

Loan and Security Agreement

Words that are capitalised (Like This) are in the Loan and Security Glossary on page 39 of the Combined Financial Services Guide and Product Disclosure Statement dated 17 March 2008.

Terms

1 The Facilities

- 1.1 This agreement, as supplemented by further agreement between the Lender and the Borrower (including any relevant Confirmation) sets out the terms on which the Lender agrees to provide the following financial accommodation to the Borrower:
- (a) an Investment Loan Facility, to be used by the Borrower to acquire particular Units;
 - (b) if the Borrower is a Non-Superannuation Borrower – a Gains Loan Facility, in relation to the unrealised gains on Units purchased under an Investment Loan to be used by the Borrower wholly or predominantly for investment purposes;
 - (c) if the Borrower is a Non-Superannuation Borrower – an Interest Loan Facility, to be used by the Borrower to pay interest prepayments in respect of an Investment Loan. The Interest Loan Facility is only available if the Borrower has elected to prepay the annual interest on the Investment Loan on a Prepaid Interest Payment Date by selecting a fixed rate loan option.
- 1.2 The details of each Facility will be confirmed in a Confirmation provided by the Lender. When it provides the first Confirmation in relation to an Application, the Lender acknowledges that it has accepted that Application.
- 1.3 The maximum total amount of financial accommodation available to the Borrower under the Facilities is:
- (a) in respect of an Investment Loan, the Investment Loan Limit;
 - (b) in respect of a Gains Loan, the amount specified by the Lender under clause 1.8(b); and
 - (c) in respect of an Interest Loan, the Interest Loan Limit.
- 1.4 If the Borrower wishes to use the Facility, it may only do so by:
- (a) drawing down an Investment Loan (if any) by a single drawdown on the Drawdown Date for an amount which shall be no less than the Minimum Investment Loan Amount and shall be a multiple of \$5,000 (or such other amount as specified by the Lender);
 - (b) if the Borrower is a Non-Superannuation Borrower – drawing down a Gains Loan (if any) by a single drawdown for an amount which shall be no less than the Minimum Gains Loan Amount. A Gains Loan may only be drawn down on the Drawdown Date for that Loan immediately following the Lender's notice under clause 1.8(b);
 - (c) if the Borrower is a Non-Superannuation Borrower – drawing down an Interest Loan (if any) by a single drawdown on the Drawdown Date for an amount equal to the Interest Loan Limit.

- 1.5 If the Borrower draws:
- (a) an Investment Loan, the Borrower irrevocably authorises and directs the Lender to apply the proceeds of the first drawdown to acquire Units for the Borrower pursuant to the Application and for all other drawdowns made in accordance with clause 3.4 to meet interest payable in respect of the Investment Loan;
 - (b) a Gains Loan, the Borrower represents and warrants to the Lender that it will use the proceeds of that Loan wholly or predominantly for investment purposes; and
 - (c) an Interest Loan, the Borrower irrevocably authorises and directs the Lender to apply the proceeds of the drawdown in payment of the relevant interest prepayment in respect of an Investment Loan for the Borrower.
- 1.6 Each:
- (a) Investment Loan (if any) will relate to the particular Units acquired with that Investment Loan and (if applicable) the interest payable in respect of the Investment Loan, and the particular Secured Property relating to those Units;
 - (b) Gains Loan will relate to the Investment Loan which was used to acquire the particular Units whose value, together with the value of the particular Secured Property relating to those Units, has increased giving rise to the availability of the Gains Loan under clause 1.8, the particular Units acquired with that Investment Loan and the particular Secured Property relating to those Units; and
 - (c) Interest Loan is applied in payment of the relevant interest prepayment in respect of an Investment Loan and will relate to that Investment Loan, the particular Units acquired with that Investment Loan and the particular Secured Property relating to those Units.
- 1.7 The Lender will maintain accounts recording the balance of each Investment Loan, Gains Loan and Interest Loan from time to time and the particular Units acquired with each Investment Loan and the particular Secured Property relating to those Units.
- 1.8 A Gains Loan will only be available for drawdown if:
- (a) the value of the particular Secured Property which relates to a particular Investment Loan exceeds the value of that Investment Loan by a margin which in the Lender's opinion is sufficient for the Lender to make a Gains Loan available to the Borrower;
 - (b) the Lender gives notice to the Borrower stating that a Gains Loan is available for drawdown for a specified amount which the Borrower may drawdown under that Gains Loan on a specified date;
 - (c) the Borrower gives notice to the Lender stating that it wishes to drawdown a Gains Loan;
 - (d) the Borrower satisfies the Lender's credit approval process; and
 - (e) the Borrower enters into any other agreements specified by the Lender in relation to the Gains Loan.

2 Conditions precedent

- 2.1 The Lender is not obliged to provide any financial accommodation under any Facility to the Borrower unless:
- (a) if the Borrower makes an Application in its capacity as a trustee of a Trust, the Lender has received a certificate from the Borrower's solicitor in a form and substance

acceptable to the Lender and the relevant sections of the Application have been completed (where applicable) to the satisfaction of the Lender;

- (b) if the Borrower is a company (acting in its own capacity or as trustee of a Trust), a guarantee in the form set out in this agreement has been provided by a director of the company and the relevant sections of the Application have been completed to the satisfaction of the Lender;
- (c) the Lender is satisfied that the representations and warranties in clause 8 are correct and not misleading as at the Drawdown Date;
- (d) the Lender is satisfied that no Event of Default has occurred and is continuing or would result from the accommodation to be provided;
- (e) the Lender has received to its full satisfaction the details of the Borrower's nominated account from which all payments due to the Lender under this agreement are to be direct debited, together with evidence of any authority required to give effect to that direct debit arrangement;
- (f) where the Facility is an Interest Loan, the Borrower has elected to prepay the interest on the Investment Loan to which the Interest Loan relates; and
- (g) the Lender has received all amounts and such other documents or information that it requires.

3 Interest

Investment Loan

- 3.1 The Borrower must pay interest on an Investment Loan at the Interest Rate in accordance with this agreement.
- 3.2 If the Lender offers, a Borrower who is a Non-Superannuation Borrower may elect to:
 - (a) prepay interest on an Investment Loan at a rate that is fixed for the term of that Loan; or
 - (b) prepay interest on an Investment Loan at a rate that is fixed each year or such longer period (being less than two years) as is specified in the Confirmation, provided that (unless the Lender agrees otherwise) if the Borrower elects to prepay interest in accordance with this clause and the Maturity Date (as specified in the first Confirmation) is extended by the Lender at anytime (New Maturity Date) and the New Maturity Date falls after the end of the Interest Period current at the time of the extension (Fixed Rate End Date), interest shall be payable at a variable interest rate in accordance with clause 3.7 from the Fixed Rate End Date.
- 3.3 If the Borrower does not elect to prepay interest pursuant to 3.2 the Borrower must pay the interest Monthly in arrears.
- 3.4 If the Borrower:
 - (a) is a Superannuation Borrower; or
 - (b) is a Non-Superannuation Borrower and has elected in their Application to pay interest in respect of an Investment Loan by drawing on that Investment Loan,

an amount equal to the interest payable in respect of the Investment Loan under clause 3.3 will be automatically drawn down by the Borrower under the Investment Loan on the date that the interest is due to be paid under clause 3.3 and applied to meet that unpaid interest, and the

amount so drawn will be added to the Outstanding Amount of the relevant Investment Loan and interest will accrue on that amount in accordance with this clause 3.

- 3.5 Interest which is prepaid:
- (a) is calculated in advance and based on a year of 365 days (and 366 days in a leap year);
 - (b) is to be prepaid for each Interest Period in respect of the Investment Loan;
 - (c) must be paid on the relevant Prepaid Interest Payment Date; and
 - (d) once paid is not refundable (including if part or all of any Loan is repaid, unless pursuant to clause 12.1) except at the discretion of the Lender.
- 3.6 If, in accordance with clause 3.3, the Borrower must pay interest in arrears, the Borrower must pay the Lender interest:
- (a) if interest is drawn down under the Investment Loan in accordance with clause 3.4 – at a rate that is fixed for the term of the Loan as set out in the relevant Confirmation; or
 - (b) otherwise – at the variable Interest Rate for the relevant Interest Period.
- 3.7 Interest which is paid in arrears:
- (a) accrues daily from the first day to the last day (inclusive) of an Interest Period in respect of the Investment Loan;
 - (b) is calculated on the balance of the relevant Loan at the end of each day, on actual days elapsed and based on a year of 365 days (and 366 days in a leap year); and
 - (c) is payable on each Interest Payment Date.
- 3.8 Unless the Borrower is paying interest in accordance with clause 3.4, the Borrower may, if the Lender has consented and subject to clause 3.9, elect to change its interest payment obligations in respect of an Investment Loan as follows:
- (a) from prepaying interest at a rate that is fixed for the term of the Loan to:
 - (i) prepaying interest at a rate that is fixed for one year (or is fixed until the Maturity Date if that one year period would end after the Maturity Date); or
 - (ii) paying interest in arrears at a rate that is variable each Month;
 - (b) from prepaying interest at a rate that is fixed each year or such longer period (being less than two years) as is specified in the Confirmation to paying interest in arrears at a rate that is variable each Month; or
 - (c) from paying interest in arrears at a rate that is variable each Month to prepaying interest at a rate that is fixed each year or such longer period (being less than two years) as is specified in the Confirmation (or is fixed until the Maturity Date if that one year period would end after the Maturity Date).
- 3.9 If the Borrower wishes to change its interest payment obligations in accordance with and as permitted by, clause 3.8, it may apply to do so by written notice to the Lender at least 10 Business Days prior to the next anniversary of the Drawdown Date. If the Lender accepts the Borrower's application to change its interest payment obligations and if the Borrower has paid all fees required by the Lender under clause 6.2 in relation to the change, the change shall take effect from the next anniversary of the Drawdown Date. The Borrower may not change its

interest payment obligations in respect of an Investment Loan other than as set out in clause 3.8.

Gains Loan

- 3.10 The Borrower must pay interest on each Gains Loan at the Interest Rate for the relevant Interest Period for the Investment Loan.
- 3.11 Interest which is prepaid:
- (a) is calculated in advance and based on a year of 365 days (and 366 days in a leap year);
 - (b) is to be prepaid for each Interest Period in respect of the Gains Loan;
 - (c) must be paid on the relevant Prepaid Interest Payment Date; and
 - (d) once paid is not refundable (including if part or all of any Loan is repaid, unless pursuant to clause 12.1 except at the discretion of the Lender.
- 3.12 Interest which is paid in arrears:
- (a) accrues daily from the first day to the last day (inclusive) of an Interest Period in respect of the Gains Loan;
 - (b) is calculated on the balance of the Gains Loan at the end of each day, on actual days elapsed and based on a year of 365 days (and 366 days in a leap year); and
 - (c) is payable on each Interest Payment Date.
- 3.13 If the Borrower changes its interest payment options under clause 3.8, its interest payment obligations under the relevant Gains Loan must be changed accordingly.

Interest Loan

- 3.14 The Borrower must pay interest on each Interest Loan at the Interest Rate for the relevant Interest Period for the Investment Loan.
- 3.15 Interest on each Interest Loan:
- (a) is calculated in advance and based on a year of 365 days (and 366 days in a leap year);
 - (b) must be prepaid for each Interest Period in respect of the Interest Loan;
 - (c) is payable on the relevant Prepaid Interest Payment Date; and
 - (d) once paid is not refundable (including if part or all of any Loan is repaid, unless pursuant to clause 12.1) except at the discretion of the Lender.
- 3.16 If the Borrower changes its interest payment options under clause 3.8, its interest payment obligations under the relevant Interest Loan must be changed accordingly. However, if the Borrower changes from prepaying interest annually to paying interest Monthly in arrears, the Interest Loan must be repaid in full at the time of the switch.

Interest Periods

- 3.17 Subject to clause 3.18, in relation to an Investment Loan:
- (a) the first Interest Period begins on the Drawdown Date and ends, subject to clause 3.21:

- (i) where interest is prepaid annually, on the day before the first anniversary of the Drawdown Date or such other date as may be specified in the Confirmation;
 - (ii) where interest is paid in arrears, on the last day of the Month of drawdown; and
- (b) each subsequent Interest Period:
- (i) where interest is prepaid annually, begins on the day after the last day of the previous Interest Period and, subject to clauses 3.21 and 3.22, ends on the day before the next anniversary of the Drawdown Date; and
 - (ii) where interest is paid in arrears, begins on the day immediately following the last day of the preceding Interest Period and, subject to clauses 3.21 and 3.22, ends on the last day of the subsequent Month.
- 3.18 Where:
- (a) interest is payable at a rate that is fixed each year or such longer period (being less than two years) as is specified in the Confirmation; and
 - (b) the interest rate applicable to the Interest Period commencing on the Drawdown Date has been fixed for a period longer than one year as specified in the Confirmation; interest shall be payable in accordance with clause 3.17(a)(ii) until the first Interest Payment Date falling in June and thereafter in accordance with clause 3.17 as specified in the Confirmation PROVIDED THAT interest shall not be payable both in arrears and in advance in respect of the same day(s).
- 3.19 In relation to a Gains Loan, the first Interest Period begins on the Drawdown Date and ends on the day before the first anniversary of the Drawdown Date. Each subsequent Interest Period begins on the day after the last day of the preceding Interest Period ends and, subject to clause 3.21 ends on the day before the next anniversary of the Drawdown Date.
- 3.20 In relation to an Interest Loan:
- (a) the first Interest Period begins on the Drawdown Date and ends on the day before the first anniversary of the Drawdown Date and each subsequent Interest Period begins on the day after the last day of the preceding Interest Period and (subject to clause 3.21) ends on the day before the next anniversary of the Drawdown Date; or
 - (b) the first Interest Period begins on the Drawdown Date and ends on the day before the day one calendar month after the Drawdown Date and each subsequent Interest Period begins on the day after the last day of the preceding Interest Period and (subject to clause 3.21) ends on the day before the day one calendar month after the Drawdown Date
- as specified in the Confirmation.
- 3.21 An Interest Period which would otherwise end on or after the Maturity Date ends on the day before the Maturity Date.
- 3.22 If interest is paid Monthly in arrears the Interest Period for the Month of June will, notwithstanding the provisions of clauses 3.17(a)(ii) and 3.17(b)(ii), end on 29 June.

Extension of Maturity Date

- 3.23 Subject to clause 11.4, if the Lender and the Borrower agree that the Maturity Date of a Loan will be a date later than the date specified as the Maturity Date in the first Confirmation for that Loan (the **Original Maturity Date**), then for the avoidance of doubt, the terms of this agreement will continue to apply after the Original Maturity Date.
- 3.24 The Borrower must, on the Maturity Date, pay interest on the balance of that Loan at the rate and on the terms specified by the Lender for the period from and including the Original Maturity Date to but excluding the Maturity Date. The Lender may not specify an interest rate under this clause that exceeds the Default Rate.

4 Repayment and early repayment

Repayment

- 4.1 Subject to this clause 4, the Borrower shall repay the total of an Investment Loan to the Lender in one amount on the earlier of:
- (a) the Maturity Date for the relevant Loan;
 - (b) the date any Loan becomes repayable under clause 5;
 - (c) the date the Borrower ceases to hold any PPI Property relating to that Investment Loan;
 - (d) the date the balance owing under the Investment Loan falls below the Minimum Investment Loan Amount, whether as a result of an early repayment under clause 4.6 or otherwise;
 - (e) the date that any Loan becomes repayable following demand by the Lender or an Event of Default under clause 12.
- 4.2 Subject to this clause 4, the Borrower shall repay the total of a Gains Loan to the Lender in one amount on the day that the Investment Loan to which that Gains Loan relates becomes repayable under clause 4.1.
- 4.3 Subject to this clause 4, the Borrower shall repay the total of an Interest Loan to the Lender:
- (a) in one amount on the earlier of:
 - (i) the date that the Investment Loan to which the Interest Loan relates becomes repayable under clause 4.1; and
 - (ii) if the Borrower notifies the Lender of its election to change from prepaying interest to paying interest in arrears in respect of the Investment Loan to which that Interest Loan relates in accordance with clause 3.8, the next Prepaid Interest Payment Date on which the Borrower would have prepaid interest on that Investment Loan but for that change;
- or
- (b) in instalments paid at the end of each Interest Period as determined by the Lender and notified to the Borrower
- as specified in the Confirmation.
- 4.4 If a proportion of the Units comprised in the Secured Property are redeemed or disposed of (other than under any written arrangement between the Borrower (or on its behalf) and the

Lender or any of its related bodies corporate or in accordance with a Dynamic Management Strategy approved by the Lender) before the Maturity Date, the Borrower shall repay the same proportion of the Investment Loan, any Gains Loan and any Interest Loan to which those Units and that Secured Property relate to the Lender in one amount on the date of that redemption (for example, if Units which represent 60% of the value of the Secured Property are redeemed, the Borrower must repay 60% of the Investment Loan (if any) which relates to those Units and that Secured Property, 60% of the Gains Loan (if any) which relates to those Units and that Secured Property and 60% of any Interest Loan that relates to that Investment Loan).

- 4.5 If all or part of a Loan becomes repayable before the Maturity Date, the Borrower shall pay to the Lender an Early Repayment Fee on the date on which the Loan becomes repayable.

Early repayment

- 4.6 The Borrower may repay to the Lender all or any part of an Investment Loan on any day before the relevant Maturity Date if:
- (a) the Borrower has provided 10 Business Days notice in writing;
 - (b) all interest, fees and other moneys then accrued or due under this agreement to the date of early repayment (whether or not yet payable) have been paid (including without limitation any Early Repayment Fee and any amount payable under clause 15); and
 - (c) the Borrower also repays early the same proportion of any Gains Loan and any Interest Loan that relates to that Investment Loan (for example, if the Borrower repays early 60% of an Investment Loan, the Borrower must also repay early 60% of any Gains Loan and 60% of any Interest Loan that relates to that Investment Loan).
- 4.7 The Borrower may only repay early all or any part of a Gains Loan or Interest Loan as contemplated by clause 4.6(a).
- 4.8 If the Borrower wishes to repay early under clause 4.6, the Borrower shall pay to the Lender an Early Repayment Fee on or before the date of early repayment.
- 4.9 If the Borrower makes an optional early repayment pursuant to clause 4.6, upon payment of all amounts then accrued and due under this agreement in relation to the amount to be prepaid, the Lender must:
- (a) in respect of a Non-Superannuation Borrower – release from the charge in clause 10.1 the same proportion of the Units and other Secured Property which relate to the Loans that have been repaid early as the proportion of the Loans that have been repaid early to all Loans (for example, if the Borrower repays 60% of an Investment Loan early (and therefore 60% of any Gains Loan and 60% of any Interest Loan which relates to that Investment Loan), the Lender must release from the charge in clause 10.1 Units and other Secured Property which are valued at 60% of the Secured Property that relates to that Investment Loan and Gains Loan); and
 - (b) in respect of a Non-Superannuation Borrower – exclude from the PPI Property (for the purposes of the definition of Specified Assets) the same proportion of the PPI Property which relate to the Loans that have been repaid early as the proportion of the Loans that have been repaid early to all Loans (for example, if the Borrower repays 60% of an Investment Loan early, the Lender must exclude from the PPI Property (for the purposes of the definition of Specified Assets) PPI Property which is valued at 60% of the Secured Property that relates to that Investment).

4.10 Amounts repaid early may not be re-borrowed under this agreement.

5 Change of law or circumstances

5.1 If there occurs any change in law or interpretation which makes it unlawful for the Lender to give effect to any provision of this agreement, the Lender may notify the Borrower and thereupon the Lender's obligation to make, fund or maintain the Facility or give effect to the relevant provision shall cease. The Borrower must, subject to clause 15, immediately repay each Loan in full together with all interest accrued thereon to the date of repayment and any other moneys then accrued or due (whether or not yet payable) under this agreement.

6 Fees and expenses

6.1 Upon demand from the Lender, the Borrower must, whether or not any Loan is made, pay or reimburse the Lender for all costs, charges and expenses (including without limitation stamp duty, any tax on goods and services, value added tax and legal fees, information retrieval costs, direct debit dishonour fees and additional statement copying costs, if any) incurred or payable by the Lender in connection with or arising out of this agreement and related documentation, the arrangement and administration of the Facility, any action required to be taken by the Lender under this agreement and the contemplated or actual enforcement of, or preservation of rights under, this agreement.

6.2 If the Lender requests, the Borrower shall pay to the Lender:

- (a) a Loan Establishment Fee;
- (b) in respect of a Non-Superannuation Borrower, any fees incurred for the registration or discharge of the charge granted to the Lender under clause 10.1 of this agreement from time to time, including any stamp duty payable in connection with the charge;
- (c) an Early Repayment Fee under clause 4;
- (d) an Interest Switching Fee.

6.3 The Lender may, at its discretion, add the fees set out in clause 6.2 to the Secured Moneys.

6.4 The Lender may at any time and from time to time impose new fees and charges and vary any of these fees or the manner in which they are calculated. The Lender must give the Borrower 30 days notice of any such new fees or variations taking effect.

7 Payments

7.1 All moneys payable by the Borrower under this agreement must be paid in full without set off or counterclaim of any kind and free and clear of, and without any, deduction or withholding of any kind, unless required by law. If such a deduction or withholding is required by law, the Borrower must make an additional payment to the Lender sufficient to ensure that the Lender receives the amount it would have received had such deduction or withholding not been made.

7.2 If any amount would otherwise become due for payment on a day which is not a Business Day, that amount shall become due on the immediately preceding Business Day.

7.3 A certificate signed by the Lender stating any amount or rate for the purpose of this agreement shall, in the absence of manifest error, be binding on the Borrower.

7.4 Unless the Lender agrees otherwise, all payments due to the Lender under this agreement, including without limitation payments on account of principal, interest, fees and expenses, shall be effected by way of a direct debit from a nominated account of the Borrower at a bank

or financial institution acceptable to the Lender. The Borrower must give the Lender 14 days notice of any change in its direct debit details.

8 Representations and warranties

- 8.1 Each of the Borrower and the Guarantor represents and warrants to the Lender on the date of this agreement, on the Drawdown Date and on each day during the term of the Facility that:
- (a) the financial accommodation provided by the Lender under this agreement will be applied wholly or predominantly for investment purposes;
 - (b) on issue of Units to the Borrower, the Borrower will be the beneficial owner of, and have good title to, those Units free from any Security Interest (other than any security given under this agreement);
 - (c) if the Borrower is a Non-Superannuation Borrower, the fixed charge granted in favour of the Lender over the Secured Property pursuant to clause 10.1 is a first ranking fixed charge over the Secured Property and the obligations of the Borrower under this agreement rank ahead of all its other obligations (other than those which on its winding-up, liquidation, dissolution or similar process must be preferred by operation of law) except to the extent provided in this agreement;
 - (d) if the Borrower is a Non-Superannuation Borrower, on issue of Units to the Borrower, those Units form part of the Secured Property over which the Lender has a fixed charge under clause 10.1;
 - (e) each of the Borrower and the Guarantor obtains various benefits by entering into, exercising its rights and performing its obligations under, this agreement;
 - (f) each of the Borrower and the Guarantor is able to pay its debts as and when they become due and payable;
 - (g) each of the Borrower's and the Guarantor's obligations under this agreement are valid and binding and are enforceable against the Borrower and the Guarantor in accordance with their terms;
 - (h) no Event of Default continues unremedied;
 - (i) unless stated in the Application, neither the Borrower nor the Guarantor enters into this agreement as a trustee of a Trust;
 - (j) if the Borrower is a body corporate:
 - (i) the Borrower has been incorporated in accordance with the laws of its place of incorporation, is validly existing under those laws and has power and authority to carry on its business as it is now being conducted;
 - (ii) the Borrower has power to enter into this agreement and comply with its obligations under it;
 - (iii) this agreement does not contravene the Borrower's constitution or any law or obligation by which it is bound or to which any of its assets are subject or cause a limitation on its powers or the powers of its directors to be exceeded;
 - (iv) the Borrower has in full force and effect the authorisations necessary for it to enter into this agreement, to comply with its obligations and exercise its rights under it and to allow it to be enforced;

- (v) no person has contravened or will contravene section 208 or section 209 of the Corporations Act by entering into this agreement or participating in any transaction in connection with this agreement;
- (vi) there is no pending or threatened proceeding affecting the Borrower or any of its related bodies Corporate or any of their assets before a court, governmental agency, commission or arbitrator except those in which a decision against the Borrower or the related body Corporate (either alone or together with other decisions) would be insignificant;
- (vii) neither the Borrower nor any of its related bodies Corporate is in breach of a law or obligation affecting any of them or their assets in away which is likely to be a Material Adverse Change; and
- (viii) neither the Borrower nor any of its related bodies Corporate has immunity from the jurisdiction of a court or from legal process; and
- (k) if the Borrower makes the Application in its capacity as a trustee of a Trust:
 - (i) where it is a joint trustee of the Trust, all other joint-trustees have authorised it to act as agent on their behalf;
 - (ii) no action has been made to remove the trustee as a trustee of the Trust;
 - (iii) the trustee is not in breach of Trust;
 - (iv) the trustee has the right to be fully indemnified out of the Trust assets for obligations incurred under this agreement before the claims of beneficiaries;
 - (v) this agreement is for the benefit of the beneficiaries of the Trust; and
 - (vi) if the Trust is a Regulated Superannuation Fund, the Borrower has stated that it is a Superannuation Investor in the Application.

9 Undertakings

- 9.1 The Borrower must perform its obligations under this agreement in full and on time which (without limitation) includes the obligation to pay the Secured Money to the Lender in accordance with this agreement.
- 9.2 The Borrower and the Guarantor shall supply to the Lender when requested to do so:
- (a) where the Borrower and/or Guarantor is a company, copies of any Financial Statements for the Borrower and/or the Guarantor for each financial year;
 - (b) where the Borrower is a Superannuation Borrower, copies of any Financial Statements for the relevant Regulated Superannuation Fund for each financial year; and
 - (c) such additional financial or other information relating to the Borrower and the Guarantor as the Lender may from time to time request.
- 9.3 Unless the Lender otherwise agrees in writing, the Borrower undertakes:
- (a) whether or not the Lender has taken possession of any part of the Secured Property, to pay all taxes for the Secured Property in full and on time and on demand provide the Lender with copies of all notices received for those taxes and copies of receipts for all payments;

- (b) if the Borrower is a Non-Superannuation Borrower, to ensure that its obligations under this agreement at all times rank ahead of all its other obligations (other than those which on its winding-up, liquidation, dissolution or similar process must be preferred by operation of law) except to the extent provided in this agreement;
- (c) not to create, agree or attempt to create or allow to exist, any Security Interest over or in respect of any Secured Property other than, if the Borrower is a Non-Superannuation Borrower, the fixed charge taken by the Lender under clause 10.1;
- (d) if the Borrower is a Non-Superannuation Borrower, not to sell, redeem, dispose of, or otherwise deal with, any of the Secured Property or any interest therein other than pursuant to any other written arrangement between the Borrower (or made on its behalf) and the Lender or any of its related bodies Corporate;
- (e) to notify the Lender of any breach of any representation or warranty made by the Borrower or the Guarantor in connection with this agreement;
- (f) to do everything necessary to ensure that no Event of Default occurs;
- (g) if an Event of Default occurs, to notify the Lender giving full details of the event and any step taken or proposed to be taken to remedy it;
- (h) if the Borrower is a Non-Superannuation Borrower, to do all things that the Lender considers necessary or desirable to assist it in registering the charge to be taken by the Lender under clause 10.1 with the Australian Securities and Investment Commission or any other government agency, including obtaining all necessary consents and making payment to the Lender of any associated fees and expenses; and
- (i) not to do anything which:
 - (i) effects or facilitates the retirement, removal or replacement of the responsible entity of any relevant Fund;
 - (ii) could restrict the responsible entity of any relevant Fund in complying with its obligations under the constitution of that Fund; or
 - (iii) effects or facilitates the termination variation or resettlement of any relevant Fund.

10 Security

10.1 Paragraphs (a) to (k) of this clause 10.1 apply only if the Borrower is a Non-Superannuation Borrower.

- (a) The Borrower charges to the Lender all of its present and future right, title and interest in and to:
 - (i) the PPI Property;
 - (ii) all rights, entitlements and all monies received by or on behalf of the Borrower under any other arrangement entered into by the Borrower or on its behalf in connection with the Units; and
 - (iii) any other property accepted from time to time by the Lender

as security for the obligations of the Borrower under this agreement, by way of a first ranking fixed charge as security for the due and punctual payment and satisfaction of the Secured Moneys.

- (b) The Borrower shall, upon request by the Lender after issue of the Units acquired under clause 1.5(a), deposit with the Lender (or its nominee) all documents of title relating to the Secured Property (if any) and thereafter any other documents the Lender requests relating to the Secured Property.
- (c) The Lender may register the charge in paragraph (a) of this clause 10.1 with the Australian Securities and Investment Commission at the Borrower's expense.
- (d) Without limiting any rights, powers or remedies conferred upon the Lender by this agreement or by law, at any time, whether before or after the occurrence of an Event of Default, the Lender may:
 - (i) insert the name of the Lender or its nominee (or, but only after an Event of Default has occurred, the name of any purchaser pursuant to a power of sale conferred by law or the power of sale referred to in clause 12.4(c) in all or any transfer document (*Transfers*) (and other relevant documents, if any) relating to the Secured Property;
 - (ii) in the name of the Borrower sign, seal and deliver all or any Transfers (and those other relevant documents);
 - (iii) cause all or any Transfers to be registered; and
 - (iv) deliver the certificates (if any) deposited with the Lender in respect of the Secured Property to any such nominee (or any such purchaser).
- (e) If the Lender is satisfied that:
 - (i) all of the Secured Money is paid, discharged or performed in full;
 - (ii) no money, obligation or liability is likely to become Secured Money within a reasonable time; and
 - (iii) there is no reasonable possibility that:
 - (A) any money received or recovered by the Lender and applied in payment of the Secured Money; or
 - (B) any settlement, conveyance, transfer or other transaction made in satisfaction of or in connection with the Secured Money;
 - (C) must be repaid or may be avoided under any law, including a law relating to preferences, bankruptcy, insolvency, administration or the winding-up of companies;

the Lender will discharge the charge taken by it under paragraph (a) of this clause 10.1, at the request and cost of the Borrower.
- (f) The Lender may release any part of the Secured Property from the charge taken by it under paragraph (a) of this clause 10.1 at any time, provided that a release of part of the Secured Property does not adversely affect the charge taken by it under paragraph (a) of this clause 10.1 over any other Secured Property.
- (g) If:
 - (i) any payment, settlement, conveyance, transfer or other transaction made in satisfaction of or in connection with the Secured Money is void or voidable under any law; or

- (ii) any claim is made that any payment, settlement, conveyance, transfer or other transaction made in satisfaction of or in connection with the Secured Money is void or voidable under any law and the claim is upheld, conceded or compromised;

the Lender is immediately entitled to the same rights, powers and remedies against the Borrower and the Secured Property as it would have had if the relevant payment, settlement, conveyance, transfer or transaction had never been made or taken place. If required by the Lender, the Borrower must, at its own expense, sign all documents and do all acts necessary to restore to the Lender the charge granted to it under paragraph (a) of this clause 10.1 and any other security to which the Borrower was a party and held by the Lender immediately before the payment, settlement, conveyance, transfer or transaction.

- (h) Paragraph (g) survives the discharge of the charge granted to the Lender under paragraph (a) of this clause 10.1.
- (i) This agreement is a continuing security and shall remain in full force and effect until the whole of the Secured Moneys have been paid or satisfied in full.
- (j) The Borrower authorises the Lender to notify the responsible entity of any relevant Fund of the details of the charge taken by the Lender under paragraph (a) of this clause 10.1.
- (k) For the purposes of fixing priorities between the charge created under clause 10.1 and any subsequent charge registered under the Corporations Act and for no other purposes, the charge secures a prospective liability (being the liability to pay and perform the Secured Moneys) up to a maximum amount being the amount specified as the Maximum Prospective Liability in the Confirmation. The charge may also secure prospective liabilities in excess of this specified maximum amount.

10.2 Paragraphs (a) to (c) of this clause 10.2 apply only if the Borrower is a Superannuation Borrower.

- (a) The Borrower hereby grants to the Lender an option to buy the Specified Assets upon an Event of Default for their current market value (as at the date of exercise of the option) as reasonably determined by the Lender (*Lender's Option*).
- (b) The Lender's Option shall remain in full force and effect until the whole of the Secured Moneys have been paid or satisfied in full.
- (c) The Borrower authorises the Lender to notify the responsible entity of PPI of the details of the Lender's Option.

11 Limited Recourse

11.1 Despite any other provision of this agreement and subject to clause 11.3 of this agreement:

- (a) if the Borrower is a Non-Superannuation Borrower and subject to clause 11.2 – if on the Maturity Date the Borrower fails to pay to the Lender any Outstanding Amount under an Investment Loan or a Gains Loan, the Lender acknowledges and agrees that the Lender's rights and remedies against the Borrower or the Guarantor for repayment or recovery of the Outstanding Amount are limited to the Lender's rights and remedies against and security interest in the Secured Property only; or

- (b) if the Borrower is a Superannuation Borrower – the Lender's rights and remedies against the Borrower or the Guarantor for repayment or recovery of any Secured Monies are limited to the Lender's rights and remedies against the PPI Property.

11.2 Where:

- (a) the Lender enters into hedging arrangements with a third party (Hedge) to secure payment of any shortfall between:
 - (i) the value of the Secured Property at the Maturity Date; and
 - (ii) the Outstanding Amount of an Investment Loan or a Gains Loan payable by the Borrower at the Maturity Date

(Shortfall Amount); and

- (b) the counterparty to the Hedge breaches its obligations under the Hedge or otherwise pays to the Lender an amount (if any) which is less than the Shortfall Amount

the provisions of clause 11.1(a) will not apply to the extent (if any) that the Hedge proceeds are less than the Shortfall Amount.

11.3 The provisions of clause 11.1 only limit the personal liability of the Borrower and the Guarantor as specified in that clause and do not derogate from or otherwise limit, in any way:

- (a) the other rights and remedies of the Lender under this Agreement;
- (b) the accrual of interest or default interest on any Loan and the Borrower's obligation to pay that interest;
- (c) in respect of a Non-Superannuation Borrower, the personal liability of the Borrower for any unpaid fees or charges in respect of any Loan;
- (d) in respect of a Non-Superannuation Borrower, the personal liability of the Borrower for the repayment of the Outstanding Amount of an Investment Loan or a Gains Loan at any date prior to the Maturity Date;
- (e) in respect of a Non-Superannuation Borrower, the personal liability of the Borrower for the repayment of the Outstanding Amount of an Interest Loan;
- (f) the rights of the Lender under clause 10 of this agreement;
- (g) in respect of a Non-Superannuation Borrower, the rights of the Lender under clause 15 of this agreement or
- (h) the right of the Lender to obtain any equitable or other relief (other than an order requiring repayment of the Outstanding Amount of an Investment Loan or a Gains Loan at the Maturity Date) for the purpose of enforcing the rights of the Lender under this agreement.

11.4 The Lender may extend the Maturity Date where the Lender reasonably determines that such an extension is necessary in view of its rights and obligations under any hedging arrangement.

12 Demand by the Lender and Events of Default

12.1 The Lender may, at any time, by notice to the Borrower:

- (a) declare all or part of each Loan and all other sums which are accrued or due hereunder (whether or not presently payable) to be, whereupon they shall become, due and

payable in 2 Business Days without further demand, notice or other legal formality of any kind; and/or

- (b) declare the Facility terminated on any date not earlier than 2 Business Days after the date of such declaration, whereupon the obligations of the Lender hereunder shall immediately cease.

12.2 If the Lender makes demand under clause 12.1, it must refund to the Borrower any interest which the Borrower has prepaid for the period from and including the date of repayment to but excluding the next Interest Payment Date.

12.3 Each of the following events shall be an Event of Default:

- (a) the Borrower fails to repay any Loan, interest or any other moneys when due in accordance with this agreement;
- (b) the Borrower or the Guarantor fails to duly and punctually perform or comply with any of their obligations under this agreement;
- (c) any representation or warranty made by the Borrower or the Guarantor in connection with this agreement is incorrect;
- (d) the Borrower fails to pay any amount required to be paid by the Borrower to the Lender under any other arrangement entered into by the Borrower or on its behalf in connection with the Units;
- (e) the Borrower fails to pay any amount required to be paid by the Borrower to the responsible entity of a relevant Fund under the Constitution of that Fund;
- (f) where the Borrower or the Guarantor is a body Corporate:
 - (i) an application is made for an order, a meeting is convened to consider a resolution, a resolution is passed or an order is made that the Borrower or the Guarantor be wound up or otherwise dissolved and/or that an administrator, liquidator or provisional liquidator of the Borrower or the Guarantor be appointed; or
 - (ii) a receiver, receiver and manager, administrator, controller, trustee or similar officer is appointed in respect of all or any part of the business, assets or revenues of the Borrower or the Guarantor;
- (g) the Borrower or the Guarantor dies, becomes insolvent or is subject to any arrangement, assignment or composition, or protected from any creditors or otherwise unable to pay their respective debts when they fall due;
- (h) any government, governmental agency, department, commission, or other instrumentality seizes, confiscates, or compulsorily acquires (whether permanently or temporarily and whether with payment of compensation or not):
 - (i) in respect of a Non-Superannuation Borrower – any of the Secured Property; or
 - (ii) in respect of a Superannuation Borrower – any of the assets of the relevant Regulated Superannuation Fund;
- (i) any litigation, administrative proceedings or other procedure for the resolution of disputes is commenced in which the title of the Borrower to:

- (i) in respect of a Non-Superannuation Borrower – any of the Secured Property will or might be impeached or the Borrower's enjoyment of, or the Lender's rights hereunder to, any of the Secured Property will or might be restrained or otherwise hindered; or
- (ii) in respect of a Superannuation Borrower – any of the assets of the relevant Regulated Superannuation Fund will or might be impeached;
- (j) there occurs an event which is, or in the Lender's opinion may lead to, a Material Adverse Change; and
- (k) in the case of an Borrower who makes an Application in its capacity as a trustee of a Trust:
 - (i) the Borrower ceases to be the trustee of the Trust or any step is taken to appoint another trustee of the Trust, in either case without the Lender's consent; or
 - (ii) an application or order is sought or made in any court for:
 - (A) removal of the Borrower as trustee of the Trust; or
 - (B) property of the trust to be brought into court or administered by the court or under its control; or
 - (iii) a notice is given or meeting summoned for the removal of the Borrower as trustee of the Trust or for the appointment of another person (who has not signed the Application) as trustee jointly with the Borrower;
- (l) in respect of a Superannuation Borrower:
 - (i) the Superannuation Borrower does, or purports to or attempts to do, anything which a reasonable trustee in the position of the Superannuation Borrower would anticipate would result in the relevant Regulated Superannuation Fund becoming technically insolvent (as defined in the SIS Act);
 - (ii) the Superannuation Borrower arranging or entering into, or taking any steps to arrange or enter into, a borrowing in respect of the relevant Regulated Superannuation Fund including:
 - (A) a temporary borrowing to make a payment to a beneficiary;
 - (B) to pay surcharge or advance instalment which the trustee is required to make under the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*;
 - (C) to cover settlement of securities transactions; or
 - (D) for any other purpose

whether or not such a borrowing is permitted by the SIS Act, except with the prior written consent of the Lender;
 - (iii) each of the following events:
 - (A) the Superannuation Borrower directs the responsible entity of PPI to transfer any PPI Property to the Superannuation Borrower while there is any amount outstanding under a Loan;

- (B) the Superannuation Borrower lodges a Withdrawal Instruction (as defined in the constitution) or effects a deemed Withdrawal Instruction while there is any amount outstanding under a Loan;
- (C) the Superannuation Borrower (or its Guarantor) fails to duly and punctually perform or comply with any of their obligations under PPI;
- (D) the Superannuation Borrower (or its Guarantor) fails to duly and punctually perform or comply with any of their obligations under the Loan or the Lender's Call Option, including failing to comply with the following undertakings or attempting or purporting to do so, or taking any steps to arrange or enter into any act, deed or transaction in breach of such undertakings:
 - undertaking not to sell, transfer, lease or otherwise dispose of, part with possession of, create an interest in or otherwise deal with any PPI Property, whether by a single transaction or by a number of transactions, whether related or not;
 - undertaking not to create or permit to exist a Security Interest over any PPI Property;
- (E) any representation or warranty made by the Superannuation Borrower (or its Guarantor) in connection with the Loan is incorrect;
- (iv) the Superannuation Borrower fails to pay any amount required to be paid by the Superannuation Borrower to the Lender or any related body corporate under any other arrangement entered into by the Superannuation Borrower or on its behalf in connection with PPI;
- (v) the Superannuation Borrower fails to pay any amount required to be paid by the Superannuation Borrower to the responsible entity of a relevant Fund under the constitution of that Fund;
- (vi) in respect of the Superannuation Borrower which is an individual, any step is taken:
 - (A) to file a bankruptcy notice with the Insolvency Trustee Services Australia against the Superannuation Borrower, or any step is taken to file a creditor's petition for the making of a sequestration order in relation to the estate of the Superannuation Borrower pursuant to the *Bankruptcy Act 1965* (Cth) (***Bankruptcy Act***);
 - (B) by the Superannuation Borrower to file a debtor's petition pursuant to the *Bankruptcy Act* ;
 - (C) any step is taken by the Superannuation Borrower to enter into an arrangement with, or compromise with, their creditors pursuant to the *Bankruptcy Act*;
- (vii) an event occurs which is, or in Lender's opinion may lead to, a Material Adverse Change;
- (viii) the Superannuation Borrower ceases to be the trustee of the relevant Regulated Superannuation Fund or any step is taken to appoint another trustee of the relevant Regulated Superannuation Fund, in either case without the Lender's consent; or

- (ix) an application or order is sought or made in any court, or any step is taken to seek or make an application or order in any court, for:
 - (A) removal of the Superannuation Borrower as trustee of the relevant Regulated Superannuation Fund; or
 - (B) property of the relevant Regulated Superannuation Fund to be brought into court or administered by the court or under its control; or
- (x) a notice is given or meeting summoned for the removal of the Superannuation Borrower as trustee of the relevant Regulated Superannuation Fund or for the appointment of another person (who has not signed the Application) as trustee jointly with the Superannuation Borrower.
- (xi) distress, attachment, execution or other court process or any judgment is issued, levied or enforced on or against the Superannuation Borrower or any assets, revenues or business of the Superannuation Borrower;
- (xii) a Government Agency expropriates all or a substantial part of the assets or business of the Superannuation Borrower or proposes to do so (where **Government Agency** means a government, whether foreign, federal, state, territorial or local or a department, office or minister of a government acting in that capacity; or a commission, delegate, instrumentality, agency, board, or other government, semi-government, judicial, administrative, monetary or fiscal body, department, tribunal, entity or authority, whether statutory or not, and includes any self-regulatory organisation established under statute or any stock exchange).
- (xiii) the Loan or the Lender's Option or any provision of them becomes void, voidable or unenforceable;
- (xiv) a law suspends, varies, terminates or excuses performance by the Superannuation Borrower of any of its obligations under the Loan or Lender's Call Option or purports to do so;
- (xv) it becomes impossible or unlawful for the Superannuation Borrower to perform an obligation under the Loan or the Lender's Option or for the Lender to exercise all or any of its rights, powers and remedies under the Loan or the Lender's Option;
- (m) the Lender receives any notice from a credit reporting agency or any other credit provider to the Borrower or the Guarantor, which indicates that the Borrower or the Guarantor is in default under any other financial, payment or performance obligation with any other party or that any of the events specified in any foregoing paragraph of this clause 12.3 have occurred.

12.4 If an Event of Default occurs the Lender may, without being obliged to do so and notwithstanding any waiver of any previous default, and in addition to any other rights or remedies conferred by this agreement or by law:

- (a) declare each Loan and all other sums which are accrued or due hereunder (whether or not presently payable) to be, whereupon they shall become, immediately due and payable without further demand, notice or other legal formality of any kind; and/or
- (b) declare the Facility terminated whereupon the obligations of the Lender hereunder shall immediately cease; and/or

- (c) in respect of a Non-Superannuation Borrower – do all acts and things and exercise all rights, powers and remedies that the Borrower could do or exercise in relation to the Secured Property including, without limitation, the power to:
 - (i) take possession and assume control of the Secured Property;
 - (ii) receive all money or other distributions (whether monetary or otherwise) made or to be made in respect of the Secured Property;
 - (iii) sell, redeem, dispose of or otherwise deal with the Secured Property or agree to do the same (whether or not the Lender has taken possession) on such terms as the Lender thinks fit in its absolute discretion;
 - (iv) employ solicitors, agents, accountants, auctioneers and consultants on such terms as the Lender thinks fit;
 - (v) carry out and enforce, or refrain from carrying out or enforcing, rights and obligations of the Borrower which may arise in connection with the Secured Property or obtained or incurred in the exercise of the rights, powers and remedies of the Lender;
 - (vi) institute, conduct, defend, settle, arrange, compromise and submit to arbitration any claims, questions or disputes whatsoever which may arise in connection with the Secured Property or in any way relating to this agreement, and to execute releases or other discharges in relation thereto; and
 - (vii) execute documents on behalf of the Borrower under seal or under hand, and any moneys which the Lender pays or becomes liable to pay by reason of doing any of the above shall form part of the Secured Moneys;
- (d) in respect of a Superannuation Borrower:
 - (i) exercise the Lender's Option; and
 - (ii) setoff and apply the monies payable by the Lender to the Borrower under the Lender's Option against the Secured Monies.

12.5 If insufficient moneys are available to meet all payment obligations then due in full, amounts received by the Lender will be appropriated as between principal, interest and other amounts then payable, and as between the Loans, in each case as the Lender determines. This appropriation will override any appropriation made by the Borrower.

13 Appointment of receiver

- 13.1 Where the Borrower is a Non-Superannuation Borrower – immediately upon or at anytime after the occurrence of an Event of Default, the Lender may appoint in writing any person to be a receiver or receiver and manager (the **Receiver**) of any Secured Property and:
- (a) the Receiver may be appointed by the Lender on such terms as the Lender thinks fit;
 - (b) the Lender may remove a Receiver and may appoint another in their place;
 - (c) the Lender may from time to time determine the remuneration of the Receiver; and
 - (d) if two or more persons are appointed as Receiver they may be appointed jointly and/or severally and may be appointed in respect of different parts of the Secured Property.
- 13.2 Unless and until the Lender by notice in writing to the Borrower and to the Receiver requires that the Receiver act as agent of the Lender, the Receiver shall be the agent of the Borrower,

and the Borrower alone shall be responsible for the acts and defaults of the Receiver, but in exercising any powers of the Lender, the Receiver shall have the authority of both the Borrower and the Lender,

- 13.3 Subject to any specific limitations placed upon the Receiver by the terms of its appointment, the Receiver may, in addition to any right, power or remedy conferred upon it by law, do any act, matter or thing and exercise any right, power or remedy that may be done or exercised by the Lender in relation to the Secured Property.

14 Interest on overdue amounts

- 14.1 If the Borrower does not pay any amount under this agreement on the due date for payment, the Borrower agrees to pay interest on that amount at the Default Rate. The interest accrues daily from (and including) the date which is 1 day after the due date to (but excluding) the date of actual payment and is calculated on actual days elapsed and a year of 365 days (and 366 days in a leap year). The Borrower agrees to pay interest under this clause 14.1 on demand from the Lender.
- 14.2 Interest payable under clause 14.1 which is not paid on the due date for payment may be added to the overdue amount by the Lender at intervals which the Lender determines from time to time or, if no determination is made, every 30 days. Interest is payable on the increased overdue amount at the Default Rate in the manner set out in clause 14.1.
- 14.3 If a liability becomes merged in a judgment, the Borrower agrees to pay interest on the amount of that liability as an independent obligation. This interest:
- (a) accrues daily from (and including) the date the liability becomes due for payment both before and after the judgment up to (but excluding) the date the liability is paid; and
 - (b) is calculated at the judgment rate or the Default Rate (whichever is higher).
- 14.4 The Borrower agrees to pay interest under this clause on demand from the Lender.

15 Indemnities, early unwind and other costs

- 15.1 The Borrower indemnifies the Lender from and against all actions, suits, claims, demands, losses, liabilities, damages, costs and expenses (including, without limitation, any legal costs and expenses) which may be made or brought against or suffered or incurred by the Lender arising out of or in connection with:
- (a) any Event of Default;
 - (b) the exercise or non-exercise of any right, power or remedy contained, referred to or implied in this agreement;
 - (c) any early repayment or other repayment prior to the Maturity Date or any Loan becoming due for repayment prior to the Maturity Date (whether pursuant to clause 4 or otherwise), including, without limitation, any loss or expense incurred in respect of:
 - (i) any cost associated with the Lender obtaining an appropriate form of risk management agreement (or instrument of similar effect) with respect to this agreement or the funding of any Loan; or
 - (ii) the exercise or non-exercise by, or the prevention or inability of, the Lender to exercise any rights under any risk management agreement; or
 - (iii) the liquidation or redeployment of funds acquired from third parties to make or maintain any Loan; or

- (iv) the termination or reversal of any arrangements (including without limitation any fixed rate contracts) entered into in connection with the funding of any Loan; or
 - (v) any loss of profits that the Lender may suffer by reason of the early liquidation or redeployment of such funds or the termination or reversal of such arrangements.
- 15.2 The Borrower agrees to compensate the Lender on demand if the Lender determines that any new or amended law (including without limitation any law which imposes a tax on goods and services), order, official policy, directive or request of any governmental agency, or any change in any interpretation or administration of any law, order, official policy, directive or request of any governmental agency, directly or indirectly:
- (a) increases the cost to the Lender of providing, funding or maintaining the Facility; or
 - (b) reduces any amount received or receivable by the Lender, or its effective return, in connection with the Facility; or
 - (c) reduces the Lender's return on capital allocated to the Facility, or its overall return on capital.
- 15.3 The Lender shall not be responsible for any losses of any kind whatsoever (including, without limitation, the negligence, default or dishonestly of any servant, agent or auctioneer employed by the Lender, any attorney of the Lender or the Receiver) suffered by the Borrower or the Guarantor as a result of:
- (a) the exercise, attempted exercise or non-exercise of any of the rights, powers or remedies of the Lender under this agreement or of any attorney appointed by the Borrower in relation to any Loan; or
 - (b) any action, delay or failure to act by the responsible entity of a relevant Fund.
- 15.4 The amounts payable under this clause 15 may be added by the Lender to the Secured Moneys and shall be payable on demand.

16 Guarantee, indemnity & third party provisions

- 16.1 The Guarantor is liable for all the obligations of the Borrower under this agreement.
- 16.2 The Guarantor acknowledges that it is responsible for making itself aware of the financial position of the Borrower and any other person who guarantees payment of the Secured Moneys, and seeking appropriate legal advice relating to the Guarantor's obligations under this agreement.
- 16.3 The Guarantor acknowledges incurring obligations and giving rights under this agreement for valuable consideration received from the Lender.
- 16.4 The Guarantor unconditionally and irrevocably guarantees to the Lender the due and punctual payment and satisfaction of the Secured Moneys by the Borrower. The amount of the Guarantor's liability as Guarantor under this clause 16 is limited to the Secured Moneys.
- 16.5 The Guarantor unconditionally and irrevocably indemnifies the Lender from all losses and claims arising under this agreement. This indemnity extends to cover all actions, suits, claims, demands, obligations, liabilities, losses, damages, costs and expenses which have been or may be made or brought against or which have been or may be suffered or incurred by the Lender if the whole or any part of the Secured Moneys:

- (a) are irrecoverable or have never been recoverable by the Lender from the Borrower; or
 - (b) cannot be enforced against the Borrower; or
 - (c) are not paid to the Lender for any other reason whatsoever including, without limitation, by reason of:
 - (i) any legal limitation, disability, incapacity, lack of any power or lack of authority of or affecting any person;
 - (ii) any of the transactions relating to the Secured Moneys being void, voidable or unenforceable (whether or not the matters or facts relating there to have been or ought to have been within the knowledge of the Lender); or
 - (d) any other fact, matter or thing whatsoever.
- 16.6 If the Borrower defaults in the due and punctual payment or satisfaction of any of the Secured Moneys, the Guarantor shall pay the whole amount of the Secured Moneys to the Lender immediately upon demand. The Lender may make such a demand on the Guarantor from time to time and whether or not demand has been made on the Borrower.
- 16.7 The Guarantor shall pay to the Lender immediately upon demand an amount equal to the amount of the actions, suits, claims, demands, obligations, liabilities, losses, damages, costs and expenses referred to in clause 16.5. The Lender may make such a demand from time to time and whether or not demand has been made on the Borrower.
- 16.8 The Guarantor agrees that the liability under clause 16.5 is that of principal debtor.
- 16.9 The Guarantor's obligations under this agreement shall be absolute and unconditional in any and all circumstances and shall not be prejudiced, released or otherwise affected by anyone or more of the following (occurring with or without the consent of or notice to any person):
- (a) any release, failure or agreement not to sue, discharge, termination, relinquishment, compromise, waiver, concession, indulgence, replacement, amendment, variation, increase, decrease or compounding of the obligations of the Borrower or of any other person under this agreement or of any of the Secured Moneys;
 - (b) any of the obligations of the Borrower or any other person under this agreement being or becoming wholly or partially illegal, void, voidable or unenforceable, whether by reason of any law or for any reason whatsoever;
 - (c) any delay, laches, acquiescence, mistake, act, omission or negligence on the part of the Lender or any other person;
 - (d) any defences being available to the Borrower under this agreement (that is, the Guarantor cannot benefit from any defences available to the Borrower);
 - (e) any part of the moneys forming part of the Secured Moneys being or becoming irrecoverable or never having been recoverable or any part of the obligations forming part of the Secured Moneys being or becoming unenforceable or never having been enforceable;
 - (f) any non-compliance by the Lender or any other person with the provisions of any law or with any provision of this agreement;
 - (g) any law or judgment staying or suspending all or any of the rights of the Lender against the Borrower, or any other person (by operation of law or otherwise);

- (h) any person becoming or not becoming a guarantor of the Secured Moneys or any part thereof or any discharge or release of any such person;
- (i) the insolvency, bankruptcy, winding up, receivership or administration of the Borrower or any other person;
- (j) any setting aside or avoidance of any payment by the Borrower of any other person;
- (k) any failure of the Lender to enforce the Secured Property, or alteration or variation to this agreement;
- (l) the full or partial release of any Security Interest (including the charge in clause 10.1) which secures all or part of the Secured Money; or
- (m) any other fact, matter, circumstance or thing whatsoever which, but for this provision, could or might operate to prejudice, release, discharge or otherwise affect the Borrower's obligations under this agreement.

16.10 The Lender shall not be required to proceed against the Borrower or exhaust any remedies it may have against the Borrower or enforce this agreement, but shall be entitled to demand and receive payment from the Guarantor when any payment is due under this agreement and/or to proceed directly against the Secured Property.

16.11 Unless and until the whole of the Secured Moneys have been paid or satisfied in full, the Guarantor shall not make any claim for any sum paid under this agreement or enforce any rights which it may have (whether by way of defence, indemnity, set-off, counterclaim, contribution, subrogation or otherwise) against the Borrower or its property.

17 Setoff

17.1 The Lender without notice to the Borrower or any other person, may:

- (a) in respect of a Non-Superannuation Borrower – setoff and apply against the Secured Moneys any amount due by the Lender to the Borrower under any agreement between the Lender and the Borrower or any credit balance (or any setting aside or avoidance of any payment by the Borrower of any other person; the full or partial release of any Security Interest (including the charge in clause 10.1) which secures all or part of the Secured Money; or any part thereof in such amounts as the Lender may elect) on any account (whether such account is subject to notice or not and whether matured or not) of the Borrower with the Lender and any other moneys owing by the Lender to the Borrower; and
- (b) in respect of a Superannuation Borrower – setoff and apply against the Secured Moneys any amount due by the Lender to the Borrower under the Lender's Option or any other agreement between the Lender and the Borrower in respect of this Loan or PPI.

17.2 The Lender may, without notice to the Guarantor or any other person set off and apply against any monies owing by the Guarantor to the Lender under this agreement any amount due by the Lender to the Guarantor under any agreement between the Lender and the Guarantor or any credit balance (or any part thereof in such amounts as the Lender may elect) on any account (whether such account is subject to notice or not and whether matured or not) of the Guarantor with the Lender and any other moneys owing by the Lender to the Guarantor.

18 Notices

- 18.1 All notices and other communications required by this agreement to be in writing shall be given by the relevant party and shall be sent to the recipient by hand, prepaid post (airmail if outside Australia) or facsimile.
- 18.2 A notice or other communication shall be deemed to be duly received:
- (a) if sent by hand, when left at the address of the recipient;
 - (b) if sent by prepaid post, 3 days after the date of posting; or
 - (c) if sent by facsimile, upon receipt by the sender of an acknowledgement or transmission report generated by the machine from which the facsimile was sent indicating that the facsimile was sent in its entirety to the recipient's facsimile number.
- 18.3 All notices and other communications shall be sent to the addresses of the respective parties as set out in the Application (in relation to the Borrower and Guarantor) or page 64 of this document (in relation to the Lender) or as a party may notify to the other party in writing.
- 18.4 The Lender is authorised to act upon instructions sent by any means (including electronically and orally) which purport to be from the Borrower, or any person authorised by the Borrower to issue instructions to the Lender, in respect of any transactions contemplated by this agreement. Where the Borrower comprises two persons, if any of those persons does anything in relation to this agreement or any Secured Property, both persons will be responsible for all transactions that result even if those transactions are not authorised by both persons.

19 Assignment

- 19.1 Neither the Borrower nor the Guarantor may assign or otherwise transfer the benefit of this agreement or any of their respective rights, remedies, powers, duties or obligations under this agreement without the prior written consent of the Lender.
- 19.2 The Lender may assign, transfer and otherwise grant participations or sub-participations in all or any part of the benefit of this agreement and any of its rights, remedies, powers, duties and obligations under this agreement without the consent of the Borrower or the Guarantor.
- 19.3 The Lender may disclose to a potential assignee, transferee, participant or sub-participant such information about the Borrower, the Guarantor and this agreement as the Lender considers appropriate.
- 19.4 Without limiting the previous provisions of this clause 19, the Lender and/or its assignee or transferee is entitled to assign its rights and novate its obligations under this agreement, or any part of this agreement, to any trustee or manager of a securitisation programme.

20 Miscellaneous

- 20.1 The Borrower hereby consents to the Lender disclosing to the Guarantor and to any other guarantor of the obligations of the Borrower the following information:
- (a) a copy or summary of this agreement and related material evidencing the obligations of the Borrower to be guaranteed;
 - (b) a copy of any formal demand that may be sent from time to time by the Lender to the Borrower; and
 - (c) on request by the Guarantor or any other guarantor, a copy of the latest Perpetual relevant statements of account (if any) relating to the Facility.

- 20.2 The Borrower and the Guarantor acknowledge that conversations between themselves and any officer of the Lender may be tape-recorded and consent to that recording being made and its use (or any transcript of the recording) in any proceedings which may be commenced in connection with this agreement.
- 20.3 The Borrower for valuable consideration irrevocably appoints the Lender and each executive director, division director and associate director of the Lender for the time being, severally, the attorneys of the Borrower to do (either in the name of the Borrower or the attorney) all acts and things that the Borrower is obliged to do under this agreement or which, in the opinion of the Lender, are necessary or desirable in connection with the Secured Property or the protection or perfection of the Lender's interests or the exercise of the rights, powers and remedies of the Lender.
- 20.4 The failure or delay of the Lender to exercise any right or remedy under this agreement will not operate as a waiver of any right or remedy. The exercise of a single right or remedy by the Lender under this agreement will not prevent the Lender from exercising any other right or remedy. The rights and remedies of the Lender under this agreement are cumulative and are not exclusive of any other rights and remedies provided by law.
- 20.5 A waiver by the Lender shall only be effective if it is in writing and it is signed by at least two officers of the Lender.
- 20.6 Any provision of this agreement which is or becomes prohibited or unenforceable in any jurisdiction shall be severed from this agreement only in respect of that jurisdiction.
- 20.7 The indemnities contained in this agreement are continuing obligations of the Borrower and the Guarantor, separate and independent from their other obligations and shall survive the termination of this agreement.
- 20.8 Any consent requested of, or determination by, the Lender may be given or withheld by the Lender in its absolute discretion and conditionally or unconditionally except where this agreement otherwise expressly provides.
- 20.9 If the performance by the Lender of any of its obligations under this agreement or related arrangements is prevented or delayed in whole or in part due to any circumstance which the Lender is unable to control, this agreement will nevertheless continue and remain in full force and effect but the Lender will not be in default under this agreement or otherwise liable for any loss, cost, expense or damage suffered by the Borrower or the Guarantor for that reason only and the Lender will be granted a reasonable extension of time to complete performance of its affected obligations.
- 20.10 Without limiting clause 15, the Lender shall not be responsible for any loss, cost, expense or damage suffered by the Borrower as a result of the Lender acting in accordance with any request or direction from the Borrower (including in relation to any sale of the Secured Property) or of not acting, or of not acting promptly, in accordance with any such request or direction.
- 20.11 This agreement shall be governed by and construed in accordance with the laws of New South Wales. The parties irrevocably and unconditionally submit to the nonexclusive jurisdiction of the courts of New South Wales.
- 20.12 Time shall be of the essence in respect of each and all of the respective obligations of the Borrower and the Guarantor hereunder.
- 20.13 The parties hereby irrevocably authorise the Lender, and each of its officers, agents, employees and solicitors to complete any details and fill in any blanks in this agreement.

- 20.14 This agreement shall bind the Borrower and the Guarantor, and the persons comprising them, jointly and severally.
- 20.15 The Borrower consents to the Lender using information about the Borrower (including, where the Borrower is an individual, Personal Information about the Borrower) for the purpose of the Lender forwarding marketing or promotional material to the Borrower from time to time, unless the Borrower has informed the Lender that the Borrower does not want to receive the marketing or promotional material. The Borrower also consents to the Lender disclosing information about the Borrower (including, where the Borrower is an individual, Personal Information about the Borrower) to the Lender's related entities for the purpose of those related entities forwarding marketing or promotional material to the Borrower from time to time, unless the Borrower has informed the Lender or the related entity that the Borrower does not want to receive the marketing or promotional material. In this clause 20.15, 'Personal Information' means information or an opinion, whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained from the information or opinion.
- 20.16 The Lender may at anytime vary any of the terms and conditions of this agreement by disclosure on www.perpetual.com.au or by notice in writing to the Borrower.

Loan and Security Agreement Glossary

Application means the application made in an Application Form completed by a proposed Borrower and accepted by the Lender (in its absolute discretion) under clause 1.2.

Application Form means the application form attached to, or provided with, the product disclosure statement for the PPI.

Borrower means the person or entity identified as the applicant in the Application.

Business Day means a day on which banks are open for business in Sydney other than a Saturday, a Sunday or a public holiday.

Confirmation means each confirmation issued by the Lender to the Borrower from time to time which sets out the terms of the Facility, including the Drawdown Date(s), the Maturity Date, the Interest Rate(s) for an Interest Period, the Investment Loan Limit(s), the Interest Loan Limit(s) (if applicable) and the Maximum Prospective Liability.

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

Default Rate means the prevailing Interest Rate for the Investment and/or Gains Loan(s) plus 4% per annum or such lesser rate determined by the Lender.

dollar or \$ means the lawful currency of Australia.

Drawdown Date means, in respect of a Facility, the date upon which that Facility is or is to be drawn down as confirmed in the Confirmation relating to that Facility.

Dynamic Management Strategy means a capital protection strategy effected by the acquisition and disposal of Units (including call options) and approved by the Lender.

Early Repayment Fee means a fee set by the Lender from time to time which reflects any costs the Lender may incur as a result of the Borrower repaying the Loan early.

Event of Default means any event specified as such in clause 12.3.

Facility means any or all of the Loan facilities available under this agreement, as the context requires.

Financial Statements means:

- (a) a statement of financial position;
- (b) a statement of financial performance; and
- (c) a statement of cash flows.

Fund means each managed investment fund selected by the Borrower in their Application Form.

Gains Loan means the amount (if any) advanced by the Lender to the Borrower under clause 1.4(b).

Guarantor means the person identified as such in the Application.

Interest Loan means the amount (if any) advanced by the Lender to the Borrower under clause 1.4(c).

Interest Loan Limit means, in respect of an Interest Loan, the amount set out as the Interest Loan Limit in the Confirmation relating to that Interest Loan.

Interest Payment Date means, in respect of an Interest Period, the first day of the following Interest Period and if that day is not a Business Day, then the next Business Day or, in respect of an Interest Period ending on a 29 June which is not a Business Day, the preceding Business Day.

Interest Period means, in respect of a Loan, each period determined in accordance with clauses 3.18 – 3.22 for that Loan.

Interest Rate means, in respect of a Loan and an Interest Period, the rate of interest charged by the Lender in relation to the Outstanding Amount of the Loan as determined by the Lender in its absolute discretion from time to time and subsequently confirmed in the Confirmation applicable to that Loan for that Interest Period as varied in accordance with this agreement.

Interest Switching Fee means the fee for switching between interest rate options when the Borrower has changed its interest payment obligations pursuant to clause 3.8 of this agreement which reflects any cost the Lender may incur as a result of the Borrower changing its interest payment obligations.

Investment Loan means the amount (if any) advanced by the Lender to the Borrower under clause 1.4(a).

Investment Loan Limit means, in respect of an Investment Loan, the amount set out as the Investment Loan Limit in the Confirmation relating to that Investment Loan.

Lender means Perpetual Loan Company Limited.

Lender's Option has the meaning given in clause 10.2.

Loan means one or more of an Investment Loan, Gains Loan and Interest Loan, as the context requires.

Loan Establishment Fee means a loan establishment fee of 1.0% on each Investment Loan and Gains Loan.

Material Adverse Change means a change which, in the Lender's opinion, has a material adverse effect on either the Borrower's or Guarantor's assets, revenue or financial condition, or the ability of either of them to perform their respective obligations under this agreement.

Maturity Date means the earlier of:

- (a) the Maturity Date specified in the first Confirmation as may be extended by the Lender by notice to the Borrower; and
- (b) the date on which each Loan becomes due and payable and/or the Facility terminated under clause 12.1.

Maximum Prospective Liability means the amount specified as such for the purposes of clause 10.1(k).

Minimum Gains Loan Amount means \$5,000 (or such other amount as specified by the Lender on the Drawdown Date in respect of that Gains Loan).

Minimum Investment Loan Amount means:

- (a) an Investment Loan for an amount of \$50,000 (or such other amount as specified by the Lender on the Drawdown Date for that Investment Loan); and
- (b) if the Borrower draws an Investment Loan and wishes to apply that Investment Loan to the purchase of Units in more than one Fund, they shall do so only if they apply a minimum amount of \$10,000 per Fund (or such other amount as specified by the Lender on the Drawdown Date for that Investment Loan).

Month means, in respect of a Loan, a calendar month or such other period of corresponding length as may be specified in a Confirmation.

Non-Superannuation Borrower means a Borrower who is not a Superannuation Borrower.

Outstanding Amount means, in relation to a Loan at any time, the principal amount outstanding in respect of that Loan.

PPI means Perpetual Protected Investments Series 3 managed investments scheme.

PPI Property means the Borrower's beneficial interest in:

- (a) the Units;
- (b) the following rights:
 - (i) the right, title and interest of the Borrower in all money, distributions, interest, allotments, offers, benefits, privileges, rights, bonuses, Units, debentures, distributions or rights to take up property;
 - (ii) the rights of the Borrower consequent on any conversion, redemption, cancellation, reclassification, forfeiture, consolidation or subdivision; and
 - (iii) the rights of the Borrower under any other arrangement entered into by the Borrower or on its behalf,

in connection with any Units acquired pursuant to clause 1.5(a) (including without limitation any money payable to the Borrower upon exercise of the right under section 1019B of the Corporations Act in respect of the Units); and

- (c) any cash account held by the Lender or any of its related bodies corporate for or on behalf of the Borrower in connection with this agreement or any other arrangements entered into by the Borrower or on its behalf in connection with the Units.

Prepaid Interest Payment Date means the first day of an Interest Period and if that day is not a Business Day, then the preceding Business Day.

Regulated Superannuation Fund has the meaning given in the SIS Act.

Secured Moneys means all moneys, obligations and liabilities of any nature whatsoever that may now be, or might at any time in the future become or remain, due, owing or payable, whether actually or contingently, by the Borrower to the Lender on any account or for any reason whatsoever under the provisions of this agreement.

Secured Property means:

- (a) in respect of a Non-Superannuation Borrower – the property charged under clause 10.1; and
- (b) in respect of a Superannuation Borrower – the PPI Property.

Security Interest includes any mortgage, charge, bill of sale, pledge, deposit, lien, encumbrance, hypothecation, arrangement for the retention of title and any other right, interest, power or arrangement of any nature whatsoever having the purpose or effect of providing security for, or otherwise protecting against default in respect of, the obligations of any person.

SIS Act means the *Superannuation Industry (Supervision) Act 1993* (Cth).

Specified Assets means the number of Units initially purchased by the responsible entity of PPI on behalf of the Borrower in accordance with their Application Form, or where a Fund has been substituted prior to the exercise of the Lender's Option, the number of Units in such substituted fund having a value (as at the exercise date of the Lender's Option) equal to the value of the PPI Property, subject to any exclusion pursuant to clause 4.9(b).

Superannuation Borrower means a Borrower who is the trustee of a Regulated Superannuation Fund.

Transfers is defined in clause 10.1(d)(i).

Units means:

- (a) units in a Fund approved by the Lender (or any of its related bodies corporate); and
- (b) call options in respect of such units acquired on behalf of the Borrower in accordance with a Dynamic Management Strategy in respect of such units

acquired by the Borrower with the proceeds of an Investment Loan pursuant to the PPI or in accordance with a Dynamic Management Strategy in respect of such units.

Interpretation

In this agreement, unless the context otherwise requires:

- (a) words importing the singular include the plural and vice versa;
- (b) references to a person includes any type of entity or body of persons whether or not it is incorporated or has a separate legal entity;
- (c) references to any document (including this agreement) include any variation or replacement to that document;
- (d) references to any party to this agreement include references to its respective successors and permitted assigns;
- (e) each Gains Loan *relates* to the Investment Loan in respect of which that Gains Loan has been applied for under clause 1.8; and
- (f) each Interest Loan *relates* to the Investment Loan in respect of which the Interest Loan has been used to pay the relevant interest prepayment.