



# Superannuation Acquisition Financing Deed

National Australia Bank Limited (ABN 12 004 044 937)  
and  
The parties referred to in Schedule 1.



**Security Trustee Undertaking** means any guarantee, indemnity or guarantee and indemnity given by the Security Trustee in favour of the Bank, in a form satisfactory to the Bank.

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

**Tax Act** means the Income Tax Assessment Act 1936 (Cth), the Income Tax Assessment Act 197 (Cth) or both, as appropriate.

**Transaction Document** means each "transaction document" as defined in a Letter of Offer or, if that term is not defined in the Letter of Offer, the Letter of Offer:

- (a) and all other agreements relating to the Loan;
- (b) this deed;
- (c) any Mortgage;
- (d) any Security Trustee Undertaking or Promisor Undertaking not contained in this deed;
- (e) any Further Security; and
- (f) any other document referred to or connected with any of them.

**Trust Assets** means, in respect of a Loan, the Financed Asset in respect of that Loan together with, the Income and any other property or right received or derived by the Security Trustee in respect of that Financed Asset.

## 1.2 Interpretation

In this deed, headings and boldings are for convenience only and do not affect the interpretation of this deed and, unless the context otherwise requires:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing a gender include any gender;
- (c) other parts of speech and grammatical forms of a word or phrase defined in this deed have a corresponding meaning;
- (d) a reference to any thing (including any right) includes a part of that thing but nothing in this clause 1.2(d) implies that performance of part of an obligation constitutes performance of the obligation;
- (e) a reference to a clause, party or schedule is a reference to a clause of, and a party and schedule to, this deed and a reference to this deed includes any schedule;
- (f) a reference to a law, a statute, regulation, proclamation, ordinance or by law includes all laws, statutes, regulations, proclamations, ordinances or by laws amending, consolidating or replacing it, whether passed by the same or another government agency with legal power to do so, and a reference to a statute includes all regulations, proclamations, ordinances and by laws issued under that statute;



- (g) a reference to a document (including the Letter of Offer, a Promisor Undertaking, a Security Trustee Undertaking, or the Mortgage) includes it as amended, supplemented, novated or replaced from time to time, except to the extent prohibited by this deed;
- (h) a reference to a party to a document includes that party's successors and permitted substitutes or assigns;
- (i) no provision of this deed will be constructed adversely to a party solely on the ground that the party was responsible for the preparation of this deed or that provision;
- (j) a covenant or agreement on the part of two or more persons binds them severally;
- (k) a reference to an agreement other than this deed includes an undertaking, deed, agreement or legally enforceable arrangement or understanding whether or not in writing;
- (l) a reference to a document includes any agreement in writing, or any certificate, notice, instrument or other document of any kind;
- (m) mentioning anything after include, includes or including does not limit what else might be included; and
- (n) where a party comprises two or more persons, a reference to such party shall be read as a reference to such persons jointly and severally.

#### **Capacities of Borrower and Security Trustee**

Where the Borrower or the Security Trustee comprises two or more persons and one or more (but not all such persons) are both persons comprising the Borrower and the Security Trustee:

- (a) a reference to the Security Trustee or Borrower is a reference to the person in the relevant capacity; and
- (b) to the extent that the Security Trustee gives a Security Trustee Undertaking, its obligations in respect of the Security Trustee Undertaking should be read as obligations discrete from the obligations of the Borrower, conferring recourse against the assets of the Security Trustee other than the Trust Assets (but not any asset of the Fund other than the relevant Financed Asset).

Nothing in this clause shall entitle the Borrower to purport to appoint persons as Security Trustee such that the Security Trustee and Borrower comprise identical persons.



#### 1.4 Capacities of Promisor

Where a Promisor is a person who is also a Borrower

- (a) a reference to the Promisor is a reference to the Borrower or Security Trustee; and
- (b) its obligations in respect of the Promisor Undertaking are obligations discrete from the obligations of the Borrower in respect of the Fund conferring recourse against the assets of the Fund other than the relevant Financed Asset.

---

## 2 Appointment and Direction of Security

### 2.1 Appointment and Directions

The Borrower unconditionally and irrevocably appoints the Security Trustee in respect of the Trust Assets on the terms of this deed as Security Trustee to:

- (a) execute and deliver to the Bank:
  - (i) this deed;
  - (ii) the Security Trustee Undertaking; and
  - (iii) any Mortgage;
- (b) acquire and hold on trust the Trust Assets in respect of each Financed Asset in a separate trust, as bare trustee for the Borrower, subject to the Beneficial Interest in the Trust Assets subject to the Beneficial Interest in the Trust Assets;
- (c) keep the Trust Assets of each trust separate from the assets of each other trust as held for the benefit of the Borrower;
- (d) dispose of or deal with the Trust Assets on the terms of this deed and not to Dispose or deal with the Trust Assets otherwise;
- (e) deliver to the Bank the documents evidencing the Financed Asset.

### 2.2 Acceptance

The Security Trustee in consideration of the Borrower's Contract and the Borrower and the Bank entering into this deed, each is party accepts its appointment and agrees to comply with the terms of this deed and Instructions and otherwise to comply with the terms of this deed.



### 2.3 Other arrangements

The Borrower and Security Trustee acknowledge and agree that the terms of this deed:

- (a) constitute the entire agreement between them in relation to the Trust Assets;
- (b) apply to the Trust Assets to the complete exclusion of any other trust deed arrangement or other instrument relating to any other property held by either or both of them; and
- (c) shall not be varied or supplemented without the prior written consent of the Bank and any variation or supplement purported to be made without that consent shall be of no force and effect.

---

## 3 Right to Legal Title

### 3.1 Borrower's Right when no Amount Owing

Despite any other terms of this deed, any Mortgage or any other Transaction Document, once all Amounts Owing in respect of the Loan have been fully and finally paid, the Borrower may give an Instruction to the Security Trustee requiring it to transfer legal title to the Financed Asset and any other Trust Assets to the Borrower, free from any claim of the Bank.

### 3.2 Release of Mortgage

The Bank agrees to execute and deliver any release of any Mortgage required to allow the Security Trustee to comply with such an Instruction.

---

## 4 Instructions when Amounts Owing

So long as there are any Amounts Owing in respect of a Loan:

- (a) the Borrower may Instruct the Security Trustee to pay or transfer to it or as it directs any Trust Assets other than the Financed Asset, free from any claim of the Bank;
- (b) the Borrower may not Instruct the Security Trustee to Dispose of the Financed Asset;
- (c) if a Default Event has occurred and is subsisting, the Bank may give any Instructions to the Security Trustee with respect to the Financed Asset as are permitted by the Mortgage, including without limitation that the Financed Asset be Disposed of in accordance with the Mortgage.

---

## 5 Present Entitlement to Income

The Borrower is presently entitled to the Income of all Trust Assets.



---

## 6 Security Trustee Undertaking and Promisor Undertakings

- (a) If in accordance with a Letter of Offer, one or more of the following is to occur:
- (i) the Security Trustee is to give a Security Trustee Undertaking;
  - (ii) a Promisor is to give a Promisor Undertaking; or
  - (iii) a person not a party to this deed (**Additional Promisor**) is to become a Promisor and is to give a Promisor Undertaking,
- then on or before the giving of such Security Trustee Undertaking or Promisor Undertaking:
- (iv) the Security Trustee or Promisor (as the case may be) will complete and execute the Acknowledgement; and
  - (v) any Additional Promisor will complete and execute the Accession Deed.
- (b) The Bank will accept and execute the Accession Deed as soon as reasonably practicable if:
- (i) the Bank has received all documents and evidence that the Bank may require in relation to the Additional Promisor, each in form and substance satisfactory to the Bank; and
  - (ii) the Additional Promisor has complied with any identification procedures that the Bank may require.
- (c) If the Bank accepts and executes the Accession Deed, the Additional Promisor becomes a party to this deed as a "Promisor" with effect on and from the date specified in the Accession Deed and is bound by the terms of this deed.

---

## 7 Limitation on Recourse

### 7.1 Limitation on Bank's Recourse

The Bank's recourse against the Borrower in respect of the Borrower's liability to pay any Amount Owing in respect of a Loan is limited to its rights relating to the Financed Asset relating to that Loan in accordance with this deed.

The Bank may not seek to recover any shortfall in the Amount Owing in respect of a Loan by bringing proceedings against the Borrower (including without limitation a proceeding to be subrogated to any right of the Borrower to be indemnified from, or have recourse to any asset of the Fund other than its beneficial interest in the Financed Asset that relates to that Loan) or to have the Borrower wound up or (if the Borrower is or comprises an individual) to have the Borrower declared Bankrupt.

However, the Bank may:

- (a) do any thing necessary to enforce its rights in connection with the Security Trustee Undertaking, any Mortgage or any Promisor Undertaking except to



the extent that such enforcement would give recourse to an asset of the Fund which is not a Financed Asset; and

- (b) take proceedings to obtain:
  - (i) an injunction or other order to restrain any breach of the Transaction Documents by any party;
  - (ii) declaratory relief or similar judgement or order as to the obligations of any party; or
  - (iii) any judgement against the Borrower which it is required by the Code of Banking Practice to obtain before enforcing a judgment against the Security Trustee under a Security Trustee Undertaking or any Promisor under a Promisor Undertaking.

#### **7.2 Limitation on Security Trustee's Lien and Indemnity**

The Borrower and Security Trustee acknowledges and agrees that the rights which, but for this clause, by operation of law, the Security Trustee would have:

- (a) to be indemnified out of the Trust Assets against liability arising in respect of the Security Trustee Undertaking; and
- (b) of lien over the Trust Assets,

are limited to the Financed Asset and until all Amounts Owing in respect of the Loan in respect of that Financed Asset have been fully and finally repaid and any such rights may only be exercised with the prior written consent of the Bank and as the Bank may Instruct.

#### **7.3 Limitation on Recourse of Security Trustee and Promisors**

Each of the Security Trustee and each Promisor acknowledges and agrees that:

- (a) it has no right of indemnity, recourse, contribution or subrogation against the Borrower arising in respect of any Security Trustee Undertaking, Promisor Undertaking, any Mortgage or any Further Security except to the extent of the Financed Asset;
- (b) it has no right to have the Borrower wound up (or if the Borrower is or comprises an individual) to have the Borrower declared Bankrupt; and
- (c) until all Amounts Owing in respect of the Loan have been fully and finally repaid any such rights described in this clause 7.3 may only be exercised with the prior written consent of the Bank and as the Bank may Instruct.

#### **7.4 No Cross Collateralisation and no additional recourse**

The Bank acknowledges and agrees that:


- (a) a Mortgage in respect of a Financed Asset secures the obligations of the Security Trustee under its Security Trustee Undertaking in respect of the Loan relating to that Financed Asset, and not under its Security Trustee Undertaking in respect of any other Loan; and



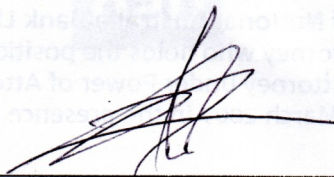
EXECUTED AS A DEED

SIGNATURES

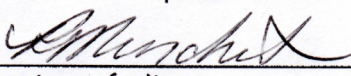
Signed Sealed and Delivered by Nathan John Chalmers as trustee of The Chalmers Superannuation Fund and Promisor in the presence of:

  
Signature of witness

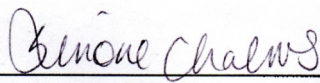
Resmo Minchinton  
Name of witness (print)

  
Signature

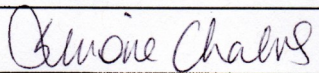
Signed Sealed and Delivered by Simone Elizabeth Chalmers as trustee of The Chalmers Superannuation Fund and Promisor in the presence of:

  
Signature of witness

Resmo Minchinton  
Name of witness (print)

  
Signature

Executed by Phalanx Pty Ltd ACN 603 897 892 as Security Trustee and Promisor in accordance with Section 127 of the Corporations Act 2001 (Cth):




Signature

SIMONE ELIZABETH CHALMERS

Full Name (BLOCK LETTERS)

Director / Secretary

Office Held



Signature

NATHAN JOHN CHALMERS

Full Name (BLOCK LETTERS)

Director

Office Held

\* Please tick here if you are signing as Sole Director and Sole Company Secretary



Schedule 3: Accession Deed

Signed Sealed and Delivered for and on behalf of National Australia Bank Limited by its Attorney who holds the position of Level 3 Attorney under Power of Attorney dated 1 March 2007 in the presence of:

*Brennan*

Signature of Witness

*SHENLEY BRENNAN*

Name of Witness (print)

*Garry Trezona*

Signature of Attorney

GARRY TREZONA  
C/- 144 Marine Tce  
Geraldton WA 6530  
PARTNER - BUSINESS

2. ACCESSION

3. Acknowledgement

<i>[Signature]</i>	<i>[Signature]</i>
Full Name (BLOCK LETTERS)	Full Name (BLOCK LETTERS)
<i>[Signature]</i>	<i>[Signature]</i>

EXECUTED AS A DEED [Note: Schedule 3 is not executed in the Superannuation Acquisitions Financial Deed]



