**\ReadConfirmation1\**

**\ReadConfirmation2\**

**MORTGAGE TERMS AND CONDITIONS**

**MORTGAGE VERSION CM2.2 (August 2023)**

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| --- | --- |
| **NSW** | Copy of the Memorandum filed in New South Wales Land Registry Services as number AT505168 |
| **VIC** | Copy of the Memorandum retained by the Land Use Victoria in number AA9598 |
| **QLD** | Copy of the Memorandum filed in Queensland Titles Registry as number 722809355 |
| **ACT** | Copy of the Memorandum filed in Access Canberra, the Australian Capital Territory Office of the Registrar of Titles as number 3277064 |
| **SA** | Copy of the Memorandum filed in Land Services SA as number 14140092 |
| **WA** | Copy of the Memorandum of Common Provisions registered with Landgate Western Australia as number P740707 |
| **NT** | Copy of the Provisions contained in a Memorandum retained by the Land Titles Office, Darwin, Northern Territory as number 372402 |
| **TAS** | Copy of the Memorandum of Provisions filed in the Land Titles Office, Hobart, Tasmania as number M754 |

**THIS FORMS PART OF THE MORTGAGE**

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In this mortgage, certain words that look *like this* or ***like this*** are defined in clause 11.13. Also clause 11.14 includes rules for interpreting this mortgage*.*

In particular is it important that the mortgagor understands what a default is (see clause 7.1 “When a default occurs under this mortgage”) and what can happen if a default occurs (see clause 7.2 “What happens if a default under this mortgage occurs” and clause 7.3 “How the mortgagee exercises its rights on default”).

# **THE *SECURITY* GIVEN BY THIS MORTGAGE**

## **Themortgage given by the mortgagor**

For valuable consideration the mortgagor mortgages the whole of the *property* to the mortgagee as *security* for payment to the mortgagee of the *secured money* and for performance of the mortgagor’s other obligations to the mortgagee under the *related agreement*s. The *property* remains mortgaged to the mortgagee until the mortgagee discharges this mortgage under clause 9.

## ***Credit laws* that apply to the mortgage**

To the extent that this mortgage is regulated by a *credit law*, then despite anything else in this mortgage or any other *related agreement*:

1. the mortgagee’s rights and powers are limited to the extent required by that *credit law*; and
2. the amounts which the mortgagor must pay under this mortgage (or which are secured by this mortgage) will not exceed that allowed under that *credit law*.

## **Laws limiting mortgagee rights**

There may be some statutes (that is, laws passed by parliament) or other laws (such as ‘common law’) (together, referred to as the ‘law’) intended to limit mortgagee’s rights. None of those laws will operate to limit the mortgagee’s rights unless those rights cannot reasonably be limited.

## **Independent advice**

The mortgagee recommends the mortgagor obtain independent legal advice regarding this mortgage before entering into it.

# **MORTGAGOR REPRESENTATIONS**

## **Mortgagor representations by a natural person**

The mortgagor represents to the mortgagee that:

1. **(registered owner)** the mortgagor is (or on completion of the purchase is entitled to be) the *registered owner* of the *property*; and
2. **(solvency)** it is solvent and there are no reasonable grounds to suspect that it is unable to pay its debts as and when they become due and payable; and
3. **(power and authority)** the mortgagor has the necessary power and authority (for example, if the mortgagor is a natural person, they are over 18 years old) to own the *property* and enter into this mortgage; and
4. **(prior *security interest*)** the *property* is not subject to any *security interest* (whether registered or not) affecting the *property* that has not been notified to the mortgagee in writing; and
5. **(entry into mortgage will not breach other agreements)** the mortgagor’s entry into this mortgage and each other *related agreement* and the carrying out of the mortgagor’s obligations under them will not breach any other agreement or document the mortgagor is a party to; and
6. **(all consents obtained by the mortgagor)** the mortgagor has obtained all consents that are required by law to allow the mortgagor to own or continue to own the *property* and to enter into this mortgage (for example, if the mortgagor requires approval from the foreign investments review board); and
7. **(information given to the mortgagee)** all information given to the mortgagee including to any of its *authorised officers* or any other representative of the mortgagee in connection with the *property* and this mortgage is not false or misleading in a material respect; and
8. **(mortgagor not in default)** the mortgagor is not in default under any agreement for providing credit to the mortgagor or under any *security interest* given to any other credit provider that has not been notified to the mortgagee in writing; and
9. **(no litigation**) no litigation or administrative, arbitration or other proceeding or action (including any action by a *public authority*) is current, threatened or (to its knowledge) pending which, if adversely determined, would have or be likely to have a detrimental impact on its ability to comply with this mortgage and any other *related agreement* to which it is a party.

The mortgagee has agreed to lend money secured by this mortgage to the mortgagor or to another person at the mortgagor’s request because of those promises. If they are not true, the mortgagor may be in default under this mortgage. If the mortgagor knows of anything which changes any of those promises, or if the mortgagor becomes aware of anything which changes any of those promises during the term of any *related agreement*, the mortgagor must tell the mortgagee immediately.

## **Mortgagor representations by a company or trustee**

1. If the mortgagor is a company, the mortgagor represents (in addition to the representations in clause 2.1) to the mortgagee that:

#### **(validly existing)** it is validly existing under the laws of its place of incorporation or establishment; and

#### **(corporate power)** it has the corporate power and has taken all necessary corporate action to authorise it to enter into and perform its obligations and carry out the transactions contemplated under this mortgage and each *related agreement*; and

#### **(no conflict)** its execution and performance of this *mortgage* and any other *related agreement* to which it is a party does not and will not conflict with or contravene any law or a judgment, ruling, order, document or agreement applying to it or its assets; and

#### **(not breach *governing documents*)** its entry into and performance of this mortgage and each *related agreement* will not breach its *governing documents*.

1. If the mortgagor is a trustee (other than a *custodian*), the mortgagor represents (in addition to the representations in clause 2.1) to the mortgagee that:

#### **(personal obligations)** it is also liable to perform all its mortgageobligations (including making payments) personally; and

#### **(resettlement)** no property of the trust has been re-settled or set aside or transferred to any other trust; and

#### **(beneficial interest)** this mortgage extends to its full beneficial interest in the *property*; and

#### **(not breach *governing document*)**entering into this mortgage and any *related agreement* complies with and does not breach the terms of any *governing document* or any other document it is bound by or a party to; and

#### **(best interests of beneficiaries)** this mortgage is in the best interests of the beneficiaries; and

#### **(consent and approval obtained)** all necessary approvals and consents required to allow it to enter into this mortgage and any *related agreement* have been obtained and are still current; and

#### **(indemnity out of assets)** it can be fully indemnified from the assets it holds in relation to all liabilities it incurs under this mortgage*;* and

#### **(supply copies of *governing* documents)** all copies of the *governing documents* given to the mortgagee are true complete and up to date.

## **Relationship of this mortgage to other documents**

No provision of any other *related agreement* affects the following essential terms of this mortgage:

1. the *property* andthe parties describedin the mortgage registration form*;*  or
2. the term of this mortgage, which may only be discharged under clause 9.

## **When there is more than one mortgagor**

If two or more persons are named as the mortgagor:

1. their obligations bind each of them alone and any two or more of them together; and
2. the release of one person from their obligations does not mean that any of the other/s are also released.

# **THINGS THE MORTGAGOR MUST DO**

## **Payment obligations**

1. The mortgagor must pay the mortgagee the *secured money* at the times and in the way required under any *related agreement*. The mortgagor must make those payments when they fall due in full without set off, counter-claim, deduction or withholding of any amounts the mortgagor believes the mortgagee owes the mortgagor.
2. The mortgagor must pay to the mortgagee interest on any judgment amount the mortgagee obtains against the mortgagor. That interest is payable from the date of the judgment until the mortgagee is paid in full.

## ***Related agreement*s**

The mortgagor must comply with the terms of this mortgage and any other *related agreement* to which it is a party.

## **Mortgagor’s *property* obligations**

The mortgagor must:

1. **(custody of title documents)** give the mortgagee custody of any title documents (if any) to the *property* until this mortgage ends, unless the mortgagee otherwise waives this requirement in writing. If there is a prior registered *security interest* over the *property* the mortgagee reserves the right to subsequently require the title documents (if any) to the *property* until this mortgage ends; and
2. **(keep property in good and substantial repair)** keep the *property* in good and substantial repair (and undertake in a timely manner all repairs reasonably necessary to keep the *property* in good and substantial repair). The mortgagee may (acting reasonably) direct the mortgagor to carry out or procure any work reasonably necessary to keep the *property* in good and substantial repair including any work required by a *public authority*; and
3. **(no illegal activity)** not carry on nor permit to be carried out any illegal activity on the *property;* and
4. **(comply with environmental laws)** comply with all laws relating to the *property*, including laws about the use, heritage, conservation, contamination or pollution of *property*; and
5. **(pay amounts owing to any *public authority*)** pay when due all money owing to any person or *public authority* in connection with the *property* or because the mortgagor owns or leases it (including rates, taxes, fees and outgoings); and
6. **(notify if there is any *material damage*)** immediately tell the mortgagee if there is any *material damage* (to the *property*); and
7. **(notify if there is an *encroachment*)** subject to any pre-existing registered dealing on the *property* title allowing an *encroachment*, tell the mortgagee if there is any *encroachment* by another property over or affecting the *property* or any *encroachment* by the *property* over or affecting any other property; and
8. **(notify if there is contamination)** tell the mortgagee if the mortgagor is or becomes actually aware that the *property* is contaminated or polluted (for example, if the property is contaminated or polluted there may be a requirement, among other matter, to notify a *public authority*); and
9. **(notify of intention to acquire adjoining property)** tell the mortgagee immediately if the mortgagor acquires or intends to acquire any property adjoining the *property* that will be used or held with the *property*. The mortgagee may (acting reasonably) require the mortgagor to promptly grant a mortgage over the adjoining property (or as otherwise agreed with the mortgagee); and
10. **(obtain fair market rent)** ensure that any rent received or other dealing relating to the *property* is at, at least, fair market rent; and
11. **(provide notice given by any *public authority*)** give the mortgagee a copy of any order or notice from any *public authority* concerning the use or condition of the *property* as soon as the mortgagor becomes aware of it (for example, a notice issued by a *public authority* requiring the mortgagor to demolish any part of the *property* or to carry out upgrades or modifications to the *property*).

## **When the mortgagee’s consent is required**

The mortgagor must obtain the mortgagee’s prior written consent before the mortgagor does or agrees to:

1. **(material reduction in *property* value)** do anything, or allow anything to happen that could materially reduce the value of the *property*. For example, by partially or wholly demolishing any structure on the *property*, by carrying out illegal or unauthorised improvements or renovations to the *property* or by leaving the *property* in a material state of disrepair; or
2. **(granting easements)** grant any right of access such as an easement over or affecting the *property* (the mortgagee’s consent is not to be unreasonably withheld); or
3. **(allowing *encroachments*)** subject to any pre-existing registered dealing on the *property* title, do anything, or allow any *encroachment* over or affecting the *property* (the mortgagee’s consent is not to be unreasonably withheld); or
4. **(*authorisations*)**transfer, change or remove any *authorisation* in relation to the *property* or do anything, or allow anything to happen, which would lead to any *authorisation* in relation to the *property* being cancelled or suspended; or
5. **(changing the *property* use)** change the use of the *property* from the use at the date the mortgagor signed this mortgage. For example, if the property is residential property using it for a non-residential purpose (the mortgagee’s consent is not to be unreasonably withheld). The mortgagor does not require the mortgagee’s consent to use residential property as their home / home office provided that use is permitted by the relevant *public authority*;or
6. **(subdivision of *property*)** subdivide the *property* or consolidate the *property* with another property; or
7. **(sell, assign or deal with *property*)** sell, assign or otherwise deal with the *property* (the mortgagee’s consent is not to be unreasonably withheld)*.* The mortgagee will consent if the mortgagor provides a replacement property satisfactory to the mortgagee; or
8. **(lease or license longer than 12 months)** lease or license the *property (*oraccept or permit a surrender, assignment or variation of any lease or any license), consent to or permit any sublease or assignment or variation of any sublease, for a term exceeding 12 months (the mortgagee’s consent is not to be unreasonably withheld); or
9. **(allowing a subsequent *security interest* over the *property*)**if the State is no*t Queens*land, create or allow another *security interest* to be created over the *property*, or transfer or otherwise deal with this mortgage*.* If the State is Queensland, a *security interest* referred to in this paragraph can be created if the other *security* holder first enters into a priority deed with the mortgagee. If required by the mortgagee the mortgagor must ensure that a priority deed in a form acceptable to the mortgagee is first entered into by the other party before the mortgagor grants the *security interest*.

To the extent that any particular restraint within any of the provisions of this clause 3.4 constitutes a restraint on alienation of land, then that particular restraint may only be exercised by the mortgagee for a valid collateral purpose.

## **Mortgagor to give information to the Mortgagee**

Whenever the mortgagee asks (acting reasonably), the mortgagor must give the mortgagee (at the mortgagor’s expense) information about the *property* and / or a valuation or other expert report about the *property*.

## **Mortgagee’s right of access to the *property***

The mortgagor must let the mortgagee or anyone the *mortgag*ee appoints enter the *property* to inspect it. Except where the mortgagee thinks it necessary to protect the *property* or its rights as mortgagee, any inspection will be at a reasonable time on giving (where possible) reasonable notice.

## **Property is not to be left vacant for extended periods**

If there are any buildings on the *property*, the mortgagor must not leave them unoccupied for a continuous period of more than 60 days without the prior written consent of the mortgagee (not to be unreasonably withheld) or during a period under which the mortgagee has approved building works under a *related agreement*.

## **Mortgagor’s assistance to better securing this mortgage**

Whenever the mortgagee ask, the mortgagor must sign and do everything reasonably necessary to better secure this mortgage and ensure that it is binding on the mortgagor and is stamped and registered.

## **Caveats affecting the *property***

A caveat is a notification to the relevant land titles office that somebody is claiming an interest in the *property*. If any caveat is lodged in the *property*, the mortgagor must (at the mortgagor’s cost and expense) take any action required by the mortgagee to promptly remove it.

## **Earlier mortgages**

The mortgagor must observe the provisions of any other mortgage which is registered before this mortgage. If the mortgagor does not do so, the mortgagee may (in its absolute discretion) perform the mortgagor’s obligations under the other mortgage, in which case the mortgagor must pay the mortgagee any amounts the mortgagee pays or becomes liable to pay in doing so. If the mortgagor does not pay the mortgagee those amounts when the mortgagee asks, the mortgagee may sue the mortgagor to recover these amounts. The mortgagee may (in its absolute discretion) pay out any prior registered mortgage and the amount paid out will be added to the amount the mortgagor owes the mortgagee under this mortgage.

## **Encroachments by or affecting the *property***

Subject to any pre-existing registered dealing on the *property* title allowing an *encroachment*, if there is any *encroachment* by another property over or affecting the *property* or any *encroachment* by the *property* over or affecting any other property, the mortgagor must do (at its cost and expense) whatever is reasonably necessary to correct this if the mortgagee asks the mortgagor to.

## **Things the mortgagor must not do if it is a trustee**

If the mortgagor is a trustee (other than a *custodian*):

1. it must not stop acting in that capacity or allow anyone else to be appointed in its place (whether alone or jointly);
2. it must not change the terms of the *governing documents*, without the prior written consent of the mortgagee (acting reasonably);
3. it must not acquire any asset unless it is in the mortgagor’s name, without the prior written consent of the mortgagee (acting reasonably);
4. it must not give up possession or use of any asset, without the prior written consent of the mortgagee (acting reasonably);
5. it must not do or fail to do anything which is a breach of the *governing documents* or could lead to the mortgagor’s removal or termination;
6. it must not end the trust or do anything which could cause it to end before the time stated in the *governing documents*;
7. there must not be any change of *control*, without the prior written consent of the mortgagee;
8. it must not distribute any capital; or
9. it must not distribute any income if doing so negatively affects the mortgagor’s ability to pay the *secured money* in accordance with a *related agreement* or to perform all its other obligations under a *related agreement*.

# **INSURANCE UNDERTAKINGS**

## **Things the mortgagor must do with respect to insurance**

The mortgagor must:

1. **(*property* insurance)** keep the *property* insured for not less than its full replacement value on terms reasonably approved by the mortgagee against loss or damage by fire, storm, tempest and any other usual risks the mortgagee reasonably requires;
2. **(public liability insurance)** keep public liability insurance in respect of the *property* and any other insurances the mortgagee may reasonably specify in writing from time to time;
3. **(provide evidence of insurance)** give the mortgagee evidence of payment of premiums, certificate of currency and policy of insurance whenever the mortgagee asks from time to time;
4. **(not jeopardise an insurance claim)** not by act or omission do anything within the mortgagor’s reasonable control that could allow the insurer to decline an insurance claim; and
5. **(not allow insurance to be cancelled or suspended)** not allow any of the insurance policies to be cancelled or suspended due to a failure to pay or renew the insurance premiums on time or anything else within the mortgagor’s reasonable control.

The insurance must be with an insurer regulated by the Australian Prudential Regulatory Authority (or any successor public authority responsible for supervising insurance companies in the State or Territory where the *property* is situated) and the policy must also note the mortgagee’s interest ‘as mortgagee’ (except in respect of owners corporation insurance on *property* subject to *strata law*).

## **Mortgagor giving notice of an insurance claim for *material damage***

The mortgagor must immediately notify the mortgagee if it makes a claim with respect to any *material damage* to the *property* or anything happens that could give rise to a claim with respect to any *material damage* to the *property* (even if the mortgagor has not made a claim with respect to the matter) under an insurance policy for the *property*.

## **Managing an insurance claim**

The mortgagor must (in relation to any insurance claim under clause 4.2):

1. only pursue, enforce or settle the insurance claim as the mortgagee reasonably directs;
2. allow the mortgagee (acting reasonably) to control, compromise and settle the insurance claim or possible insurance claim (including to conduct legal proceedings against the insurer if it becomes necessary to do so); and
3. not claim against the mortgagee in relation to any claim or insurance of the *property* generally (including for any failure to insure, which is the mortgagor’s responsibility under clause 4.1).

## **Insurance proceeds**

The mortgagor must (in relation to any insurance claim under clause 4.2):

1. tell the insurer to pay the insurance proceeds directly to the mortgagee; and
2. pay to the mortgagee any money it receives under those insurances and that money will be held for the mortgagee’s benefit until they are paid to the mortgagee.

Unless the law requires otherwise, the mortgagee may use the money received acting reasonably to either:

1. rebuild the *property*; and / or
2. reduce the *secured money* (to the extent payable at that time).

Whilst the mortgagee will act reasonably it must also take a pragmatic view when assessing these matters. Factors that may affect the mortgagee’s decision in regards to the application of the insurance proceeds under this clause may include a consideration of the level and extent of the *material damage* (to the *property*), the prospect of the necessary repairs being completed in a timely and efficient manner, whether the mortgagor is lawfully permitted to procure the required repairs to the *property* and (under the circumstances) the capacity (including the financial capacity) of the mortgagor to procure and pay for the *property* repairs whilst complying with the *mortgage* and any other *related agreement.* The factors are not closed as they will also depend on the specific situation in hand.

# **SPECIAL UNDERTAKINGS**

## **If the *property* is a unit, apartment or community title property**

If the *property* is or includes any land subject to *strata law*, the mortgagor must if reasonably requested by the mortgagee:

1. give the mortgagee copies of documents it receives from or about the owners corporation; and
2. sign and give the mortgagee all documents it asks the mortgagor for in connection with the *property* or the owners corporation,

but the mortgagor must not, without the mortgagee’s consent:

1. agree to any dealing with the common property, or
2. exercise any rights or powers under any law affecting the *property*.

At the mortgagee’s discretion (acting reasonably), it may exercise any voting rights related to the *property*. The mortgagor agrees that the mortgagee is not liable to the mortgagor if the mortgagee does not exercise its right to vote at meetings of the owners corporation. The mortgagor also agrees that the mortgagee is not liable for anything which occurs because it does vote at such meetings.

## ***Special land law (Crown land or Crown leased land)***

If the *property* is subject to *special land law*:

1. the mortgagor must:
2. comply with the *special land law* that applies to the mortgagor or to the *property*; and
3. do everything necessary or desirable to exercise any rights or entitlements the mortgagor has in relation to the *property* under the s*pecial land law*;
4. the mortgagor must not:
5. do or allow anything to be done which would cause the mortgagor’s interest in the *property* to be cancelled or otherwise affected in a way that might prejudice the mortgagee or its interest in this mortgage; or
6. make any application under the *special land law* relating to the *property* without the prior written consent of the mortgagee; and
7. the mortgagor must give the mortgagee a mortgage in the form the mortgagee requires over any new interest in the *property* or interest in any other property the mortgagor has because:
8. the nature of the tenure or holding of the *property* or the mortgagor’s interest in the *property* is altered or converted, or
9. the mortgagor obtains rights to other property from exercising its rights or entitlements under the *special land law*.

## **Building work**

The mortgagor must obtain the mortgagee’s prior written consent before any building work (excluding minor non-structural work such as painting and decorating and the upgrading or replacement of existing fittings and fixtures) is carried out on the *property*. Building work must be:

1. in accordance with plans approved by the mortgagee (acting reasonably); and
2. carried out by qualified and appropriately licensed builders and tradesmen; and
3. covered by appropriate insurances (such as contractors all-risk and public liability insurance and any insurances required by law); and
4. in accordance with all legal requirements; and
5. completed promptly and in a proper and professional manner.

The mortgagormust ensure that all builders and tradespeople are paid and that all necessary certificates procured and inspections to complete the building works are carried out. The mortgagee and its *authorised officer*s are not liable to the mortgagor if any building work is not carried out properly, even if the mortgagee or its agent or consultant have approved or are satisfied with any building work (the mortgagee’s consultants are only engaged for and on behalf of the mortgagee and any advice they give the mortgagee is only for the mortgagee’s benefit). The mortgagor may engage its own consultants to provide it with any advice it requires in respect of any building works carries out or intends carry out on the *property*. Notwithstanding clause 5.3, if the mortgagor is a *custodian* for the *superannuation fund* then it must be careful not carry out or procure any building work on the *property* that will contravene the *SIS Act* including section 67A(1)(a)(i) of the *SIS Act*.

## **Compulsory acquisition of land**

If the mortgagor becomes aware that the *property* may be resumed or compulsorily acquired by a *public authority*, the mortgagor must:

1. immediately notify the mortgagee and give it copies of all documents about the compulsory acquisition or resumption as soon as the mortgagor receives them; and
2. exercise the mortgagor’s rights in relation to the compulsory acquisition or resumption as the mortgagee tells the mortgagor to and not otherwise; and
3. keep the mortgagee informed of progress in any claim for compensation; and
4. direct the resuming authority to pay any compensation directly to the mortgagee and pay any compensation the mortgagor receives to the mortgagee (and that money will be held by the mortgagor for the mortgagee’s benefit until it is paid to the mortgagee).

If the mortgagor does not claim the compensation, the mortgagor agrees that the mortgagee may claim it. The mortgagee may apply any compensation money paid to it towards payment of the *secured money*.

# **SMSF LOANS**

## ***Custodian***

This clause 6 applies if the mortgagor is a *custodian* granting a *security* over the *property* under a *related agreement*. This mortgage is granted in accordance with the provisions of section 67A of the *SIS Act*, which permits the *superannuation fund* to borrow money provided:

1. the borrowed money is to purchase a single asset (the *property*); and
2. the *property* is held by the *custodian* for the *superannuation fund*; and
3. the *superannuation fund* has the right to acquire from the *custodian* legal ownership of the *property*; and
4. the mortgagee’s recourse against the *superannuation fund* for default on the borrowing is limited to the *property*.

## ***Security***

Despite any other provision of this mortgage:

1. the *superannuation fund* directs the mortgagor to grant, and the mortgagor agrees to grant the mortgage to the mortgagee; and
2. the mortgagee enters into the mortgage at the mortgagor’s request.

## **Mortgagor’s limited recourse obligations**

Despite any other condition in this mortgage:

1. in the absence of fraud or misrepresentation by the mortgagor, the mortgagee’s recourse (including the recourse of anyone claiming through it, such as a *receiver*, *receiver* and manager) to the mortgagor under this mortgageis limited to the *property*;
2. subject to clause 6.3(d), nothing in this clause 6.3 is intended to limit or restrict in any way any right, power or remedy the mortgagee may have against the mortgagor under this mortgageor at law or in relation to this mortgageincluding over the *property*;
3. if the mortgagee exercises any of its rights under this mortgage against the mortgagor the mortgagee will, to the extent required, comply with the *superannuation laws*; and
4. if a provision of this mortgagecontravenes a requirement of the *superannuation laws* or imposes an obligation or liability on the mortgagor which is prohibited by the *superannuation laws*, this mortgageis to be read as if that provision were varied to the extent necessary to comply with the *superannuation laws* or, if necessary, omitted.

## **Dealing with the *property***

1. The mortgagee may direct the mortgagor to deal with the *property* as directed by it in a *mortgagee notice*.
2. The mortgagee may only make directions under a *mortgagee notice* consistent with its interest as creditor secured by the *property* being directions reasonably necessary to:
   * + 1. recover the *secured money* due to it;
       2. preserve the *property*; and / or
       3. take any action that the mortgagee is authorised to take under the mortgage.

## **Mortgagor’s own enquiries**

1. The mortgagee makes no warranty or representation in relation to the structure of the *superannuation fund* or the basis upon which the mortgagor has acquired or will hold the *property*.
2. The mortgagor acknowledges that the mortgagee has made no representation, has given no advice and takes no responsibility in respect of or in relation to the *property* including the suitability or the appropriateness of the *property* as an investment for the *superannuation fund.*

## **Mortgagor’s acknowledgments**

The mortgagor acknowledges having received and read a copy of the mortgage (which includes this document) before signing it.

# **DEFAULT UNDER THE MORTGAGE**

## **When a default occurs under this mortgage**

A default event occurs if:

1. the mortgagor or any *relevant party*:
2. **(failure to pay)** does not pay all or any part of the *secured money* when it is due; or
3. **(breach of obligation or promise)** breaches an obligation or promise to the mortgagee under this mortgage or a *related agreement*; or
4. **(non approved or illegal use of *secured money*)**uses the *secured money* for a purpose not approved by the mortgagee or for an illegal purpose; or
5. **(bankrupt or insolvent)** is or becomes bankrupt, insolvent or otherwise unable to pay their debts when they fall due, or makes or attempts to make an arrangement with creditors; or
6. **(judgment against the mortgagor)** has a judgement made against them which remains unsatisfied for 30 days or more; or
7. **(loss of capacity)** is not capable or becomes incapable of managing their affairs (as the case may be); or
8. **(fraud)** acts fraudulently in respect of or in connection with this *mortgage* or any other *related agreement* (even if the mortgagor is not a party to a *related agreement*);
9. **(incorrect or misleading information given)** any information, representation or warranty given to the mortgagee about the mortgagor, a *relevant party* or any *security* proves to be incorrect or misleading in any material respect; or
10. **(unenforceable mortgage)** this mortgage or any other *related agreement* does not have effect, or stops having effect, in accordance with its terms for any reason (other than as a result of the mortgagee’s direct act or omission); or
11. **(property liable to be seized)** the *property* is, or is liable to be, seized, taken in execution or subject to any other legal process; or
12. **(receiver or external administrator appointed)** a *receiver* or external administrator is appointed to any of the mortgagor’s assets; or
13. **(if the mortgagor is a company)** if the mortgagor is a company any of the following occurs:
14. an application or order is made or a resolution is passed for the mortgagor’s winding up, or the mortgagor becomes subject to external administration;
15. it reduces or proposes to reduce its authorised capital (without the prior written consent of the mortgagee);
16. it merges or consolidates or proposes to merge or consolidate with another entity (without the prior written consent of the mortgagee);
17. there is a changein the *control* of the mortgagor or of any company of which the mortgagor is a subsidiary (including any ultimate subsidiary) (without the prior written consent of the mortgagee); or
18. a receiver, manager, receiver and manager, administrator, controller, provisional liquidator, or liquidator is appointed to any part of the mortgagor’s assets; or
19. any application or action is commenced to deregister the mortgagor.

## **What happens if a default under this mortgage occurs**

If a default occurs, the mortgagor is in default under each agreement between the mortgagor and the mortgagee, and subject to clause 7.3 (including giving the mortgagor notices required by this mortgage or the law), the mortgagee may:

1. require that the mortgagor immediately pay the mortgagee the *secured money*; and
2. take or give up possession (as often as the mortgagee thinks necessary) of the *property* and of any rents and profits of the *property*; and
3. appoint one or more *receiver*s to the *property* and its income; and
4. deal with the *property* as if the mortgagee owns it to the extent permitted by law and acting reasonably (such as):
5. selling it in any way including rescinding, varying or completing any contract for sale for the *property*;
6. improving it in any way (including repair, cleanse, repaint, demolish, rebuild, alter or construct completely new buildings or structures on the *property*);
7. leasing or licensing it on any terms and for any period (and to the extent possible, no legislation operates to restrict or limit any lease or license by the mortgagee under this clause);
8. prepare plans and specifications and obtain approvals from any competent authority in relation to the *property*;
9. give or transfer the *property* to any competent authority;
10. acquire additional property for development, sale or lease in conjunction with the *property;*
11. carry on any business activities within the *property*; or
12. borrow or obtain financial accommodation on the *security* over the *property*, and lend or grant financial accommodation to a receiver on the *security* over the *property* for the purposes of enabling the mortgagee or a *receiver* to exercise a right under the mortgage;
13. rectify any default and recover from the mortgagor, the mortgagee’s reasonable costs of doing so (including paying any money that the mortgagor owes the mortgagee or that the mortgagor owes under any agreement relating to the *property*, and also includes the right to pay out any earlier mortgage);
14. eject the mortgagor or any other occupants from the *property* and take possession of the *property*. If the mortgagee takes possession of the *property* it can subsequently withdraw from possession of the *property*; and
15. exercise all other rights, powers and remedies that a mortgagee or owner has at law in relation to the *property*; and
16. perform any of the mortgagor’s obligations under the mortgage.

## **How the mortgagee exercises its rights on default**

1. The mortgagee will **not** exercise its rights, powers and remedies under this clause 7 unless:
2. the mortgagee has given the mortgagor all relevant notices required to be given by this mortgage or the law (subject to clause 7.3(b), the mortgagee will give the mortgagor at least 30 days written notice of default); and
3. the relevant notice period and any postponement period have elapsed; and
4. the default specified in the notice has not been remedied.
5. The mortgagee does not need to give the mortgagor a notice of default or wait the required notice period before commencing enforcement action if:
6. the mortgagee reasonably believes that it was induced by fraud by the mortgagor or a guarantor to enter into the mortgage; or
7. the mortgagee has made reasonable attempts to locate the mortgagor or a guarantor without success; or
8. a court authorises it to begin enforcement proceedings; or
9. the mortgagee reasonably believes that the mortgagor or a guarantor has removed or disposed of the *property* secured by this mortgageor that urgent action is necessary to protect the *property* secured by this mortgage.
10. The mortgagee will only take enforcement action in relation to a non-monetary default(that is a default that does not involve the non-payment of any money) if the event by its nature is material, or the mortgagee reasonably considers that the event has had, or is likely to have, a material impact on:
11. the mortgagor’s or a guarantor’s ability to meet the mortgagor’s or their financial obligations to the mortgagee; or
12. the mortgagee’s credit or security risk (including the mortgagee’s ability to assess these risks); or
13. the mortgagee’s legal or reputational risk including where any event in clause 7.1(a)(ii), 7.1(a)(iii) or 7.1(b) occurs.

## **Appointing a *receiver***

If the mortgagee appoints any *receiver*:

1. they have the power to do any of things the mortgagee may do under clause 7.2 or which a *receiver* may otherwise do at law in relation to a company (as if the mortgagor were a company); and
2. the mortgagee may set their remuneration as the mortgagee (acting reasonably) thinks appropriate; and
3. if there is two or more of them, the mortgagee may specify whether they act independently or together; and
4. they are the mortgagor’s agent and the mortgagor is responsible for what they do or omit to do (except to the extent the mortgagee notifies the mortgagor otherwise); and
5. the mortgagor must pay their remuneration and their costs and expenses.

## **Reasonable enforcement expenses**

If a default event occurs, the mortgagor must pay the mortgagee’s reasonable enforcement expenses (including those expenses the mortgagee reasonably incurs in preserving or maintaining the *property*, such as payment of insurance, rates, taxes, fees and outgoings). The mortgagor authorises the mortgagee to incur those expenses.

## **If the mortgagee or a *receiver* sells the *property***

If the mortgagee or a *receiver* sells or otherwise disposes of the *property*, any purchaser of the *property* need not enquire whether the mortgagee or the *receiver* had the right to sell or dispose of the *property* or whether that right was exercised properly.

## **Proceeds less than the *secured money***

1. If the proceeds from the sale of the *property* are not sufficient to repay the whole of the *secured money* the mortgagor remains liable to the mortgagee for the balance.
2. The mortgagor’s liability continues even if the *property* has been released from this mortgage and the mortgagee may sue the mortgagor to recover the amount outstanding.

## **What happens to chattels on default**

This clause deals with chattels which are not mortgaged to the mortgagee. Chattels are items which are not attached to the *property* or building (such as personal effects, TVs, washing machines and furniture). Examples of items which are not chattels are built-in ovens, television antennas, carpets and light fittings. If a default event occurs the mortgagor must remove its chattels from the *property* if the mortgagee asks it to. If the mortgagor does not remove its chattels within 30 days of being asked to do so (without reasonable explanation from the mortgagor), those chattels will be treated as being abandoned by the mortgagor, in which case the mortgagee may:

1. remove them and store them in the mortgagor’s name and at the mortgagor’s cost; and/or
2. sell them for the price and in the way the mortgagee reasonably chooses.

Storage costs and the cost of selling the chattels will be deducted from the sale price and any surplus will be credited to the mortgagor’s account. Neither the mortgagee nor anyone acting for it, is responsible for any chattels removed from the *property*, and is not liable for conversion of, or for loss or damage to, any of the chattels. In these circumstances, the mortgagor can reduce the risk of loss or damage to the chattels by arranging for their remove and collection (when asked to do so by the mortgagee under this clause).

# **POWER OF ATTORNEY**

## **Appointment and power**

The mortgagor irrevocably and for valuable consideration received appoints the mortgagee and any of its directors, secretaries, each *receiver* and each of its *authorised officer*s jointly and each of them severally as the mortgagor’s attorney (each an attorney) and authorises each attorney: (i) to sign anything and do anything reasonably required to make sure that the mortgage is valid; and (ii) if a default event occurs (subject to clause 7.3) each attorney has the power to do anything on the mortgagor’s behalf and in the attorney’s name or in the mortgagor’s name which, in the attorney’s reasonable opinion:

1. would give effect to a right, power or remedy the mortgagee has; or
2. the mortgagor is required to do,

under this mortgage, a *related agreement* or under the law including:

1. to sign anything and to do anything reasonably necessary to perfect this mortgage;
2. do anything in relation to the *property* as the *attorney* (acting reasonably) thinks fit, and do anything the mortgagor may lawfully authorise an *attorney* to do in relation to the *property*; and
3. if the mortgagor is a trustee (including a *custodian*), to exercise and perform any power, authority, duty or function conferred or imposed on the mortgagor.

The appointment is given by way of security and cannot be revoked and the mortgagor must ratify all actions that an attorney lawfully does under the power of attorney.

## **Attorney may delegate powers**

An attorney may delegate its powers (including the power to delegate) to any person for any period and may revoke the delegation.

# **ENDING THIS MORTGAGE**

## **When this mortgage discharges**

This mortgage continues in full effect until the mortgagee signs and gives the mortgagor an unconditional discharge of both the *property* and the mortgagor’s personal obligations under this mortgage. The mortgagor is only entitled to a discharge if:

1. all of the *secured money* has been paid to the mortgagee; and
2. the mortgagee is satisfied that it will not have to repay or refund any money paid to it (having regard to the law relating to insolvency or the protection of creditors); and
3. the mortgagee is reasonably satisfied that:
4. the mortgagor does not have a continuing liability to it; and
5. there is no reasonable prospect that the mortgagor will owe the mortgagee any money in the future,

under any agreement secured by this mortgage.

## **Effect of release of this mortgage**

A full or partial release of this mortgage does not release the mortgagor from any indemnity or personal liability under this mortgage until the mortgagee receives the *secured money* in full (and any amount payable by the mortgagor under this mortgage). This is so despite any:

1. receipt given, payout figure quoted or other form of account stated; or
2. error or miscalculation the mortgagee makes.

## **Reinstating or replacing rights**

If the mortgagee has to repay or refund any money paid to it in reduction of the *secured money* for any reason (including under a law relating to insolvency or the protection of creditors):

1. the money remains owing and the mortgagee may recover the amount of that payment from the mortgagor and it has all the same rights it would have if that payment to it had never been made; and
2. the mortgagor must immediately do everything the mortgagee requires to replace or reinstate this mortgage or any *related agreement* which has been released in connection with that payment; and
3. the mortgagor indemnifies the mortgagee against and must pay on demand all costs and expenses in connection with replacing or reinstating this mortgage and any *related agreement*.

# **NOTICES**

## **Notices the mortgagee gives**

The mortgagee may give the mortgagor any notice or other document (including to be served on the mortgagor in any court proceedings it takes) by:

1. delivering it to the mortgagor personally;
2. leaving it at the mortgagor’s home or business address last known to the mortgagee;
3. leaving it at the address the mortgagor has given the mortgagee to send notices to; or
4. sending it by post, email or other form of electronic transmission to any of those addresses.

The mortgagee may also give the mortgagor such a notice or document in any other way authorised by law.

## **Notices sent to the mortgagee**

Notices sent to the mortgagee must be given to it in any lawful way and must be addressed to the mortgagee at its address in this mortgage or otherwise such other address as it notifies in writing from time to time in a *related agreement*.

## **When notice is received**

A notice or other document is taken to be given to the mortgagor:

1. if given personally - on the date shown on it or the date the mortgagor receives it, whichever is the later;
2. if sent by post - on the date shown on it or the date it would ordinarily be delivered by post, whichever is the later; or
3. if sent by electronic transmission (including email) - on the date shown on it or the date the computer produces a report indicating that the notice or other document was sent, whichever is the later.

## **Signing notices by the mortgagee**

A notice from the mortgagee or other document may be signed by its *authorised officer*. If the notice or other document is given electronically, it is taken to be properly signed and issued by the mortgagee.

## **Change of mortgagor address**

The mortgagor must tell the mortgagee in writing as soon as its address and other contact information changes.

# **GENERAL MATTERS**

## **The mortgagee does not waive its rights**

The mortgagee may exercise its rights under this mortgage even if:

1. it could have done so before but did not do so, or delayed in doing so; or
2. it has exercised the right before (in whole or in part); or
3. it has exercised another right under this mortgage or a *related agreement* before; or
4. it holds other securities for payment of the *secured money*.

## **Delegation to a manager**

The mortgagee may delegate some or all of its rights and powers under this mortgage to a person named as the "manager" in a *related agreement*. If the mortgagee does, the manager and its *authorised officer*s may exercise those rights and powers on the mortgagee’s behalf.

## **GST (if applicable)**

## If GST is or becomes payable in respect of any supply the mortgagee makes under or in connection with this mortgage, the payment for that supply will be increased by the amount necessary so that the mortgagee actually receives what the mortgagee would have been entitled to receive had there not been that GST (after allowing for any input tax credit the mortgagee determine the mortgagee can claim).

## **Authority to complete and date**

The mortgagor authorises the mortgagee and each of its *authorised officer*s to complete any blanks which may be left in this mortgage (such as to date this mortgage) required to enable it to be stamped and registered.

## **Mortgagee dealings with this mortgage**

The mortgagor consents to and agrees that the mortgagee may at any time assign, novate or otherwise deal with all or any part of the mortgagee’s rights and obligations under this mortgage*,* any debt it secures and any other *related agreement* and the mortgagor must sign anything and do anything the mortgagee reasonably requires to enable the mortgagee to do any of these things. The mortgagee may, in connection with these matters give information about this mortgage*,* any debt it secures and any other *related agreement* to any party the mortgagee deals with or intends to deal with in relation to these provisions.

## **Unenforceable provisions**

Any interpretation of this mortgage that results in all provisions being enforceable is to be preferred to an interpretation that does not. If by changing or severing a word or words:

1. an illegal, void or unenforceable provision of this mortgage can be made legal and enforceable; or
2. a provision breaching or imposing a prohibited obligation or liability under the *credit law* can be made to comply with that Act,

that word or those words must be read as changed to the extent necessary or, severed. If this mortgage is illegal, void or unenforceable unless a whole provision or provisions are severed, the provision or provisions must be read as severed.

## **Consent and waiver**

The mortgagee’s consent, approval or waiver is only effective if in writing. The mortgagee may impose conditions on any consent, approval or waiver as it reasonably requires.

## **How the mortgagee can apply a set off**

If the mortgagee exercises its right of enforcement in accordance with this mortgage, the mortgagee may also set off and apply any amount it owes to the mortgagor against the *secured money* in any lawful way. The mortgagee may use any money held in any of the mortgagor’s accounts under this mortgage to pay to the mortgagee any money payable by the mortgagor under this mortgage. The mortgagee may treat all of those accounts as a single account for this purpose.

## **Changes to this mortgage**

Changes to this mortgage must be in writing signed by the mortgagor and the mortgagee.

## **Information the mortgagee may disclose**

The mortgagee may disclose as much information as it considers appropriate about the mortgagor, this mortgage or the mortgagor’s accounts to any person:

1. who is considering entering into contractual relations concerning a *loan agreement* or a *related agreement*; or
2. where necessary to protect the mortgagee’s position concerning this mortgage or a *related agreement*; or
3. where disclosure is compelled by law or duty to the public; or
4. with the mortgagor’s express or implied consent.

## **Governing law**

This mortgage is governed by the law of the State or Territory in which the *property* is situated. The mortgagor agrees that the courts of that place have the right to decide any dispute in connection with this mortgage.

## **Limitation of liability**

If the mortgagee enters the mortgage in its capacity as a trustee of a trust, its liability is limited to the assets of that trust.

## **Defined terms**

In this mortgage:

***authorisation*** means any licence, permit, authority or consent issued or required to be issued by any *public authority* or other authority for any activity, matter or thing.

***authorised officer*** means, in relation to us, any person whose title includes the word ‘manager’, any person acting for and on behalf of the mortgagee as ‘Manager’ under a *related agreement* and any solicitor or agent from time to time acting for the mortgagee.

***control***:

1. with respect to a company means a change (from that prevailing at the earliest date of a *related agreement*) in the person/s who control any of the following:
2. more than 50% of the votes eligible to be cast in the election of directors or any similar matter; or
3. the right to appoint or remove directors (or members of a governing body having functions similar to a board of directors) representing more than 50% of the votes exercisable by the directors (or persons having similar functions); or
4. an interest of more than 50% in any category of the profits, distributions or net liquidation proceeds.
5. with respect to a trust means a change (from that prevailing at the earliest date of a *related agreement*) in the person/s who control any of the following:
6. the right to appoint or remove the trustee;
7. the right to appoint or remove the appointor (if there is one under the *governing documents*) of a trust; or
8. an interest of more than 50% in any category of income or capital distribution.

***custodian*** means, in relation to a loan to a *superannuation fund,* a custodian, holding trustee or security trustee specified in a *related agreement*.

***credit law*** means:

1. the *National Consumer Credit Protection Act 2009 (Cth)*;
2. the *National Consumer Credit Protection Regulations 2010 (Cth)*; and
3. the *National Credit Code, contained in Schedule 1 of the National Consumer Credit Protection Act 2009 (Cth)*.

***encroachment***includes a building or structure (or any part of a building or structure) that intrudes on or crosses over another property boundary. Some examples (without limitation) of an encroachment may include a fence, eave and / or gutter (or part of a fence, eave and / or gutter) that crosses over another property boundary.

***governing document***means a document that sets out the power, authority, duty, responsibility or function of a person. If the person is a company it includes the company’s constitution and in relation to a trustee, includes the document that governs the trust.

***loan agreement*** means any loan agreement, letter of offer or contract now or in the future providing for the provision of credit by the mortgagee to the mortgagor or to another person at the mortgagor’s request.

***material damage*** includes any defect in or damage to a material part of any building or structure on the *property* or any structural element to the *property*, for example a load-bearing component essential to the stability of the building such as foundations, footings, floors, walls, roofs, columns or beams, or a fire safety system or a waterproofing element.

***mortgagee notice*** means a notice given by the mortgagee to the mortgagor directing the mortgagor to take or refrain from taking steps.

***property*** means the property specified in the mortgage and includes all buildings, fences, structures, carpets, floor coverings, light fittings, blinds, curtains and other objects attached to the *property*. It includes any contract or other rights relating to that *property* such as building contracts, leases, development approvals, building approvals, other approvals, plans, specifications, consents and licenses relating to the use of the *property*, and all income (such as rent) to be derived from the *property* at any time. It also includes any right to occupy, lease, or license relating to or adjoining the *property*. Where this mortgage is of a lease of land, ‘*property*’ includes the land the subject of the lease, and the house or unit and other buildings and improvements on the land and includes any contract or other rights relating to the lease.

***public authority*** includes the State or Territory, the government, a government department or agency, a local authority or other authority administering an applicable law.

***receiver*** includes a *receiver* and manager.

***registered owner*** includes:

1. the registered freehold owner of the *property*; or
2. where the *property* is subject to a lease arising under law, the lessee of the *property*.

***related agreement*** means this mortgage, a *loan agreement* or any *security* or other document at any time entered into with the mortgagee which relates to the *secured money*.

***relevant party*** means a person (other than the mortgagee or mortgagor) who is a party to a *related agreement*.

***secured money*** means all amounts that are or may become owing or payable by the mortgagor to the mortgagee in connection with any arrangement between the mortgagor and the mortgagee now or in the future, including under:

1. a *loan agreement*; or
2. a guarantee and indemnity given in relation to a *loan agreement*; or
3. a *security*,

and includes (without limitation):

1. all money which an agreement says is *secured money* or which the mortgagor agrees is secured by this mortgage; and
2. all money which the mortgagor has guaranteed to the mortgagee will be paid; and
3. interest on all of the above amounts.

Money is part of the *secured money* whether it is:

1. provided to the mortgagor or to anyone whose obligations the mortgagor has guaranteed, alone or with anyone else; or
2. owing immediately or at some time in the future; or
3. owing actually or contingently; or
4. provided at a time before or after this mortgage is signed or at some time in the future.

***security*** means each *security interest*, now or in the future given to the mortgagee in relation to a *loan agreement*.

***security interest*** means a mortgage, bill of sale, guarantee, indemnity, pledge, lien, charge, preferential right, agreement or other arrangement given or created as *security* including any "security interest" as defined under any legislation applying in the State or Territory in which the *property* is situated.

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

***special land law*** means law of the State applying to the *property* such as where the *property* is Crown land or subject to a lease from the Crown.

***strata law*** means all applicable laws now or in the future governing vertical, horizontal, underground or air space subdivision of land or a building into lots or units and common property and which apply to the *property*.

***superannuation fund*** means the ‘Superannuation Fund’ specified in a *related agreement.*

***superannuation* laws** means the *SIS Act* and the *Superannuation Industry (Supervision) Regulations* *1994 (Cth).*

***tax*** includes any taxes, levies, imposts, and withholdings levied or imposed by a government, a *public authority* and includes GST as defined in the A New Tax system (Goods and Services Tax) Act 1999 (Cth).

## **Interpretation rules**

In this mortgage:

1. a reference to a person includes that person’s successors and assigns;
2. a reference to a thing includes all and each part of that thing;
3. a reference to a document includes that document as changed or replaced from time to time;
4. a reference to a statute includes that statute as amended, repealed or replaced from time to time;
5. a reference to a person includes an individual, a corporation, a *public authority* or other entity;
6. a reference to a gender includes all other genders;
7. a reference to currency is a reference to Australian dollars;
8. headings are included for guidance only and must not be used for interpretation.
9. a reference to ‘includes’ is given by way of example and is not intended to limit the term to which it applies;
10. words or phrases which are derived from defined words or phrases have a similar meaning to the defined term;
11. the singular includes the plural and vice versa;
12. if the mortgagor agrees not to do something, it will also not attempt to or permit or cause that thing to be done; and
13. in relation to appointments, obligations, amounts owed, powers and promises a reference to ‘alone’, ‘together’ or ‘alone and together’ is a reference to ‘severally’, ‘jointly’ and ‘severally and jointly’ respectively.