

# Mortgage and Security Provisions

Issued 30 April 2018

**Commonwealth**Bank  
of Australia



## Section 1:

# Memorandum of Provisions for Land Mortgages

This section contains the provisions that apply if you sign a Land Mortgage to secure your obligations to us.

Please read all of these provisions to make sure you understand all of your obligations and the actions we can take if a Default under the Mortgage occurs.

When you sign the Mortgage, you accept these provisions.

### **LAND MORTGAGE**

#### **THIS DOCUMENT CONTAINS THE PROVISIONS FOR MORTGAGES THAT REFER TO ANY ONE OF THE FOLLOWING:**

The Memorandum filed in the **New South Wales** Department of Lands, Land and Property Information Division as number **AG251077**;

The Memorandum of Common Provisions retained by the **Victorian** Registrar of Titles in number **AA1754**;

The Document filed in the **Queensland** Department of Environment Resource Management as number **713905230**;

The Memorandum filed in the **Australian Capital Territory** Office of Regulatory Services as number **1746016**;

The Memorandum of Standard Terms and Conditions deposited at the **South Australian** Land Titles Office as number **11587161**;

The Memorandum filed and registered at the **Western Australian** Land Information Authority as number **L654804**;

The Memorandum of Common Provisions retained by the **Northern Territory** Land Titles Office as number **372138**;

The Memorandum of Provisions filed at the Office of the Recorder of Titles, **Tasmania** as number **M438**;

The Memorandum of Provisions filed at the Registrar of Titles, **Norfolk Island** as number **011**;

#### **AND FORMS PART OF THE MORTGAGE.**

**The part of the mortgage which you sign may contain clauses which either alter or conflict with some of the terms in this document. In such a case, the clauses in the part of the mortgage which you sign prevail.**

#### **NOTE:**

**This mortgage is able to be used to secure lending covered by Consumer Credit Law and also unregulated lending. Please refer to the beginning of Part A for an understanding of how this works.**

## Key words

The meaning of words printed Like This and of some other common key words is explained in clause A1.

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# PART A. ALL MORTGAGES

- ***This mortgage secures all Amounts Owing under any Secured Agreement.***
- ***Once you enter into a Secured Agreement with us relating to credit to which no Consumer Credit Law applies, then this mortgage also secures all other Amounts Owing as defined in Part B.***

## A1 Meaning of words

'Amount Owing' means, when Part B does not apply, all money which one or more of you owe us, or will or may owe us in the future, under a Secured Agreement and this mortgage or either of them.

When Part B applies, Amount Owing has the extended meaning set out in Part B.

'Authorised Officer' includes each of our officers within the meaning given to that word in the Corporations Act, *for example* each of our officers whose position title is or includes the word 'manager' or the word 'executive'.

'Consumer Credit Law' means the National Consumer Credit Protection Act 2009 (Commonwealth) (*including* the National Credit Code) and the regulations made under that Act (all as amended from time to time).

'Crown Land' means land of the Crown (ie the State or Territory) occupied by a Person not as freehold but under a lease, licence or other right granted by the Crown (*for example*, land described as 'State Tenure' or 'Crown Lease').

'Governing Body' means each entity which administers any Shared Scheme of which The Property is part.

'Land Law' means any law of a State or Territory relating to the giving of default notices prior to the enforcement of real property mortgages. The Land Law applicable to this mortgage is the Land Law of the State or Territory:

- (a) in which The Property is located; and
- (b) applicable to the system applying to the title to The Property.

*For example*, if The Property is located in New South Wales and is under Torrens Title, the relevant Land Law is the *Real Property Act 1900 (NSW)*. If The Property is located in Victoria and is under Torrens Title, the relevant Land Law is the *Transfer of Land Act 1958 (Vic)*.

'Licence' includes a certificate of registration, authority or permit under a law.

'Own', when it is used in relation to land, means holding an estate or interest in land that can be mortgaged to us, *for example* being the registered proprietor, the registered holder, the registered lessee or Crown lessee or the holder of an estate in fee simple, and 'Owner' has the corresponding meaning.

'Person' includes an individual, a firm, a body corporate, an unincorporated association or an authority.

'The Property' means each one or more of the following which the context allows:

- (a) the land described in this mortgage;
- (b) each fixture, structure or improvement on the land or fixed to it;
- (c) your estate and interest in the land;
- (d) all rights and Licences attaching to the land or to your estate or interest in it, *for example* rights to use water on rural land, rights under any builder's warranty, guarantee or insurance relating to The Property or any Works, rights to purchase or convert title, rights granted to you under any lease, and rights to claim or receive a payment of money by way of compensation because you Own or Owned The Property;
- (e) all rights you hold as licensee under the law for sale of liquor, operation of gaming machines or conduct of a club on The Property, *including* any right to claim or receive a payment of money because you hold or held such Licence.

'Relative' means any of the following in relation to an individual:

- (a) a spouse (*including* a former spouse, a de facto spouse and a former de facto spouse);
- (b) a child or an adult child (*including* an adopted child, a step-child or an ex-nuptial child);
- (c) a parent, grandparent, grandchild or sibling;
- (d) an aunt or uncle who is a sibling of a parent of the individual or of the individual's legally appointed guardian.

‘Secured Agreement’ means:

- (a) an agreement between one or more of you and us (*including* a guarantee given by one or more of you) whenever made, under which you undertake to pay or repay us money, and which you acknowledge in writing to be an agreement to which this mortgage extends; and

- (b) any such agreement as varied.

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

‘Shared Scheme’ means each scheme or plan which is regulated by a Shared Scheme Law and which affects The Property. *For example* home units, strata titles, town houses and properties in integrated developments are properties that are often part of a Shared Scheme.

‘Shared Scheme Law’ means any law which provides for the:

- (a) subdivision and development of land with shared property; or
- (b) subdivision of buildings; or
- (c) management of land which is subdivided and has shared property; or
- (d) management of subdivided buildings.

‘we’ means the Person named in this mortgage as mortgagee and its successors and assigns.

‘Works’ means building work, excavation or earthworks on The Property, work demolishing any part of The Property, or any building or development work required in connection with The Property by an authority.

‘you’ means the Person or Persons named in this mortgage as mortgagor. If there are more than one, ‘you’ means each of them separately and every two or more of them jointly. ‘You’ includes your executors, administrators and assigns.

A reference in this mortgage to:

- (a) the singular includes the plural and vice versa;
- (b) ‘*including*’ or ‘*for example*’ when introducing an example does not limit the meaning of the words to which the example relates, to that example or examples of a similar kind;
- (c) a document includes any variation or replacement of it;

(d) law means common law, principles of equity and laws made by parliament (and includes regulations and other instruments under laws made by parliament and consolidations, amendments, re-enactments or replacements of any of them);

(e) any thing includes the whole and each part of it.

## **A2 How this mortgage affects you and The Property**

A2.1 By signing this mortgage you undertake the obligations identified in it on your part. You also give us rights concerning you and The Property.

*For example*, we can take possession of The Property and sell it if you fail to do what you must do under this mortgage. If the proceeds from the sale of The Property are not enough to repay what you owe us, then, unless we have told you otherwise in writing, we can ask you to pay the difference between the sale proceeds and what you owe us, even after The Property is released from this mortgage. The same applies if The Property is forfeited or compulsorily acquired by an authority.

A2.2 You are liable for all the obligations under this mortgage both separately on your own and jointly with any one or more other Persons named in this mortgage as mortgagor, except where clause A2.3 applies.

A2.3 Where there is more than one of you and only some of you are liable for a part of the Amount Owing, then only the interest in The Property of those who are liable secures that liability. We may vary the agreement under which that liability arises by agreement with those Persons without the consent of the rest of you and this will not discharge or affect this mortgage.

A2.4 This mortgage remains in effect despite the death or bankruptcy of any one of you or (if you are a corporation) the making of an order for winding up or the appointment of an administrator.

A2.5 When there is no Amount Owing, we will release The Property from this mortgage when you ask us to do so.

*(If the Secured Agreement is a guarantee, it is a term of the guarantee that we have the right to refuse to give a discharge of this mortgage in certain circumstances.)*

### **A3 Your declarations**

A3.1 You declare that:

- (a) you Own The Property or will Own it by the time this mortgage takes effect; and
- (b) you have told us about all rights affecting The Property and those which are proposed to affect The Property of which you are aware or ought reasonably to be aware. Rights affecting The Property include easements, leases, other mortgages and the rights of a beneficiary under a trust; and
- (c) you do not breach any law or any obligation to any other Person by signing this mortgage; and
- (d) all the information you have given us in connection with this mortgage and each Secured Agreement is correct and not misleading; and
- (e) you have not withheld any information of which you are aware or ought reasonably to be aware and which might have caused us not to enter into this mortgage or a Secured Agreement; and
- (f) you have told us about any structure on adjoining land that encroaches on The Property and any structure on The Property that encroaches on adjoining land; and
- (g) The Property is free from any unlawful contamination, of which you are aware or ought reasonably to be aware, and your use and occupation of The Property does not breach any law; and
- (h) if you hold The Property under a lease:
  - (i) you have kept to all your obligations under the lease; and
  - (ii) the lease is legally binding on you and the lessor; and
  - (iii) at the time this mortgage takes effect, you have not surrendered the lease, and the lessor has no cause or right to re-enter the leased premises; and
- (i) if you sign this mortgage as trustee of a trust, this mortgage binds you both personally and as trustee of the trust; and
- (j) you exercise due care and take all necessary precautions to detect and prevent breaching any law which results in pollution of or harm to the environment or to any Person or property, *including* The Property.

You acknowledge that your declarations induced us to enter into this mortgage.

A3.2 You repeat all the declarations in clause A3.1, and we rely on them, each time:

- (a) you ask us for credit under a Secured Agreement; or
- (b) you acknowledge that another agreement is to be a Secured Agreement; or
- (c) you accept an extension of your liabilities under a Secured Agreement.

### **What you undertake in this mortgage**

#### **A4 Complying with this mortgage**

A4.1 You must pay us every Amount Owing for which you are liable at the time agreed by you, or if no time has been agreed, when we ask (which we may do on one or more occasions).

A4.2 You must ensure that you are not in default under this mortgage. You must also carry out on time all your obligations under every Secured Agreement.

A4.3 When we release The Property from this mortgage, your following obligations continue:

- (a) to pay the Amount Owing except to the extent we have told you otherwise in writing (*for example* if we told you that your liability in respect of the Secured Agreement is limited to the value of The Property);
- (b) under clause A27.2 and clause B6(a); and
- (c) under clauses A18.2 and A29, but only to the extent necessary to ensure our full rights under clause A27.2 or where you induced us to give the release by making an incorrect statement.

#### **A5 Rates, taxes and levies**

You must pay on time all amounts for which you are liable as Owner of The Property, *including* rates, taxes, rents and Shared Scheme levies.

#### **A6 Looking after The Property**

A6.1 You must:

- (a) keep The Property in good condition and fix any defect; and
- (b) not do anything or allow anything to be done that might lower the value of The Property or put at risk our security interest in The Property; and

<ul style="list-style-type: none"> <li>(c) tell us if The Property is seriously damaged or is defective; and</li> <li>(d) remove any contaminant and clean up any unlawful contamination, if The Property is contaminated; and</li> <li>(e) comply with all laws, requirements, orders and notices of authorities in connection with The Property; and</li> <li>(f) inform us promptly of: <ul style="list-style-type: none"> <li>(i) the existence of any unlawful contamination of or emanating from The Property;</li> <li>(ii) the receipt of any penalty notices or directions to 'clean-up' The Property issued by any authority or regulator;</li> <li>(iii) the receipt of any notice or complaint from any authority or regulator that has not been answered to the satisfaction of the complainant, alleging that your activities on The Property are polluting the environment or that the carrying on of your business on The Property causes any public or private nuisance;</li> <li>(iv) any revocation, suspension, modification or refusal or failure to renew any authorisation or approval under any law relating to The Property or the conduct of your business; and</li> <li>(v) the commencement of any proceedings or suits, the issue of any orders or the imposition of any penalty for a contravention of a law relating to The Property.</li> </ul> </li> </ul>	A6.3	<p>(f) tell us of any proposal which may affect the value of The Property or the shared property to vary, substitute or terminate the Shared Scheme or its by-laws, rules or articles.</p> <p>If you hold The Property under a lease and, according to the terms of a Secured Agreement there will remain some of the Amount Owing at the end of the lease term, then you must:</p> <ul style="list-style-type: none"> <li>(a) apply for a renewal or extension of the lease: <ul style="list-style-type: none"> <li>(i) at the earliest date on which any option for renewal under the lease may be exercised; or</li> <li>(ii) in cases where there is no option or the time for its exercise has not arisen, no later than 12 months before the end of the lease term; and</li> </ul> </li> <li>(b) do anything we reasonably ask to provide us with effective Security over the renewed or extended lease or over any new lease.</li> </ul>
<p>A6.2 If The Property is part of a Shared Scheme (<i>for example</i>, a townhouse or home unit), you must also:</p> <ul style="list-style-type: none"> <li>(a) comply with the by-laws, rules or articles of the Shared Scheme; and</li> <li>(b) vote at any Governing Body meeting following any reasonable directions we give you to protect The Property, its value or the shared property; and</li> <li>(c) use your best endeavours to ensure that the Governing Body complies with its obligations (<i>for example</i> keeping the shared property in good condition); and</li> <li>(d) tell us if the Governing Body does not comply with its obligations (<i>including</i> its insurance obligations); and</li> <li>(e) use your best endeavours to ensure that your rights under the Shared Scheme are not varied in a way that adversely affects our security interest in The Property and tell us promptly if they are; and</li> </ul>	<b>A7</b>	<p><b>Insurance</b></p> <ul style="list-style-type: none"> <li>(a) You must maintain insurance over The Property and any Works against fire and other usual risks for the full insurable value of The Property and any Works on a replacement and reinstatement basis; and</li> <li>(b) Each policy must note our interest as mortgagee and be on terms and for an amount which are to our reasonable satisfaction.</li> </ul>
A7.1		
A7.2	<p>Clause A7.1 does not apply if The Property is part of a Shared Scheme and the Governing Body is required by law to maintain insurance over The Property. In that case, you must use your best endeavours to ensure that the Governing Body maintains whatever insurance it is required to by law and inform us promptly if, for any reason, there is no adequate insurance cover over The Property.</p>	
A7.3	<p>You must produce evidence to our reasonable satisfaction of current insurance cover whenever we ask for it.</p>	
A7.4	<p>You must do all that you reasonably can to ensure that the insurance cover is not reduced or cancelled and must notify us if it is or could be.</p>	
A7.5	<p>If we reasonably require, you must assign to us your interest under the policy of insurance referred to in clause A7.1(a).</p>	

## **A8 Insurance claims**

- A8.1 You must ensure that the benefit of any insurance claim proceeds to which you are entitled is received by you or us. If the proceeds are for serious damage to The Property and you receive them:
- (a) you must tell us;
  - (b) you hold the proceeds for us and you must pay us so much of them towards the Amount Owing as we reasonably require as soon as we ask you; and
  - (c) you must use them as we reasonably direct, *including* to reinstate The Property or carry out other Works.
- A8.2 When the insurance claim proceeds are paid to and held by a Governing Body, then:
- (a) you must do your best to ensure that the proceeds are used to reinstate The Property or carry out other Works; or
  - (b) if the Shared Scheme is terminated and you receive your share of the proceeds following the termination, you hold your share for us. When we ask, you must pay us so much of your share as we require towards the Amount Owing.
- A8.3 You must tell us if an insurance claim is refused either in part or in full.
- A8.4 If we notify you, we may take over your rights to make, pursue or settle an insurance claim. We may exercise those rights in any reasonable manner we choose, having regard to your interests under the claim and our rights under the Security.
- A8.5 If we receive insurance claim proceeds, we use the proceeds as set out in clause A23.

## **A9 Building and other work**

- A9.1 When Works are undertaken, you must:
- (a) get all necessary approvals from authorities (and the Governing Body if The Property is part of a Shared Scheme) before you carry out the Works or enter into a contract to have them carried out; and
  - (b) comply with all laws, requirements of authorities, easements and covenants which affect the Works; and
  - (c) ensure that the Works are done competently and completed within a reasonable time; and

- (d) get and give us relevant certificates which we reasonably require (*for example*, certificates of satisfactory completion or compliance); and
- (e) ensure that the cost of labour and materials required for the Works is not less than the amount stated in the contract for the Works or any other amount we agree to.

- A9.2 Any monitoring of the Works by us will be for our own purposes. We do not hold ourselves out as exercising care or skill in doing so. Your obligations under clause A9.1(c) are not affected by this clause A9.2.
- A9.3 If we lend you money for Works, you must obtain our approval to the contract for the Works. Such approval will not be unreasonably withheld.

## **A10 The Property and adjoining land**

- A10.1 If any part of a structure on The Property encroaches on adjoining land, then, if we ask, you must, as we reasonably require:
- (a) correct the encroachment; or
  - (b) obtain an easement or other permission acceptable to us to allow it to continue; or
  - (c) become the Owner of the encroached land.
- A10.2 As further Security for payment of the Amount Owing, you must mortgage to us on the same terms as this mortgage any encroached land of which you become the Owner.
- A10.3 If we reasonably require, you must have any encroachment on The Property from adjoining land removed.

## **A11 Dealings – *for example* selling, renting or mortgaging**

- Unless you first get our written consent (see clause A16), you must not:
- (a) sell The Property; or
  - (b) rent out The Property or agree to a surrender or variation of any rental agreement we consent to. Our consent to your renting out The Property will not be required if the lease is to an individual for residential purposes unless any one or more of the following apply:
    - (i) the Secured Agreement is for a loan which we advanced to you to buy or build a home to live in on The Property; or
    - (ii) the term of the lease and any option for renewal, when added together, is or exceeds 3 years; or

- (iii) the rent payable is less than that which you told us you expect to receive; or
- (iv) the lease contains an option to purchase; or
- (v) the tenant is a Relative of yours or, if you are a corporation, is one of your directors or a Relative of a director.
- (c) create another Security over The Property, or allow one to arise (unless The Property is in Queensland, in which case you must tell us before you do so); or
- (d) part with possession of The Property; or
- (e) subdivide or consolidate The Property; or
- (f) create, release or vary an easement, covenant or public right of way which relates to The Property or allow one to arise; or
- (g) deal in any other way with The Property, this mortgage or any interest in them.

**A12 Other securities**

Our consent to another Security over The Property may depend on whether we are able to negotiate an agreement reasonably acceptable to us regarding the priority between this mortgage and the other Security (see clause A16).

**A13 Caveats**

You must do everything necessary to remove any caveat placed on The Property without our consent. (A caveat is a warning, noted in the official title register, restricting dealings with The Property, *for example* its sale.)

**A14 Crown Land**

If The Property is held under any law relating to Crown Land, you must:

- (a) mortgage to us on the same terms as this mortgage and as further Security for payment of the Amount Owing, any estate or interest in land or other property which the rights you have from the Crown are converted into or which you become Owner of because you Own the Crown Land property; and
- (b) if it is permissible to do so and we ask you, convert or join with us in converting the Crown Land property into another form of land tenure, *for example* into freehold tenure. We will only ask you to do this if it is reasonable to do so.

**A15 Rural land**

If any of The Property is used for grazing, farming, horticultural or agricultural purposes, you must:

- (a) do all things reasonably necessary to manage and preserve it properly and efficiently, *including* by taking suitable action (*for example*, fencing and spraying) to keep it free from pests and harmful vegetation; and
- (b) if we reasonably require, secure to us any crop produced on The Property on terms we reasonably require, as further Security for payment of the Amount Owing; and
- (c) not give Security over any crop produced on The Property without our consent (see clause A16); and
- (d) not deal with any quota or contract for producing or selling crops or produce capable of being produced on The Property or do anything which could cause a quota or contract to be forfeited or cancelled without our consent (see clause A16).

**A16 Consents**

We will only refuse our consent if it is reasonable to refuse it. If we give our consent we may impose reasonable conditions. You must comply with all our requirements in any consent we give in connection with this mortgage.

**A17 Payments as compensation, *for example* for compulsory acquisition of The Property**

A17.1 You must tell us if you have a right to claim or receive a payment of money by way of compensation because you Own The Property.

A17.2 We may take over your rights to make, pursue or settle your claim. We will tell you if we want to do so. We may then exercise those rights at our discretion (*including* signing releases for the payment in your name or ours) having regard to your rights under the claim and our rights under the Security. If we leave it to you to claim payment, you must do so as we direct. When we do anything under this clause A17.2, we must act reasonably.

A17.3 You must do your best to ensure that any compensation payment is made to us. If the payment is made to you, you hold the money for us and you must pay so much of that money to us toward the Amount Owing as we reasonably require and as soon as we ask you. (In each case, we must then use the money as set out in clause A23.)

- A18 Administrative matters**
- A18.1 You must deposit with us any documents of title, leases or tenancy agreements relating to The Property. But you need not deposit them with us if another Person has a Security over The Property which has priority over this mortgage and that Person is holding those documents or agreements.
- A18.2 You must do anything we reasonably ask (*for example* obtaining consents, signing and producing documents, producing receipts and getting documents completed and signed):
- (a) to provide more effective Security over The Property for the payment of the Amount Owning; or
  - (b) to enable us to register this mortgage with the agreed priority; or
  - (c) to enable us to exercise our rights in connection with The Property; or
  - (d) to ensure that each agreement which is intended to be covered by this mortgage becomes a Secured Agreement; or
  - (e) to enable us to register the power of attorney in clause A29 or a similar power; or
  - (f) to show us whether you are complying with this mortgage.
- A18.3 If we ask, you must give us any information or documents we reasonably require about or affecting:
- (a) The Property or any Works; or
  - (b) the Shared Scheme, if The Property is part of a Shared Scheme; or
  - (c) any lease, tenancy or other arrangement in connection with The Property; or
  - (d) this mortgage.

**A19 How you must comply with this mortgage**

- A19.1 Everything you must do under this mortgage must be done reasonably promptly and to our reasonable satisfaction.
- A19.2 You must pay for anything which you must do under this mortgage.

**A20 Things we may do at any time**

- A20.1 We may assign or otherwise deal with our rights under this mortgage or any Secured Agreement in any way we consider appropriate. If you receive notice of such assignment, you can exercise against the assignee the same rights you have against us under this mortgage or Secured Agreement.

- A20.2 Upon reasonable notice and at reasonable times, we or any of our agents may enter The Property to:
- (a) inspect its condition or any Works; or
  - (b) make reasonable enquiries in order to ascertain whether you are complying with this mortgage; or
  - (c) where reasonably necessary, carry out our rights under this mortgage.
- The requirement to provide reasonable notice may be dispensed with in cases of emergency.
- A20.3 You must give us and any of our agents all reasonable help to enter, *for example* by getting any consent necessary.
- A20.4 We or our agents may do anything which you should have done under this mortgage but which you have not done reasonably promptly and to our reasonable satisfaction.

**What can happen if you are in default**

**A21 When are you in default?**

- You are in default if:
- (a) you do not pay on time any of the Amount Owning; or
  - (b) you do not keep to the other terms of this mortgage or of a Secured Agreement; or
  - (c) you or another Person give us incorrect or misleading information (*for example* when you make your declarations under clause A3) in connection with this mortgage or a Secured Agreement before or after you sign this mortgage; or
  - (d) the power of sale arises under any other Security over The Property; or
  - (e) where Part B applies, any of the events described in clause B4 occurs.

**A22 What can happen then?**

- A22.1 If you are in default, we need not make funds available under any Secured Agreement.
- A22.2 If you are in default and we choose to enforce this mortgage, then, except in the cases described in clause A22.3 and A22.4(c), we give you a notice before doing so. The notice must:
- (a) tell you what the default is; and
  - (b) require you to fix the default (if it can be fixed) within the period stated in the notice. (If we give you notice under the Consumer Credit Law, we will give you at least 30 days notice before we enforce this mortgage.)

- A22.3 We need not give you a notice referred to in clause A22.2 or wait for the periods specified above where:
- (a) we believe on reasonable grounds that the default cannot be remedied, unless required by a Consumer Credit Law or some other law to give you notice; or
  - (b) we believe on reasonable grounds that:
    - (i) we were induced by fraud to enter this mortgage or a Secured Agreement; or
    - (ii) urgent action is necessary to protect The Property; or
  - (c) we have made reasonable attempts to locate you without success; or
  - (d) the court so orders.
- A22.4 For the purposes of any Land Law:
- (a) which requires that you must be in default for a certain period of time before we give you the notice and allows the period to be fixed in the mortgage, the period is fixed at one day; or
  - (b) which allows this mortgage to limit the period of time in which you must fix a default, the period (which must be at least one day) is the period set by the notice; or
  - (c) which allows the parties to a mortgage to agree that the mortgage may be enforced without giving a notice, you agree that we need not give you a notice before beginning enforcement proceedings against you.
- A22.5 If we have given you a notice under clause A22.2 or A22.4 and you do not fix the default within the time allowed in the notice, or you are in default and we are not required to give you a notice, we may:
- (a) decide, without further notice to you, that the Amount Owing is due and payable immediately but if this mortgage is subject to a Consumer Credit Law, provided that in any notice we have also told you the amount required to pay out the Secured Agreement and that we can exercise our rights under this clause if you do not remedy the default;
  - (b) take possession of The Property;
  - (c) manage The Property;
  - (d) sell, lease, subdivide or, where it is reasonable to do so, improve The Property;
  - (e) acting reasonably, do anything else with or to The Property that an Owner of The Property could do;
- (f) appoint any Person or any two or more Persons jointly and separately to be a receiver to do such of the things in paragraphs (b), (c), (d) and (e) of this clause A22.5 as are set out in the receiver's terms of appointment.
- We may do any or all of the above things in any order and we may do them at any time after the time stated in the notice elapses or, if we are not required to give you a notice, at any time.
- A22.6 If we enter into possession of The Property:
- (a) we may carry out Works on The Property if it is necessary to do so for us to:
    - (i) manage The Property; or
    - (ii) restore The Property to good condition; or
    - (iii) prepare The Property for sale, lease or subdivision; or
    - (iv) do any combination of the above.
  - (b) you must promptly remove all goods (such as furniture, or plant and equipment) which are not part of the Secured Property. If you do not do so, we may remove the goods from the Secured Property and:
    - (i) store them in another place; or
    - (ii) if the goods have little or no value, dispose of them without notice to you.
- A22.7 In determining how to dispose of the goods, we may have them independently appraised or valued. Unless you can produce satisfactory evidence to the contrary, the independent appraisal or valuation is sufficient evidence of the condition or value (or both) of the goods.
- A22.8 If we store the goods in another place, we will give you notice promptly of the location of the goods. If you do not claim the goods within 30 days of the date of our notice we may:
- (a) leave the goods in storage and the manager of the place where your goods are stored may sell those goods to meet its charges for storing those goods; or
  - (b) sell those goods on your behalf and we will pay any proceeds of such sale into an account that we open with us in your name; or
  - (c) dispose of the goods in any other manner we choose, if the likely costs of sale exceeds the value of the goods.

- A22.9 The reasonable costs of removal, delivery, storage, sale, or disposal are part of the Amount Owing. We may use the proceeds deposited in the account referred to in clause A22.8(b) to pay our reasonable costs of removing, disposing, storing, sale or delivery of the goods. After the goods have been sold or disposed of under this clause A22 and, if applicable, we have paid any proceeds into an account in your name, we will have no more liability to you for them.
- A22.10 We will act reasonably where we do anything under this clause A22.
- A22.11 You must pay us any reasonable amount reasonably incurred or spent by us in exercising any powers whilst we are in possession of The Property. *For example*, you must pay us the cost of Works we carry out on The Property. These costs are part of the reasonable enforcement expenses we may charge you under this mortgage.  
(clause A22.13 tells you our right to charge enforcement expenses.)
- A22.12 If you are in default and we need not give you notice to fix it, then at any time we may do any of the things set out in paragraphs (a) to (f) of clause A22.5 and any of the things set out in clause A22.6.
- A22.13 You must pay us our reasonable enforcement expenses reasonably incurred or spent by us in exercising our rights in relation to your default.
- A23 What happens to money we receive**
- A23.1 We use any money we receive under this mortgage (other than any money we deal with under clause A22.8(b)) towards paying:  
(a) first, anyone with a prior claim;  
(b) second, the Amount Owing to the extent that any part of the Amount Owing is due for payment. If there are amounts due on more than one account, we may apportion the payment between those accounts in any way we choose.  
However, if money received represents proceeds of an insurance claim, we may use the moneys to reinstate The Property to good condition, or carry out any other work reasonably required.  
We deal with the balance (if any) under clauses A23.2 and A23.3.
- A23.2 The balance we refer to in clause A23.1 is paid by us into an interest bearing account in your name. Until the Amount Owing is paid in full:  
(a) we are under no obligation to pay any of the money in the account to you; and  
(b) we may apply the whole or any part of the balance of the account to pay any part of the Amount Owing which is then due for payment; and  
(c) you cannot operate on the account or assign your interest in the account.
- A23.3 We must pay to you reasonably promptly or to another Person entitled to it (*for example* another Person with a Security over The Property), any money remaining after the Amount Owing is paid. If we choose, we may do this by crediting your or that other Person's account with us. We are then under no further liability to you for that money.
- A23.4 Our obligations to deal with the money we receive under this mortgage only arise from the date when we actually receive it.
- General matters**
- A24 Notices and other communications**
- A24.1 Notices *including* certificates, consents and demands given or made under this mortgage must be in writing.
- A24.2 They may be:  
(a) given personally (if they are for us, to one of our employees at the branch or office where you arrange this mortgage or any other branch or office we tell you); or  
(b) left at the address last notified; or  
(c) sent by prepaid post to the address last notified; or  
(d) sent by facsimile transmission to the fax number last notified; or  
(e) given in any other way permitted by law.
- A24.3 They take effect from the time they are received unless a later time is specified in them.
- A24.4 If they are sent by post, they are taken to be received on the day they would be received in the ordinary course of post.
- A24.5 If they are sent by facsimile machine which produces a transmission report, they are taken to be received at the time shown in a transmission report which indicates that the whole facsimile transmission was sent.
- A24.6 If you agree and if the law permits, any information which we provide in exercising our rights or fulfilling our obligations under this mortgage may be provided:

- (a) by electronic communication to your nominated electronic address (ie email address); or
- (b) by being made available at our website for retrieval following electronic communication to you, on the condition that we:
- (i) promptly notify you by electronic communication that the information is available for retrieval at our website, and the nature of the information; and
- (ii) provide you with the ability to readily retrieve the information by electronic communication (*for example*, by providing an electronic link to the relevant information on our website, or the Universal Resource Locator (URL) of our website).
- A24.7 Your agreement to the provision of information under clause A24.6 will be by a specific positive election, after receiving an explanation of the implications of making such a decision. When providing such explanation, we will remind you of your right to:
- (a) vary your nominated electronic address (by notice to us); or
- (b) terminate your agreement to the provision of information by electronic communication.
- A24.8 Unless your agreement is given in accordance with the procedures set out in clause A24.7, making information available at our website will not be effective communication to you.
- A24.9 Where you have viewed information available at our website and you:
- (a) have been given the opportunity to retain that information for subsequent reference (*for example*, by printing or saving it); and
- (b) specifically agreed that you have been given the opportunity to retain that information and that you will not be otherwise provided with a copy of the information by us (without a separate request by you under clause A24.10), we are to be treated as having provided that information to you at the time you specifically agreed.
- A24.10 Where we have provided, or are treated as having provided, information to you under this clause A24, we will provide a paper copy of that information to you, if you so request, within 6 months of the receipt of the electronic communication.
- A24.11 Any such mode of service will be fully effective despite that at the date of such service you may be lacking in mental capacity, dead, bankrupt, insolvent or absent from your place of domicile or usual residence or (if you are a corporation) that you are in the course of liquidation or have had an administrator or receiver appointed.
- A25 Statements of amount payable**
- A written statement made up from our books and signed by one of our Authorised Officers about an amount payable under this mortgage, is sufficient evidence of the amount and of any other matter referred to in the statement in connection with the amount, unless you provide satisfactory evidence to the contrary.
- A26 How we may exercise our rights**
- A26.1 We may exercise a right or remedy in any way we consider appropriate and reasonable, *including* by imposing conditions.
- A26.2 We may enforce this mortgage before we enforce our rights under another Security.
- A26.3 If we do not exercise a right or remedy fully or at a given time, we can still exercise it later unless we have expressly agreed not to or it would be unconscionable to exercise that right or remedy later.
- A26.4 We are not liable for loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising a right or remedy except where the loss is caused by our negligence.
- A26.5 Our rights and remedies under this mortgage may be exercised by any of our Authorised Officers or any lawyer or agent we authorise and they may give good discharge to any Person who pays money to them.
- A26.6 If any provision of this mortgage is found to be illegal, void or unenforceable for unfairness or any other reason (*for example*, if a court or other tribunal or authority declares it so) the remaining provisions of this mortgage will continue to apply to the extent possible as if the void or unenforceable part had never existed.

## **A27 Your obligations and our rights are unaffected**

- A27.1 The rights and remedies we have under this mortgage are independent of those we have under any other Security or what the law says we have and they can still be exercised by us even if we obtain an order or judgment against you.
- A27.2 Under law, a trustee in bankruptcy or a liquidator may ask us to refund a payment we have received in relation to the Amount Owing or this mortgage. To the extent that we are obliged to, or we reasonably agree to, make a refund, we may treat the original payment as if it had not been made. We are then entitled to our rights against you under this mortgage as if the payment had never been made.
- A27.3 (a) If any of our officers, or any Person engaged by us, carries out any inspection or valuation of The Property, they do so for our purposes only and not on your behalf. This is the case even if you pay us a valuation fee. Any reports made as a result of the inspection or valuation are our exclusive property.
- (b) When we inspect or value The Property, lend against it or do anything as a result of the inspection or valuation, we are not responsible for and make no representation to you about the condition of the land, the quality of the title, the location of the boundaries, the construction of any building or the standard or value of the land or any building on The Property or the uses to which The Property may be put. It is your responsibility to make necessary enquiries regarding all such matters.

## **A28 Variation or waiver**

A term of this mortgage, or right created under it, may not be waived or varied except in writing made by the party or parties to be bound.

## **A29 Power of attorney**

- A29.1 You appoint us and each of our Authorised Officers separately as your attorney. The attorney's powers are limited to those stated in clause A29.2. If we ask, you must formally approve anything they do. You may not revoke these appointments.
- A29.2 If you are in default, each attorney may:
- (a) do anything which you must do under this mortgage; and

- (b) delegate their powers (*including* this power) and revoke a delegation; and
- (c) exercise their powers even if this involves a conflict of duty or they have a personal interest in doing so.

## **A30 Receiver**

- A30.1 If we appoint a receiver after a court order for your bankruptcy (or, if you are a corporation, while you are in the course of winding up), the receiver is our agent. In any other case, the receiver is your agent, not ours, unless we notify you otherwise.
- A30.2 We may set a receiver's reasonable pay and expenses, remove a receiver and appoint a new or additional receiver, as the circumstances reasonably require. You are liable for the receiver's pay as part of our reasonable enforcement expenses. We may authorise a receiver to appoint a delegate with our consent.

## **A31 Governing law and jurisdiction**

- A31.1 This mortgage is governed by the law of the State or Territory in which The Property is located.
- A31.2 You accept the jurisdiction of the courts of that State or Territory and all appellate courts hearing matters from that jurisdiction.
- A31.3 If the court rules allow, we may serve any document in a court action (*including* documents to commence the action) on you by delivering it to The Property or leaving it there. This clause A31.3 does not prevent any other permissible method of service.

## PART B. MORTGAGE SECURING UNREGULATED CREDIT

***This Part applies, in addition to Part A, once you have entered into a Secured Agreement with us relating to credit where no Consumer Credit Law applies. From that time, the extended definition of Amount Owing applies and this Part operates to the extent that this mortgage secures an Amount Owing to which no Consumer Credit Law applies.***

### **B1 Extended definition of Amount Owing**

When Part B applies, Amount Owing means, at any time, all money which one or more of you owe us, or will or may owe us in the future, alone or with others.

*For example, this may include:*

- (a) the principal amount of any loan;
- (b) interest;
- (c) any fees and charges, *including* government charges and duties;
- (d) the cost of early repayment of principal;
- (e) costs and expenses referred to in a Secured Agreement;
- (f) damages for breach of a Secured Agreement;
- (g) amounts contingently owing (that is, amounts which may become owing if something happens or is discovered);
- (h) if you are a corporation, money owing (*including* contingently owing) under any guarantee;
- (i) if you are an individual, money owing (*including* contingently owing) under a guarantee which you have acknowledged in writing to be secured by this mortgage;
- (j) amounts to reimburse or indemnify us;
- (k) amounts you owe as a trustee;
- (l) amounts you owe as a member of a partnership;
- (m) amounts you owe as a member of an unincorporated association;
- (n) amounts you owe because you become a party to a negotiable instrument; and
- (o) amounts you owe under this mortgage.

### **B2 Interest on secured moneys**

If any part of the Amount Owing is owing on an account which is not covered by a Secured Agreement, then you must pay us interest on that amount whilst it remains unpaid.

Interest:

- (a) is charged at the rate agreed by you and us. If no rate is agreed, then the applicable rate is the prevalent rate which we charge from time to time to our other customers on similar accounts;
- (b) accrues daily;
- (c) is calculated on the unpaid daily balance of the account at the daily percentage rate then applying to the relevant part of the Amount Owing. We calculate the daily percentage rate by dividing the annual percentage interest rate then applying by 365 (even in a leap year);
- (d) becomes part of the Amount Owing as it accrues; and
- (e) the accrued amount is debited to the account monthly, and on the day the Amount Owing is paid in full.

### **B3 No merger upon judgment**

If any obligation to pay us an amount under this mortgage becomes merged in a court order, you must pay interest on that amount as a separate obligation. The interest rate we apply from time to time is the higher of the rate we may charge under clause B2(a) and the rate payable under the court order. We calculate and accrue the interest and debit the account with the frequency and in the manner described in clause B2.

### **B4 Additional default events**

In addition to the events set out in clause A21, you are in default if:

- (a) you are a corporation and an administrator is appointed, or such appointment is threatened or proposed; or
- (b) you are a corporation and an application is filed or an order is made or a resolution is passed for your winding up, or if any meeting is called for the purpose of considering such a resolution; or
- (c) you enter into any arrangement, reconstruction or composition with your creditors or any of them or propose to do so; or

- (d) a receiver is appointed over The Property or any of your property which includes The Property, or a holder of a Security interest over The Property takes possession of The Property or any part of it; or
- (e) you charge or assign or attempt to charge or assign any money owing by us to you (*for example* money on deposit) without our written consent (see clause A16); or
- (f) any execution or other process of any court or government agency or any distress is issued against or levied upon any such moneys; or
- (g) any execution or other process of any court or government agency or any distress is issued against or levied upon all or any part of The Property; or
- (h) any event mentioned in clause B11(d) occurs.

**B5 Indemnity upon default**

- (a) If you or another Person give us incorrect or misleading information (*for example* when you make your declarations under clause A3) in connection with this mortgage or a Secured Agreement before or after you sign this mortgage, then you must indemnify us against any loss we incur as a result of that default.
- (b) You agree to indemnify us against all claims which may be made against us by any Person having any interest in all or any part of any goods we deal with under clause A22.6 or clause A22.8 (or both clauses), except where any such claim arises as a result of our negligence.

**B6 Additional rights on default**

In addition to any other rights we may have under this mortgage or under law, if you are in default we may, without any demand or notice:

- (a) set off against, hold or appropriate for the purpose of applying towards payment of the Amount Owing, any liability (whether due, owing, contingent or otherwise) owing to you (*for example*, we could set off money we owe you on an unmaturing term deposit against your loan debt); and
- (b) have access to and make use of your fixtures, plant and equipment on The Property for the purposes set out in clause A22.6(a); and

- (c) where it is reasonable to do so, at any time we choose, surrender to the Crown all or any part of The Property; and
- (d) where it is reasonable to do so, exchange with the Crown or with any Person all or any part of The Property for other lands of any tenure either with or without giving or receiving any cash for the purpose of equalising the exchange, and in any such event:
  - (i) any land so acquired will be held by us on your behalf as further Security for the Amount Owing; and
  - (ii) the power of sale we have under this mortgage and all other rights and remedies will apply to and be capable of being enforced in respect of such land.

**B7 Protection of third parties**

Subject to the provisions of any Land Law, you agree that if anyone presents an instrument for registration under law (*for example*, registration of a transfer of The Property in a land title registry) or takes any action and claims that the instrument has been prepared or signed or the action has been taken under powers or rights derived from this mortgage:

- (a) it will not be necessary for any Person authorised under law or taking an interest under the instrument (*for example*, the registry or a purchaser or lessee) to enquire whether the facts and circumstances by which those powers or rights are derived, have occurred. *For example*, they need not enquire whether:
  - (i) any money is in fact owing on this mortgage; or
  - (ii) you are in default; or
  - (iii) the power of sale has arisen under this mortgage;
- (b) those Persons will not be affected by notice or by failure to enquire whether any Amount Owing has actually been paid or that you are not in default or that other facts and circumstances necessary for powers or rights to be exercised under this mortgage have not occurred.

**B8 Application of moneys**

Any receiver appointed under this mortgage in respect of an Amount Owing which is not regulated by a Consumer Credit Law shall apply all money obtained by the receiver in the following order:

- (a) in payment of all debts, costs, charges and expenses reasonably incurred in or incidental to the exercise or performance or attempted performance of the powers conferred by this mortgage or otherwise in relation to this mortgage;
- (b) in discharge of all rents, taxes, rates and outgoing whatever affecting The Property which are owing or are required to be paid;
- (c) in keeping down all annual sums or other payments and the interest on all principal sums having priority to this mortgage;
- (d) in payment of the receiver's reasonable remuneration and the premiums and other moneys necessary for keeping current all policies of insurance included in this mortgage or effected by us or the receiver for the protection of The Property, and the cost of effecting such repairs to The Property as are reasonably necessary for the purposes of clause A22.6(a) as the receiver may be directed in writing by us to execute;
- (e) in payment of the interest accruing due in respect of any principal money due under this mortgage;
- (f) in or towards discharge of the Amount Owing.

The receiver shall pay the residue of the money obtained to the Person who, but for the possession of the receiver, would have been entitled to it or is otherwise entitled to The Property.

#### **B9 Costs, charges and expenses**

By signing this mortgage, without your having to sign any other document, you authorise us from time to time to debit and charge any account of yours with all reasonable costs, charges and expenses, legal or otherwise (*including* premiums for insurance costs (solicitor and client as well as party and party), duties, taxes and other moneys paid or payable by us or any agent of ours) which we shall pay, incur, sustain or be put to in connection with:

- (a) any account of yours;
- (b) The Property or any part thereof;
- (c) the exercise of any rights of purchase or conversion of title connected with The Property;
- (d) this mortgage;

- (e) the preparation, completion or release of this mortgage, *including* the release in whole or in part of this mortgage; or
- (f) the exercise or attempted exercise of any right, power, authority, discretion or remedy conferred on us or on any attorney of ours under or by virtue of this mortgage or by law.

#### **B10 This mortgage not affected by changes in mortgage**

If:

- (a) you are a partnership, firm, committee, trustee or unincorporated body; or
- (b) any of the Amount Owing is owing or payable upon a joint account,

this mortgage remains effective and continues binding on each Person named in this mortgage as mortgagor notwithstanding any change by death, retirement, accession, addition, amalgamation, incorporation or otherwise to that partnership, firm, committee, trustee or body of Persons or any change in its name or style.

#### **B11 Liquor licensed premises**

If a Licence is held under law for the sale of liquor or operation of gaming machines or the conduct of a club on The Property, then:

- (a) you declare that the Licence is valid and current;
- (b) you undertake to comply with all the requirements of the Licence, *including* paying any fees;
- (c) you undertake to apply for a renewal of the Licence before it expires and to apply for any other Licence or authorisation necessary to conduct the activity on The Property;
- (d) you must inform us promptly if:
  - (i) the Licence is revoked, suspended, modified or not renewed; or
  - (ii) proceedings are commenced in any tribunal which could affect the Licence or to impose any penalty for an offence in connection with the Licence or for amalgamation with another club; or
- (e) if you are in default, you must transfer the Licence to us or to any Person we nominate when we ask you to do so.

#### **B12 Exclusion of laws**

You agree that any law which limits our rights and remedies under this mortgage is excluded except for those laws which do not allow that exclusion.

## Section 2:

# Security Interest Provisions

### WHAT YOU NEED TO KNOW

**These Security Interest Provisions are filed in the New South Wales General Register of Deeds (Book 4739 Number 946).**

The Security Interest is comprised of these Security Interest Provisions, the Security Document that you have been asked to sign and any other document or documents which the Security Document states are part of the Security Interest.

Please read all of these documents to make sure you understand all of your obligations and the actions we can take if a Default occurs.

When you sign the Security Document, you accept these Security Interest Provisions.

If these Security Interest Provisions conflict with the Security Document or any other document (including a Secured Agreement) you sign with us, the Security Document or that other document will prevail.

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## Your declarations

You declare that:

- you Own or have an interest in the Secured Property or will Own or have an interest in the Secured Property by the time the Security Interest takes effect;
- you have told us about all material rights affecting the Secured Property of which you are aware or ought reasonably to be aware and those which are proposed to affect the Secured Property, including easements, leases, other mortgages and the rights of a beneficiary under a trust;
- you do not breach any law or any obligation to any other Person by signing the Security Document and entering into the Security Interest;
- to the best of your knowledge, all the information you have given us in connection with the Security Interest is correct and not misleading;
- you have not withheld any information of which you are aware or ought reasonably to be aware which might have caused us not to enter into the Security Document or a Secured Agreement;
- the Secured Property is in good condition at the time you sign the Security Document or if later the time the Security Interest takes effect in relation to the Secured Property;
- a Default has not occurred (see clause 9); and
- if the Secured Property includes rights as lessee under any lease of real property:
  - you have performed all of your material obligations under the lease;
  - the lease is legally binding on you and the lessor; and
  - at the time the Security Interest takes effect, you have not surrendered the lease, and the lessor has no cause or right to re-enter the leased premises.

You acknowledge that these declarations induced us to enter into the Security Interest.

You repeat all these declarations, and we rely on them, each time:

- you ask us for credit;
- you agree that another agreement (a Secured Agreement) is to be secured by the Security Interest; or
- you accept an extension of your liabilities under an agreement (including a Secured Agreement) that is secured by the Security Interest.

## PART A. GENERAL PROVISIONS

This Part A applies in relation to the Security Interest, irrespective of whether the Security Interest is regulated under Consumer Credit Law.

### 1. The meaning of words used in this document

#### 1.1 Definitions

The following words have the meanings set out below in the Security Interest.

"Amount Owing" means, when Part B does not apply, all money which you owe us, or will or may owe us in the future, under a Secured Agreement and the Security Interest or any of them.

"Authorised Officer" includes any of our officers within the meaning given to that word in the Corporations Act. This also includes each of our officers whose position title includes the word 'manager' or 'executive'.

"Authority" means any government, any governmental or semi-governmental authority, agency or body, local government authority, administrative or judicial body or tribunal or stock exchange.

"Business" means any business, of any nature, carried on by you unless a business is specifically identified in the Schedule to the General Security Interest, in which case "Business" means the business identified in the Schedule to the General Security Interest.

"Circulating Assets" means any of the following:

- any Account that arises from dealing with inventory or from granting a right, or providing services, in the ordinary course of a business of granting rights or providing services of that kind;
- any bank account (other than a term deposit);
- currency;
- inventory; or
- any Negotiable Instrument other than a Negotiable Instrument where, in accordance with clause 7.1, we require you to provide us with the certificate for that Negotiable Instrument.

"Consumer Credit Law" means the National Consumer Credit Protection Act 2009 (Commonwealth) (including the National Credit Code) and the regulations made under that Act (all as amended from time to time).

"Corporations Act" means the Corporations Act 2001 (Commonwealth).

"Default" means any event of default under any Secured Agreement.

"Default Notice" means a notice that we give you which advises you that a Default has occurred and which requests you to fix the Default, if it can be fixed. A Default Notice may contain other information.

"Deposit" means the aggregate of the balances of the money standing to the credit of any account which you hold with us from time to time, including interest accrued on any such account.

"Encumbrance" means any mortgage, charge, pledge, lien, encumbrance, title retention arrangement (other than where entered into in the ordinary course of ordinary business), contractual right of set off (other than where entered into in the ordinary course of ordinary business) or any other security agreement or security interest entered into in favour of any Person and includes an Interest.

"Enforcement Proceedings" means:

- proceedings in a court to recover a payment due; and
- taking possession of the Secured Property or taking any other action to enforce our rights under the Security Interest.

"Insurance Policy" means any insurance policy relating to the Secured Property.

"Intellectual Property" means any patent, trade mark, service mark, design, copyright, circuit layout, plant breeder's rights, business name, trade secret, know how and other intellectual property rights and interests (in each case whether or not registered under any law).

"Interest" means an interest in personal property provided for by a transaction that, in substance, secures payment or performance of an obligation or otherwise

would be considered to be a "security interest" for the PPS Act. It includes but is not limited to an Encumbrance over personal property.

"Licence" includes a licence entered into by contract, a certificate of registration, an authority or a permit under a law or any right, entitlement, authority or other arrangement that is a "licence" for the purposes of the PPS Act.

"Marketable Securities" means debentures, stocks, shares or bonds of any government, any local government authority or any body corporate, association or society and includes any right or option in respect of shares in any body corporate and any interest in a "managed investment scheme" (as defined in the Corporations Act).

"Material Adverse Effect" means, in our reasonable opinion, a material adverse effect on:

- your ability to perform your obligations under the Security Interest or the Secured Agreement; or
- the value of, or the amount that may be recovered on the sale of, the Secured Property; or
- our rights and remedies in relation to the Secured Property.

"Negotiable Instrument" means:

- a bill of exchange;
- a cheque;
- a promissory note;
- a letter of credit that states it must be presented on claiming payment; or
- any record (whether evidenced in writing or electronically) that evidences a right to payment of currency that is, in the ordinary course of business, transferred by delivery with any necessary endorsement or assignment or where the record satisfies the requirements for negotiability under the law governing negotiable instruments,

but does not include any instrument that is excluded from the definition of "negotiable instrument" in the PPS Act.

"Other Document" means any other document (other than these Security Interest Provisions) referred to in the Security Document as being part of the Security Interest.

"Own" means holding an estate or interest in property. For example, a reference to a Person "Owning" real property means that Person is the registered proprietor, holder, lessee or Crown lessee or the holder of an estate in fee simple of that real property. "Owner" means a Person who holds an estate or interest in property.

"Person" includes an individual, a firm, a body corporate, an unincorporated association or an authority.

"PPS Act" means the Personal Property Securities Act 2009 (Commonwealth).

"Receiver" means a receiver or a receiver and manager.

"Secured Agreement" means any agreement between you and us (including a guarantee given by you) whenever made, under which you undertake to pay or repay us money and which you acknowledge in writing (including by electronic communication) to be an agreement to which the Security Interest extends.

"Secured Property" means any property over which an Encumbrance is granted under the Security Interest or which is otherwise subject to the Security Interest. This includes:

- any part of that property;
- if that property includes a Licence, all rights you hold as licensee under that Licence and any renewal of the Licence and any other Licence you obtain in connection with any other Secured Property;
- rights to claim or receive money because you Own or Owned that property, including any right to receive compensation as referred to in clause 5; and
- all proceeds from the sale or any other dealings with that property (including any proceeds within the meaning of that term in the PPS Act), whether or not the sale or other dealing is permitted by the Security Interest.

If the Secured Property includes shares in a company title unit, the company title unit is part of the Secured Property.

"Security Document" means:

- an agreement entitled "Asset Security Interest" signed by you at any time;
- an agreement entitled "General Security Interest" signed by you at any time; or

- any other agreement signed by you at any time that states that it is a "Security Document" for the purposes of these Security Interest Provisions.

"Security Interest" means:

- these Security Interest Provisions;
- the Security Document; and
- the Other Documents.

"Security Interest Provisions" means this document.

"Serial Numbered Good" means any of the following:

- any aircraft;
- any aircraft engine;
- any airframe;
- any helicopter;
- any small aircraft;
- any design which is registered or registrable under any legislation;
- any patent which is registered or registrable under any legislation;
- any plant breeder's right which is registered or registrable under any legislation;
- any trade mark which is registered or registrable under any legislation;
- any licence over a design, patent, plant breeder's right or trademark;
- any motor vehicle;
- any watercraft; or
- any other property in respect of which, in accordance with the PPS Act, an Interest can be registered by serial number.

"the Bank", "we", "us" or "our" means Commonwealth Bank of Australia ABN 48 123 123 124 and its successors and assigns.

"you" means each Person (and their executors, administrators, successors and assigns) named as a "Grantor" in the Security Document. If there is more than one Person so named, this means each Person named separately and every two or more of those Persons jointly.

## 1.2

### General interpretation rules

(a) A reference in the Security Interest to:

- the singular includes the plural and vice versa;
- 'including' or 'for example', when introducing an example does not limit the meaning of the words to which the example relates to that example or examples of a similar kind;

- a document includes any variation or replacement of it;
  - law means common law, principles of equity and laws made by parliament (and includes regulations and other instruments under laws made by parliament and consolidations, amendments, re-enactments or replacements of any of them); and
  - any thing (including the Secured Property or the Amount Owing) includes the whole and each part of it.
- (b) If a word is defined in the Security Interest, any other form of that word has a corresponding meaning.
- (c) Each clause or provision is a separate right or obligation.

### 1.3 Conflict

If these Security Interest Provisions conflict with the Security Document or any other document (including a Secured Agreement) that you sign with us, the Security Document or that other document will prevail.

## 2. How these provisions affect you and the Secured Property

### 2.1 Effect of signing

When you sign the Security Document you:

- (a) agree that you must fulfil all of the obligations described in the Security Interest;
- (b) grant us rights concerning you and the Secured Property;
- (c) agree that the Encumbrance granted under the Security Interest is a first ranking Encumbrance unless we agree otherwise in writing or the law otherwise provides; and
- (d) agree that we have all of the rights and powers of a secured party under the PPS Act except to the extent otherwise expressly provided in the Security Interest.

### 2.2 Your obligations

- (a) you must ensure that no Default occurs. You must also carry out on time all your obligations under the Security Interest and each Secured Agreement.
- (b) You are liable for all the obligations under the Security Interest, both on your own and jointly with anyone else named as a "Grantor" in the Security Interest.
- (c) If anyone else is named as a "Grantor" in the Security Interest, and some of you

are only liable for a part of the Amount Owing, then only that liability is secured by the interest those Persons hold in the Secured Property. We can change the agreement with those Persons without the consent of the rest of you and this will not discharge or affect the Security Interest or the liability of the rest of you.

### 2.3 Selling Secured Property

- (a) If a Default occurs and subject to the terms of the Security Interest, we have the right to sell the Secured Property before other creditors and without needing a court judgment against you.
- (b) For example, subject to the terms of the Security Interest, we can take possession or control of the Secured Property and dispose of it if the Amount Owing is not paid at the time it is due to be paid or another Default occurs. If the money from this disposal does not repay the Amount Owing in full, then we can ask you to pay the difference. We can make this request even if the Secured Property is released from the Security Interest.

### 2.4 Death, bankruptcy or insolvency

The Security Interest remains in effect despite the death or bankruptcy of any one of you, the appointment of a Receiver to any of your property or, if you are a corporation, the making of an order for winding up or the appointment of an administrator or Receiver to you.

### 2.5 Releasing the Secured Property

If the Amount Owing has been fully repaid and no Default has occurred, if you ask us we will release the Secured Property from the Security Interest subject to our rights under clauses 16 and 17.2 and our rights under the equivalent provisions in any Other Document. If the Security Interest secures a guarantee, we can refuse to discharge the Security Interest in certain circumstances as set out in that guarantee.

### 2.6 Trustees

If you sign the Security Document as trustee of a trust, the Security Interest binds you both personally and as trustee of the trust.

### 3. You must repay the Amount Owing

You must pay us the Amount Owing at the agreed time. If we have not agreed a time, then you must pay when we ask (which we may do on one or more occasions).

### 4. General obligations

#### 4.1 Compliance with laws and other obligations

You must use reasonable endeavours to comply with:

- (a) all laws, Licences, requirements, orders and notices of Authorities that apply to the Secured Property; and
- (b) all other obligations that relate to your interests in the Secured Property. For example, this might include any licensing arrangement and any constitution of a corporation (where the Secured Property includes shares in that corporation).

#### 4.2 Maintenance and repair

You must use reasonable endeavours to:

- (a) keep the Secured Property in reasonably good condition;
- (b) fix any material defect in the Secured Property;
- (c) do anything we reasonably believe is needed to keep the Secured Property in good condition;
- (d) not do anything, and you must prevent anything from happening, that might materially lower the value of the Secured Property or put the Secured Property or our interest in the Secured Property at material risk; and
- (e) ensure that no Secured Property is installed in or affixed to other property that is not Secured Property which might affect our Interest.

#### 4.3 Keeping us informed

You must tell us within 30 days if:

- (a) serious damage to the Secured Property occurs or if the Secured Property becomes materially defective;
- (b) any material authorisation or approval under any law relating to the Secured Property has been revoked, suspended, modified, refused or not renewed;
- (c) you are a party to any court proceedings, you are fined or any other penalties are imposed on you under any law, in any case, relating to the Secured

Property which could have a Material Adverse Effect;

- (d) you have broken any material law relating to the Secured Property; or
- (e) you breach any material provision of the Security Interest.

#### 4.4 Rates, taxes and levies

As the Owner of the Secured Property you must pay all amounts for which you are liable on the due date, including rates, taxes, rents and Licence fees.

#### 4.5 Keeping the Property insured

- (a) You must keep the Secured Property insured, on an ongoing basis, for its full insurable value on the basis of replacement, reinstatement and for loss of income against fire and other usual risks.
- (b) All Insurance Policies must note our interest in the Secured Property under the Security Interest and be on terms and for an amount we consider, acting reasonably, are satisfactory.
- (c) If we ask, you must show us the current policy schedule for each Insurance Policy. If we ask, you must assign your interest in each Insurance Policy to us as security for payment of the Amount Owing.
- (d) You must not reduce or cancel any Insurance Policy. You must tell us immediately if any Insurance Policy is cancelled or you think it is likely to happen.
- (e) You must tell us promptly if you receive a material payment under any Insurance Policy (each amount paid is an "**Insurance Payment**").
- (f) If we ask you must pay us any amount of an Insurance Payment that we, acting reasonably, require. Each payment we ask for must be paid at the time we ask for it to be paid. We will use each amount received to repay part or all of the Amount Owing in accordance with clause 11.
- (g) You will comply with any direction that we give you to pay any part of any Insurance Payment that we do not receive under clause 4.5(f) either to reinstate the Secured Property or carry out other works.
- (h) You must tell us if any claim you make under any Insurance Policy is refused either in part or in full. If we take over your rights to make, pursue or settle such an insurance claim then we will tell you in writing. We will exercise those rights having regard to your interests under the claim and our rights under the Security Interest.

#### **4.6 Proceeds of insurance claims**

Unless restricted by law, if we receive the proceeds of a claim under any Insurance Policy, we may use those proceeds to re-instate the Secured Property or carry out other work on it.

#### **4.7 Application of proceeds**

If we provide any financial accommodation to you or for your benefit to assist you to acquire rights in any Secured Property you will apply the financial accommodation solely for that purpose.

#### **4.8 Perfection of Security Interests**

You will implement policies and practices and take all steps necessary to ensure that all Interests which you hold are attached, enforceable and continuously perfected under the PPS Act until the obligations they secure are satisfied or they are released for value, where a failure to implement the relevant policies and practices or take the necessary steps could have a material adverse effect on the value of the Secured Property or your ability to perform your obligations under the Security Interest or a Secured Agreement.

#### **4.9 Circulating Assets**

Prior to:

- (a) any Default occurring under clause 9.1; or
- (b) us giving you a notice telling you not to do so,

you may sell or otherwise deal with the Circulating Assets in the ordinary course of your ordinary business on reasonable commercial terms provided that, where the Circulating Assets include livestock, you may only sell or otherwise deal with that livestock if you immediately replace the livestock with more livestock of at least equal value.

#### **4.10 Goods used in earning income**

Where the Security Interest is regulated under Consumer Credit Law, the Secured Property does not include goods that are property used by the Grantor in earning income by personal exertion if the goods do not have a total value greater than the limit prescribed from time to time under the *Bankruptcy Regulations 1996* for the purposes of subparagraph 116(2)(c)(i) of the *Bankruptcy Act 1966* for goods of that type.

### **5. Compensation payments**

- (a) You must tell us if you are legally entitled to compensation because you Own the Secured Property. For example, this might apply in the case of a compulsory acquisition.
- (b) If this happens we can take over your rights to make, pursue or settle your claim. We will tell you if we want to do this.
- (c) If we take over your rights to make, pursue or settle your claim, we can exercise those rights in any reasonable manner we choose (including signing releases for the payment in your name or ours), having regard to your interests under the claim and our rights under the Security Interest. If we allow you to make, pursue or settle your claim, you must do so as we direct. You must do your best to ensure that any compensation payment is made to us.
- (d) If you receive any compensation payment then you must pay so much of the money received to us as we, acting reasonably, require, as soon as we ask you to. We will apply that amount, and any compensation payment received by us directly, to repay part or all of the Amount Owing in accordance with clause 11.

### **6. Restrictions on dealings in the Secured Property**

Unless you get our prior written consent or this is otherwise expressly permitted by the Security Interest you will not:

- (a) sell, rent or otherwise transfer the Secured Property;
- (b) create another Encumbrance (other than an Encumbrance in favour of us) over the Secured Property or allow one to arise;
- (c) part with possession of the Secured Property; other than temporarily; or
- (d) deal in any other way with the Secured Property or any interest in the Secured Property.

### **7. Further actions and information**

#### **7.1 Further actions**

- (a) You must do anything we, acting reasonably, ask to:
  - (i) provide a more effective Encumbrance

over the Secured Property for the payment of the Amount Owing or to perfect the Encumbrance over the Secured Property (including any bank accounts) created by the Security Interest;

- (ii) enable us to register or perfect the Encumbrance over the Secured Property created by the Security Interest with the agreed priority, including any registration required or permitted by any law;
- (iii) enable us to exercise our rights in connection with the Secured Property; and
- (iv) enable us to register the power of attorney described under clause 13 or a similar power.

(b) You must:

- (i) provide to us all Negotiable Instruments which are part of the Secured Property and all documents of title or certificates (for example, share certificates) relating to the Secured Property;
  - (ii) allow us to obtain possession or control of any Negotiable Instruments or Marketable Securities or other similar interests, in any case, which are part of the Secured Property;
  - (iii) ensure that all property which is intended to be subject to the Security Interest is subject to it; and
  - (iv) show us whether you are complying with the Security Interest.
- (c) Examples of actions you may be required to take under this clause 7.1 include obtaining consents, signing and producing documents, producing receipts and getting documents completed and signed.

## **7.2 Further information**

- (a) If we ask, you must give us any information or documents we, acting reasonably, require that might affect:
  - (i) the Secured Property; or
  - (ii) the Security Interest.
- (b) If we ask, you will promptly tell us the serial numbers of any Serial Numbered Goods that are part of the Secured Property.
- (c) If you change your name you must tell us in writing of your changed name at least 14 days before the change of name takes effect.

## **8. You must comply with our requests**

### **8.1 General compliance**

- (a) You agree that you will promptly take any action that we, acting reasonably, request to ensure you comply with your obligations under the Security Interest.
- (b) You must pay for anything which you are obliged to do under the Security Interest.

### **8.2 Consents**

- (a) If you request our consent under the Security Interest we must act reasonably in considering whether to give or refuse that consent. If we give our consent we may impose reasonable requirements on that consent.
- (b) You must comply with all our requirements in any consent we give in connection with the Security Interest.

## **9. What happens if a Default occurs?**

### **9.1 When a Default occurs**

A Default occurs if an event of default occurs under any Secured Agreement.

### **9.2 Our rights**

If a Default occurs, we do not have to give you any money or provide any other financial accommodation under any Secured Agreement and we can choose to enforce the Security Interest.

### **9.3 Giving notice of enforcement**

- (a) If a Default occurs and we choose to enforce the Security Interest or to begin any other Enforcement Proceedings, unless clause 9.4 applies, we will give you a Default Notice before doing so.
- (b) If we give you a Default Notice and the law requires:
  - (i) that a Default must continue for a certain period before we can give a Default Notice, this period is one day (or any longer period required by law); and
  - (ii) us to allow you a period of time to fix a Default, this period must be at least 30 days and will be defined in the Default Notice.

#### 9.4 When we do not have to give notice

Unless otherwise required by law, we do not have to give you a Default Notice before beginning Enforcement Proceedings or wait until the period in a Default Notice elapses before beginning Enforcement Proceedings if:

- (a) we believe on reasonable grounds that you induced us by fraud to enter into the Security Interest or any Secured Agreement;
- (b) we believe on reasonable grounds that we need to take urgent action to protect the Secured Property, for example, we believe on reasonable grounds that the Secured Property may perish before the end of 14 days (excluding public holidays) after the day we take possession or control of the Secured Property;
- (c) we believe on reasonable grounds that you have removed or disposed of the Secured Property or intend to remove or dispose of the Secured Property without our permission;
- (d) we have made reasonable attempts to find you without success; or
- (e) a court authorises us to begin Enforcement Proceedings.

#### 9.5 If you do not fix the Default

- (a) If:
  - (i) you do not fix the Default within the period required in the Default Notice we give you (if any); or
  - (ii) we are not required by law to give you a notice regarding the Default before beginning Enforcement Proceedings; or
  - (iii) we are required to give you a Default Notice but are not required by law to wait until a period specified in the Default Notice has elapsed before beginning Enforcement Proceedings,we can:
  - (iv) ask you to pay the Amount Owing immediately provided that, if any Secured Agreement is a credit contract regulated by Consumer Credit Law, in the Default Notice we gave you, if any, we told you the amount required to pay out that Secured Agreement and that we can ask you to pay the Amount Owing immediately if you do not fix the Default;

- (v) take possession or control of the Secured Property, by any method permitted by law, unless the Amount Owing is less than the lesser of 25 per cent of the amount of credit provided under the Secured Agreements and \$10,000 (or any other amount prescribed for the purposes of Consumer Credit Law) in which case we may only take possession or control of the Secured Property:
    - A. with the consent of a court; or
    - B. if we believe on reasonable grounds that you have removed or disposed of the Secured Property, or intend to remove or dispose of the Secured Property, without our permission; or
    - C. if we believe on reasonable grounds that urgent action is necessary to protect the Secured Property;
  - (vi) convert any part of the Amount Owing which is in another currency into Australian dollars, at our usual rate of exchange for transactions of similar amounts and currencies at the time of conversion. If we exercise this right, the amount in Australian dollars will be included in the Amount Owing;
  - (vii) to the extent permitted by law, sell or lease the Secured Property or do anything else with it that an Owner of the Secured Property could do;
  - (viii) if permitted by law, purchase or retain the Secured Property;
  - (ix) do anything else the law allows us to do as mortgagee, chargee or secured party or which you could do as the Owner of the Secured Property; and
  - (x) appoint any Person or Persons to be a Receiver to take any of the above actions (other than under clause 9.5(a)(iv)), as defined in the Receiver's terms of appointment.
- (b) We may do any or all of the things in clause 9.5(a) in any order and we may do them:
- (i) at any time after the time stated in the Default Notice (if any) elapses unless we are required by law to do something else first, in which case we can do them after that; or

- (ii) if we are not required by law to give you a Default Notice, at any time.
- (c) You must pay us any amount reasonably incurred or spent by us in exercising any powers whilst we are in possession or control of the Secured Property. Each such amount is part of the Amount Owing.

## 9.6 Our liability

Any agreement we, or any Receiver, enter into with a third party in exercising powers or rights under the Security Interest may contain provisions excluding our or the Receiver's personal liability to that third party.

## 10. If we need to repair the Secured Property

if we take possession or control of the Secured Property and it appears to us that the Secured Property has not been kept in good condition as required by the Security Interest, we may carry out such repairs or remediation as are necessary to restore the Secured Property to good condition. The costs and expenses of such repairs or remediation are part of the Amount Owing.

In exercising our rights in any of the circumstances set out in this clause 10, we will act reasonably and will require you to meet only reasonable costs and expenses which have been reasonably incurred.

## 11. Money we receive

### 11.1 Application of money

Unless otherwise required by law, we may apply any money we receive as a result of any Enforcement Proceedings, or in connection with the exercise of any of our rights under the Security Interest, to pay:

- (a) first, any amount payable to a holder of interests (other than Interests) in the Secured Property with a claim that has a higher priority than our Encumbrance under the Security Interest;
- (b) second, the reasonable expenses we incur in relation to enforcing the Security Interest which, under the Security Interest, you are obliged to pay. These expenses include the expenses listed in clauses 9.5(c), 10 and 11.2 and, if Part B applies, clause 25.6;

- (c) third, any amount payable to a holder of an Encumbrance in the Secured Property that has a higher priority than our Encumbrance under the Security Interest;
- (d) fourth, the Amount Owing whether or not it is then due for payment. If there are amounts payable on more than one account, we can apply the payment between those accounts in any way we choose;
- (e) fifth, any amount payable to a holder of an Encumbrance in the Secured Property that ranks behind our Encumbrance under the Security Interest; and
- (f) sixth, to you (but this amount does not carry interest). We will make this payment to you by paying this amount into an account with us in your name or, if you agree, in any other manner.

Our obligations to deal with the money we receive only arise from the date that we receive the money.

### 11.2 Expenses of enforcement

The expenses referred to in clause 11.1(b) may include any of the following, where incurred after a Default has occurred:

- (a) all reasonable debts, costs, charges and expenses incurred in exercising, or attempting to exercise, rights under the Security Interest (net of any rebates or allowances);
- (b) rents, taxes, rates and outgoings whatever affecting the Secured Property;
- (c) if a Receiver is appointed, the Receiver's remuneration;
- (d) any premiums and other money needed to maintain the insurance required under the Security Interest or that we or the Receiver have arranged to protect the Secured Property; and
- (e) the reasonable costs of making repairs that we instruct the Receiver in writing to make or the Receiver determines to make.

## 12. Appointing a Receiver

### 12.1 Receiver as agent

If the court orders you to be declared bankrupt or if you are a corporation in the course of being wound up, a Receiver appointed by us will be our agent. Unless we tell you otherwise, in all other cases the Receiver is your agent, not ours.

## 12.2 Pay and expenses of the Receiver

We may set the reasonable pay and expenses of the Receiver, which you must pay as part of our enforcement expenses. We can also appoint a new or additional Receiver or remove them as we see fit. We may authorise a Receiver to appoint a delegate.

## 13. Power of attorney

- (a) You appoint us, and each of our Authorised Officers separately as your attorney.
- (b) If a Default occurs, each attorney can:
  - (i) do anything you must do (including paying money) under the Security Interest or any Secured Agreement;
  - (ii) execute any document so that we may transfer legal and/or beneficial title in the Secured Property to another Person if we sell the Secured Property;
  - (iii) delegate their powers (including this power) and revoke a delegation;
  - (iv) exercise their powers, even if this involves a conflict of duty or they have a personal interest in doing so; and
  - (v) complete or execute any document or form relating to any Licence or authorisation used or required to carry on the Business.
- (c) If we ask, you must approve formally anything any attorney does under clause 13(b).
- (d) You may not revoke the power of attorney.

## 14. Exclusion of PPS Act provisions

### 14.1 No right to receive notices

You agree that, if the Secured Property is not used predominantly for personal, domestic or household purposes, except as otherwise expressly provided in the Security Interest, we do not need to give you any information in relation to, or any form of notice, which we would otherwise be required to provide under the PPS Act:

- (a) of our intention to remove any property (whether or not that property is part of the Secured Property) from any part of the Secured Property;
- (b) if we, as permitted by any law, make a decision to enforce our Interest in the Secured Property in the same way as, under land law, we may enforce any interest in land that you have granted to us;

- (c) if we give a notice to any Person to pay the proceeds of, or amounts owing in respect of, any Negotiable Instrument, account or chattel paper forming part of the Secured Property to us or if we take possession or control of any of those proceeds or amounts;
- (d) of our intention to dispose of, or purchase, the Secured Property;
- (e) of any amount paid to another Person that holds an Encumbrance over the Secured Property, whether under clause 11.1 or otherwise;
- (f) if we have not disposed of the Secured Property within 6 months of taking possession or control of the Secured Property, stating that we have not disposed of the Secured Property or stating:
  - (i) the total amounts received in relation to the Secured Property after we took possession or control of that Secured Property, or commenced any other Enforcement Proceedings;
  - (ii) any expenses incurred in relation to the retention of the Secured Property before the disposal;
- (g) if we dispose of the Secured Property under a statutory right and you request a written statement of account, however only to the extent of specifying in that statement any amounts paid to other secured parties;
- (h) if, after a Default by you, we exercise a right to seize the Secured Property and propose to exercise any statutory right we may have to retain the Secured Property.

### 14.2 Exclusion of rights

You agree that, if the Secured Property is not used predominantly for personal, domestic or household purposes, except as otherwise expressly provided in the Security Interest, you do not have a right (which you would, but for this clause, have under the PPS Act):

- (a) to reinstate the Security Interest prior to us exercising a right to dispose of or to retain the Secured Property; or
- (b) to redeem the Secured Property after we have seized the Secured Property as a result of a Default by you, but prior to us exercising a right to dispose of the Secured Property.

### 14.3 Waiver of other provisions

If the Secured Property is not used predominantly for personal, domestic or household purposes, you agree to, except to the extent restricted by law, waive any right you may have to require the Secured Property to be dealt with in accordance with the PPS Act if, as a result of any Enforcement Proceedings, we obtain possession or control of the Secured Property.

### 14.4 Controllers

You agree that the provisions of the PPS Act concerning seizure and disposal or retention of the Secured Property do not apply in relation to the Secured Property while a person is in possession or has control of the Secured Property for the purposes of enforcing an Encumbrance.

## 15. Things we can do

- (a) We can register the Encumbrance over the Secured Property created by the Security Interest and take any other action to perfect that Encumbrance.
- (b) We can assign or otherwise deal with our rights under the Security Interest without your consent. If you receive notice of such assignment, you can exercise against the assignee the same rights you have against us under this Security Interest.
- (c) Upon reasonable notice and at reasonable times we can enter, or access, the Secured Property to:
  - (i) inspect its condition;
  - (ii) find out whether you are complying with the Security Interest; and
  - (iii) exercise our rights.The requirement to provide reasonable notice may be dispensed with in cases of emergency.
- (d) You must give us and any of our agents all reasonable help to enter, or access, the Secured Property by giving your consent.
- (e) We can do anything you are obliged to do under the Security Interest if you fail to act reasonably promptly and to our reasonable satisfaction in complying with that obligation.

## 16. Releasing Secured Property

When we release the Secured Property from the Security Interest your obligations listed below continue:

- (a) your obligation to pay the Amount Owing;
- (b) your obligations under clause 17.2; and
- (c) your obligations under clauses 7 and 13 but only to the extent necessary to ensure our full rights under clause 17.2 or where you induced us to give the release by making an incorrect statement.

## 17. Additional rights and obligations

### 17.1 Independent rights

- (a) Where possible any law that limits our rights and actions under the Security Interest is excluded from the Security Interest.
- (b) Our rights and actions under the Security Interest are independent of any other Encumbrance and we can exercise them even if we obtain an order or judgment against you.

### 17.2 Refunding payments

A trustee in bankruptcy or a liquidator can ask us to refund a payment of the Amount Owing that we have received from you. If we are obliged to, or we decide to, make this refund, we can treat the original payment as if it had not been made, and are entitled to our rights against you under the Security Interest as if the original payment had not been made. You will do anything that we, acting reasonably, ask to restore to us those rights under the Security Interest.

### 17.3 Exercise in any way

We can exercise our rights, or give or refuse our consent, in any way we reasonably consider appropriate, at any time, including by imposing reasonable conditions. You must comply with any conditions that we impose on the grant of our consent.

### 17.4 Completion and additional security interests

- (a) We can complete in favour of ourselves, our nominee or any purchaser, any instrument you have signed and given to us in relation to the Secured Property.
- (b) We can enforce the Security Interest before any other Encumbrance or any guarantee given to us in relation to the Amount Owing.

## 17.5 Liability for loss

We are not liable for any loss caused by attempting to exercise, or exercising, our rights (or not exercising our rights, or if there is a delay in exercising our rights), except where our, or a Receiver's, fraud, negligence or breach of statutory duty causes the loss.

## 17.6 Inspection or valuation

If any of our officers carries out an inspection or valuation of the Secured Property, they do so for our purposes only, even if you pay us a valuation fee. We will keep any reports resulting from the inspection or valuation as our exclusive property. You are not entitled to rely, in any way, on any inspection or valuation.

## 17.7 Our agents and Authorised Officers

Our rights and remedies under the Security Interest may be exercised by any of our Authorised Officers or any lawyer or agent we authorise and they may give good discharge to any Person who pays money to them.

## 17.8 Changes to laws

If laws change so that any provision of the Security Interest becomes illegal, void or unenforceable, it is to be read without that provision. Every other provision will continue.

## 18. Notices and communications

### 18.1 Notices in writing

Notices including certificates, consents and demands given or made under the Security Interest must be in writing.

### 18.2 Sending notices

- (a) You can give us notices in person, by pre-paid post or by fax.
- (b) To deliver a notice in person to us you must give it to an employee at the branch or office where you arranged the Security Document, or any other branch or office we advise you.
- (c) To fax or post a notice you must send it to the address or fax number we have provided to you.
- (d) We can give you notices:
  - (i) in person;
  - (ii) by leaving it at your last known address;

- (iii) by pre-paid post (to your last known address);
- (iv) by fax (to your last known number);  
or
- (v) any other way permitted by law.

### 18.3 Notices sent by email or via our website

- (a) If the law permits this, we may email notices to you directly or advise you by email that you can retrieve them from our website.
- (b) If we make any notice available to you on our website, we will:
  - (i) promptly notify you by email that the notice is available for retrieval from our website and the nature of the notice provided; and
  - (ii) provide you with the ability to readily retrieve the notice by electronic communication (for example, by providing an electronic link to the relevant notice on our website or the universal resource locator (URL) of our website).
- (c) We will provide a paper copy of any notice sent in accordance with this clause 18.3 to you if you ask us to do so within seven years of the date we send the notice to you by email or advise you by email that you may retrieve the notice from our website.

### 18.4 Changing your details

You can change your nominated email address by notifying us at any time. You can also end your agreement to receive information by electronic communication by notifying us at any time.

### 18.5 When do notices take effect?

- (a) Our notices to you take effect from the time you receive them or on the date specified in clause 18.3 unless a later date is shown on the notice. Your notices to us take effect from the time we receive them.
- (b) Notices sent by post are taken to be received on the day they would be received in the ordinary course of post.
- (c) Notices sent by a fax machine are taken to be received at the time shown in a transmission report, if the machine creates a report showing that the fax was sent in full.
- (d) Notices sent by us to you are fully effective, even if at the date of the

service you are:

- (i) lacking in mental capacity;
- (ii) dead;
- (iii) bankrupt;
- (iv) insolvent;
- (v) absent from your usual residence; or
- (vi) if you are a corporation, in the course of liquidation or have had an administrator or Receiver appointed.

## 18.6 Statements

Each statement made up from our books and signed by one of our Authorised Officers relating to the Security Interest or any Secured Agreement is sufficient evidence of the matters to which the statement relates, unless you prove to the contrary in any proceedings between you and us.

## 19. Variation or waiver

Unless otherwise permitted by law, a term of the Security Interest, or a right created under it, can only be waived or varied in writing, signed by the party or parties to be bound or benefited.

## 20. Law and jurisdiction

The law and the jurisdiction of the courts of the State or Territory where the Secured Property is kept applies to the Security Interest. If more than one, then it is the State or Territory of our address stated in the Security Document. The venue for any dispute can be any court in the capital city of that State or Territory.

# PART B. PROVISIONS

This Part B applies, in addition to Part A, in relation to the Security Interest, only if the Security Interest is not regulated under Consumer Credit Law.

## 21. Definition of Amount Owng

For the purposes of the Security Interest, the definition of "Amount Owng" in clause 1.1 does not apply and "Amount Owng" means all money that you (or any one or more of you) owe us, now or in the future. This may include:

- (a) the principal amount of any loan and the interest payable on that loan;
- (b) any fees and charges, including government charges and duties;
- (c) the cost if you repay the principal amount of any loan early;
- (d) costs and expenses referred to in any Secured Agreement and damages for any breaches of any Secured Agreement;
- (e) amounts which may become owing in future if any event or any other thing occurs or does not occur;
- (f) money owing (including contingently owing) under any guarantee you give us;
- (g) amounts to reimburse or indemnify us;
- (h) amounts you (or any one or more of you) owe as a trustee, a member of a partnership or a member of an unincorporated association;
- (i) amounts you (or any one or more of you) owe because you become a party to a Negotiable Instrument; and
- (j) amounts you owe under the Security Interest.

However, if you are an individual, the Amount Owng will only include money owing (including contingently owing) under a guarantee if you have acknowledged in writing that the guarantee will be secured by the Security Interest.

## 22. Additional definitions

Without limiting clause 1.1, the following words have the meanings set out below in this Part B:

"Account" means an obligation to pay money that arises from:

- any disposal of property, including by sale, transfer, assignment, lease or Licence (for example, any book debt); or

- granting a right, or providing services, in the ordinary course of a business of granting rights or providing services of that kind, but does not include any obligation to pay money that is excluded from the definition of 'account' in the PPS Act, including shares or Negotiable Instruments.

"Chattel Paper" means a record (whether evidenced in writing or electronically) of a monetary obligation and one or both of:

- an Interest in, or lease of, goods; or
- an Interest in Intellectual Property or an Intellectual Property Licence,

but does not include any records which are excluded from the definition of "chattel paper" in the PPS Act, including shares or Negotiable Instruments.

## **23. Additional undertakings and waiver**

### **23.1 General undertakings**

- (a) You must tell us within 30 days:
- (i) if any authorisation or approval under any law relating to how you conduct the Business has been revoked, suspended, modified, refused or not renewed which could have a Material Adverse Effect;
  - (ii) if you are a party to any court proceedings or you are fined or any other penalties are imposed on you under any law, in any case, relating to the conduct of the Business which could have a Material Adverse Effect; or
  - (iii) if you have broken any law relating to the conduct of the Business which could have a Material Adverse Effect.
- (b) Notwithstanding the terms of clause 6, if the Secured Property is real property and, pursuant to any law, you do not need to get our prior written consent before you create another Encumbrance over that Secured Property, then you must tell us before you create another Encumbrance and arrange for the holder of that Encumbrance (other than where the Encumbrance is in favour of us) to enter into an agreement with us to provide that the Encumbrance over the Secured Property created by the Security Interest has priority to that other Encumbrance.

- (c) You must:
- (i) if we require you to do so, provide to us all leases or tenancy agreements relating to the Secured Property;
  - (ii) allow us to obtain possession or control of any Chattel Paper which is part of the Secured Property;
  - (iii) if we require you to do so, give notice to any debtor under any Account or Chattel Paper of the transfer of that Account or Chattel Paper to us in accordance with the Security Interest and require any such debtor to make payment under the Account or Chattel Paper directly to us; and
  - (iv) give us any information or documents we reasonably require that might affect any lease, tenancy or other arrangement in connection with the Secured Property.
- (d) You must obtain all Licences and other authorisations needed to carry on the Business, keep them up to date, and renew them at the proper time.
- (e) You must carry on the Business, and any other activity on or with the Secured Property, properly and efficiently.

### **23.2 Transfer of Accounts and Chattel Paper**

Without limiting any other provision of the Security Interest, if the Secured Property includes any Accounts or Chattel Paper, if we require you to do so, you must transfer to us each Account and each Chattel Paper as security for payment of the Amount Owing on the date we specify.

### **23.3 Real property related undertakings**

- (a) You must tell us:
- (i) promptly if the Secured Property becomes seriously contaminated in any way or any contamination is emitted from the Secured Property;
  - (ii) promptly if you receive any penalty notices or directions to 'clean-up' the Secured Property issued by any authority; or
  - (iii) within 30 days if there are any unresolved complaints from any authority or regulator alleging that your activities on the Secured Property are polluting the environment, or that you are causing public or private nuisance in the way you conduct the Business.

- (b) If the Secured Property becomes contaminated you must remove the contaminant and clean up the Secured Property.
- (c) If any of the Secured Property is rights under a lease of real property, you must apply for a renewal or extension of the lease, or for a new lease, before the expiry of the lease term.
- (d) If there is a renewal or extension option under the lease referred to in clause 23.3(c), you must apply for a renewal or extension at the earliest date you are able to do so. If there is no option, or the time to exercise it has not arisen, you must apply for a renewal or extension, or for a new lease, no later than 12 months before the end of the lease term.
- (e) You must do anything we ask to give us an effective Encumbrance over the renewed or extended lease, or over any new lease in any case entered into on the terms in clause 23.3(c) or 23.3(d).
- (f) You will not, unless you get our prior written consent:
  - (i) surrender or materially change any rental agreement relating to the Secured Property that we have consented to;
  - (ii) subdivide or consolidate the Secured Property;
  - (iii) create, release or vary an easement, covenant or public right of way which relates to the Secured Property, or allow one to arise; or
  - (iv) demolish or remove any building which is part of the Secured Property.

#### **23.4 Modifying or substituting Accounts or Chattel Paper**

You will not make any modification to, or substitution for, any Account or Chattel Paper that is part of the Secured Property other than minor modifications of an administrative nature which are made in the ordinary course of your ordinary business on arm's length commercial terms.

#### **23.5 Keeping records**

- (a) You must keep proper records and accounts strictly in accordance with the law and current Australian accounting practice.
- (b) If we ask you to, you must ask a suitably qualified Person (whom we have approved) to audit the accounts.

- (c) You must give us copies of your financial statements (including the notes) within 120 days of the end of each of your financial years.

#### **23.6 Holding Licences**

- (a) If you sell liquor, operate gaming machines or conduct a club you must hold all current Licences required to do so by law.
- (b) You must pay any fees and meet any other requirements of any such Licence and renew it before it expires.

#### **23.7 Telling us of changes**

- (a) You must tell us immediately if any Licence referred to in clause 23.6 is revoked, suspended, modified or not renewed or if proceedings start in any tribunal which could affect any such Licence including imposing a penalty for an offence in connection with the Licence or amalgamation with another club.
- (b) If we ask, you must transfer any such Licence to us or to any Person we nominate.

#### **23.8 Verification statements**

If you are not an individual or if the Secured Property does not include any personal property that are used for anything other than in the course or furtherance, to any degree, of carrying on an enterprise to which an ABN has been allocated, you waive any right that you have at any time to receive notice of any verification statement we are given in relation to registration of an Interest created by the Security Interest under the PPS Act, or changes to any registration relating to such an Interest under the PPS Act.

#### **24. Deleted**

#### **25. Additional rights on Default**

##### **25.1 Replacement clauses**

If this Part B applies, clauses 9.3, 9.4 and 9.5 are deleted and replaced with clauses 25.2, 25.3 and 25.4.

##### **25.2 Giving notice of enforcement**

- (a) If a Default occurs and we choose to enforce the Security Interest, unless clause 25.3 applies, we will give you a Default Notice before doing so.

- (b) For some types of Secured Property, including real property, we are legally obliged to give you a Default Notice.
- (c) If we give you a Default Notice:
  - (i) and the law requires that a Default must continue for a certain period before we can give a Default Notice, this period is one day (or any longer period required by law); and
  - (ii) we will allow you a period of time to fix a Default and, this period will be at least 30 days and will be defined in the Default Notice.

### 25.3 When we do not have to give a notice

- (a) We do not have to give you a Default Notice, unless otherwise required by law, if we believe on reasonable grounds that:
  - (i) you cannot fix the Default (for example, an administrator or Receiver is appointed to you; a petition is granted or order is made for your bankruptcy or winding-up; you enter an arrangement under Part X of the Bankruptcy Act 1966 (Cth) or a scheme of arrangement with your creditors);
  - (ii) you acted fraudulently before or after you signed the Security Document or any Secured Agreement;
  - (iii) we need to take urgent action to protect the Secured Property, for example, we believe on reasonable grounds that the Secured Property may perish before the end of 14 days (excluding public holidays) after the day we take possession or control of the Secured Property;
  - (iv) there will be a material decline in the value of the Secured Property if it is not disposed of immediately after we take possession or control of the Secured Property (for example, shares or other securities that need to be sold to prevent further decline in value);
  - (v) the Secured Property is foreign currency or the Secured Property secures a foreign currency loan; or
  - (vi) the Secured Property is to be disposed of in accordance with the operating rules of a clearing and settlement facility.

- (b) We also do not have to give you a Default Notice, unless otherwise required by law, if:
  - (i) we have made reasonable attempts to find you without success; or
  - (ii) a court authorises us to begin Enforcement Proceedings.

### 25.4 If you do not fix the Default

- (a) If you do not fix the Default within the period required in the Default Notice we give you (if any), or if we are not required by law to give you a notice regarding the Default, we can:
  - (i) ask you to pay the Amount Owing immediately;
  - (ii) take possession or control of the Secured Property;
  - (iii) convert any part of the Amount Owing which is in another currency into Australian dollars, at our usual rate of exchange for transactions of similar amounts and currencies at the time of conversion. If we exercise this right, the amount in Australian dollars will be included in the Amount Owing;
  - (iv) manage the Secured Property;
  - (v) sell or lease the Secured Property or do anything else with it that an Owner of the Secured Property could do;
  - (vi) where it is reasonable to do so, if the Secured Property includes any real property, subdivide or improve that real property;
  - (vii) if permitted by law, purchase or retain the Secured Property;
  - (viii) do anything else the law allows us to do as mortgagee, chargee or secured party or which you could do as the Owner of the Secured Property; and
  - (ix) appoint any Person or Persons to be a Receiver to take any of the above actions (other than under clause 25.4(a)(i)), as defined in the Receiver's terms of appointment.
  - (x) carry on the Business or any other business you carry on;
  - (xi) have access to and make use of your fixtures, plant and equipment which are part of the Secured Property; and
  - (xii) make a call on uncalled capital and premiums if they form part of the Secured Property.

- (b) We may do any or all of the things in clause 25.4(a) in any order and we may do them at any time after the time stated in the Default Notice (if any) elapses.
- (c) You must pay us any amount reasonably incurred or spent by us in exercising any powers whilst we are in possession or control of the Secured Property. Each such amount is part of the Amount Owing.

## 25.5 Removing your goods

- (a) If we take possession or control of any of the Secured Property, you must promptly remove all goods (including furniture, or plant and equipment) which are not part of the Secured Property. If you do not do so, we may remove the goods from the Secured Property and:
  - (i) store them in another place; or
  - (ii) if the goods have little or no value, dispose of them without notice to you.
- (b) In determining how to dispose of the goods, we may have them independently appraised or valued. Unless you can produce satisfactory evidence to the contrary, the independent appraisal or valuation is sufficient evidence of the condition or value (or both) of the goods.
- (c) If we store the goods in another place, we will give you notice promptly of the location of the goods. If you do not claim the goods within 30 days of the date of our notice we may:
  - (i) leave the goods in storage and the manager of the place where your goods are stored may sell those goods to meet its charges for storing those goods; or
  - (ii) sell those goods on your behalf and we will pay any proceeds of such sale into an account that we open with us in your name; or
  - (iii) dispose of the goods in any other manner we choose, if the likely costs of sale exceeds the value of the goods.
- (d) The reasonable costs of removal, delivery, storage, sale, or disposal are part of the Amount Owing. We may use the proceeds deposited in the account referred to in clause 25.5(c)(ii) to pay our reasonable costs of removing, disposing, storing, sale or delivery of the goods.

- (e) After the goods have been sold or disposed of under this clause 25.5 and, if applicable, we have paid any proceeds into an account in your name, we will have no more liability to you for them.
- (f) We will act reasonably where we do anything under this clause 25.5.

## 25.6 Expenses of enforcement

The expenses referred to in clause 11.1(b) also include:

- (a) the reasonable costs incurred in removing and storing goods in accordance with clause 25.5; and
- (b) any costs, charges and expenses referred to in clause 28 where incurred in connection with enforcing the Security Interest.

## 26. Interest on Amount Owing

### 26.1 Payment of interest

If any part of the Amount Owing is owing on an account that is not covered by a Secured Agreement you must pay us interest at the rate determined in accordance with clause 26.2 on that amount until it has been paid in full.

### 26.2 Rates

- (a) We will charge interest at the rate we have agreed with you. If we have not agreed a rate, we will charge the prevailing rate that applies to similar accounts.
- (b) We calculate the daily interest rate by dividing the annual percentage interest rate by 365.

### 26.3 Charging interest

- (a) Interest accrues daily. We calculate and charge interest on the unpaid daily balance of the account at the daily interest rate that applies to the relevant part of the Amount Owing and on the basis of a year of 365 days (even in a leap year).
- (b) As the interest accumulates it becomes part of the Amount Owing. We will debit the accumulated amount from the account each month.

### 26.4 Court orders

If any obligation to pay us an amount under the Security Interest becomes merged in a court order, you must pay interest on that amount as a separate obligation. The interest rate we apply from time to time is the higher of the rate we may charge

under this clause 26 or any other agreement (including a Secured Agreement) under which the Amount Owing is owing and the rate payable under the court order and this clause 26 will apply in relation to the payment of that interest.

## **27. Indemnities**

- (a) If you or another Person gave us incorrect or misleading information or made false declarations in the Security Interest, any Secured Agreement or a related contract, before or after you signed the Security Document, then you must indemnify us against any loss we incur as a result, reduced to the extent any loss is incurred as a result of our, or a Receiver's fraud, negligence or wilful misconduct.
- (b) If we take any enforcement action under the Security Interest, you must indemnify us against all claims which anyone who has any interest in all or any part of any Secured Property may make against us, reduced to the extent any loss is incurred as a result of our, or a Receiver's fraud, negligence or wilful misconduct.

## **28. Costs, charges and expenses**

- (a) You must pay any reasonable costs, charges and expenses that we reasonably incur, or any Receiver or agent of ours reasonably incurs, in connection with:
  - (i) any of your accounts;
  - (ii) the Secured Property; or
  - (iii) the Security Interest or any Secured Agreement.
- (b) These amounts may include:
  - (i) duties and taxes;
  - (ii) insurance premiums;
  - (iii) legal costs on a full indemnity basis (even if a court does not award costs on that basis);
  - (iv) commissions and fees charged by real estate agents, brokers, auctioneers and valuers; and
  - (v) advertising expenses.

- (c) You must also pay all reasonable costs we incur:
  - (i) in preparing, completing or registering the Security Interest or any Secured Agreement or any interest under the Security Interest or Security Agreement, releasing the Secured Property from the Security Interest or releasing any Secured Agreement;
  - (ii) if we are ordered to produce documents or attend proceedings that relate to you, the Secured Property, the Security Interest or any Secured Agreement; and
  - (iii) if we exercise any right granted to us under the Security Interest or by law.
- (d) You authorise us from time to time to deduct from any account of yours with us all amounts referred to in this clause 28.

## **29. Effectiveness and binding**

If the Amount Owing is owing or payable on a joint account or you are a:

- (a) partnership;
- (b) firm;
- (c) committee;
- (d) trustee; or
- (e) unincorporated body,

the Security Interest remains effective and continues to bind you regardless of death, retirement, accession, addition, amalgamation, incorporation or otherwise to the partnership, firm, committee, trustee or unincorporated body, or any change to its name or style.

## **30. Third parties**

- (a) If any Person:
  - (i) presents an instrument for registration; or
  - (ii) takes any action and claims that an instrument has been prepared or signed or the action has been taken under powers or rights derived from the Security Interest,then it will not be necessary for any Person authorised under law or taking an interest under the instrument to enquire whether the facts and circumstances by which those powers or rights are derived have occurred and the facts and circumstances by which those powers or rights are derived will be deemed have occurred.

- (b) The Persons referred to in clause 30(a) will not be affected by notice or failure to enquire about matters relating to payment of the Amount Owing or the Security Interest.

### **31. Set-off**

- (a) Without limiting any other rights we may have, if a Default occurs we may apply the whole or any part of the Deposit towards the Amount Owing without having to take you to court. We can do this at any time.
- (b) You agree that if the Deposit is not in Australian dollars we may convert the Deposit (or any part of the Deposit) into Australian dollars. Such conversions will be at our usual rates of exchange for transactions of similar amounts and currencies at the time of conversion.

