you borrow against the *Investment* or *Guarantee* the obligations of such a *Borrower*. It also does not disclose all the terms and conditions of the *Agreement* or the *Mortgage Terms*.

Acting as the *Borrower* or *Guarantor*, and signing the documents necessary to do so, does not affect your obligations in relation to any other facilities you have with us or any of our related bodies corporate, or any other guarantee or other security you have given to us or any of our related bodies corporate.

## 3. Definitions and interpretation.

In this Section 3: Privacy Disclosure and Consent and Risk Disclosure Statement, unless the context otherwise requires, words printed like *This* shall have the same meaning as set out in Clause 80 of the *Agreement* between you and *Leveraged Equities* in relation to your *Loan* and this Section 3 is to be interpreted according to any other interpretation provisions set out in Clause 80 of the *Agreement*.

## Section 4: Power of Attorney and Direct Debit Service Agreement

If you are a *Borrower* or a *Guarantor*, these are the terms of the *Power of Attorney* which you will give to us at the time that you sign the *Application Form*.

### 1. Power of Attorney.

#### 1.1 Who you appoint and the power you give.

For valuable consideration you irrevocably appoint *Leveraged Equities Limited*, the *Nominee*, the *Sponsor* and in regard to each of us, any *Authorised Officer*, severally as your attorney (an *Attorney*) to:

- (a) date the *Application Form* no later than the date *Leveraged*

*Equities* receives the form (if you do not date it);

- (b) correct errors or omissions in, or make amendments to, the *Application Form* in accordance with your oral or written instructions;
- (c) execute the *Agreement* (including the *Guarantee*, if applicable) on your behalf;
- (d) transfer the *Secured Property* to *Leveraged Equities* or the *Nominee* or to a purchaser or otherwise convey the *Secured Property* where you are required or permitted to do so under the *Agreement* or the *Mortgage Terms*;
- (e) open a *Deposit Account* in your name (whether alone or jointly with any other *Borrower* under the *Agreement*);
- (f) deal in any way with the *Deposit Account* and, without limitation, set off the balance in the *Deposit Account* against any of the *Total Amount Owed*, grant a charge or mortgage over a *Deposit Account* and give any directions to the issuer of the *Deposit Account* which you could give as owner of the *Deposit Account*;
- (g) if you are a corporation or a corporate trustee, complete sign and date any form required to be lodged with the Australian Securities and Investments Commission in order to register the *Mortgage* pursuant to the *Corporations Act* or otherwise in relation to the *Mortgage*;
- (h) do anything which the *Attorney* thinks fit in any way relating to your involvement in the *Agreement* or any transaction contemplated by them or a sale or dealing contemplated by this power of attorney;
- (i) do anything which you can do as owner of the *Secured Property* and give directions to the *Nominated Financial Adviser*, the issuer or registry of any *Securities*, the *Sponsor* in relation to the *Secured Property* (or any part of it);
- (j) enter into any agreement with the trustee, operator or any other person in relation to any *Secured Property* not registered in the name of the *Nominee* (including, without limitation, any *Secured Property* included in a master trust or wrap account) and/or *Leveraged Equities* as may in the opinion of *Leveraged Equities* be necessary to protect its interest in the *Secured Property* including, without limitation, any agreement in which such trustee, operator or other relevant person agrees to comply with the directions of the *Attorney* in relation to dealing with the *Secured Property* and/or the redemption proceeds of the *Secured Property* notwithstanding any direction from you or any other person to the contrary;
- (k) sign any forms or other documents which in the *Attorney's* opinion are necessary or desirable to ensure shares or other securities subject to the *Mortgage* or intended to be subject to the *Agreement* are on a *CHESS Subregister* under the control of the *Sponsor* as contemplated by the *Agreement*;
- (l) execute any other document which an *Attorney* thinks necessary, advisable or incidental in connection with either the *Agreement* or any transaction contemplated by the *Agreement*;
- (m) stamp and register the *Agreement* and any documents contemplated by the *Agreement*;
- (n) do anything else contemplated by the *Agreement*; and
- (o) execute any other document which you instruct the *Attorney* in writing to execute from time to time (whether or not in connection with or contemplated by the *Agreement*).

#### **1.2 Attorney may delegate powers.**

An *Attorney* may delegate his or her powers (including this power) and revoke such a delegation.

#### **1.3 Interest in transaction.**

An *Attorney* may exercise his or her powers even if doing so involves a conflict of interest.

#### **1.4 Approval of acts of Attorney.**

If we request, you must formally approve anything that the *Attorney* may do under the *Agreement*.

#### **1.5 Indemnity.**

You indemnify the *Attorney* against each claim, action, proceeding, judgment, damage, Cost, loss, expense or liability incurred or suffered by or brought or made or recovered against the *Attorney* in connection with the exercise of any of the powers and authorities conferred by this power of attorney.

#### **1.6 No personal liability.**

The exercise by the *Attorney* of the powers and authorities conferred by this power of attorney does not involve any assumption by the *Attorney*, or any body in which he or she is a partner or employed, of personal liability in connection with the exercise of the powers and authorities or the consequences of so doing.

#### **1.7 Conflict of duty.**

You authorise the *Attorney* to exercise the powers and authorities conferred by this power of attorney even if it involves a conflict of duty or the *Attorney* (or a person they know) have a personal interest in doing so.

#### **1.8 Effect as a deed.**

This power of attorney is intended to have effect as a deed.

#### **1.9 Governing Law.**

This power of attorney is governed by the laws of New South Wales.

#### **1.10 Interpretation.**

Words written like *This* have the same meaning as set out in Clause 80 of Part D of the *Agreement*.

### **2. Direct Debit Service Agreement.**

#### **2.1 Debit arrangements.**

- (a) By completing and signing the *DDR* above you authorise us to arrange for funds to be transferred from your *Nominated Account* in accordance with this *Direct Debit Service Agreement*, and you also authorise the financial institution where your *Account* is held (the **Financial Institution**) to debit your *Nominated Account* accordingly.
- (b) Direct Debits will not commence until we have processed your direct debit application.
- (c) All Direct Debits made on your behalf in accordance with a *DDR* are deemed payments by you.
- (d) If the date you have nominated for payment falls on a day that is not a *Business Day*, we may direct the *Financial Institution* to debit your *Account* on the following *Business Day*. If you are unsure about which day your *Account* has been or will be debited please check with the *Financial Institution*.
- (e) Nothing in this *Direct Debit Services Agreement* affects or overrides the terms of the *Agreement*. If the result of a debit payment being returned is that you do not make a payment due under the *Agreement* on time then an *Event of Default* will occur for the purpose of that *Agreement* and default interest may accrue on the unpaid amount.
- (f) If there are insufficient cleared funds available in your *Nominated Account* to meet any debit payment:
  - (i) you or your *Nominated Account* may be charged a fee and/or interest by the *Financial Institution*;
  - (ii) we may charge a fee to reimburse us for costs or charges we have incurred as a result of the failed transaction;
  - (iii) if you are in default in your payments, you must arrange for the payment to be made by another method or arrange for sufficient cleared funds to be in your *Nominated Account*

within 3 days or such other period as we specify so that we can make a further drawing on *your Nominated Account*; and

- (iv) we may attempt a redraw on *your Nominated Account*.

## 2.2 Your rights.

- (a) You may terminate the Direct Debit arrangement with us by giving us written notice. The termination will be effective when we have completed processing your request.
- (b) You may request that we stop or defer a payment by notifying us in writing. We will notify you if your request to stop or defer a payment has been successful.
- (c) You may alter the *DDR* amount and the date on which payment is to be made by completing a new application.
- (d) Where you consider the debit is incorrect in either the due date or amount or both, you should raise the matter with us on 1300 307 807.
- (e) All notices to us in writing should be sent to:

Leveraged Equities Limited  
GPO Box 5388  
Sydney NSW 2001

## 2.3 Our rights.

- (a) We may terminate the Direct Debit arrangement as to future deductions at any time by notice in writing to you.
- (b) We may in our discretion vary any condition and introduce a charge in relation to the *DDR*. We will notify you of variations to this agreement in writing, no later than 14 days prior to the day on which the variation takes effect.

## 2.4 Your responsibilities.

It is your responsibility:

- (a) before completing the *DDR* to:
- check with the *Financial Institution* that direct debiting is available on your *Nominated Account*. You will need to do this because direct debiting is not available on all accounts offered by financial institutions; and
  - check the account details you have provided to us are correct by checking them against a recent statement of your *Nominated Account*;
- (b) to ensure sufficient cleared funds are available in the *Nominated Account* to meet the debit on the due settlement date of your transactions executed by us;
- (c) to check the statements issued on your *Nominated Account* to verify that the amounts debited from the *Account* are correct;
- (d) to ensure that the authorisation to debit the *Nominated Account* is in the same name as the account signing the instruction held by the *Financial Institution*;
- (e) to advise us if the *Nominated Account* you have nominated to debit is transferred or closed;
- (f) to ensure that suitable arrangements are made if the Direct Debit is cancelled:
- (i) by you
  - (ii) by the *Financial Institution*; or
  - (iii) for any other reason.

## 2.5 Dispute.

- (a) If you believe that there has been an error in debiting your *Nominated Account* you should call us on 1300 307 807 and confirm the details by writing to us, at the address in Clause 2.2(e), as soon as possible so that we can try to resolve your query quickly.

- (b) If our investigations show that your *Nominated Account* has been incorrectly debited we will arrange for the *Financial Institution* to adjust your *Account* (including interest and charges) accordingly. We will also notify you in writing of the amount by which your *Nominated Account* has been adjusted.

- (c) If our investigations show that your *Nominated Account* has not been incorrectly debited we will respond to your query by providing you with reasons and copies of any evidence for this finding.

- (d) Any queries you may have about an error made in debiting your *Nominated Account* should be directed to us in the first instance so that we can attempt to resolve the matter between us and you. If we cannot resolve the matter you can then refer it to the *Financial Institution* which will obtain details from you of the disputed transaction and may lodge a claim on your behalf.

- (e) agree that we may refuse to act on a telephone, facsimile, email or other instruction if we believe or suspect the instruction is fraudulent, mistaken or unauthorised.

## 2.6 Confidentiality and Privacy.

- (a) When we collect, use and disclose the personal information in your *DDR* (such as your *Account* details), we comply with the privacy and related law and our privacy policy.
- (b) We will disclose information about you for the purposes of this *Direct Debit Service Agreement* which may include providing information to the *Financial Institution* or others involved in the direct debit system (for example we may need to do so in connection with a claim that there has been an incorrect or wrongful debit).
- (c) If you fail to provide any information requested in the *DDR* then we will not be able to arrange debit payments.
- (d) More information about privacy is in the Privacy Disclosure and Consent which was given to you when you signed the *DDR*.

## 2.7 Priority.

The *Financial Institution* may in its absolute discretion conclusively determine the priority of payment by it of any moneys, pursuant to this or any other authority or withdrawal request which you give to the *Financial Institution* in relation to your *Nominated Account*.

## 2.8 Definitions and interpretation.

In this *Direct Debit Service Agreement*, unless the context otherwise requires, words printed like *This* shall have the same meaning as set out in Clause 80 of the *Agreement* between you and us in relation to your *Loan* and this *Direct Debit Service Agreement* is to be interpreted according to any other interpretation provisions set out in Clause 80 of the *Agreement*, and:

*DDR* means the request which you have made for amounts to be debited from your *Nominated Account* as set out in the *Direct Debit Request Form* attached to this *Direct Debit Service Agreement*; and *Financial Institution* means the financial institution which your *Nominated Account* is held with.



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