



# UBS Investment Loan

---

Issued by UBS AG, Australia Branch ABN 47 088 129 613, AFSL  
231087

## Information Memorandum

10 February 2012

# Important Notice

---

This Information Memorandum ("IM") is dated 10 February 2012.

You should ensure that you read and understand this IM before deciding whether to use the UBS Investment Loan.

## **Applications**

If you wish to use the UBS Investment Loan, you must complete and return the Application Form. The Application Form and corresponding Term Sheet may be requested from UBS. The UBS Investment Loan will only be provided to you upon UBS accepting your Application made using that Application Form.

## **Eligible Investment**

References in this IM to an Eligible Investment are included solely for the purposes of identification of the financial products to which the Loan Facility relates. No Issuer of any Eligible Investment has authorised, been involved in the preparation of, or caused the issue of this IM (other than UBS, if UBS is the Issuer). No Issuer of any Eligible Investment takes any responsibility for any part of this IM (other than UBS, if UBS is the Issuer).

## **Your decision to invest**

It is important that you carefully read this IM in its entirety before deciding to use the UBS Investment Loan.

Documents of this kind cannot take into account your own investment objectives, financial situation or particular needs. Accordingly, nothing in this IM is a recommendation by UBS or any of its related entities or by any other person concerning investment through, or the use of, the UBS Investment Loan. You should not only consider the information in this IM but also obtain independent financial, legal and taxation advice as to the suitability of leveraging your investment using the UBS Investment Loan (bearing in mind your investment objectives, financial situation and particular needs).

## **Restrictions on distribution of the IM**

The offer to which this IM relates is only available to persons receiving this IM in Australia who are tax residents of Australia. This IM does not constitute an offer of the UBS Investment Loan in any place in which, or to any person to whom, it would not be lawful to make such an offer. The distribution of this IM in jurisdictions outside Australia may be restricted by law and any person who resides outside Australia into whose possession this IM comes (including nominees, trustees or custodians) should seek advice on and observe those restrictions. The UBS Investment Loan is not a security and has not been, and will not be, registered under the US Securities Act 1933 (as amended) and may not be offered or sold in the United States or to, or for the account of or benefit of, US persons. The offer of Eligible Investments may be similarly restricted—for more information, investors should refer to the terms of offer set out in the relevant offer documents for the Eligible Investment.

## **Disclosure of Interests**

UBS and its related entities, and their directors and employees may have pecuniary or other interests in Eligible Investments. UBS and its related entities may be the issuer of an Eligible Investment and will therefore derive financial benefits from the placement of that investment. Customers who have received this IM from a financial intermediary, adviser or broker should note that if they utilise the UBS Investment Loan, UBS may pay that intermediary, adviser or broker a commission or fee in the nature of an up-front selling fee and/or a trail fee (which will be funded out of UBS's revenue from offering the product). These amounts will depend upon the Loan Balance in relation to any Loan. For more information see section 2 of this IM.

## **Update of information**

This IM is current as at 10 February 2012. Information in this document is subject to change from time to time. To the extent that any change is not materially adverse to investors, it may be updated by UBS posting a notice of the change on its website at [www.ubs.com/equitysolutions](http://www.ubs.com/equitysolutions). UBS will provide to investors, free of charge, a paper copy of the updated information upon request.

## **Definitions**

Certain expressions used in this IM are as defined in the Glossary on page 59 of this IM.

# Table of contents

---

Important Notice

Section 1—Summary of key features	2
Section 2—Description of the Loan	6
Section 3—General risks of the Loan	12
Section 4—Description of UBS	15
Section 5—Taxation summary	16
Section 6—Superannuation opinion	22
Section 7—Loan Agreement	28
Section 8—Trust Deed and Nominee Deed Summary	53
Section 9—Direct Debit Request Service Agreement	55
Section 10—Glossary	59

# Section 1—Summary of key features

---

## 1 Summary of key features

Feature	Summary
Description	The UBS Investment Loan is a loan facility provided by UBS to finance your investment in an Eligible Investment. The key details of the Loans available for each Eligible Investment are set out in the relevant Term Sheet, including the application period, indicative Interest Rates and the Loan repayment schedule. The final terms of your Loans drawn under this facility are as set out in this Information Memorandum, including the Loan Agreement in section 7, and supplemented by the relevant Term Sheet and Confirmation.
Lender	UBS AG, Australia Branch ABN 47 088 129 613 (“UBS”)
Nominee (for Nominee Investors)	UBS Nominees Pty Limited ABN 32 001 450 522 (“UBS Nominees”) or any other person nominated by UBS
Broker Sponsor	UBS Securities Australia Limited ABN 62 008 586 481 (“UBS Securities”) or any other person nominated by UBS.
Permitted applicants	Individuals, companies, trusts and Superannuation Funds
Loan Types	Two types of Loans are available under this facility: <ul style="list-style-type: none"><li>– Principal Loan—to fund all or part of the purchase price of the Eligible Investment (or to release funds following the deposit of an Eligible Investment with the Nominee or into a Locked Holding); and</li><li>– Interest Assistance Loan—to fund all or part of the Interest payments on the Principal Loan. Note the Interest Assistance Loan is not currently available to Superannuation Funds.</li></ul>
Maximum Principal Loan Percentage and Maximum Interest Assistance Loan Percentage	<p>The Maximum Principal Loan Percentage and Maximum Interest Assistance Loan Percentage will be determined at UBS’s discretion and set out in the Term Sheet. For a Principal Loan, the Maximum Principal Loan Percentage may be up to 100% of the Eligible Investment purchase price or up to 100% of the protected investment amount if that is greater than the purchase price (and if specified in the Term Sheet). For an Interest Assistance Loan, the Maximum Interest Assistance Loan Percentage will be for a percentage of an Interest Amount for the Principal Loan.</p> <p>The Term Sheet will also specify whether you may only borrow at the Maximum Principal Loan Percentage and Maximum Interest Assistance Loan Percentage or whether you may borrow less than this (in which case it will specify the other permitted borrowing levels).</p> <p>Your Maximum Principal Loan Amount and Maximum Interest Assistance Loan Amount (if applicable) will be set out in your Confirmation. The Maximum Principal Loan Amount will reflect the applicable Maximum Principal Loan Percentage multiplied by the value of your Eligible Investment for that Principal Loan. The Maximum Interest Assistance Loan Amount (if applicable) will reflect the applicable Maximum Interest Assistance Loan Percentage multiplied by the relevant Interest Amount for the Principal Loan.</p>

Feature	Summary
Interest Payment options	<p>The Interest payment options available for your Loan will be as specified in the Term Sheet. Examples include:</p> <ul style="list-style-type: none"> <li>– annually in advance</li> <li>– quarterly or monthly</li> <li>– prepaid for the whole Term on the first Drawdown Date</li> <li>– interest capitalised into the Loan Balance for the full Term.</li> </ul> <p>Some of these options may not be available for different Eligible Investments or to different categories of borrowers. See the Term Sheet for more information.</p>
Interest Rate	<p>As specified in the Term Sheet. May be fixed or variable depending on the Interest payment option you have elected (except for Superannuation Funds, where it must be fixed). UBS may in its discretion offer different Interest Rates to different borrowers in its absolute discretion. Such Interest Rates may differ from those set out in the relevant Term Sheet.</p>
Term	<p>The permitted Term of the Principal Loan will be specified in the Term Sheet. The Term of the Principal Loan must not exceed the maturity or settlement date of the Eligible Investment (if applicable).</p> <p>In certain circumstances the Term of a Loan may be extended, including automatic extension in some cases. See clauses 7.5.8, 7.5.9 and 7.5.11 of the Loan Agreement in section 7 of this Information Memorandum for more information.</p>
Mortgaged Property	<p>As specified in the Term Sheet. Each Loan is attributable to a specific pool of Mortgaged Property (generally including an Eligible Investment). You will be required to lodge security acceptable to UBS, either with the Nominee or into a Locked Holding, at which point it will become subject to a Mortgage in favour of the Mortgagee on the terms and conditions set out in the Trust Deed and clause 7.7(a) (if you are a Nominee Investor) or clause 7.7(b) (if you are a Personal Investor) of the Loan Agreement. The Term Sheet will specify whether the Mortgaged Property is to be held by the Nominee (and will therefore be held in the name of the Nominee) or in a Locked Holding (and will therefore be held in your own name), in which case the Term Sheet will also specify whether any of the Mortgaged Property must be held through an account with the Broker Sponsor.</p> <p>The Mortgaged Property of Superannuation Funds will always be held by the Nominee.</p> <p>If you are not a Superannuation Fund, your Loans will be cross collateralised so that the Eligible Investment under each Loan will be security for the aggregate of all your obligations under your outstanding Loans. If you are a Superannuation Fund, each Loan will be treated separately and your Loans will not be cross collateralised.</p>
Locked Holding	<p>If the Term Sheet specifies that the Mortgaged Property is to be held in a Locked Holding, then you will be unable to deal with the Mortgaged Property in any way, without the permission of UBS, while the Mortgage is in place. Also, for certain types of Eligible Investments, the Term Sheet may specify that the Mortgaged Property will need to be held in an account with the Broker Sponsor and will be subject to the Broker Sponsor Terms which will also be set out in the Term Sheet.</p>

<b>Feature</b>	<b>Summary</b>
Limited Recourse	<p>If the Term Sheet specifies that your Loan is Limited Recourse, then UBS's and/or the Mortgagee's recourse against you in respect of amounts owing is limited in certain circumstances as set out in the Loan Agreement and the Term Sheet. If your Loan is Limited Recourse there are still circumstances where UBS and/or the Mortgagee will have full recourse against you and these are set out in clause 7.6 of the Loan Agreement in section 7 of this Information Memorandum.</p> <p>If you are a Superannuation Fund, your Loan will always be Limited Recourse.</p> <p>The Limited Recourse feature operates differently depending upon whether or not you are a Superannuation Fund. See clause 7.6 of the Loan Agreement in section 7 of this Information Memorandum for more information.</p>
Full Recourse	<p>If the Term Sheet specifies that your Loan is Full Recourse, then UBS's recourse against you in respect of amounts owing in respect of your Loan is unlimited.</p>
Eligible Investment	<p>An Eligible Investment may include deferred purchase agreements for the acquisition of quoted securities, units in unlisted managed funds, unlisted notes, debentures, quoted securities, managed fund units or any other investment acceptable to UBS in its absolute discretion from time to time.</p>
Minimum Drawdown Amount	<p>As specified by UBS in the Term Sheet</p>
Fees and Costs	<p>Fees and costs (in addition to Interest) are charged at UBS's discretion and specified in the Term Sheet. They may include:</p> <ul style="list-style-type: none"> <li>– Loan Establishment Fee</li> <li>– Facility Adjustment Fee</li> <li>– Trust deed review fee (if applicable)</li> <li>– Direct debit fail fee</li> <li>– Default interest on overdue payments (see clause 7.5.5 of the Loan Agreement)</li> <li>– Early Termination Amount (if applicable)</li> </ul>
Adviser Commission	<p>Your financial adviser may be paid a commission as set out in the Term Sheet by UBS out of its own funds or by a separate charge to your account.</p>
Guarantee	<p>UBS may in certain circumstances require a third party to act as Guarantor in relation to your Loan, on the terms set out in clause 7.12 of the Loan Agreement in section 7 of this IM. Superannuation Funds will not be required to have a third party act as Guarantor.</p>
Corporate Actions and Events of Default	<p>If a Corporate Action occurs in relation to the Eligible Investment for your Loan, UBS has wide discretion to adjust the terms of a Loan to amend the economic positions of the parties, including to terminate a Loan.</p> <p>A Loan may also be terminated in a number of other circumstances. Refer to clauses 7.4.9 and 7.9 of the Loan Agreement in section 7 of this Information Memorandum for more information.</p>
Eligibility	<p>You must be a resident of Australia for tax purposes and fulfil certain financial criteria as required by UBS from time to time in its discretion in order to be eligible for a Loan. UBS reserves the right to reject any Application for any reason in its absolute discretion.</p>
Trust Deed	<p>Where you are a Nominee Investor, UBS and the Nominee have entered into a Trust Deed which sets out various matters in relation to the Loan and security arrangements, in particular the terms of the Mortgage, and matters relating to the obligations and powers of UBS and/or the Mortgagee and the Nominee in relation to the Mortgaged Property. See section 8 of this IM for more information.</p>

<b>Feature</b>	<b>Summary</b>
Nominee Deed	Where you are a Nominee Investor, the Nominee has entered into the Nominee Deed which sets out the terms under which the Nominee holds the Mortgaged Property (including the Eligible Investment) on separate trust for each borrower (but subject to the Mortgage and the Trust Deed). See section 8 of this IM for more information.
Defined terms	Capitalised terms used in this IM are defined in the Glossary on page 54 of this IM.

# Section 2—Description of the Loan

---

## 2 Description of the Loan

### 2.1 What is the UBS Investment Loan?

The UBS Investment Loan is a simple loan facility that may be used by a wide range of retail and wholesale investors to purchase or finance any financial product that UBS determines in its discretion is a permitted Eligible Investment from time to time. UBS will release Term Sheets from time to time that will specify what an Eligible Investment is. The Term Sheets will contain all of the key commercial terms for a Loan relating to that Eligible Investment. For example, they will contain the Maximum Principal Loan Percentage, the Maximum Interest Assistance Loan Percentage, the frequency with which you may make Interest payments, the Interest Rate you will be charged, the Term and any fees and charges payable.

There are two types of Loans available: a Principal Loan and an Interest Assistance Loan. Unless you have provided an Eligible Investment as security under a roll-in arrangement (note: this option is not available to Superannuation Funds), the Principal Loan must be used to fund all or part of the purchase price of an Eligible Investment. The Interest Assistance Loan is used to fund all or part of the Interest cost of the Principal Loan. Interest Assistance Loans are offered in UBS's discretion and will not currently be offered to Superannuation Fund borrowers.

### 2.2 What Eligible Investment may be purchased using the Loan?

An Eligible Investment may be any financial product specified by UBS. They may be issued by UBS or a third party. An Eligible Investment may include deferred purchase agreements for the acquisition of quoted securities, units in unlisted managed funds, unlisted notes, debentures, quoted securities, managed fund units or any other investment acceptable to UBS in its absolute discretion from time to time. The Eligible Investment may be offered under a product disclosure statement, in which case you should read and consider the product disclosure statement for the Eligible Investment. An Eligible Investment may have a fixed term and/or capital protection feature.

You or your adviser may contact UBS to obtain a list of currently available Eligible Investments.

### 2.3 How much can I borrow?

The Maximum Principal Loan Percentage and Maximum Interest Assistance Loan Percentage will be determined at UBS's discretion and set out in the Term Sheet. For a Principal Loan, the Maximum Principal Loan Percentage may be up to 100% of the Eligible Investment purchase price or up to 100% of the protected investment amount if that is greater than the purchase price (and if specified in the Term Sheet). For an Interest Assistance Loan, the Maximum Interest Assistance Loan Percentage will be for a percentage of an Interest Amount for the Principal Loan.

Your Maximum Principal Loan Amount and Maximum Interest Assistance Loan Amount (if applicable) will be set out in your Confirmation. The Maximum Principal Loan Amount will reflect the applicable Maximum Principal Loan Percentage multiplied by the purchase price (or, if applicable, the roll-in value as determined by UBS in its absolute discretion) of your Eligible Investment for that Principal Loan. The Maximum Interest Assistance Loan Amount (if applicable) will reflect the applicable Maximum Interest Assistance Loan Percentage multiplied by the relevant Interest Amount for the Principal Loan.

Superannuation Funds are not permitted to use the Interest Assistance Loan and must prepay all Interest as specified in the Term Sheet on or before the first Drawdown Date.

The Term Sheet will also specify whether you may only borrow the Maximum Principal Loan Percentage and Maximum Interest Assistance Loan Percentage or whether you may borrow less than this (in which case it will specify permitted borrowing percentages). Your initial Drawdown Amount must be equal to the relevant permitted borrowing percentage multiplied by the purchase price (or, if applicable, the roll-in value as determined by UBS) of the Eligible Investment.



## **2.4 When is the Loan drawn down?**

Where the Eligible Investment is acquired by applying under an offer document (such as a product disclosure statement), the Loan will be drawn down on or before the date that payment is due under that offer document. UBS will arrange for the relevant Drawdown Amount under the Loan to be paid to the Issuer of the Eligible Investment on your behalf. If you are a Nominee Investor, the Eligible Investment will be acquired in the name of the Nominee and held by the Nominee on trust on your behalf subject to the Mortgage in favour of the Mortgagee until the Loan is repaid and you meet all other obligations to UBS and/or the Mortgagee. If you are a Personal Investor, the Eligible Investment will be acquired in your name and held in a Locked Holding, and the Eligible Investment will be subject to the Mortgage in favour of the Mortgagee until the Loan is repaid and you meet all other obligations to UBS and/or the Mortgagee.

Where the Eligible Investment is not acquired under an offer document, the Loan will be drawn down on the date that the Eligible Investment is transferred to or acquired by the Nominee, or transferred to or held in a Locked Holding (as applicable).

Where the Maximum Principal Loan Amount is for only a portion of the purchase price of the Eligible Investment, you must also pay the remainder of the purchase price to UBS, so that UBS can pay the full purchase price for the Eligible Investment on the due date.

Interest Assistance Loans will be drawn down on dates specified by UBS for you to pay Interest on the Principal Loan.

## **2.5 What is the permitted Term of the Loan?**

The permitted Term of the Principal Loan will be as specified in the Term Sheet. The end of the Term must coincide with the maturity or settlement date of the Eligible Investment (if applicable). The Principal Loan must be fully repaid on the Maturity Date (although an early repayment schedule may be agreed with UBS in its discretion in which case an Early Termination Amount may be payable).

The Interest Assistance Loan is generally repayable prior to the Maturity Date. The repayment schedule for an Interest Assistance Loan will be specified in your Term Sheet and Confirmation.

## **2.6 What are the permitted purposes of the Loan?**

Where you are using the Loan to purchase a new Eligible Investment, the Principal Loan must be applied to purchase that Eligible Investment. Where the Eligible Investment is already owned by you, and is being transferred to the Nominee or held in a Locked Holding as security for the Loan, the Principal Loan drawn against it must be used for business or investment purposes. Note the option of rolling an existing Eligible Investment into a Loan is not currently available to Superannuation Funds.

The Interest Assistance Loan is to be used solely to cover the Interest expense of the Principal Loan. It will be applied automatically by UBS. This feature is not currently available to Superannuation Funds.

## **2.7 What is the Interest Rate?**

An indicative Interest Rate for your Loan will be specified in the Term Sheet. Once the Principal Loan is drawn down, the final Interest Rate will be notified in your Confirmation.

Both fixed and variable Interest Rate options may be available. This will also be specified in the Term Sheet. Superannuation Funds will only be able to borrow with a fixed Interest Rate.

UBS may in its discretion offer different Interest Rates to different borrowers in its absolute discretion. Such Interest Rates may differ from those set out in the relevant Term Sheet.

## **2.8 What are the fees?**

In addition to Interest Amounts, UBS also reserves the right to charge other fees at its discretion. The relevant fees are as follows:

- a) Loan Establishment Fee—this is an upfront fee as set out in the Term Sheet.

- b) Facility Adjustment Fee—this is a fee to increase your Maximum Principal Loan Amount.
- c) Trust deed review fee—if you are a trust applicant, and you are unable to have a solicitor sign the declaration in the Application Form, then you may be charged a fee as set out in the Term Sheet for UBS to arrange a legal review of your trust deed.
- d) If a direct debit from or to your nominated bank account fails, then you may be charged a fail fee as set out in the Term Sheet each time this occurs. In addition, if this causes an Interest Amount to be late, you may be charged additional Interest until the original Interest Amount is paid.
- e) In the event of an early unwind of your Loan, you may be required to pay an Early Termination Amount. This will include any losses or costs UBS has incurred through movements in interest rates or as a result of unwinding its hedge, and may include part of any profit UBS has foregone due to the early unwind.

## **2.9 What commissions are payable to my adviser?**

UBS may pay a commission as set out in the Term Sheet to your financial adviser. The Term Sheet will also specify whether this commission will be paid by UBS out of its own funds or whether it will be separately charged to your account.

## **2.10 How can I pay Interest?**

The Interest payment options available for a particular Eligible Investment will be as specified in the Term Sheet. They will be some or all of the following:

- a) Annually in advance—this is where Interest is paid in advance on or before the first Drawdown Date and then each year on a date specified by UBS.
- b) Quarterly or monthly—this is where Interest is paid on quarterly or monthly dates as specified by UBS.
- c) Entirely in advance—this is where Interest for the full Term of the Loan is paid to UBS on or before the first Drawdown Date.
- d) Drawdown from the Loan Balance—this is where Interest is paid by drawing down the Loan, so that the Loan Balance repayable on the Maturity Date includes all Interest for the Term. This will generally be determined so that the Loan Balance on the Maturity Date does not exceed the Maximum Loan Amount.

Some of these options may not be available for different Eligible Investments or to different categories of borrowers. See the Term Sheet for more information. As there is no Interest payment exposure to Superannuation Funds or other investors who are required to or have elected to prepay Interest in full, they are not required to provide financial information for credit assessment in the Application Form. UBS may also not require financial information in other circumstances as determined by UBS in its absolute discretion.

All Interest Amounts must be paid by direct debit only, unless UBS agrees otherwise in writing. You must enter into the Direct Debit Request Service Agreement in section 9.

All Interest is calculated on a simple interest basis, based on the number of days in the Interest Period, as set out in clause 7.5.2 of the Loan Agreement in section 7 of this IM. The Interest Periods and Interest Payment Dates will be specified in your Confirmation.

Prepaid Interest may be refundable at UBS's discretion in the event of an early unwind, after taking into account any Early Termination Amount payable by you.

If you fail to pay Interest on the due date, this will be an Event of Default and your Eligible Investment may be immediately sold or redeemed by UBS to repay the Loan Balance and any other outstanding obligations including any Early Termination Amount.

## **2.11 How are distributions on the Eligible Investment treated when I have a Loan?**

Distributions paid on the Eligible Investment will become part of the Mortgaged Property. UBS and/or the Mortgagee may however apply the distribution to meet any obligation you have to pay Interest to UBS, apply the distribution to be paid to UBS to the extent of any Secured Moneys, require you to reinvest the

distribution into the Eligible Investment, or release the distribution from the Mortgage and pass it on to you, in certain circumstances (including if specified in the Term Sheet).

## **2.12 What recourse does UBS and/or the Mortgagee have against me?**

If you are not a Superannuation Fund, then your Loan will be structured in one of the following two ways, as specified in your Term Sheet:

- 1) Limited Recourse – subject to the Loan Agreement, the recourse of UBS and/or the Mortgagee against you in respect of the Principal Loan Balance on the Maturity Date (or at any other time specified in the Term Sheet) is limited to the amount which UBS and/or the Mortgagee can obtain by enforcing its rights in respect of the Mortgaged Property. UBS's and/or the Mortgagee's recourse against you at any other time and for all other amounts due under this Agreement is personal and unlimited.
- 2) Full Recourse - in addition to enforcing its rights in respect of the Mortgaged Property, UBS's and/or the Mortgagee's recourse against you at any time and for all amounts due under the Loan Agreement is personal and unlimited.

If you are a Superannuation Fund, the recourse of UBS and/or the Mortgagee against you in respect of each Loan is limited to the amount which UBS and/or the Mortgagee can obtain by enforcing its rights relating to the Mortgaged Property in respect of that Loan.

## **2.13 Who holds the Mortgaged Property and who gives the Mortgage?**

The Term Sheet for each Loan will specify whether you are a Nominee Investor or a Personal Investor.

If you are a Nominee Investor, the Nominee will hold the Eligible Investment and the Nominee will grant the Mortgage. You will be prohibited from dealing with the Mortgaged Property in any way, without the permission of UBS, while the Mortgage is still in place.

If you are a Personal Investor, you will hold the Eligible Investment in a Locked Holding and you will grant the Mortgage. You will be prohibited from dealing with the Mortgaged Property in any way, without the permission of UBS, while the Mortgage is still in place. In addition, for certain types of Eligible Investments, the Term Sheet may specify that the Mortgaged Property will need to be held in an account with the Broker Sponsor and will be subject to the Broker Sponsor Terms which will also be set out in the Term Sheet.

If you are a Superannuation Fund, then in all cases you will be a Nominee Investor.

## **2.14 Can my Loan be repaid early?**

You may repay the entire Loan early if UBS consents. If a Loan is repaid early an Early Termination Amount may be payable. Once a Loan is repaid, and (in the case of borrowers which are not Superannuation Funds) no other amounts are owed by you to UBS and/or the Mortgagee, then the Eligible Investment will be released to you by the Nominee or removed from the Locked Holding and the Mortgage in respect of your Eligible Investment will be released. If the Eligible Investment is sold or redeemed to repay any amounts owing to UBS and/or the Mortgagee, then the funds payable to you will be net of any amounts owed to UBS and/or the Mortgagee including all outstanding Interest Amounts and any Early Termination Amount.

UBS may terminate your Loan if an Event of Default or other specified event as set out in the Loan Agreement in section 7 of this IM occurs. You may be required to pay an Early Termination Amount in such circumstances. You should consider clause 7.9 of the Loan Agreement carefully before applying for a Loan.

## **2.15 How are Corporate Actions treated?**

If a Corporate Action occurs with respect to the Eligible Investment, UBS and/or the Mortgagee may take any action it deems necessary or desirable to preserve the economic position of the parties, including in certain circumstances to terminate a Loan. If you are a Superannuation Fund and the Corporate Action results in the Eligible Investment being replaced by other assets and/or cash then UBS and/or the Mortgagee will generally terminate the Loan. See clause 7.4.9 of the Loan Agreement for more information.

If you are a Nominee Investor, you will not generally have voting rights in respect of the Eligible Investment while it is held by the Nominee, other than at a meeting of members to consider the retirement or removal and replacement of the relevant Issuer (see clause 5.2(c) of the Trust Deed and the Application Form). In all other circumstances, UBS and/or the Mortgagee may direct the Nominee how to exercise voting rights held by the Nominee in its absolute discretion and you agree to allow UBS and/or the Mortgagee to make such a direction.

If the Eligible Investment is held by you directly in a Locked Holding, then you will have voting rights in respect of the Eligible Investment.

## **2.16 What happens to the Loan at Maturity?**

On the Maturity Date, the Loan may either be repaid out of your own funds or repaid from the proceeds of the redemption or sale of the underlying Eligible Investment. This election must be notified to UBS in writing no later than the date specified in your Confirmation.

If the Loan is repaid from your own funds, provided no other amounts or payments are owed to UBS and/or the Mortgagee, the Eligible Investment will be transferred from the Nominee to you or released from the Locked Holding.

If the Loan is repaid from the proceeds of the redemption or sale of the Eligible Investment, UBS will pay any remaining funds to you, once the Loan Balance and any other amounts or payments owed to UBS and/or the Mortgagee have been satisfied.

## **2.17 How do I obtain a Loan?**

To obtain a Loan, you must complete the Application Form available with a Term Sheet and send it to UBS. An Application Form and Term Sheet can be obtained from UBS. Please note the following:

- ◆ Financial information is not required from Superannuation Fund applicants or other applicants who prepay Interest in full or in other circumstances as determined by UBS in its absolute discretion. Financial information is required in all other cases.
- ◆ If you are a trust or Superannuation Fund, you must have a solicitor complete and sign the relevant section of the Application Form or pay a fee as set out in the Term Sheet to UBS who will arrange for a solicitor to review your trust deed and sign the form.
- ◆ UBS may also require that existing Security Interests affecting your assets be discharged in certain circumstances before UBS will make a Loan available to you.
- ◆ In certain circumstances at UBS's discretion including in the case of certain non-Superannuation Fund borrowers who pay interest by instalments, guarantees are required from:
  - a director in the case of company applicants (including corporate trustee applicants); and
  - the trustee in the case of an individual trustee.

Your Application will then be assessed by UBS. UBS may in its discretion request more detail than what is required in the Application Form.

Any approval given is only in respect of a single Principal Loan against the specified Eligible Investment and any related Interest Assistance Loan.

## **2.18 What information will I receive?**

UBS will provide you with the following information in relation to your Loan:

- ◆ Following the Drawdown Date, UBS will send you a Confirmation setting out the Maximum Principal Loan Amount, Maximum Interest Assistance Loan Amount (if applicable), Principal Loan Balance, Interest Assistance Loan Balance (if applicable), Maturity Date, Repayment Date(s), Interest Period(s), Interest Rate(s), Interest Amount(s) and Interest Payment Date(s).

- ◆ If the terms of the Loan are adjusted for any reason (whether by agreement between you and UBS or otherwise in accordance with the Loan Agreement), UBS will send you a Confirmation detailing the adjustments made.
- ◆ Around one month prior to the date on which an Interest Amount is due, UBS will send you an Interest reminder letter, setting out the Interest Amount to be paid and the Interest Payment Date.
- ◆ At or around the Maturity Date, UBS will provide you with a closing Confirmation, showing final amounts owed to (or by) you.

If you have any questions relating to your UBS Investment Loan, please feel free to contact your financial adviser or UBS.

## **2.19 Financial Services Guide**

The financial services guides of UBS Nominees and UBS Securities, which contain information, respectively, about the nominee services provided by UBS Nominees (if you are a Nominee Investor) and the broking and CHESS sponsorship services provided by UBS Securities (if you are a Personal Investor) are available from [www.ubs.com/equitysolutions](http://www.ubs.com/equitysolutions) or by contacting UBS on 1800 633 100. If you are a Nominee Investor or a Personal Investor to whom the Broker Sponsor Terms apply, you should read and ensure you fully understand the financial services guide of UBS Nominees or the financial services guide of UBS Securities (respectively) before using the Loan.

# Section 3 – General risks of the Loan

---

## 3 General risks of the Loan

While this section highlights a number of risks involved in using the Loan, it does not purport to be exhaustive. When using the Loan, you are taking on these risks, so you must satisfy yourself that you are prepared to do so.

### 3.1 Risk of leveraging into an Eligible Investment

Borrowing to invest in an Eligible Investment will magnify both the positive and negative returns on that Eligible Investment. In addition, the larger your Loan, the more your returns (positive or negative) are magnified. You must therefore assess the risks inherent in the Eligible Investment even more carefully than had you been investing on a non-leveraged basis, and whether it is appropriate to your financial circumstances, needs and objectives to borrow to invest in the Eligible Investment.

UBS does not guarantee the performance or returns of any Eligible Investment. Nothing in this IM is a recommendation by UBS concerning investment in any Eligible Investment.

### 3.2 Limited Recourse and Full Recourse

If you have a Limited Recourse Loan, the Limited Recourse feature protects you against a decline in the value of the Eligible Investment below the Principal Loan Balance on the scheduled Maturity Date (or at any other time specified in the Term Sheet) only. Limited Recourse will not apply (except for Superannuation Fund investors) if the Loan is terminated or repaid early or an Event of Default occurs and in certain other circumstances as set out in clause 7.6 of the Loan Agreement in section 7 of this IM. For example, if the Eligible Investment is described as a capital protected product but the realised value or redemption proceeds of that investment as at its scheduled capital protection date is less than the protected amount then UBS and/or the Mortgagee will have recourse to non-Superannuation Fund investors for the difference. At any time other than the Maturity Date (or any other time specified in the Term Sheet), UBS and/or the Mortgagee will have full recourse to non-Superannuation Fund investors for all unpaid amounts including without limitation the Principal Loan Balance.

If you have a Full Recourse Loan, then UBS's and/or the Mortgagee's recourse against you at any time and for all amounts due under the Loan Agreement is personal and unlimited.

### 3.3 Cross Collateralisation

If you are not a Superannuation Fund, the security for the Loans that you obtain from UBS under this IM will be cross collateralised so that all of the Mortgaged Property (including each Eligible Investment under each Loan) will be security for all your obligations under all of your outstanding Loans from time to time. In particular, this would be relevant if you were to default on a particular Loan because that would trigger a default under all of your Loans granted under this IM and UBS and/or the Mortgagee (as applicable) would be able to enforce its rights under the Mortgage and use the Eligible Investments relating to your other Loans as security to cover the defaulting Loan. This will be the case regardless of whether your Loans are Limited Recourse and/or Full Recourse because recourse to you is unlimited in the case of an Event of Default. If you are a Superannuation Fund, each Loan will be treated separately and your Loans will not be cross collateralised.

### 3.4 Ability of UBS to fulfil its obligations

UBS has certain obligations under the Loan Agreement. You must make your own assessment of the ability of UBS to meet its obligations under the Loan Agreement.

UBS's obligations created under the Loan Agreement are unsecured contractual obligations of UBS which will rank equally with other unsecured contractual obligations and unsecured debt other than liabilities mandatorily preferred by law.

### **3.5 Nominee**

If you are a Nominee Investor, the Eligible Investment will be held by the Nominee. You must make your own assessment of the ability of the Nominee to meet its obligations to you under the Nominee Deed and the Trust Deed.

### **3.6 Variation of Terms**

Certain events, for example Corporate Actions, can result in the terms of your Loan being adjusted. These adjustments are made by UBS and are determined by UBS in its absolute discretion. You should also be aware that if, in UBS's reasonable opinion, it is not possible or desirable to adjust the Loan to account for a Corporate Action, the Corporate Action may become an Event of Default and therefore result in an Early Termination Amount becoming payable by or to you.

### **3.7 Increased costs and change of law**

UBS has broad powers under the Agreement to pass on increased costs to you and also to terminate any Loan in the event of increased costs or an adverse change of law. See clause 7.9 of the Loan Agreement for more information.

### **3.8 Event of Default and early termination**

Pursuant to the Loan Agreement, the Maturity Date may be brought forward on the occurrence of an Event of Default. In such circumstances you may be required to pay an Early Termination Amount, which may be significant. You should review the Events of Default set out in clause 7.9 of the Loan Agreement in detail.

An Event of Default can occur even if you have met your obligations to UBS and/or the Mortgagee, due to circumstances outside your control.

If your Loan is a Limited Recourse Loan, the Limited Recourse feature does not apply in the event of an early termination (other than for Superannuation Fund investors). Any Early Termination Amount payable may be a significant cost to you.

### **3.9 Restrictions on transfer of an Eligible Investment**

The grant of a first ranking Mortgage by the Mortgagor to the Mortgagee over the Eligible Investment acquired with or securing the Loan is a pre-condition to drawing a Loan from UBS. The grant of such a Mortgage in favour of the Mortgagee will prohibit you from dealing with or encumbering the Eligible Investment without UBS's and/or the Mortgagee's prior written consent. A breach of the terms of the Mortgage will give UBS and/or the Mortgagee the right to terminate the Loan immediately and may require you to pay to UBS an Early Termination Amount.

### **3.10 UBS does not provide you with any investment, tax or legal advice**

UBS does not provide investment, tax, accounting or legal advice. You acknowledge that UBS will not act in a capacity of an adviser or fiduciary to you in relation to any Loan and you should not regard any Term Sheet, description of any Eligible Investment, marketing materials or other written or oral communications from UBS or its employees or affiliates as recommendations or advice or as expressing a view as to whether a particular Loan or Eligible Investment is appropriate for you or meets your financial objectives. UBS does not provide legal, tax, financial or accounting advice. Loans may have significant legal, tax and accounting consequences to you based upon your particular circumstances. We strongly recommend that you review the legal, tax and accounting consequences of entering into any Loan with your professional advisers.

### 3.11 Borrowings by Superannuation Funds

Superannuation Funds, including self managed superannuation funds or "SMSFs", are subject to a specific regulatory regime under the *Superannuation Industry (Supervision) Act 1993* ("SIS"). Superannuation trustees must also comply with the governing rules of their fund and are subject to general law duties. This legal and regulatory framework is complex and changes over time.

Superannuation trustees are responsible for monitoring and complying with their changing legal obligations. Accordingly, it is your responsibility to satisfy yourself that any investment and related borrowing using a UBS Investment Loan does not breach these obligations. Some of the obligations imposed by SIS that are potentially relevant for superannuation trustees to consider include:

- (a) the "in-house assets" rules contained in Part 8 of SIS;
- (b) the sole purpose test set out in section 62 of SIS;
- (c) the prohibition against giving financial assistance to members, as set out in section 65 of SIS;
- (d) the requirement for transactions to be entered into on an arms' length basis, as required by section 109 of SIS;
- (e) the covenant to act in the best interests of beneficiaries, as set out in section 52(2)(c) of SIS; and
- (f) the covenant to formulate and give effect to an investment strategy, as set out in section 52(2)(f) of SIS.

SIS generally prohibits the trustee of a superannuation fund from borrowing money. Sections 67A and 67B of SIS provide an exception to the general rule prohibiting a superannuation fund trustee from borrowing money, so long as the borrowing complies with the conditions specified in these sections. The UBS Investment Loan seeks to take advantage of these changes. The application of these requirements to the use of a UBS Investment Loan is considered in the opinion letter from Blake Dawson, which is set out in Section 6 of this Information Memorandum.

Sections 67A and 67B of SIS constitute relatively new legislation and you should be aware that the interpretation and the administrative practices of the Australian Prudential Regulation Authority and the Australian Taxation Office in relation to these new provisions is not yet settled and may change over the term of your Loan.

Importantly, superannuation trustees should obtain their own advice as to whether the UBS Investment Loan is permitted by superannuation laws and appropriate for their fund. It is up to each superannuation trustee to satisfy itself that its use of the UBS Investment Loan complies with all relevant legal obligations both at the time of entering into the Loan and during the term of the Loan, having regard to any changes in superannuation laws and administrative practices that may occur over time.



# Section 4—Description of UBS

---

## 4 Description of UBS

**The information set out below is intended to be a brief summary only of UBS. You must make your own assessment of the ability of UBS to meet its obligations in relation to the UBS Investment Loan. Nothing in this IM is, or may be relied upon as, a representation as to any future event or a promise as to the future.**

UBS AG was formed on 29 June 1998 from the merger of Swiss Bank Corporation and Union Bank of Switzerland. UBS AG with its subsidiaries is a client-focused financial services firm that offers a combination of wealth management, asset management and investment banking services on a global and regional basis. By delivering a full range of advice, products and services to its private, corporate and institutional clients, UBS aims to generate sustainable earnings, create value for its shareholders and become economically profitable in every segment, market and business in which it operates. Securities in UBS AG are listed on the New York Stock Exchange and the SIX Swiss Exchange.

As of 1 January 2004, UBS AG, Australia Branch is an Authorised Deposit-Taking Institution under section 9 of the *Banking Act 1959* (Cth). It is therefore regulated by the Australian Prudential Regulation Authority.

UBS will provide a copy, free of charge, of any of the following documents to any person who requests such copies during the life of this PDS, by contacting UBS on 1800 633 100:

- the latest available annual financial report of UBS AG; and
- the latest available quarterly financial report of UBS AG.

UBS's latest available annual and quarterly financial reports can also be downloaded from [www.ubs.com/1/e/investors.html](http://www.ubs.com/1/e/investors.html).

# Section 5 – Taxation summary

---

## 5 Taxation summary

This summary has been prepared by Clayton Utz for the purposes of inclusion in this Information Memorandum and any opinions expressed in this tax summary are those of Clayton Utz and not UBS.

### 5.1 Qualifications

Taxation issues are complex. This summary is based on the Australian taxation laws in force and administrative practices generally accepted as at the date of this document. Any of these may change in the future without notice and legislation introduced to give effect to announcements may contain provisions that are currently not contemplated. Future changes in taxation laws, their interpretation or associated administrative practices could affect your taxation treatment.

This summary outlines the expected main Australian income tax and GST implications that may arise for an Australian resident taxpayer who obtains a Principal Loan, alone or together with an Interest Assistance Loan, from UBS for the purpose of acquiring Eligible Investments for the purpose of gaining or producing non-capital gains assessable income. This summary will apply to you only if you meet those criteria. This summary does not address the taxation consequences for non-Australian investors or investors who apply the loan funds for non-assessable income producing purposes. If you are an investor in this situation this summary will not apply to you.

This discussion is provided only for the benefit of UBS. The information in this summary does not purport to constitute legal, financial or tax advice. Further, this summary is of a general nature only and cannot address all of the taxation issues which may be relevant to you. For these reasons, you should not rely on this summary but must take full and sole responsibility for your own borrowings and investments, the associated taxation implications arising from those borrowings and investments and any changes in those taxation implications, for any reason, during the course of those borrowings and investments.

UBS recommends that you obtain your own independent professional taxation advice on the full range of taxation implications applicable to your own particular circumstances.

All references to legislative provisions are to the Tax Act unless otherwise indicated.

### 5.2 Assumptions

This summary of taxation implications assumes:

- (a) you are an Australian resident for tax purposes at all times;
- (b) at all times the Nominee will be an Australian resident;
- (c) each Principal Loan and Interest Assistance Loan will be denominated in Australian dollars;
- (d) the maximum Principal Loan Percentage will not exceed 100% of the purchase price or market value of the Eligible Investments at the time the loan is drawdown; and
- (e) all transactions you enter into with UBS in relation to the Loan will be at prevailing market prices and otherwise on arm's length terms.

### 5.3 Interest Deductibility

Subject to the qualifications above and the discussion set out below, interest on the Principal Loan and any Interest Assistance Loan, reduced by that portion of the interest which is determined to be reasonably attributable to capital protection should be deductible to you to the extent you use the Principal Loan funds for the purpose of gaining or producing non-capital gains assessable income.

## 5.4 Capital Protected Borrowings

Division 247 of the Tax Act applies to determine what portion (if any) of interest incurred in respect of a capital protected borrowing must be treated for tax purposes as the cost of capital protection in respect of the relevant loan. For the purposes of these provisions, a capital protected borrowing is generally defined as an arrangement under which a borrower is protected against the fall in value of a beneficial interest (direct or indirect) in a share, unit in a unit trust or a stapled security acquired with, or used as security for, the borrowing. Any amount treated as the cost of capital protection should be treated as the cost of acquiring a notional put option in respect of the assets acquired with, or used as security for, the relevant borrowing. The provisions should however apply only in circumstances where the borrowing and the capital protection are provided under a single arrangement (which may be constituted by two or more agreements).

Whether or not the provisions will apply to reduce your deduction for interest payable on the Principal Loan and the Interest Assistance Loan (if applicable) will depend principally on the interest rate applicable to the relevant loan and also on the other terms of the arrangement of which the borrowing forms part (including whether the loan is Full Recourse or Limited Recourse), the asset acquired with, or used as security for, the borrowed funds (noting that the provisions will only apply if the asset is a share, unit or stapled security) and the extent of the borrowing used for that purpose.

If the provisions apply, any interest and capital protection costs you incur in excess of the benchmark rate will be treated as the cost of a notional put option. The benchmark interest rate under current law is the Reserve Bank's indicator rate for standard housing loans (variable), plus 100 basis points.

For a loan where interest is fixed for all or part of the term, the benchmark rate at the time the first interest amount is incurred during the term or part of the term will be applied.

For a loan where interest is payable at a variable rate for all or part of the term, you must apply average of the benchmark rates for the term or relevant part.

If you are an investor who holds shares, securities and other investments on capital account, and do not carry on a business of trading in securities or investing in securities in the course of which you regularly acquire and dispose of securities, the amount treated as the cost of the notional put option will not be deductible. Rather, this amount will be treated as included in the cost base or reduced cost base of the notional put option.

If the limited recourse feature of a Principal Loan is invoked, the notional put option will be treated as having been exercised. In these circumstances, any capital gain or loss arising in respect of the exercise will be disregarded. The cost of the notional put option will be included in the cost base of the interest in the shares, units or stapled securities acquired with or used as security for the borrowing and disposed of on invoking the limited recourse feature. If the limited recourse feature of the Principal Loan is not invoked, the notional put option will lapse giving rise to a capital loss equal to the reduced cost base in that asset.

As these rules are complicated, you should obtain your own independent advice as to the application of the capital protected borrowing rules in your own particular circumstances.

## 5.5 Timing of deductions

To the extent it is deductible, interest that is paid in arrears should be deductible in the income year in which it becomes due and payable. Satisfying an interest obligation by drawing funds down under the Interest Assistance Loan should not affect the deductibility of the interest.

Interest that is paid in advance (including obligations satisfied by drawing funds down under the Interest Assistance Loan) should be deductible in the income year in which it is paid if either the interest expense is less than \$1,000, or all of the following requirements are satisfied:

- (a) the Loan funds are applied to acquire:
  - i) real property or an interest in real property;
  - ii) listed shares; or
  - iii) units in a trust that is a fixed trust having 300 or more beneficiaries and it is not the case that 20 or fewer individuals are entitled to 75% or more of the trust's income or capital, from which you can

reasonably be expected to obtain rent, dividends or trust income and no other kind of assessable income (other than capital gains or insurance receipts); and

- (b) the interest expense relates to a period of 12 months or less which ends in the year of payment or before the end of the following income year;
- (c) you are either an individual who incurs the interest otherwise than in the course of carrying on a business or a small business entity (whose combined annual turnover for you and your associates for the previous year or the current year was, or is likely to be, less than \$2 million) who has not chosen to apportion the interest expense over the interest period; and
- (d) you have not elected for TOFA to apply to your financial arrangements (refer to discussion in paragraph 5.13 below).

In all other circumstances, interest deductibility will be apportioned on a straight line basis over the period to which the interest relates.

There is currently some uncertainty surrounding the test for whether a trust is a fixed trust for tax purposes. If the ATO determines that the issuer of Eligible Investments is not a fixed trust, the test above will not be satisfied and a deduction may not be available at the time of prepayment of any interest expense. In these circumstances, any such deduction will be spread over the period to which the interest relates.

Nominee Investors should refer to the discussion in paragraph 5.10 below in relation to the availability of prepaid interest deductions.

## **5.6 Loan Establishment Fee**

Any Loan Establishment Fee incurred to obtain a loan will be deductible to the extent that the Loan funds are applied for the purpose of producing assessable income. If the Loan Establishment Fee is in excess of \$100, it should be deductible on a straight line basis over the lesser of the Loan Term and five years. A Loan Establishment Fee of \$100 or less will be deductible in the year it is incurred.

## **5.7 Facility Adjustment Fee**

Where you are required to pay a Facility Adjustment Fee as consideration for UBS increasing your Maximum Loan Amount, the Facility Adjustment Fee should be characterised as a borrowing cost and deductible as set out below, except to the extent that the capital protected borrowing rules apply to treat a part of that amount as reasonably attributable to capital protection.

If the Facility Adjustment Fee is in substance for capital protection it should be aggregated with the Interest on the Loans in order to determine the amount reasonably attributable to capital protection in the manner described above. To the extent the Facility Adjustment Fee is reasonably attributable to capital protection, it may be regarded as a cost of acquiring the notional put option described above.

To the extent the Facility Adjustment Fee is not reasonably attributable to capital protection, the Facility Adjustment Fee may be deductible to you under section 25-25 of the Tax Act over the lesser of five years and the period from the date on which the additional Loan is drawn down to when it is repaid, where you use the additional Loan for the purpose of producing assessable income in the income year in which a deduction is sought.

Where you only draw down part of the Loan during the Term (with the remainder drawn down on the Maturity Date), you may not be immediately entitled to a deduction for the whole of the Facility Adjustment Fee (as apportioned in accordance with section 25-25). Rather, you may only be entitled to deductions for that part of the Facility Adjustment Fee that is referable to the part of the additional Loan that is drawn down and used for income-producing purposes at that time. You may be entitled to deduct the remainder of the Facility Adjustment Fee in the income year in which the remainder of the additional Loan is drawn down and used for income-producing purposes.

## 5.8 Early Termination Amount

Any Early Termination Amount payable by you on early termination or repayment of a Loan prior to the Repayment Date, should be allowable as a deduction to the extent that those amounts are incurred to reduce or eliminate your deductible interest expense. You should note that where the Early Termination Amount is incurred as a cost of disposing of a burdensome investment the ATO may deny you a deduction for this amount.

Any Early Termination Amount you receive should be included in your assessable income.

## 5.9 Superannuation Fund holding an Eligible Investment through the Nominee

If you are a Superannuation Fund, the Nominee should not be subject to tax on any part of the income from an Eligible Investment held on your behalf. Rather, any income from an Eligible Investment should be included in your assessable income. In general terms, the taxation implications from holding an Eligible Investment should flow through to you, and the holding of an Eligible Investment by the Nominee should not, in general, affect your entitlements in relation to an Eligible Investment, including for example, your entitlements to any franking credits attaching to any income distribution in respect of an Eligible Investment that comprises shares or units in a trust.

Further, the capital gains tax (CGT) rules will apply as if anything done by the Nominee in relation to the Eligible Investment (which will be CGT assets) were done by you, including any acquisition and disposal of the Eligible Investment. Your cost base and reduced cost base in the Eligible Investment will include any amount paid to acquire the Eligible Investment, as well as any incidental costs of acquisition and disposal. Subject to the discussion at paragraph 5.14 below, any transfer of an Eligible Investment by the Nominee to you (once the Mortgage is discharged), should not give rise to any CGT implications for you.

You should obtain your own advice in relation to the taxation implications of holding the Eligible Investment through the Nominee that takes into account the characteristics of the Eligible Investment and your own particular facts and circumstances.

## 5.10 Holding an Eligible Investment through the Nominee

If you are a Nominee Investor and not a Superannuation Fund, and either:

- a) you are absolutely entitled to the Eligible Investment as against the Nominee; or
- b) the relevant Eligible Investment is a direct or indirect interest in a listed security, an unlisted security in a widely held entity or a bundle of these assets,

then the discussion in paragraph 5.9 above should apply equally to you, provided that the changes referred to in paragraph 5.14 are enacted in the terms announced.

However, if you are a Nominee Investor that is not a Superannuation Fund, and the relevant Eligible Investment is an asset other than one referred to in paragraph (b) above, there is a risk that the ATO may treat the Nominee (as opposed to you) as the absolutely entitled owner of the Eligible Investment for taxation purposes (until such time as the Loan is repaid by you).

In these circumstances, the ATO may consider that the taxation implications from holding the Eligible Investments apply to the Nominee and do not flow through to you. Accordingly, this may, for example, affect your entitlements to any franking credits attaching to any income distribution in respect of an Eligible Investment that comprises shares or units in a unit trust. It may also affect your entitlement to an immediate deduction for the interest paid in advance.

In addition, in these circumstances, a CGT event will occur (which may give rise to a capital gain or loss) when you transfer an Eligible Investment to the Nominee or you repay your Loan and the Eligible Investment is transferred to you. It should also be noted that if you are eligible for the CGT discount, the 12 month holding period commences from the date you repay your Loan and the Eligible Investments are transferred to you.

## 5.11 Distributions Made through Chains of Trusts

Trustees of closely held trusts are required to make a correct statement which discloses the identity of certain recipients of the income of the trust. The ATO has issued a Practice Statement (PS LA 2000/2) which states that trustees of "Transparent Trusts" or "Secured Purchase Trusts" will not be required to lodge such statements. Subject to the discussion at paragraph 5.14 below, each Separate Trust should be a Transparent Trust or Secured Purchase Trust. However, if you are a Borrower in the capacity as trustee of a trust estate, you must, if requested by the Nominee, provide sufficient information for the Nominee to make a correct statement as required by Division 6D of the Tax Act.

## 5.12 TFN/ABN Withholding

The Nominee may be required to withhold an amount from any income paid to you if you do not provide the Nominee with your TFN or ABN (where applicable) or proof of exemption.

## 5.13 Taxation of Financial Arrangements (TOFA)

The TOFA regime applies to gains and losses in respect of "financial arrangements", including loans, entered into on or after 1 July 2010. The provisions generally operate to tax gains and losses on revenue account and on an accruals basis where the gain or loss is or becomes sufficiently certain. Other gains and losses will be subject to tax on a realisation basis unless an election is made for an alternative method to be applied.

The provisions should not apply to individuals, or non-financial entities with an aggregated turnover of less than \$100 million, financial assets of less than \$100 million and total assets of less than \$300 million where the arrangement does not give rise to a deferral of income or expenses and no election is made for the provisions to apply. You should obtain your own independent advice as to the application of the proposed provisions in your own particular circumstances.

## 5.14 Government Announcement regarding 'traditional instalment warrants'

The Assistant Treasurer announced that the Government will introduce legislation to amend the income tax treatment of 'traditional instalment warrants' and the Minister for Financial Services, Superannuation and Corporate Law announced that the Government proposes to amend the tax law so that a superannuation trustee who enters into a limited recourse borrowing arrangement to purchase an asset under subsection 67(4A) (now section 67A) of the SIS Act, will be treated as the owner of the asset for income tax purposes.

The terms of the proposed changes are set out in the consultation paper headed "Income Tax Treatment of Instalment Warrants Proposals Paper" dated 10 March 2010.

In accordance with the announcement, the income tax amendments will apply for assessments for the 2007-2008 and later income years.

### **Superannuation Funds**

In respect of Superannuation Funds, the taxation implications outlined at paragraph 5.9 above are subject to the enactment of this change in the terms announced.

### **Nominee Investors**

In respect of Nominee Investors (who are not Superannuation Funds), where the Eligible Investment is a direct or indirect interest in a listed security, an unlisted security in a widely held entity or a bundle of these assets, the taxation implications outlined in paragraph 5.10 above are subject to the enactment of this change in the terms announced.

Regarding the discussion at paragraph 5.11 above, if the change is enacted in the terms announced, such that until the Loan is repaid the ATO treats the Nominee as the absolutely entitled owner of an Eligible Investment that is not a direct or indirect interest in a listed security, an unlisted security in a widely held entity or a bundle of these assets, the Nominee will be required to lodge a statement under Division 6D of the Tax Act and a tax return in respect of your investment. That is, the exemption in PS LA 2000/2 for trustees of "Transparent Trusts" or "Secured Purchase Trusts" will not apply in these circumstances.

Superannuation Funds and Nominee Investors should note that if the announced changes are not legislated, or are not legislated in accordance with the announcement, the summary in paragraphs 5.9 and 5.10 above may not be applicable and different taxation implications may arise.

## 5.15 GST

The *A New Tax System (Goods and Services Tax) Act 1999* ("GST Act") and related legislation impose a goods and services tax ("GST") on certain "supplies". GST is payable on "taxable supplies". However, GST is not payable on supplies that fall within a category of "input taxed" or "GST-free" supplies. The *A New Tax System (Goods and Services Tax) Regulations 1999* identify a range of "financial supplies" that are input taxed.

In our view:

- ◆ the grant of a Principal Loan and the grant of an Interest Assistance Loan by UBS to you;
- ◆ the payment of a Loan Establishment Fee by you to UBS for establishment of the Loan;
- ◆ the payment of Interest on a Loan and repayment of the Loan by you to UBS;
- ◆ the transfer of the Eligible Investments by you to UBS as security for the Loan;
- ◆ the payment of the trust deed review fee, direct debit fail fee, default interest on overdue payments, Facility Adjustment Fee and the Early Termination Amount by you to UBS;

will not attract GST.

However, payments by you to UBS (where UBS acts as agent) for advisory services provided by your financial adviser to you will attract GST as consideration for a taxable supply made by your financial adviser to you (assuming your financial adviser is registered for GST purposes). Further, if GST were to become payable by UBS or any other person in connection with any supply made to you under or in connection with this IM, then UBS would be entitled to recover an additional amount on account of GST from you.

You should obtain your own advice as to whether or not you are entitled to an input tax credit for any acquisition you make from UBS or any other person in connection with a supply made under or in connection with this IM in respect of which GST is charged.

## Section 6—Superannuation opinion

---

### **6 Superannuation opinion**

*This page has been left intentionally blank.*



UBS AG, Australia Branch  
Level 16  
Chifley Tower  
2 Chifley Square  
Sydney NSW 2000

**10 February 2012**

Dear Sirs

**Our reference**  
RST CYM 02 2025 7917

## **UBS Investment Loan: Superannuation Law**

### **1. INTRODUCTION**

You have asked for our opinion in relation to various matters relating to the UBS Investment Loan, a loan product which is to be offered to potential borrowers (**Borrowers**) under an Information Memorandum (**IM**) issued by UBS AG, Australia Branch (**UBS**) in which this opinion is included. We understand that UBS intends that the UBS Investment Loan be made available to, amongst other categories of Borrowers, trustees of superannuation funds, including trustees of self managed superannuation funds (**SMSFs**) as defined in the *Superannuation Industry (Supervision) Act 1993 (Cth)* (**SIS**).

The opinions in this letter are given solely for the benefit of UBS and should not be relied upon by any other person. Whilst we understand that a copy of the opinion will be included in the IM, your purpose in doing so is only to demonstrate that UBS has considered the issues addressed in this opinion, and not to permit potential investors to rely on it. In particular, superannuation fund trustees should seek their own independent advice on the legal implications of entering into a UBS Investment Loan and the transactions contemplated under the IM.

Nothing in this letter is or is intended to be financial product advice or a recommendation that a superannuation fund trustee or any other person should enter into a UBS Investment Loan.

Capitalised terms not otherwise defined in this letter have the meaning given to them in the IM.

The opinions in this letter are subject to the qualifications and assumptions set out in section 3 below.

The opinions in this letter are given solely in respect of Australian superannuation laws in force at 9.00 am (Sydney time) on the date of this letter.

## 2. SUPERANNUATION LAW ISSUES

### 2.1 Introduction and scope

There are a number of legal issues which arise where the Borrower in respect of a UBS Investment Loan is a trustee of a superannuation fund. In particular, a superannuation fund trustee must comply with numerous obligations imposed under SIS and the Regulations made pursuant to SIS (**SIS Regulations**).

Determining whether a particular transaction could potentially involve a breach of certain provisions of SIS or the SIS Regulations by a superannuation trustee requires an analysis of the transaction in the context of the fund's overall circumstances, including the fund's investment strategy. Some examples of SIS provisions of this type include:

- (a) The "in-house assets" rules contained in Part 8 of SIS;
- (b) The sole purpose test set out in section 62 of SIS;
- (c) The prohibition against giving financial assistance to members, as set out in section 65 of SIS;
- (d) The requirement for transactions to be entered into on an arms' length basis, as required by section 109 of SIS;
- (e) The covenant to act in the best interests of beneficiaries, as set out in section 52(2)(c) of SIS; and
- (f) The covenant to formulate and give effect to an investment strategy, as set out in section 52(2)(f) of SIS.

A consideration of these SIS issues is beyond the scope of this advice.

### 2.2 Specific SIS issues relevant to the UBS Investment Loan

There are, however, certain specific SIS restrictions that are of direct relevance to a superannuation fund trustee who wishes to enter into a UBS Investment Loan. Before addressing these, it is worth noting that the UBS Investment Loan seeks to take advantage of changes made to SIS in 2007, and subsequent amendments to SIS in 2010, which allow superannuation fund trustees to borrow on a limited recourse basis, subject to various specified conditions.

Section 67(1) of SIS generally prohibits the trustee of a superannuation fund from borrowing money. Section 67A of SIS provides an exception to this general rule for arrangements that fall within the parameters specified in the section.

In summary, section 67A applies to an arrangement under which:

- (a) money is borrowed and applied for the acquisition of a single asset, or collection of multiple identical assets with the same market value (other than money or assets the superannuation fund trustee is prohibited by SIS or any other law from acquiring);
- (b) the asset(s) are held on trust so that the superannuation fund trustee acquires a beneficial interest in the asset;
- (c) the superannuation fund trustee has a right to acquire legal ownership of the asset(s) by making one or more payments after acquiring the beneficial interest;

- (d) the rights of the lender or any other person against the superannuation fund trustee for default on the borrowing (or on the sum of the borrowing and charges related to the borrowing), are limited to rights relating to the asset(s);
- (e) if, under the arrangement, the superannuation fund trustee has a right relating to the asset, the rights of the lender or any other person against the superannuation fund trustee for the superannuation fund trustee's exercise of its rights are limited to rights relating to the asset(s); and
- (f) the asset(s) are not subject to any charge or encumbrance other than as set out in paragraphs (d) and (e) above.

The asset(s) originally acquired under the loan may be replaced by other assets only in certain prescribed circumstances set out in section 67B of SIS.

### 2.3 Issues for Consideration

There are three key SIS issues that require particular consideration in the context of UBS making the UBS Investment Loans available to superannuation fund trustees. Our opinions in respect of these are set out in the paragraphs below.

- (a) **Does the UBS Investment Loan, when made available to a superannuation fund trustee on the terms described in the IM, fall within the scope of section 67A of SIS, which provides an exception to the general rule that superannuation fund trustees are prohibited from borrowing?**

In our opinion, the answer to this question is yes.

- (b) **When a superannuation fund trustee uses the UBS Investment Loan, would this involve a breach, by the superannuation fund trustee, of SIS Regulation 13.14 which generally prohibits the trustee from granting a charge over fund assets?**

In our opinion, the answer to this question is no. The Mortgage is granted by the Nominee, not the Borrower. The Borrower does not grant a charge or other security interest over its beneficial interest in the assets held on trust for it by the Nominee. Further, SIS Regulation 13.15 provides that the prohibition against charging does not apply in relation to charges that are permitted 'expressly or by necessary implication, by the Act or the Regulations'. Section 67A(1)(f) now permits an asset to be the subject of a charge as provided for in sections 67A(1)(d) and 67A(1)(e).

- (c) **When a superannuation fund trustee uses the UBS Investment Loan, would this involve a breach of section 66 of SIS, which generally prohibits a superannuation fund trustee from acquiring assets from a related party, subject to certain exceptions?**

The security trust may be considered to be a "related party" of the superannuation fund, by virtue of the terms of the Trust Deed and the fact that the superannuation fund trustee is the sole beneficiary of the security trust, particularly where the superannuation fund is an SMSF.

The issue potentially arises in two ways as follows:

- (i) **When the superannuation fund trustee acquires legal title to the Eligible Investment, following repayment of the Loan**

In this regard, although this may arguably involve a technical breach of section 66, from a practical point of view, some comfort can be drawn from

the Australian Tax Office (**ATO**) publication entitled 'Limited recourse borrowing arrangements by self-managed super funds – questions and answers' last modified on 29 July 2010 which states that:

*"The ATO considers that, under the new laws,... (a transfer of legal title in these circumstances) ..would not contravene the existing prohibition on acquiring assets from related parties."*

(ii) **When the superannuation fund trustee acquires an interest in the security trust**

At the time the interest is acquired, the security trust is not a "related party" of the superannuation fund trustee. Rather, it is the acquisition that will cause the security trust to become a "related party". On that basis, in our opinion, this acquisition does not breach the prohibition in section 66 of SIS.

### **3. QUALIFICATIONS AND ASSUMPTIONS**

#### **3.1 Qualifications**

The observations and opinions that we have expressed in this letter are based on and qualified by the following matters:

- (a) the qualifications we have noted elsewhere in this letter;
- (b) we have acted and been involved only in our capacity as Australian legal advisers to UBS;
- (c) we express no opinion in relation to the taxation or stamp duty implications, whether for UBS, a Borrower or any other party, of entering into any of the transactions contemplated in the IM or with respect to the structure, scope or operation of the Loan Agreement, Trust Deed and Nominee Deed;
- (d) we express no opinion on any operational, financial, commercial business, statistical, valuation, accounting, taxation or technological information in the IM; and
- (e) sections 67A and 67B of SIS comprise relatively new legislation, involve matters that are open to differing legal interpretation, have not yet been fully tested by the courts and are subject to change in regulations and regulatory policy. Our observations and opinions have been given on the basis of our interpretation of sections 67A and 67B. It is possible that a court or regulator could take a different view.

#### **3.2 Assumptions**

In making the observations and giving the opinions that we have expressed in this letter we have assumed:

- (a) that money borrowed under the UBS Investment Loan will be applied to purchase a single asset or a collection of multiple identical assets;
- (b) that the Borrower is not prohibited by SIS or any other law from acquiring the assets purchased with the borrowed money;
- (c) that if the asset or assets acquired using the borrowed funds are replaced with other assets, then either, the replacement asset is treated as a "replacement

asset" as provided for in section 67B(2) of SIS or UBS will terminate the relevant UBS Investment Loan;

- (d) the completeness and accuracy of all material or information in relation to matters of fact and opinion provided to us by UBS;
- (e) that the superannuation funds that are the subject of this advice are regulated superannuation funds as defined in SIS;
- (f) that the IM, Trust Deed and Nominee Deed will be issued in the form we have reviewed and commented on;
- (g) each superannuation fund trustee to which this letter relates is a Nominee Investor;
- (h) that neither the Nominee nor any person from whom any assets are acquired by the Nominee pursuant to these arrangements is a "related party" of the superannuation fund, except, in the case of the Nominee, to the extent that the Nominee becomes a related party of the fund as a consequence of the superannuation fund trustee's use of the UBS Investment Loan; and
- (i) that a superannuation fund trustee who uses the UBS Investment Loan otherwise complies with its obligations under SIS and the SIS Regulations.

Yours faithfully



**Blake Dawson**

# Section 7—Loan Agreement

---

## 7 Preliminary

### 7.1.1 Agreement

This agreement is entered into between UBS AG, Australia Branch, ABN 47 088 129 613, AFSL 231 087 ("UBS") and the person whose details are set out in the Confirmation as the person who will be entering into Loans under this agreement ("you"). This agreement governs each Loan entered into between you and UBS pursuant to this agreement.

### 7.1.2 Confirmations

UBS will give to you a Confirmation in respect of each Loan. The terms of this agreement apply to each Confirmation. This agreement and each Confirmation constitute the terms of a Loan. To the extent of any inconsistency between the terms of this agreement and the Confirmation in respect of a Loan, the terms of the Confirmation prevail.

## 7.2 Definitions and interpretation

### 7.2.1 Definitions

Capitalised terms not otherwise defined in this agreement have the meaning given to them in the Glossary section of the Information Memorandum accompanying this agreement.

### 7.2.2 Rules for interpreting this agreement

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this agreement, except where the context makes it clear that a rule is not intended to apply:

- (a) A reference to:
  - i) legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
  - ii) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
  - iii) a party to this agreement or to any other document or agreement includes a permitted substitute or a permitted assign of that party;
  - iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
  - v) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
- (c) A word which suggests one gender includes the other genders.
- (d) If a word is defined, another part of speech has a corresponding meaning.
- (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (f) The word "agreement" includes an undertaking or other binding arrangement or understanding, whether or not in writing.
- (g) Where an expression is defined anywhere in this agreement, it has the same meaning throughout.

- (h) A reference to "AUD", "dollars" or "\$" is to an amount in Australian currency.
- (i) Words defined in the GST Law have the same meaning in this agreement.

### 7.2.3 *Business Days*

If the day on or by which a person must do something under this agreement is not a Business Day:

- (a) if the act involves a payment that is due on demand, the person must do it on or by the next Business Day; and
- (b) in any other case, the person must do it on or by the previous Business Day.

## 7.3 **Conditions precedent**

UBS will generally not enter into any Loan with you unless:

- (a) you have completed and returned the Application Form and any additional documentation or information requested by UBS in accordance with the directions set out in the Information Memorandum, Application Form and Term Sheet and UBS has accepted your Application;
- (b) if any fees and charges relating to the Loan are specified in the Term Sheet as being payable on or before the Trade Date, you have paid to UBS those fees and charges;
- (c) UBS is satisfied that the Mortgage will provide effective security and control over the disposal or redemption of the Mortgaged Property;
- (d) UBS is satisfied that all statements made in your Application Form and the representations and warranties set out in this agreement are correct and will be correct on the Trade Date of the Loan and on each day during the Term of the Loan;
- (e) UBS has obtained all other documents, information or opinions relating to you and (if applicable) the Guarantor which it requires in order to enter into the Loan (including solicitors' certificates or statutory declarations in relation to the Guarantor if applicable);
- (f) UBS is satisfied that no Event of Default has occurred or is continuing, and that entry into the Loan will not result in the occurrence of an Event of Default; and
- (g) where you hold an Eligible Investment and UBS requires the Eligible Investment to become subject to the Mortgage, you have delivered to the Nominee or placed in a Locked Holding (as directed by UBS) the Eligible Investment specified by UBS in the Term Sheet as Unrestricted Products.

For the avoidance of doubt, UBS is not required to enter into any Loan with you if the above conditions precedent have been satisfied and UBS may, in its absolute discretion, enter into a Loan with you notwithstanding that the conditions precedent in this clause have not been satisfied.

## 7.4 **Loan Facility**

### 7.4.1 *Drawdown*

UBS may, in its absolute discretion and subject to clause 7.4.2:

- (a) make a Principal Loan available to you on a Drawdown Date; and
- (b) if you are not a Superannuation Fund, make an Interest Assistance Loan available to you on a Drawdown Date,

subject to the terms of this agreement. For the avoidance of doubt, UBS may in its sole discretion, refuse to make a Loan available to you and will not be required to provide reasons for such refusal.

#### 7.4.2 *Purpose*

- (a) Unless you have provided an Eligible Investment as security for the Principal Loan, you must apply your Principal Loan exclusively for the purchase of an Eligible Investment. If you are a Superannuation Fund you must apply your Principal Loan exclusively for the purchase of an Eligible Investment.
- (b) You must apply your Interest Assistance Loan (if applicable) exclusively to pay your Interest obligations under a Principal Loan and for no other purpose.

#### 7.4.3 *Payment of drawn down amounts*

You irrevocably authorise and direct UBS to:

- (a) if you have not provided an Eligible Investment as security for the Principal Loan, make the Principal Loan by applying the Loan to fund the purchase of an Eligible Investment on the Drawdown Date;
- (b) if you have provided an Eligible Investment as security for the Principal Loan, make the Principal Loan by providing the Principal Loan to you; and
- (c) make the Interest Assistance Loan (if applicable) by applying the Interest Assistance Loan Balance to pay your Interest obligations under a Principal Loan as set out in your Confirmation.

#### 7.4.4 *Maximum Principal Loan Amount*

- (a) If your Application is approved, UBS will, in its absolute discretion, determine the Maximum Principal Loan Amount for each Principal Loan, and the Maximum Interest Assistance Loan Amount for the corresponding Interest Assistance Loan (if applicable).
- (b) You may request an increase in the Maximum Principal Loan Amount from time to time and UBS may, in its absolute discretion, agree to such a request, in consideration of you paying the Facility Adjustment Fee to UBS and/or delivering additional Mortgaged Property to the Nominee or placing additional Mortgaged Property in a Locked Holding. UBS may agree to such a request subject to conditions, including that additional Mortgaged Property is made subject to the Mortgage.
- (c) Any new Maximum Principal Loan Amount will take effect from the date specified by UBS in writing.

#### 7.4.5 *Term*

- (a) Unless extended or otherwise agreed in writing by UBS, the Term of any Principal Loan commences on the first Drawdown Date, and terminates on the Maturity Date.
- (b) Unless extended or otherwise agreed in writing by UBS, the term of any Interest Assistance Loan commences on the first Drawdown Date for that Interest Assistance Loan and terminates on the final Repayment Date for that Interest Assistance Loan (which may be the Maturity Date for the related Principal Loan).

#### 7.4.6 *Interest Period*

The Term of a Loan may be made up of one or more Interest Periods. Each Interest Period begins and ends on the dates set out in your Confirmation.

#### 7.4.7 *Loan Establishment Fee*

The Loan Establishment Fee (if any) is payable by you to UBS on or before the first Drawdown Date.

#### 7.4.8 *Loan segmented into tranches and cross collateralisation*

Each Loan is a separate Loan. Each reference in this agreement to a Loan is to each Loan separately. If you enter into multiple Loans, UBS will maintain sub accounts recording the balance of each Loan from time to time and records showing each other Loan to which the Loan relates, and the relevant Mortgaged Property. If you are not a Superannuation Fund, your Loans will be cross collateralised so that the Eligible Investment



under each Loan will be security for the aggregate of all your obligations under your outstanding Loans. If you are a Superannuation Fund, your Loans will not be cross collateralised.

#### **7.4.9 Corporate Actions**

If:

- (a) UBS (in its absolute discretion) forms the view that the result of the operation of this agreement in relation to any Corporate Action is that your economic position, or that of UBS and/or the Mortgagee, in respect of the Mortgaged Property is substantially worse than it ought to have been as a result of that Corporate Action, after taking into account UBS's ability to manage its hedge positions in respect of the Loan and any increased cost in maintaining, acquiring or disposing of UBS's hedge positions; or
- (b) a Corporate Action results in some or all of the Mortgaged Property being replaced with other assets and/or cash;

then UBS and/or the Mortgagee may in its absolute discretion take any action (including without limitation directing the Nominee or you to do anything or declaring an Early Termination Date) and may require you to take any action it thinks fit to place you or UBS and/or the Mortgagee (as the case may be) in an economic position which is as similar as reasonably practicable to your or UBS's and/or the Mortgagee's economic position prior to the Corporate Action in relation to the Mortgaged Property and to enable UBS to preserve a hedge position. Such actions taken by UBS and/or the Mortgagee under this clause may include without limitation an adjustment of any of the terms of your Loan.

### **7.5 Drawdown, Interest and Maturity**

#### **7.5.1 Drawdown Amount**

You may make one or more drawdowns of a Drawdown Amount for each Loan by delivering a Drawdown Notice to UBS subject to the following:

- (a) the Principal Loan Balance must not exceed the Maximum Principal Loan Amount and the Interest Assistance Loan Balance must not exceed the Maximum Interest Assistance Loan Amount (if applicable);
- (b) any Drawdown Amount must be no less than the Minimum Drawdown Amount; and
- (c) the Drawdown Date specified in the Drawdown Notice must be a Business Day.

For the avoidance of doubt, your failure to satisfy any of these obligations or any waiver of these requirements by UBS does not in any way diminish your obligation to repay any Drawdown Amount on the Repayment Date or your obligation to pay Interest on any Drawdown Amount.

#### **7.5.2 Interest Amounts**

The Interest Amount payable on any Drawdown Amount (not yet repaid) during an Interest Period is calculated as:

$$DA \times IR \times (d / 365)$$

where:

"DA" is the Drawdown Amount (not yet repaid);

"IR" is the Interest Rate applicable to that Drawdown Amount for that Interest Period; and

"d" is the number of days in the relevant Interest Period.

#### **7.5.3 Payment of Interest Amounts**

- (a) Each Interest Amount is payable on the Interest Payment Date specified by UBS for the relevant Interest Period.
- (b) As specified in your Confirmation, on each Interest Payment Date, you irrevocably direct UBS to either:

- i) draw down an amount equal to the Interest Amount under your Loan Facility (including any Interest Assistance Loan) and to apply the amount drawn down to meet your Interest obligations due on that Interest Payment Date; or
  - ii) direct debit an amount equal to the Interest Amount from your nominated amount to meet your Interest obligations due on that Interest Payment Date.
- (c) For the avoidance of doubt, if payment of an Interest Amount would result in your Principal Loan Balance exceeding the Maximum Principal Loan Amount or your Interest Assistance Loan Balance exceeding the Maximum Interest Assistance Loan Amount (if applicable), your Loan will not be drawn down under paragraph 7.5.3(b)i) and you will be liable for the Interest Amount and must pay the amount on the applicable Interest Payment Date to UBS out of your own funds.

#### *7.5.4 Repayment*

- (a) Subject to paragraph (b), you must repay each Drawdown Amount to UBS on the earlier of:
- i) the relevant Repayment Date(s); or
  - ii) upon receipt of a notice from UBS requiring repayment following the occurrence of an Event of Default.
- (b) Subject to clause 7.5.7, you must, by no later than the relevant date specified in your Confirmation, by irrevocable notice in writing, inform UBS either that:
- i) you will repay the Loan Balance and any outstanding Interest to UBS on the Maturity Date; or
  - ii) you will not repay the Loan Balance and/or any outstanding Interest and UBS and/or the Mortgagee may proceed on the Maturity Date to exercise its rights under the Mortgage or otherwise under this agreement.

if UBS does not receive such a notice by the time required, UBS and/or the Mortgagee may exercise its rights under the Mortgage and this agreement immediately.

- (c) Unless otherwise provided in this agreement or your Confirmation, you must make each payment due to UBS under this agreement by authorising UBS to direct debit your nominated account as specified in your Application Form. UBS may, by exception, agree to accept a cheque or an electronic transfer of cleared funds to an account specified by UBS. All amounts payable on a due date are to be made without set-off, counterclaim or other deduction except as expressly approved by UBS. Time is of the essence in making all payments and failure to pay by the specified time will result in UBS immediately exercising its rights arising on default under this agreement. UBS may charge a fee as specified in your Term Sheet if a direct debit from your nominated account fails and UBS is required to re-run the direct debit or process payment by some other method.

#### *7.5.5 Interest on overdue payments*

- (a) If you fail to:
- i) repay all or part of a Drawdown Amount on the relevant Repayment Date; or
  - ii) pay Interest as required by this agreement,
- then in addition to any other rights UBS may have, UBS may calculate Interest on such outstanding amount from the respective due date up to the date of actual payment, at the Interest Rate then applicable to the relevant Drawdown Amount plus 4% per annum.
- (b) Subject to clause 7.6, Interest due under this provision, but unpaid, may be capitalised on the last day of each month, commencing from the first month in which the amount was due, whereupon it shall bear Interest in accordance with this clause.

### 7.5.6 *Early Repayment*

- (a) You may, if permitted by your Confirmation and agreed by UBS, by giving at least five Business Days prior written notice to UBS, repay all or part of a Drawdown Amount before the Repayment Date, provided that you pay all other amounts due to UBS under, or in connection with, this agreement, including without limitation any Early Termination Amount, at the time you make such repayment. UBS may in its absolute discretion refuse to accept a partial repayment in respect of a Loan if you are a Superannuation Fund.
- (b) If you make a repayment in full (together with all amounts due to UBS under or in connection with this agreement) under paragraph 7.5.6(a), the Mortgagee agrees to release the Mortgage in accordance with and subject to clause 7 of the Trust Deed.
- (c) If all or a proportion of the Eligible Investment is redeemed before the Maturity Date, or cancelled, forfeited or otherwise terminated, you must repay on the date of that redemption, cancellation, forfeiture or termination, the same proportion of the Principal Loan and Interest Assistance Loan (if applicable) in one amount, together with any capitalised interest (if any) on the amount repaid and any other Interest, fees and other moneys applicable or proportionate to that amount. For example, if 50% of the value of the Eligible Investment is redeemed, you must repay 50% of the Principal Loan and Interest Assistance Loan (if applicable) and any other Interest, fees or amount payable.

### 7.5.7 *Offer of extension of Loan*

- (a) Before the Maturity Date for a Loan, UBS may, in its absolute discretion, notify you in writing that it offers you the opportunity to extend the Maturity Date for the Loan for an additional period ("New Period").
- (b) The notice given by UBS pursuant to paragraph 7.5.7(a) will contain the terms upon which UBS offers to extend the Maturity Date for the Loan, including the indicative Interest Rate applicable for the New Period.
- (c) Before the end of any New Period, UBS may provide you with another notice under paragraph 7.5.7(a).

Nothing in this clause 7.5.7 in any way affects UBS's absolute discretion under clause 7.5.9.

### 7.5.8 *Notification by you*

Following receipt of the notice pursuant to clause 7.5.7(a), you may inform UBS in writing by that you wish to extend the Maturity Date for the Loan for the New Period.

### 7.5.9 *Extension of Loan*

If you have notified UBS under clause 7.5.8 that you wish to extend the Maturity Date for the Loan, UBS may, in its absolute discretion, decide whether to extend the Maturity Date for the Loan. If UBS decides to extend the Maturity Date for the Loan then the Maturity Date will be extended on and subject to the terms set out in the notice under clause 7.5.7(a). The extension of the Maturity Date will not affect the validity or operation of the Mortgage.

If:

- (a) you have notified UBS under clause 7.5.8 that you wish to extend the Maturity Date for the Loan; and
- (b) UBS decides not to grant such an extension to you,

then UBS must refund to you without interest, any amount paid by you to UBS in respect of the Loan extension and the New Period in compliance with any condition specified by UBS in a notice given under clause 7.5.7(a).

#### *7.5.10 No notice from you*

If you do not notify UBS under clause 7.5.8 that you wish to extend the Maturity Date for the Loan or you notify UBS under clause 7.5.8 that you wish to extend the Maturity Date for the Loan and UBS decides not to grant an extension of the Loan, the Loan is repayable on the Maturity Date.

#### *7.5.11 Automatic Extension*

- (a) If:
- i) the Issuer acts to redeem, cancel or forfeit the Eligible Investment, such that the full redemption proceeds for the Eligible Investment are not paid by the close of business on the Maturity Date, or the full redemption proceeds for the Eligible Investment are not paid by the close of business on the Maturity Date for any other reason; and
  - ii) the Loan has not otherwise been repaid,
- then paragraphs 7.5.11(b) and 7.5.11(c) of this clause will apply.
- (b) If part of the Loan Balance remains outstanding as at the close of business on the Maturity Date, then in addition to the Mortgagee's right to enforce the Mortgage, UBS can extend the term of the Loan until the Loan Balance is repaid through the application of distributions or redemption proceeds.
- (c) Interest shall accrue daily on any unpaid Loan Balance for the period of extension described in paragraph (b), at a rate equal to AUD one month BBSW + 4% p.a. as calculated by UBS. You are liable to pay this interest amount to UBS on the Maturity Date and at the end of each month thereafter, and UBS shall have recourse to you for the payment of this amount in accordance with clause 7.6 as it shall form part of the Secured Moneys.

#### *7.5.12 Direction at Maturity*

You acknowledge the Nominee or UBS may lodge a redemption notice (or similar document) with the Issuer prior to any scheduled redemption, cancellation, forfeiture or similar arrangement in respect of the Eligible Investment.

#### *7.5.13 Drawdown at Maturity*

In the absence of an early repayment or an Early Termination Date, if your Principal Loan Balance immediately prior to Maturity is less than the Maximum Principal Loan Amount, you authorise UBS to draw down the Principal Loan to the Maximum Principal Loan Amount and to first apply the funds to pay any amount that you owe under this Loan Facility (other than the Principal Loan Balance) and then to advance any remaining amount as a Drawdown Amount to you immediately prior to Maturity.

This clause 7.5.13 does not apply if you are a Superannuation Fund.

#### *7.5.14 Direction to pay*

- (a) You irrevocably authorise UBS and/or the Mortgagee to instruct the Issuer, the Broker Sponsor or the Nominee to pay any amount payable to you or the Nominee as holder of an Eligible Investment (including without limitation any distribution) to:
- i) the Issuer to be reinvested in the Eligible Investment (subject to any applicable laws including without limitation, SIS or any other any laws with respect to superannuation if you are a Superannuation Fund);
  - ii) UBS and/or the Mortgagee to the extent of any outstanding Secured Moneys; or
  - iii) UBS and/or the Mortgagee to set off against any obligation you have to pay Interest to UBS, at UBS's discretion.
- (b) UBS may also specify how distributions will be dealt with in the Term Sheet.

## 7.6 Limited Recourse and Full Recourse

### 7.6.1 Limited Recourse

- (a) If you are not a Superannuation Fund, and your Loan is a Limited Recourse Loan, then:
- i) subject to this clause 7.6, the recourse of UBS and/or the Mortgagee against you in respect of the repayment of the Principal Loan Balance on the Maturity Date (or at any other time specified in the Term Sheet for the Loan) is limited to the amount which UBS and/or the Mortgagee can obtain by enforcing its rights in respect of the Mortgaged Property securing the Principal Loan Balance; and
  - ii) for the avoidance of doubt, UBS's and/or the Mortgagee's recourse against you at any other time and for all other amounts due under this agreement is personal and unlimited.
- (b) If you are a Superannuation Fund, then your Loan will be a Limited Recourse Loan and the recourse of UBS and/or the Mortgagee against you in respect of all of your obligations under each Loan is limited to the amount which UBS and/or the Mortgagee can obtain by enforcing its rights relating to the Mortgaged Property in respect of that Loan.

### 7.6.2 Exceptions to Limited Recourse

Subject to the Term Sheet for a Loan, the limitation in clause 7.6.1(a)i) does not apply, and UBS and/or the Mortgagee may take legal or other action against you to recover the Interest Assistance Loan Balance (if applicable) in all cases and the Principal Loan Balance where:

- (a) the relevant Eligible Investment is described by the Issuer as being capital protected at a particular date and the value or redemption proceeds of the Eligible Investment on that date, as calculated by UBS, is less than the capital protected amount (but only to the extent that the value or redemption proceeds are less than the capital protected amount);
- (b) an Early Termination Date occurs;
- (c) you or the Guarantor have breached any provision of this agreement;
- (d) a representation made or a warranty given by you or the Guarantor under this agreement was or becomes incorrect or misleading;
- (e) UBS and/or the Mortgagee has relied on a statement or some conduct of yours or the Guarantor's which in UBS's opinion was false or misleading; or
- (f) you and UBS agree and have stated in the Confirmation that the limitation will apply only in respect of a portion of the Principal Loan Balance, such that if the Principal Loan Balance exceeds this amount then UBS's and/or the Mortgagee's recourse against you in respect of the excess is personal and unlimited.

### 7.6.3 Full Recourse

If your Loan is a Full Recourse Loan, then in addition to its rights in respect of the Mortgaged Property, UBS's and/or the Mortgagee's recourse against you at any time and for all amounts due under the Loan Agreement is personal and unlimited.

### 7.6.4 Winding up

Notwithstanding anything in clauses 7.6.1(a)i) and 7.6.2 but subject to clause 7.6.1(b), UBS and/or the Mortgagee may prove for the Loan Balance, any Drawdown Amount or any other amount owing to UBS and/or the Mortgagee under this agreement and otherwise participate in your bankruptcy or insolvency if another creditor initiates those proceedings.

### 7.6.5 Limitations

Nothing in clause 7.6.1:

- (a) releases you from your obligations under this agreement;

- (b) prevents UBS and/or the Mortgagee from obtaining equitable relief under, or in connection with, this agreement; or
- (c) affects in any way whatsoever the rights of UBS and/or the Mortgagee to apply any proceeds received by the Mortgagee on enforcement of the Mortgage against any amount payable under, or in connection with, this agreement (or if you are not a Superannuation Fund, any other agreement), including or interest, costs and expenses or Taxes under, or in connection with, this agreement.

Nothing in clause 7.6.1(a)i) affects in any way whatsoever UBS's and/or the Mortgagee's right to recover personally from you Interest Amounts, costs and expenses or Taxes under, or in connection with, this agreement.

## **7.7 Nominee and Locked Holding arrangements**

- (a) If you are a Nominee Investor, you agree and acknowledge:
  - i) By way of consideration of UBS's entering into this agreement and the Loan, you agree that you will where requested by UBS, by the date specified by UBS in your Confirmation, cause the legal title to the Mortgaged Property to be held by the Nominee as your nominee in accordance with this clause, the Nominee Deed and the Trust Deed.
  - ii) You acknowledge that the Nominee will hold the Mortgaged Property transferred to it as set out in the Nominee Deed and the Trust Deed for you from the day the legal title is first held by Nominee, as contemplated by paragraph i), until the Mortgage is released in respect of the Mortgaged Property.
  - iii) You acknowledge that:
    - (A) the Nominee must not act on your instructions in relation to the Mortgaged Property without first obtaining the Mortgagee's consent;
    - (B) the Nominee is authorised to act in accordance with any directions of the Mortgagee for any purpose under this agreement, without obtaining your consent even if the directions contradict instructions that you have given or will give later in relation to the Mortgaged Property;
    - (C) without limiting clauses 7.7 (a)(iii)(A) or (B), until the Mortgagee executes a release of the mortgage, instructions to the Nominee or any other person appointed to act on the Nominee's behalf in relation to the sale, transfer, disposal, redemption or other dealing in respect of any Mortgaged Property may only be given by the Mortgagee;
    - (D) the Nominee is under no duty to enquire whether the Mortgagee may validly give any consent or instruction and you may not challenge the validity of those instructions or any action taken by the Nominee in accordance with those instructions;
    - (E) the Nominee has mortgaged the Mortgaged Property held by it in favour of the Mortgagee to secure the due and punctual repayment to UBS and/or the Mortgagee of the Secured Moneys and the performance of the Secured Obligations; and
    - (F) you have agreed not to request or require the Nominee to transfer legal title to the Mortgaged Property to you until the Mortgagee executes a release of the mortgage or otherwise consents in writing.
  - iv) Subject to clause 7.6, the Nominee may apply any Mortgaged Property held by it towards the satisfaction of any amount owing by you to UBS and/or the Mortgagee or the Nominee.
  - v) The Nominee has no powers, duties, rights or discretions in relation to the Mortgaged Property except as expressly set out in this agreement, the Nominee Deed or the Trust Deed.
  - vi) By entering into this agreement, you agree to be bound by the terms of the Trust Deed and the Nominee Deed.

- (b) If you are a Personal Investor, you agree and acknowledge:
- i) the Mortgaged Property is subject to the Mortgage under clause 7.8;
  - ii) you will cause the Mortgaged Property to be held in a Locked Holding until authorised by the Mortgagee to release the Mortgaged Property from the Locked Holding;
  - iii) you must do everything necessary or reasonably required by UBS and/or the Mortgagee to preserve and protect the value of the Mortgaged Property;
  - iv) you must do everything you are required to do under or in connection with the Mortgaged Property;
  - v) where specified in the Term Sheet for an Eligible Investment:
    - (A) the Eligible Investment and Mortgaged Property must be held through an account with the Broker Sponsor; and
    - (B) you acknowledge that the Broker Sponsor Terms contained in the Term Sheet shall apply to the account with the Broker Sponsor and agree to comply with those terms;
  - vi) until the Mortgagee executes a release of the mortgage, instructions to the registrar, Broker Sponsor, custodian (as applicable) in relation to the sale, transfer, disposal, redemption or other dealing of the Mortgaged Property may only be given by the Mortgagee;
  - vii) if any of the Mortgaged Property is an "intermediated security" (as defined in the PPS Act), you agree that:
    - (A) the Broker Sponsor, or any other "intermediary" (as defined in the PPS Act), must not act on your instructions in relation to the Mortgaged Property without first obtaining the Mortgagee's consent;
    - (B) the Broker Sponsor, or any other "intermediary" (as defined in the PPS Act), is authorised to act in accordance with any directions of the Mortgagee for any purpose under this agreement, without obtaining your consent even if the directions contradict instructions that you have given or will give later in relation to the Mortgaged Property;] and
  - viii) you will not, and will not seek to, sell, transfer, encumber, dispose of, declare a trust over, or redeem or amend, vary, waive or give up the Mortgaged Property without the prior written consent of UBS.

## **7.8 Mortgage**

### **7.8.1 Nominee Investor - acknowledgment of Mortgage**

If you are a Nominee Investor, you acknowledge that the Nominee has mortgaged the Mortgaged Property on the terms and conditions set out in the Trust Deed. The Mortgage secures the due and punctual payment of the Secured Moneys and the punctual performance of the Secured Obligations under this agreement, the Trust Deed and the Nominee Deed. The Mortgage is granted in return for UBS agreeing to make the Loan or (to the extent applicable) Loans to you.

### **7.8.2 Personal Investor – Mortgage**

If you are a Personal Investor:

- (a) You hereby mortgage to the Mortgagee the Mortgaged Property;
- (b) The Mortgage secures the due and punctual payment to UBS and/or the Mortgagee of the Secured Moneys and punctual performance of the Secured Obligations in respect of the Loan relating to the relevant Mortgaged Property;

- (c) The Mortgagee has, pursuant to the Mortgage, a first right to receive and retain for its own account from the net proceeds of sale, redemption or disposal of the Mortgaged Property, the Secured Moneys;
- (d) For the purposes of the Corporations Act only, the maximum prospective liability (as defined in the Corporations Act) secured by the Mortgage is \$3,000,000,000 but this clause does not limit the amount of liability at any time secured by or recoverable under this agreement. The Mortgagee may from time to time lodge a notice under section 268(2) of the Corporations Act specifying an increase in the maximum prospective liability secured by the Mortgage, and the sum specified in this clause will be taken to be varied accordingly;
- (e) The Mortgage is a first ranking equitable mortgage which takes priority over all other Encumbrances except to the extent determined by law;
- (f) To the extent permitted by law, if you have not repaid the Loan or any other amount under the Loan Agreement on or before the Maturity Time, then the Mortgagee is entitled to, in addition to anything else it is permitted to do by law, exercise a power of sale under the Mortgage and apply the proceeds to repay the Secured Money, or appoint one or more receivers or receivers and managers ("Receivers");
- (g) If the Mortgagee appoints a Receiver as contemplated by clause 7.8.2(f):
  - i) the Mortgagee may remove any Receiver, appoint another Receiver in addition or in place of a Receiver and fix or vary the remuneration of a Receiver;
  - ii) Every Receiver so appointed is the agent of the Mortgagee and the Mortgagee alone will be responsible for the acts and defaults and remuneration of a Receiver;
  - iii) In addition to any powers granted by law, and except to the extent specifically excluded by the terms of appointment, every Receiver has power to do anything in respect of the Mortgaged Property that the Mortgagee could do;
- (h) Whether or not a Receiver has been appointed, to the extent permitted by law, the Mortgagee (directly or through one or more agents) may at any time after the Mortgage becomes enforceable and without giving notice, exercise any power which might be exercised by a Receiver in addition to any power it has as mortgagee. The Mortgagee may exercise those powers and its powers without taking possession or being liable as mortgagee in possession;
- (i) The powers conferred on UBS and/or the Mortgagee by law:
  - i) are in addition to the powers conferred by this agreement or the Mortgage; and
  - ii) are excluded or varied only so far as they are inconsistent with the express terms of this agreement or the Mortgage;
- (j) To the extent permitted by law:
  - i) UBS and/or the Mortgagee will not be required to give notice before enforcement or exercise of its rights under this agreement or the Mortgage; and
  - ii) any law requiring the giving of notice or the compliance with a procedure or a lapse of time before enforcement or exercise is excluded;
- (k) In applying any monies towards satisfaction of the Secured Moneys, you will be credited only with the money available for that purpose which is actually received by UBS and/or the Mortgagee. The credit will date from the time of receipt;
- (l) Nothing in this agreement in relation to the Mortgage or the Secured Moneys will be affected by anything in relation to the Mortgage or the Secured Moneys which but for this provision might operate to release, prejudicially affect or discharge the Mortgage or in any way relieve you from any obligation to UBS and/or the Mortgagee in relation to the Mortgage, including the following:
  - i) the grant to any person of any time, waiver or other indulgence or concession, or the whole or partial discharge or release of any person;



- ii) any transaction or arrangement that may take place between UBS and/or the Mortgagee and any person;
- iii) the insolvency or liquidation of any person;
- iv) UBS and/or the Mortgagee becoming a party to or bound by any compromise, moratorium, assignment of property, scheme of arrangement, composition of debts or scheme of reconstruction by or relating to any person or the acceptance by UBS and/or the Mortgagee of any dividend or distribution or sum of money under any such compromise or scheme;
- v) the fact that UBS and/or the Mortgagee or any other person exercises or delays or refrains from exercising or enforcing its rights under the Mortgage or this agreement or any other document or agreement, or any right, power or remedy conferred on it by law or by any document or agreement, including this agreement;
- vi) all or part of any document or agreement held by UBS and/or the Mortgagee at any time or of any right, obligation, power or remedy changing, ceasing or being transferred (including any amendment, variation, novation, replacement, rescission, invalidity, extinguishment, repudiation, avoidance, unenforceability, frustration, failure, expiry, termination, loss, release, discharge, abandonment or assignment);
- vii) the taking or perfection of any document or agreement or failure to take or perfect any document or agreement;
- viii) any legal limitation, disability, incapacity or other circumstance relating to any person;
- ix) any change in circumstance (including the members or constitution of any person);
- x) any document or agreement is not executed by any person, or is not valid or binding on any person; or
- xi) any increase in the Secured Moneys or maximum prospective liability for any reason (including anything referred to above).

Nothing in any sub-paragraph of this paragraph (l) limits any other paragraph;

- (m) Despite any provision in this agreement, if UBS and/or the Mortgagee holds money in an account on behalf of you in accordance with section 981B of the Corporations Act, UBS and/or the Mortgagee will be entitled to retain any interest payable on the account;
- (n) Despite any other provision of this agreement, where UBS and/or the Mortgagee is permitted to take any action, or may exercise any right or remedy, under this agreement in respect of the Mortgaged Property as a result of you being in default, UBS and/or the Mortgagee may only exercise such right or remedy, or take such action, in accordance with clause 7.6 of this agreement;
- (o) You agree:
  - i) to comply with all obligations affecting the Mortgaged Property and pay on time all amounts for which the holder of the Mortgaged Property is liable, including all calls, instalments and Taxes;
  - ii) at UBS's and/or the Mortgagee's request in its discretion, to take up any rights attaching to Mortgaged Property; and
  - iii) to promptly provide to UBS and/or the Mortgagee on request any information which UBS and/or the Mortgagee reasonably requests about the Mortgaged Property or anything in relation to it;
- (p) The Mortgage is a continuing security for the Secured Moneys and the Secured Obligations. It continues until the Mortgagee releases it under this clause 7.8.2. It will not be satisfied or discharged by any other action;
- (q) The Mortgagee agrees to release the Mortgaged Property from the Mortgage if the Secured Obligations are discharged in full and the Secured Moneys are paid to UBS or as UBS directs in full; and
- (r) If the Mortgagee releases any Mortgaged Property from the Mortgage because UBS and/or the Mortgagee received an amount in respect of a Loan and UBS and/or the Mortgagee subsequently pays

that amount to another person under any law relating to insolvency, then the Mortgagee may exercise all its rights under the Mortgage which will be taken to still be valid, in effect and enforceable as if UBS and/or the Mortgagee had never received the amount and the release will be treated as having no effect.

### 7.8.3 *Exercise of powers*

- (a) If you breach any term of this agreement, the Trust Deed or the Nominee Deed (if applicable), or an Early Termination Date occurs, UBS and/or the Mortgagee may:
  - i) enforce the Mortgage and sell or redeem the Mortgaged Property;
  - ii) if you are a Nominee Investor – exercise the Nominee's rights comprised in the Mortgaged Property;
  - iii) exercise any other power granted by law to mortgagees in accordance with the terms of this agreement and/or the Trust Deed (as applicable); and
  - iv) apply the proceeds in repayment of your Loan.
- (b) If you are a Nominee Investor, to the extent permitted by law, the Nominee has dispensed with any notice or lapse of time required by law for the enforcement of the Mortgage or the exercise of any power by UBS and/or the Mortgagee under this agreement or the Trust Deed.

### 7.8.4 *Certain Mortgages to be granted in favour of a security nominee of UBS*

Despite any other provision to the contrary in this Agreement and unless UBS agrees otherwise, if the Issuer and UBS are the same legal entity:

- (a) you must grant the Mortgage in favour of a security nominee of UBS specified in the relevant Term Sheet;
  - (b) you acknowledge that the Mortgaged Property and all associated rights will be held on trust for the benefit of UBS under a security trust under the terms of a security trust deed or other relevant arrangement entered into or to be entered into between UBS and the relevant security nominee of UBS; and
  - (c) you acknowledge that, under the security trust arrangement, UBS, without limiting any other right, power, discretion or remedy it may have under the Mortgage or the Loan Agreement or any other document, may direct and instruct the security nominee to enforce the Mortgage and exercise all its rights, powers, discretions and remedies as mortgagee under this agreement or at law,
- and if this clause 7.8.4 applies:
- (d) this clause 7.8 must be read and construed as if the security nominee is the Mortgagee under the Mortgage granted pursuant to this clause; and
  - (e) UBS will procure that the Mortgagee agrees to be bound by the Mortgage (as mortgagee).

### 7.8.5 *PPSA further assurance*

- (a) Without limiting any other provision in this Agreement and unless UBS agrees otherwise consents, you must do all things that the Mortgagee may require from time to time (whether before or after the registration commencement time) to ensure that the Mortgage is a first-ranking perfected security interest over the Mortgaged Property, the Mortgage is perfected by control to the extent possible under the PPS Act and the Mortgagee's position as mortgagee under the Mortgage in the context of the PPS Act is otherwise protected, from the point in time immediately before the registration commencement time or any later time as UBS and/or the Mortgagee may decide. In this clause 7.8.5, "PPS Act" means the *Personal Property Securities Act 2009* (Cth) and terms have the meanings given to them in the PPS Act.

## 7.9 Events of Default, early termination and change of law

### 7.9.1 Events of Default

- (a) An Event of Default occurs if:
- i) you fail to pay on time any amount which is due and payable by you under this agreement;
  - ii) you breach this agreement or fail to perform any obligation under this agreement;
  - iii) any statement made by you in the Application Form, the Term Sheet or any other document in relation to this agreement or required by UBS is or becomes incorrect or misleading;
  - iv) any representation made or repeated by you or any Guarantor under this agreement is or becomes misleading or incorrect;
  - v) you are or become bankrupt or insolvent, or fail or are unable or admit to your inability generally to pay your debts as and when they become due;
  - vi) the holder of any Security Interest granted by you takes possession of any of your property, or you make a general assignment, arrangement or composition with or for the benefit of your creditors or institute or have instituted against you a proceeding seeking a judgement of insolvency or bankruptcy or other relief under any bankruptcy or insolvency law or other similar law affecting creditor's rights;
  - vii) you cease to be of full legal capacity or otherwise become incapable of managing your affairs or you die;
  - viii) where you are a body corporate:
    - (A) any application is made for an order, a meeting is convened to consider a resolution, a resolution is passed or an order is made that you be wound up or otherwise dissolved and/or that an administrator, a liquidator or provisional liquidator be appointed; or
    - (B) a receiver, receiver and manager, administrator, controller, trustee or similar officer is appointed in respect of all or any part of your business, assets or revenues; or
    - (C) you become insolvent or are subject to any arrangement, assignment or composition, or protected from any creditors or otherwise unable to pay your debts when they fall due;
  - ix) UBS receives any notice from a credit reporting agency or any other credit provider to you which indicates that you are in default under any other financial, payment or performance obligation with any other party or that any of the events or circumstances specified in the previous paragraphs of this clause has occurred;
  - x) you cause or are subject to any event which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in paragraphs 7.9.1(a)v) to ix);
  - xi) any of the events and circumstances referred to in paragraphs (v) to (x) (inclusive) occur in relation to the Guarantor;
  - xii) in the reasonable opinion of UBS some or all part of the Mortgaged Property is at risk of forfeiture, loss or cancellation for any reason, and in the reasonable opinion of UBS it may become impossible or unlawful for the ownership of the Mortgaged Property to be transferred;
  - xiii) you create or permit to exist any Security Interest over any of the Mortgaged Property, other than a Security Interest permitted by UBS in writing;
  - xiv) all or any material provision of this agreement becomes wholly or partly void, voidable, or unenforceable, or is claimed to be so by you, any Guarantor or anyone on your behalf;
  - xv) any government, governmental agency, department, commission, or other instrumentality seizes, confiscates, or compulsorily acquires (whether permanently or temporarily and whether with or without payment of compensation) any of the Mortgaged Property;

- xvi) any litigation, administrative proceedings or other procedure for the resolution of disputes is commenced in which your right to any of the Mortgaged Property or UBS's rights under this agreement, will or might be impeached or adversely affected or any of the Mortgaged Property will or might be restrained or otherwise hindered;
- xvii) in the case of a particular Loan:
  - (A) in circumstances where the Eligible Investment is quoted on ASX at the time a Loan is entered into:
    - (I) the Issuer of the Eligible Investment is delisted or proposed to be delisted from the ASX;  
or
    - (II) the Eligible Investment is removed or proposed to be removed from quotation or suspended or proposed to be suspended from trading on ASX;
  - (B) the Underlying Security is subject to a takeover offer and the offer has become unconditional or has been accepted by holders of 80% or more of the financial products making up the Eligible Investment, or a scheme of arrangement in relation to financial products making up the Eligible Investment has been approved, unless UBS explicitly acknowledges that such event is not to be treated as an Event of Default;
  - (C) there is:
    - (I) a situation where UBS is unable, after using commercially reasonable efforts, to acquire, establish, re-establish, substitute, maintain, unwind or dispose of any transaction(s) or asset(s) it deems necessary to hedge the risk of entering into and performing its obligations with respect to a Loan, or to realise, recover or remit the proceeds of any such transaction(s) or asset(s);
    - (II) a situation where UBS would incur a materially increased (as compared with circumstances existing on the Trade Date) amount of Tax, duty, expense or fee (other than brokerage commissions) to acquire, establish, re-establish, substitute, maintain, unwind or dispose of any transaction(s) or asset(s) it deems necessary to hedge the risk of entering into and performing its obligations with respect to a Loan, or to realise, recover or remit the proceeds of any such transaction(s) or asset(s), other than a materially increased amount that is incurred solely due to the deterioration of the creditworthiness of UBS;
    - (III) a termination of UBS's hedging arrangement or an adjustment or change to UBS's hedging arrangements occurs in such a manner that it is reasonably impracticable for UBS to adjust or change the terms of this agreement to reflect the adjustment or change in the hedging arrangements;
  - (D) where any event occurs which UBS determines in good faith results in the performance of its obligations under this agreement having become or becoming, in circumstances beyond its reasonable control, impossible, unlawful, illegal or otherwise prohibited; or
  - (E) a Corporate Action occurs or is proposed to occur and in UBS's reasonable opinion, it is not possible or desirable to adjust the Loan to account for the Corporate Action (including without limitation in circumstances where you are a Superannuation Fund and the result of the Corporate Action is that the Loan will no longer comply with the relevant provisions of SIS permitting loans to be made to Superannuation Funds).
- (b) You undertake to UBS that you will immediately notify UBS of any fact or circumstance within your knowledge which has given rise or is likely to give rise to an Event of Default or a breach of any representation, warranty, statement, undertaking or other provision in this agreement, the Application Form, the Term Sheet or any other document in connection with this agreement or required by UBS.

### 7.9.2 *Early Termination Date and Consequences of Early Termination*

- (a) If an Event of Default occurs, UBS may, without further notice to you and in its absolute discretion terminate one or more Loans at such times as UBS may in its discretion determine. The date on which a Loan is terminated is the Early Termination Date in respect of that Loan.
- (b) If an Early Termination Date occurs in respect of a Loan, UBS shall calculate the Early Termination Amount in respect of the Loan and shall, as soon as reasonably practicable, give to you a statement specifying the Early Termination Amount.
- (c) If the Early Termination Amount is a positive number, you must pay to UBS the Early Termination Amount. If the Early Termination Amount is a negative number, UBS must pay the Early Termination Amount to you, subject to its rights under clause 7.13.11.
- (d) The Early Termination Amount shall be payable on the third Business Day following the date that notice of that the Early Termination Amount is given to you.

### 7.9.3 *Increased costs*

If:

- (a) there is an introduction of, or change in, an applicable law or regulatory requirement or its interpretation or administration by a government agency which:
  - i) subjects UBS or any of its related bodies corporate to any Tax relating to this agreement;
  - ii) changes the basis of taxation of any payment due or to become due to UBS under, or in connection with, this agreement;
  - iii) imposes, modifies or deems applicable any capital, liquidity, reserve or prudential requirement or requires the making of any special deposit against or in relation to any assets or liabilities (actual or contingent) of, deposits with or for the account of, or loans by, UBS or any of its related bodies corporate; or
  - iv) imposes on UBS or any of its related bodies corporate any other condition affecting this agreement; and
- (b) the result is (directly or indirectly) to:
  - i) increase the cost to UBS or any of its related bodies corporate of the provision or maintenance by UBS of any Loan or the performance by UBS or the Nominee (if applicable) of its obligations under this agreement;
  - ii) reduce:
    - (A) the effective rate of return (on capital, property, deposits or otherwise) of UBS under this agreement; or
    - (B) the amount of any payment received by UBS under any Loan; or
  - iii) require UBS or any of its related bodies corporate to make a payment or to forgo or suffer a reduction in return on or calculated by reference to any amount payable to UBS under this agreement,
- (c) then UBS may provide a notice to you stating the nature of the relevant change and:
  - i) require you to indemnify UBS in relation to, and pay to UBS on demand the amount that UBS claims is necessary to compensate UBS or any of its related bodies corporate, for the additional cost, reduction or payment, calculated from the day on which it was first incurred by UBS or the related body corporate;
  - ii) adjust the terms of any Loan in order to compensate UBS for the additional cost, reduction or payment, calculated from the day on which it was first incurred by UBS or the related body corporate; or

- iii) terminate this agreement.

#### **7.9.4 Notice of change of law**

If, in the opinion of UBS:

- (a) a law, regulation or directive or request (whether or not having the force of law) of any government agency not in effect at the date of this agreement; or
- (b) an amendment after the date of this agreement to, or a change after the date of this agreement in the interpretation or application of, a law, regulation or a directive or request (whether or not having the force of law) of a government agency,

makes, or will make, it illegal in any jurisdiction for UBS to continue to be a party to a Loan, UBS may give a notice (a "Change of Law Notice") to you that it considers that this has happened or will happen.

#### **7.9.5 Termination**

If UBS terminates this agreement in accordance with clause 7.9.3(c)iii) or gives a Change of Law Notice under clause 7.9.4:

- (a) its obligations under the relevant Loan will terminate on the date specified in the notice given in accordance with clause 7.9.3(c) or the Change of Law Notice (as applicable); and
- (b) the parties must settle the Early Termination Amount on the date notified by UBS.

### **7.10 Independent decisions and advice**

You agree that you have relied, and will continue to rely, on your own judgment and that of your professional advisers as you consider necessary (if any) in deciding whether to utilise the Loan Facility or to enter into any Loan offered under this Information Memorandum, the tax treatment of using the Loan Facility and generally in relation to this agreement and the transactions which it contemplates. Without limiting this:

- (a) you confirm that the fact that UBS may classify a financial product as an Eligible Investment is not a recommendation by UBS that you invest in, continue to hold or sell that financial product or enter into any Loan in relation to it;
- (b) you will not rely on any statement or representation made, or purported to be made, by or on behalf of UBS in relation to the above matters; and
- (c) you acknowledge that:
  - i) from time to time UBS and its affiliates may have substantial long or short positions in, and may make a market in or otherwise buy or sell, instruments identical or economically related to the Eligible Investment;
  - ii) UBS may undertake proprietary trading activities, including hedging transactions related to the initiation or termination of a Loan with you, that may adversely affect the market price, rate, index or other market factors underlying the Eligible Investment and consequently the value of the Eligible Investment; and
  - iii) UBS may have previously acted, and may currently or in future from time to time act as an adviser to an Issuer for which it may receive fees and commissions,  
  
as a result of which potential conflicts of interests may arise, and you have considered the implications of such potential conflicts prior to entering into any Loan.
- (d) You acknowledge that UBS does not act in any fiduciary capacity in relation to this agreement or any Loan.

### **7.11 Your representations and warranties**

You represent and warrant to UBS on the date this agreement is entered into, on the Trade Date for a Loan and on every day during the Term of each Loan that:

- (a) the execution and delivery of this agreement and entry into any Loan by you and the performance of your obligations under this agreement and any Loan do not and will not violate or conflict with:
  - i) any law, rule or regulation applicable to you;
  - ii) any order or judgement of any court or other agent of government applicable to you or any of your assets or any agreement or contractual restriction binding on or affecting you or any of your assets, including without limitation any agreement between you and:
    - (A) the Issuer;
    - (B) any underwriter in respect of the Eligible Investment; or
    - (C) securityholders of the Issuer;
- (b) In respect of any Loan which requires or may require the transfer of the Eligible Investment, you have obtained all consents which may be required by law to enable you to:
  - i) procure transfer of good title to the Eligible Investment to UBS or as UBS directs; or
  - ii) accept a transfer of good title to the Eligible Investment from UBS,in either case as required under the Loan;
- (c) the transfer of any Eligible Investment:
  - i) to UBS or as UBS directs; or
  - ii) to you,in either case as required in respect of a Loan, will not result in you contravening any law to which you are subject;
- (d) in relation to any Loan in respect of which the Mortgage applies:
  - i) at the Trade Date, every Drawdown Date, Maturity Date and at all times until the Secured Obligations are discharged, you will have good beneficial title to the Mortgaged Property free from any Security Interest or restriction on transfer, except as may be permitted under the Mortgage; and
  - ii) any Mortgaged Property that you are required to hold in a Locked Holding, or deliver to UBS or the Nominee will be Unrestricted Products;
- (e) by entering into this agreement or any Loan or by exercising any right or performing any obligation under this agreement or any Loan, you have not and will not contravene the insider trading or other market conduct provisions of the Corporations Act or any other applicable laws or regulations;
- (f) you do not "control" (as defined in section 50AA of the Corporations Act) the Issuer;
- (g) if you are an officer or employee of the Issuer, by entering into this agreement or any Loan or by exercising any right or performing any obligation under this agreement or any Loan, you will not contravene the Issuer's policies for dealing in the Eligible Investment applicable to you and, if required, you have obtained the written approval of the Issuer to enter into this agreement;
- (h) you are aware of all of your legal disclosure obligations and have complied with or will comply with all such obligations, including, if applicable, notification obligations arising under section 205G of the Corporations Act to the extent that they apply in connection with dealing with the Eligible Investment under this agreement;
- (i) you have reviewed this agreement, the Information Memorandum and associated documents to the extent you consider necessary, and you have sought independent advice regarding this agreement and any Loan, including advice on financial risk, legal and tax implications, which take into account your specific circumstances;
- (j) you have not relied in any way whatsoever on any statements made by, or purported to be made by, UBS or its related entities or any of their respective servants, agents, employees or representatives in relation to the Information Memorandum, this agreement or any Loan, other than as set out in this agreement or the Information Memorandum, and acknowledge that UBS has not made any

- representation to you with regard to the suitability or appropriateness of this investment to your individual circumstances;
- (k) you have full authority, capacity and legal standing to enter into, and perform the obligations set out in this agreement and any Loan, and this agreement constitutes your valid and legally binding obligations, enforceable against you in accordance with its terms;
  - (l) no Event of Default has occurred or is continuing;
  - (m) all statements, representations and warranties made in this agreement, the Application Form and Term Sheet or any other document in relation to this agreement or required by UBS are true and correct;
  - (n) you have disclosed in writing to UBS all facts relating to you, this agreement, the Mortgaged Property and all things in connection with this which are material to the assessment of the nature and amount of risk undertaken by UBS in entering into any Loan and doing anything in connection with this agreement or a Loan contemplated by it;
  - (o) in the case of individual or individual trustee applicants—you will apply any credit or financial accommodation provided by UBS wholly or predominantly for business or investment purposes (or for both purposes). NOTE: you should not enter into this agreement unless credit or financial accommodation provided by UBS will be applied wholly or predominantly for business or investment purposes (or for both purposes). By signing this agreement you may lose your protection under the Consumer Credit Code;
  - (p) there are no actions, claims or demands pending the determination of which might reasonably be expected to have a material adverse effect on:
    - i) your ability to perform your obligations under this agreement or any Loan; or
    - ii) the rights of UBS;
  - (q) In respect of any Mortgaged Property:
    - i) you are or will become on the Issue Date, the beneficial owner of the Mortgaged Property;
    - ii) the Mortgaged Property is not and will not be subject in any way to any Security Interest (other than in favour of or for the benefit of UBS pursuant to the Mortgage);
  - (r) you are acting for your own account, and have made your own independent decisions to enter into this agreement and that each Loan is appropriate and proper for you, based upon your own judgement and upon advice from such advisers as you have considered necessary. You are not relying on any communication (written or oral) of UBS or any of its affiliates as investment advice or as a recommendation to enter into this agreement or any Loan, it being understood that information and explanation relating to the terms and conditions of this agreement in the Information Memorandum or otherwise shall not be considered investment advice or a recommendation by UBS to enter into this agreement or any Loan. No communication (written or oral) received from UBS shall be deemed to be an assurance or guarantee as to the expected results of this agreement or any Loan; and
  - (s) you are capable of assessing the merits of and understand (on your own behalf or through independent professional advice), and accept, the terms, conditions and risks of this agreement and the Loan, and you are capable of assuming and assume, the risks of this agreement and the Loan.

## **7.12 Guarantee**

### *7.12.1 Application of clause*

- (a) UBS may require a Guarantor to guarantee your obligations under this agreement.
- (b) This clause applies to the Guarantor.



### *7.12.2 Obligations guaranteed*

In consideration of UBS making available the Loan Facility to you or for your benefit, the Guarantor unconditionally and irrevocably guarantees to UBS the due and punctual performance of all of your obligations under this agreement (as amended, extended or varied) and any Loan (as amended, extended or varied) other than the payment of amounts in respect of which UBS's recourse against you is limited under clause 7.6.

### *7.12.3 Consequences of your default*

The Guarantor must pay any amount which you fail to pay under this agreement on demand to, or as directed by, UBS.

### *7.12.4 Nature of obligations and enforcement*

The Guarantor's obligations under this agreement are principal obligations and may be enforced against the Guarantor without UBS first being required to exhaust any remedy it may have against you or enforce any Security Interest it may hold (including under the Mortgage).

### *7.12.5 Continuity and preservation of Guarantor's obligations*

The guarantee in this clause 7.12 is a continuing guarantee. The Guarantor's obligations under this agreement are absolute, unconditional and irrevocable. The liability of the Guarantor under this agreement extends to, and is not affected by, any circumstance, act or omission which, but for this clause, might otherwise affect it at law or in equity.

### *7.12.6 Limitations on Guarantor's rights*

Until all moneys owing by you under, or in connection with, this agreement have been paid in full, the Guarantor may not exercise any right of subrogation to UBS and may not exercise any rights as surety in competition with UBS.

### *7.12.7 Indemnity from Guarantor*

For the consideration mentioned in clause 7.12.2, the Guarantor (as primary obligor) unconditionally indemnifies UBS in full against, and must pay UBS on demand, the amount of, any loss that UBS may suffer because moneys owing by you under, or in connection with, this agreement (in each case, subject to clause 7.6) are not recoverable from you for any reason or must be repaid by UBS to you or any bankruptcy or insolvency representative after they have been received by UBS.

## **7.13 Miscellaneous**

### *7.13.1 Governing Law*

This agreement is governed by the law of New South Wales. The parties submit to the non-exclusive jurisdiction of the courts of New South Wales. Each party waives any objection to the venue of any procedures on the ground that they have been brought in an inconvenient forum.

### *7.13.2 Waiver*

UBS will not be taken to have waived any right under this agreement unless that waiver is in writing signed by two duly authorised signatories of UBS.

### *7.13.3 Severability*

- (a) If any provision of this agreement is determined to be void, invalid, illegal or unenforceable, then that provision will be deemed to have been deleted to the extent of that invalidity, illegality or unenforceability.

- (b) A deletion under paragraph (a) will not affect UBS's ability to enforce any other provision of this agreement.

#### *7.13.4 Variation*

UBS may vary any term of this agreement at any time in its discretion by 14 calendar days' written notification to you. UBS may however vary any term of this agreement with immediate effect if required to comply with any law, regulation or regulatory policy or requirement. The variation will not take effect until UBS has notified you in writing of the amendment.

#### *7.13.5 Duty*

You are liable for all stamp duty, transfer duty, mortgage duty or other similar Tax payable on or in connection with this agreement and the transfer of any Eligible Investment.

#### *7.13.6 Payments and withholding tax*

All payments by you under this agreement must be made in full without any deduction or withholding in respect of tax or otherwise unless the deduction or withholding is required by law in which event you must pay such additional amounts as are necessary to ensure that UBS receives and retains the full amount it would have received if no deduction or withholding had been made.

#### *7.13.7 Limitation of liability*

UBS will not be liable to you for any error, omission or delay in carrying out your instructions under this agreement or any Loan, nor will UBS have any responsibility for any resultant or consequential loss or damage to you or to any other party.

#### *7.13.8 Indemnity*

You fully indemnify UBS, its affiliates and employees and the Mortgagee against, and shall pay UBS, its affiliates and employees and the Mortgagee on demand:

- (a) the amount of all funding costs, hedge unwind costs and any break costs including any costs, loss, liability, expenses or damages direct or indirect which UBS, its affiliates and employees and the Mortgagee may incur in connection with any part of a Loan being terminated prior to its scheduled Maturity Date (including without limitation any Early Termination Amount due from you), or any Drawdown Amount being repaid or becoming due for repayment other than on the relevant Repayment Date; and
- (b) the amount of all losses, liabilities, costs and expenses (including GST and legal expenses on a full indemnity basis) and Taxes of UBS in connection with:
  - i) the occurrence of any Event of Default;
  - ii) any Loan contemplated by this agreement;
  - iii) any Early Termination Amount;
  - iv) the administration, enforcement or attempted enforcement or preservation or attempted preservation of any rights of UBS or the Mortgagee under this agreement;
  - v) the performance of any obligation under, any amendment to, or any consent, approval, waiver, release or discharge of or under, this agreement;
  - vi) any failure by you to make a drawdown under a Loan because of the non-satisfaction of any of the conditions precedent set out in clause 7.3; and
  - vii) any representation or warranty made by you under this agreement being incorrect or misleading.

### 7.13.9 *Continuing indemnity*

The indemnity in this agreement is a continuing indemnity, separate from the other obligations under this agreement and will survive the termination of this agreement.

### 7.13.10 *GST*

You must in respect of any Taxable Supply in connection with this agreement:

- (a) pay to UBS an amount equal to the GST Exclusive Consideration multiplied by the GST Rate, without deduction or set-off of any other amount;
- (b) make that payment as and when you must pay any part of the GST Exclusive Consideration; and
- (c) indemnify UBS:
  - i) from the GST on each Taxable Supply; and
  - ii) against any damage or cost directly or indirectly arising from or caused by the failure by you to pay any amount as and when required by this clause.

### 7.13.11 *Set off*

UBS and/or the Mortgagee may at any time, at its discretion and without notice to you, set-off any present, future or contingent obligation or other liability (whether monetary or otherwise) owed by UBS and/or the Mortgagee to you under this agreement or any Loan in or towards satisfaction of any sum at any time payable or any present, future or contingent obligation or other liability (whether monetary or otherwise) owed by you to UBS and/or the Mortgagee under or in relation to this agreement or any Loan.

No amount will be payable by UBS or the Mortgagee under or in connection with this Agreement to you if any amount is owing but unpaid by you to UBS under this Agreement.

### 7.13.12 *Power of attorney*

You irrevocably appoint UBS and each officer of UBS jointly and each of them severally as your attorney to sign any document and do any other thing that UBS or the attorney thinks is necessary or desirable to:

- (a) effect a drawdown under a Loan;
- (b) if you are a Nominee Investor – ensure that any Eligible Investment is held by the Nominee as your nominee in accordance with this agreement;
- (c) ensure that the Mortgage is as effective and enforceable as possible, including, without limitation, making any amendments to the terms of this agreement or any other document and registering any charges with ASIC;
- (d) exercise any of UBS's rights under this agreement, including to transfer any Eligible Investment to UBS (or the Nominee) or to a purchaser or to otherwise convey the Eligible Investment as UBS determines in accordance with the provisions of this agreement;
- (e) if you are a company or corporate trustee Applicant, complete, sign and date any ASIC form required to register the Mortgage with ASIC;
- (f) do all things that are necessary or desirable for the conversion of your Eligible Investment to the CHES system (if applicable);
- (g) do anything that the attorney thinks ought be done in relation to this agreement and any related documents, including to perfect any such documents or to make any such documents effective (including stamping and registering any relevant document);
- (h) execute any document which varies or amends this agreement and any notices, consents and waivers required to be provided under this agreement; and
- (i) sign any document and do any other thing that the attorney thinks is necessary or desirable under this agreement.

You agree to ratify and confirm whatever an attorney does under and in accordance with this power of attorney and indemnify each attorney against all liabilities incurred as a result of such action. You agree that any person dealing with an attorney in good faith may accept a declaration by the attorney to the effect that this power of attorney has not to the attorney's knowledge been revoked as conclusive evidence of that fact.

#### *7.13.13 Notices*

- (a) Unless expressly stated otherwise in this agreement, all notices, consents, approvals, waivers and other communications in connection with this agreement must be in writing, signed by the sender.
- (b) Notices must be:
  - i) sent by prepaid ordinary post (airmail if appropriate), if to you, to the address set out or referred to in the Application Form and if to UBS, to the address set out in the Information Memorandum;
  - ii) sent by fax, if to you, to the fax number set out or referred to in the Application Form and if to UBS, to the fax number set out in the Information Memorandum;
  - iii) if sent electronically, sent to the email address or through the facility advised by UBS to you or you to UBS; or
  - iv) given in any other way permitted by law.
- (c) However, if the intended recipient has notified a changed postal address or changed fax number, then the communication must be to that address or number.
- (d) Notices sent by post are taken to be received three Business Days after they are sent unless a later time is specified. Notices sent by fax are taken to be received if the sender receives a transmission receipt indicating the notice has been transmitted to the correct number without error. Notices sent electronically are taken to be received when sent in the absence of any error message or similar communication.

#### *7.13.14 Entire agreement*

This agreement constitutes the entire agreement between the parties in relation to its subject matter, provided however that to the extent that there is any inconsistency between this agreement and your Confirmation, the Confirmation will prevail.

#### *7.13.15 Further acts*

You must do all acts and execute or sign all documents reasonably required by UBS to carry out and give effect to this agreement and any Loan, including without limitation the Application Form and Term Sheet.

#### *7.13.16 Rights cumulative*

The rights and remedies in this agreement are cumulative and do not exclude, and are in addition to, any rights or remedies provided by law.

#### *7.13.17 Assignment*

- (a) UBS and/or the Mortgagee may assign, novate or otherwise transfer all or any part of its rights, benefits or obligations under this agreement (including without limitation, the Mortgage) without notice to you and for this purpose may disclose information about you and this agreement to a potential assignee.
- (b) You hereby agree that if requested by UBS and/or the Mortgagee, you will promptly execute any documentation required to give effect to an assignment, novation or transfer contemplated by paragraph 7.13.17(a).
- (c) You may not assign your rights under this agreement without the prior written consent of UBS.

### 7.13.18 *Time of essence*

Time is of the essence with respect to each party's obligations under this agreement.

### 7.13.19 *Consent to telephone recording*

You consent to the recording of any of your telephone conversations with UBS, the Mortgagee or the Nominee in relation to this agreement.

### 7.13.20 *Provisions which apply if you are a trustee*

- (a) This clause 7.13.20 only applies if you enter into this agreement as a trustee (including without limitation if you are a Superannuation Fund).
- (b) If you enter into this agreement as a trustee, you acknowledge that this agreement is binding on you in your capacity as trustee.
- (c) If anyone succeeds you as a trustee of the trust, you remain liable until, and you agree to ensure that, your successor executes whatever documents UBS requires to ensure that this agreement is binding on your successor.
- (d) You represent and warrant as follows at the date UBS receives your Application Form, and on each day during the Term of any Loan by reference to the facts subsisting on that date:
  - i) you are the only trustee of the trust, and no step has been taken to remove you or to appoint another trustee;
  - ii) you have provided UBS with a copy of the properly executed and stamped trust deed (including all amendments and variations to the trust deed), when requested to do so;
  - iii) you have the power to sign this agreement and to perform your obligations under this agreement as trustee of the trust;
  - iv) it is proper for you, as trustee, to execute this agreement, and to do everything this agreement contemplates that you will do and those things do or will benefit the beneficiaries of the trust;
  - v) you are entitled to use the assets of the trust to meet all your obligations under this agreement, ahead of the rights of any of the beneficiaries; and
  - vi) you must make sure that none of these representations is or becomes untrue in any way and you must immediately inform UBS if they do.
- (e) You must, when requested by UBS, immediately provide UBS with a copy of the trust deed (including all amendments to the trust deed). UBS may charge a trust deed review fee as set out in your Term Sheet to review the trust deed.
- (f) You must not, without the prior written consent of UBS:
  - i) cease to be the only trustee of the trust;
  - ii) allow the trust to be terminated or wound up in any way;
  - iii) allow any part of the capital of the trust to be distributed in any way; or
  - iv) allow the terms of the trust, allow any units to be issued, transferred, charged, redeemed or otherwise dealt with.
- (g) UBS's right to recover from you is not limited to the trust assets.
- (h) You must exercise any rights that you have against the trust assets or the beneficiaries if necessary for the purpose of paying any amount owing to UBS. UBS may exercise all the rights that you may have against the trust assets or the beneficiaries.
- (i) UBS may exercise the same rights and remedies against the trust assets as you could exercise against those assets if they were owned by you personally.

- (j) UBS's rights will not be modified or reduced because UBS is aware (or is treated as being aware) of an interest that anyone else has, or claims, under the trust or against any trust assets.

#### *7.13.21 Acknowledgement of potential Early Termination Amount*

You acknowledge that UBS enters in arrangements to hedge its exposure to risk. Accordingly, you acknowledge that you may be required to pay an Early Termination Amount to UBS in the following circumstances:

- (a) an Event of Default occurs and you receive a statement from UBS under clause 7.9.2 requiring repayment of your Loan Balance before the Maturity Date or of any Drawdown Amount before the relevant Repayment Date or UBS elects to terminate any Loan;
- (b) a Drawdown Amount is repaid before the relevant Repayment Date; or
- (c) a Loan is terminated before the Maturity Date.

UBS will provide an indicative quote of the Early Termination Amount if you request an early repayment of a Loan or a Drawdown Amount or early termination of a Loan.

#### *7.13.22 Voting rights*

- (a) If you are a Nominee Investor, you acknowledge that you will have no right or entitlement to:
  - i) receive information or notices regarding meetings of the relevant Issuer; or
  - ii) attend, speak at or vote at those meetings or direct UBS or the Nominee to attend, speak at or vote at such meetings,other than as set out in the Trust Deed.
- (b) If you are a Nominee Investor, you acknowledge that UBS may direct the Nominee to cast a vote at a meeting of members (or a class of members) of the relevant Issuer as set out in the Trust Deed.
- (c) If you are a Personal Investor, you will have voting rights in respect of the Eligible Investment

#### *7.13.23 Acknowledgment of direction*

You acknowledge that:

- (a) if you are a Nominee Investor, the Nominee may give a direction to the Issuer to recognise or cease to recognise the Mortgage on any register relating to the Eligible Investment; and
- (b) if you are a Personal Investor, UBS may direct the Issuer to recognise or cease to recognise the Mortgage on any register relating to the Eligible Investment.

# Section 8—Trust Deed and Nominee Deed Summary

---

## 8 Trust Deed and Nominee Deed Summary

Capitalised terms used in this section not otherwise defined in this Information Memorandum have the meaning given in the Trust Deed and the Nominee Deed. A copy of the Trust Deed and Nominee Deed can be obtained by contacting UBS.

The Trust Deed and Nominee Deed are only relevant if you are a Nominee Investor, and do not apply to Personal Investors.

Capitalised terms used in this section 8 which are not otherwise defined in this IM have the meaning given to them in the Trust Deed or Nominee Deed (as applicable).

### 8.1 Summary of Trust Deed

#### 8.1.1 *Beneficial Interest*

Each Borrower is absolutely entitled pursuant to the Nominee Deed and the Trust Deed as against the Security Trustee to the Mortgaged Property, however the Borrower will forebear from requiring the transfer of Mortgaged Property to it or its nominee (other than the Security Trustee) prior to the release and discharge of the Mortgage.

#### 8.1.2 *Mortgage*

The Security Trustee will grant a Mortgage to the Mortgagee in the form of an equitable mortgage over the Mortgaged Property held by the Security Trustee on trust for each Borrower. The Mortgage secures the due and punctual payment to UBS of the Secured Moneys in respect of the Loan relating to the relevant Mortgaged Property.

#### 8.1.3 *Disposal Events and corporate actions*

The rights and obligations of the Borrower may be adjusted as set out in the Trust Deed if a Disposal Event or corporate action occurs.

#### 8.1.4 *Powers and duties of the Security Trustee*

The Security Trustee has no powers, duties, rights or discretions under the Separate Trusts other than those expressly set out in the Trust Deed and Nominee Deed.

The Security Trustee may borrow or raise any financial accommodation, appoint attorneys and rely on advice from advisers, give indemnities, dispose of Mortgaged Property and do various other things in accordance with the Trust Deed.

#### 8.1.5 *Liability of Security Trustee*

Subject to certain exceptions as set out in the Trust Deed, the Security Trustee will not be liable to a Borrower to a greater extent than the extent to which the liability can be lawfully satisfied in accordance with the Trust Deed out of the property of the Separate Trust to which that Borrower has a Beneficial interest.

UBS has indemnified the Security Trustee against certain liabilities in accordance with the Trust Deed.

### *8.1.6 Replacement of Security Trustee*

The Security Trustee may resign at any time by giving not less than 30 days written notice to UBS. UBS may remove the Security Trustee if the Security Trustee breaches any of its obligations under the Trust Deed and the breach remains unremedied after 30 days written notice to the Security Trustee. The resignation or removal of a Security Trustee is subject to the appointment of a successor Security Trustee.

### *8.1.7 Payments to the Security Trustee*

The Security Trustee is entitled to be reimbursed by UBS in respect of certain outgoings in connection with the administration of the Separate Trusts.

## **8.2 Summary of Nominee Deed**

Under the Nominee Deed, the Security Trustee will hold each item of Trust Property on a separate trust for each Beneficiary solely.

Subject to the Trust Deed, the Security Trustee is prohibited from mixing Trust Property held on behalf of a Beneficiary with Trust Property held on behalf of any other Beneficiary.

The Beneficiary is presently entitled to and has an absolute vested and indefeasible interest in the Income derived from the Trust Property.



# Section 9 – Direct Debit Request Service Agreement

---

## 9 Direct Debit Request Service Agreement

### 9.1 Definitions

Definitions	<p><b>account</b> means the account held at your financial institution from which we are authorised to arrange for funds to be debited.</p> <p><b>agreement</b> means this Direct Debit Request Service Agreement between you and us.</p> <p><b>banking day</b> means a day other than a Saturday or a Sunday or a public holiday listed throughout Australia.</p> <p><b>debit day</b> means the day that payment by you to us is due.</p> <p><b>debit payment</b> means a particular transaction where a debit is made.</p> <p><b>direct debit request</b> means your direct debit request, which you make by completing and signing either:</p> <ul style="list-style-type: none"><li>i) the relevant part of the Application Form; or</li><li>ii) a separate document to a similar effect,</li></ul> <p>under which you authorise UBS Australia to arrange for funds to be debited from the account to satisfy your obligations under the Application Form and the Loan Agreement contained in the Information Memorandum for the UBS Investment Loan.</p> <p><b>us</b> or <b>we</b> means UBS AG, Australia Branch, the Debit User you have authorised by signing a direct debit request.</p> <p><b>you</b> means the customer who signed the direct debit request.</p> <p><b>your financial institution</b> is the financial institution where you hold the account that you have authorised us to arrange to debit.</p>
-------------	---

### 9.2 Debiting your account

- 9.2.1 By signing a direct debit request, you have authorised us to arrange for funds to be debited from your account. You should refer to the direct debit request and this agreement for the terms of the arrangement between us and you.
- 9.2.2 We will only arrange for funds to be debited from your account as authorised in the direct debit request.
- 9.2.3 If the debit day falls on a day that is not a banking day, we may direct your financial institution to debit your account on the following banking day.

If you are unsure about which day your account has or will be debited you should ask your financial institution.

### **9.3 Changes by us**

9.3.1 We may vary any details of this agreement or a direct debit request at any time by giving you at least fourteen (14) days written notice.

### **9.4 Changes by you**

9.4.1 Subject to 9.4.2 and 9.4.3, you may change the arrangements under a direct debit request by contacting us on 1800 633 100.

9.4.2 If you wish to stop or defer a debit payment you must notify us in writing at least fourteen (14) days before the next debit day. This notice should be given to us in the first instance.

9.4.3 You may also cancel your authority for us to debit your account at any time by giving us fourteen (14) days notice in writing before the next debit day. This notice should be given to us in the first instance at the following address:

UBS Investment Loan  
Equity Operations  
GPO Box 4151  
Sydney NSW 2001

### **9.5 Your obligations**

9.5.1 It is your responsibility to ensure that there are sufficient clear funds available in your account to allow a debit payment to be made in accordance with the direct debit request.

9.5.2 If there are insufficient clear funds in your account to meet a debit payment:

- (a) you may be charged a fee and/or interest by your financial institution;
- (b) you may also incur fees or charges imposed or incurred by us; and
- (c) you must arrange for the debit payment to be made by another method or arrange for sufficient clear funds to be in your account by an agreed time so that we can process the debit payment.

- 9.5.3 You should check your account statement to verify that the amounts debited from your account are correct.
- 9.5.4 Unless indicated otherwise, any fees and charges payable on a supply made in connection with this agreement are stated exclusive of any goods and services tax (GST).
- 9.5.5 If UBS AG, Australia Branch is liable to pay GST on a supply made in connection with this agreement, then you agree to pay UBS AG, Australia branch on demand an amount equal to the consideration payable for the supply multiplied by the prevailing GST rate.

## **9.6 Dispute**

- 9.6.1 If you believe that there has been an error in debiting your account, you should notify us directly on 1800 633 100 and confirm that notice in writing with us as soon as possible so that we can resolve your query more quickly.
- 9.6.2 If we conclude as a result of our investigations that your account has been incorrectly debited we will respond to your query by arranging for your financial institution to adjust your account (including interest and charges) accordingly. We will also notify you in writing of the amount by which your account has been adjusted.
- 9.6.3 If we conclude as a result of our investigations that your account has not been incorrectly debited we will respond to your query by providing you with reasons and any evidence for this finding.
- 9.6.4 Any queries you may have about an error made in debiting your account should be directed to us in the first instance so that we can attempt to resolve the matter between us and you. If we cannot resolve the matter you can still refer it to your financial institution which will obtain details from you of the disputed transaction and may lodge a claim on your behalf.

## **9.7 Accounts**

- 9.7.1 You should check:
- (a) with your financial institution whether direct debiting is available from your account as direct debiting is not available on all accounts offered by financial institutions;
  - (b) your account details which you have provided to us are correct by checking them against a recent account statement; and
  - (c) with your financial institution before completing the direct debit request if you have any queries about how to complete the direct debit request.

## **9.8 Confidentiality**

- 9.8.1 We will keep any information (including your account details) in your direct debit request confidential. We will make reasonable efforts to keep any such information that we have about you secure and to ensure that any of our employees or agents who have access to information about you do not make any unauthorised use, modification, reproduction or disclosure of that information.
- 9.8.2 We will only disclose information that we have about you within the Direct Debit Request Form:
- (a) to the extent specifically required by law; or
  - (b) for the purposes of administering, enforcing or giving effect to this agreement, the Loan Agreement, the Trust Deed and the Nominee Deed (including disclosing information in connection with any query or claim); or
  - (c) as otherwise agreed by you.

## 9.9 Notice

9.9.1 If you wish to notify us in writing about anything relating to this agreement, you should write to us at the following address:

UBS Investment Loan  
Equity Operations  
GPO Box 4151  
Sydney NSW 2001

9.9.2 We will notify you by sending a notice in the ordinary post to the address you have given us in the direct debit request.

9.9.3 Any notice will be deemed to have been received on the third banking day after posting.

## Section 10 – Glossary

---

The following definitions apply in this Information Memorandum, including in the Loan Agreement in section 7 of this Information Memorandum:

**Application** means a request to enter into the Loan Agreement with UBS, as evidenced by the submission of an Application Form.

**Application Form** means the application form available with the Term Sheet which you must complete, sign and return to UBS before UBS will enter into a Loan with you.

**ASIC** means the Australian Securities and Investments Commission.

**ASX** means the Australian Securities Exchange operated by ASX Limited ABN 98 008 624 691.

**Broker Sponsor** means UBS Securities or any other person nominated by UBS.

**Broker Sponsor Terms** means the terms and conditions governing your account with the Broker Sponsor as set out in the Term Sheet for the relevant Eligible Investment.

**Business Day** means a day which is not a public holiday and on which banks are open for normal trading in Sydney.

**CHES** means the Clearing House Electronic Subregister System.

**Confirmation** means any confirmation which UBS provides to you following the drawdown of a Loan.

**Corporate Action** means, in relation to an Eligible Investment, any of the following events:

- (a) a special dividend;
- (b) a return of capital;
- (c) a takeover bid, scheme of arrangement or merger;
- (d) a stock split or consolidation or other form of capital reconstruction;
- (e) a rights issue; or
- (f) any analogous event.

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

**Direct Debit Request Service Agreement** means the agreement with that name set out in section 9 of this Information Memorandum.

**Drawdown Amount** means, in relation to a Loan, any amount you draw down on a Drawdown Date.

**Drawdown Date** means a date specified in your Confirmation, a Drawdown Notice or otherwise agreed between you and UBS on which you agree to draw down a Drawdown Amount.

**Drawdown Notice** means a notice setting out the proposed details (including Interest Rate, Interest Amount, Drawdown Amount, Drawdown Date and Repayment Date), of a drawdown requested by you.

**Early Termination Amount** means the amount that UBS reasonably determines in good faith to be UBS's total losses and costs (or gain, in which case expressed as a negative number) in connection with an Early Termination Date in relation to a Loan, including losses and costs in respect of any payment or delivery required to have been made but not made and including any fees or charges, loss of bargain, loss of expected profit, cost of funding or loss or cost incurred as a result of UBS terminating, liquidating, obtaining or re-establishing any hedge or related trading position (or any gain resulting from any of them).

**Early Termination Date** means the date on which a Loan is terminated prior to its scheduled Maturity Date or a Drawdown Amount is repaid before the relevant Repayment Date, including without limitation following the occurrence of an Event of Default.

**Eligible Investment** means a financial product that is specified by UBS as eligible Mortgaged Property as security for a Principal Loan.

**Event of Default** has the meaning given to it in clause 7.9.1 of the Loan Agreement.

**Facility Adjustment Fee** means the fee payable by you to UBS under the Loan Facility in relation to a request to increase the Maximum Principal Loan Amount, as calculated and advised by UBS.

**Full Recourse** means, in respect of a Loan, a Loan that is specified in the Term Sheet as a Full Recourse Loan.

## **GST**

This means:

(a) the same as in the A New Tax System (Goods and Services Tax) Act, 1999 (Cth); and

(b) any amount imposed as additional tax, penalty tax, fine, interest or other charge payable in respect of GST as defined in paragraph (a).

## **GST Exclusive Consideration**

The consideration for any Taxable Supply and all other money payable by you under the Loan Facility to UBS or as UBS directs, but does not include GST.

## **GST Law**

This has the same meaning as in the *A New Tax System (Goods and Services Tax) Act, 1999* (Cth).

## **GST Rate**

The rate of GST under the GST Law.

**Guarantor** means the person specified in the Application Form as the Guarantor.

**Information Memorandum** or **IM** means this Information Memorandum.

**Interest** means interest accrued or accruing on any Drawdown Amount.

**Interest Amount** means an amount calculated in accordance with clause 7.5.2 of the Loan Agreement.

**Interest Assistance Loan** means a loan provided by UBS to you under the terms of the Loan Agreement to fund your Interest obligations under a Principal Loan.

**Interest Assistance Loan Balance** means the sum of all Drawdown Amounts relating to the Interest Assistance Loan (including any Drawdown Amounts used to pay Interest Amounts) outstanding under your Loan Facility from time to time. For the avoidance of doubt, it does not include any Interest payable by you out of your own funds and not through a drawdown under the Loan, nor does it include any fees, charges, break costs and other amounts owed to UBS under the Loan Agreement.

**Interest Payment Date** means a date on which an Interest Amount is due, as set out in your Confirmation or Drawdown Notice.

**Interest Period** means an interest period set out in your Confirmation.

**Interest Rate** means, in relation to an Interest Period, the interest rate applicable to a Drawdown Amount for that Interest Period, as set out in your Confirmation or otherwise advised by UBS, and which may be fixed or variable.

**Issuer** means, in respect of a Principal Loan, the issuer of the Eligible Investment for that Principal Loan.

**Limited Recourse** means, in respect of a Loan, a Loan that is specified in the Term Sheet as a Limited Recourse Loan.

**Loan** means a Principal Loan and/or an Interest Assistance Loan as the context requires.

**Loan Agreement** means the loan agreement in the form set out in section 7 of this Information Memorandum, entered into between UBS and you.

**Loan Balance** means, in respect of a Loan, the sum of the Principal Loan Balance and the Interest Assistance Loan Balance at any time.

**Loan Establishment Fee** means, in relation to a Loan, the fee specified in the Term Sheet, payable on or before the first Drawdown Date of the Loan.

**Loan Facility** means the facility through which you may apply to obtain a Loan from UBS, the terms of which are set out in the Loan Agreement.

**Locked Holding** means an account in your name to hold Mortgage Property where that Mortgage Property may not be sold, transferred or redeemed while it is subject to the Mortgage.

**Maturity** means the Maturity Time.

**Maturity Date** means the date set out in your Confirmation as the Maturity Date for your Loan, or an Early Termination Date, whichever occurs first.

**Maturity Time** means 5.00pm on the Maturity Date unless otherwise specified in your Confirmation or in a notice from UBS in relation to an Early Termination Date.

**Maximum Interest Assistance Loan Amount** means the amount specified as such in a Confirmation or a Drawdown Notice, representing the maximum amount that you can borrow from UBS under an Interest Assistance Loan.

**Maximum Interest Assistance Loan Percentage** means the percentage set out in the Term Sheet for an Interest Assistance Loan, which indicates the maximum percentage exposure UBS will allow for an Eligible Investment.

**Maximum Loan Amount** means the sum of the Maximum Principal Loan Amount and the Maximum Interest Assistance Loan Amount.

**Maximum Principal Loan Amount** means the amount specified as such in a Confirmation or a Drawdown Notice, representing the maximum amount that you can borrow from UBS under a Principal Loan.

**Maximum Principal Loan Percentage** means the percentage set out in the Term Sheet for a Loan, which indicates the maximum percentage exposure UBS will allow for an Eligible Investment.

**Minimum Drawdown Amount** means, in relation to a Loan, the minimum amount specified by UBS in the Term Sheet that you must draw down on a Drawdown Date. This is equal to zero if no amount is specified by UBS.

**Mortgage** means the mortgage granted by the Mortgagor in favour of UBS:

- (a) if the Mortgagor is a Nominee Investor, under the Trust Deed and as contemplated by clause 7.8 of the Loan Agreement; and
- (b) if the Mortgagor is a Personal Investor, under clause 7.8 of the Loan Agreement.

**Mortgaged Property** means, in respect of a Loan:

- (a) the Eligible Investment under or otherwise the subject of the Loan and, if you are not a Superannuation Fund, all Eligible Investments under all or otherwise the subject of each of your Loans;
- (b) any property deemed to be part of the Eligible Investment as a result of a Corporate Action;
- (c) any property that you or the Nominee receive as a result of a Corporate Action;
- (d) any cash collateral;
- (e) if you are not a Superannuation Fund, any other property or rights specified in the Loan Agreement;
- (f) any New Rights you or the Nominee have in relation to any property set out in paragraphs (a) to (e) above;
- (g) any Net Sale Proceeds; and
- (h) any other property or rights acceptable to UBS,

which is mortgaged to UBS pursuant to the Mortgage.

**Mortgagee** means, in respect of a Loan:

- (a) if the Issuer is not UBS, UBS; and
- (b) if the Issuer is UBS, a security nominee of UBS as contemplated by clause 7.8.4 of the Loan Agreement, or the Trust Deed (as applicable).

**Mortgagor** means, in respect of a Loan:

- (a) if the Loan is granted to a Nominee Investor – the Nominee; or
- (b) if the Loan is granted to a Personal Investor - you.

**Net Sale Proceeds** means the proceeds from the sale or redemption of an Eligible Investment forming part of the Mortgaged Property net of all costs and expenses associated with that sale or redemption (including fees payable to ASIC in respect of notifying discharges of such Eligible Investment from the Mortgage) incurred by UBS or the Nominee.

**New Right** means a present or future right to or in any money, dividend (including any return of capital), distribution (of income or capital), interest, offer, bonus, note, debenture, stock, share, bond, unit, interest in a managed investment scheme or other security, or any entitlement to subscribe for any of them, however resulting, in connection with any property.

**Nominee** means UBS Nominees or any other person nominated by UBS.

**Nominee Deed** means the deed entered into by the Nominee, as described in section 8 of this Information Memorandum.

**Nominee Investor** means you, in circumstances where the Term Sheet specifies that your Eligible Investment will be held by the Nominee.

**Personal Investor** means you, in circumstances where the Term Sheet specifies that your Eligible Investment will be held in your name in a Locked Holding.

**PPS Act** means the *Personal Property Securities Act 2009* (Cth).

**Principal Loan** means a loan provided by UBS to you under the terms of the Loan Agreement to fund your purchase of an Eligible Investment (and, if you are not a Superannuation Fund, includes a loan provided by UBS to you under the terms of the Loan Agreement following the delivery of the Eligible Investment to the Nominee or the transfer of the Eligible Investment into a Locked Holding).

**Principal Loan Balance** means the sum of all Drawdown Amounts relating to the Principal Loan (including any Drawdown Amounts used to pay Interest Amounts) outstanding under your Loan Facility from time to time. For the avoidance of doubt, it does not include any Interest payable by you out of your own funds and not through a drawdown under the Loan, nor does it include any fees, charges, break costs and other amounts owed to UBS under the Loan Agreement.

**Repayment Date** means, in relation to a Loan, the date(s) on which all or part of a Drawdown Amount must be repaid, as set out in your Confirmation or otherwise agreed with UBS in writing.

**Secured Moneys** means all amounts which are payable, present and future, owing but not payable, or contingently owing by you to UBS or the Mortgagee under or in connection with a Loan (in the case of a Superannuation Fund) or the Loan Agreement (in all other cases), including all amounts which are payable, or have been advanced or paid, by UBS or the Mortgagee to protect any Mortgaged Property, or any Security Interest created by the Trust Deed, at any time, for any reason.

**Secured Obligations** means all of your obligations under the Loan Agreement.

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



**SIS** means the *Superannuation Industry (Supervision) Act 1993* (Cth) and any regulations made under that Act.

**Superannuation Fund** means the trustee of a regulated superannuation fund, as defined in SIS.

**Tax or Taxes** includes any tax, levy, duty, charge, deduction or withholding, however it is described, that is imposed by a government agency, together with any related interest, penalty, fine or other charge.

**Taxable Supply** has the same meaning given to this term in the GST Law.

**Tax Act** means the *Income Tax Assessment Act 1936* and the *Income Tax Assessment Act 1997*.

**Term** means, in respect of a Loan, the period from the first Drawdown Date to the Maturity Date.

**Term Sheet** means the document provided by UBS to you setting out indicative terms of a Loan.

**TFN** means tax file number, as that term is defined in the *Tax Act*.

**Trade Date** means, in relation to a Loan, the date specified as the Trade Date in your Confirmation.

**Trust Deed** means the deed between the Nominee and UBS dated 9 February 2012 under which the Nominee holds Mortgaged Property on trust for you if you are a Nominee Investor, as described in section 8 of this Information Memorandum and as amended from time to time.

**UBS** means UBS AG, Australia Branch (ABN 47 088 129 613, AFSL 231087).

**UBS Nominees** means UBS Nominees Pty Limited (ABN 32 001 450 522, AFSL 231 088).

**UBS Securities** means UBS Securities Australia Limited (ABN 62 008 586 481, AFSL 231098).

**Unrestricted Products** means financial products that are free and clear of any Security Interest (except as created pursuant to the Mortgage or otherwise authorised in writing by UBS) and which are not subject to any transfer restriction in the hands of a current holder immediately prior to delivery to a purchaser and would not be subject to any transfer restriction in the hands of that purchaser upon delivery to another purchaser.

# Contact information

---

**Issuer**

UBS AG, Australia Branch

Level 16  
Chifley Tower  
2 Chifley Square  
Sydney NSW 2000

Level 16  
8 Exhibition Street  
Melbourne VIC 3000

**Issuer's Solicitors**

Blake Dawson  
Level 36, Grosvenor Place  
225 George Street  
SYDNEY NSW 2000

**Issuer's Tax Solicitors**

Clayton Utz  
Level 1  
1 Bligh Street  
SYDNEY NSW 2000

Investor enquiry Line  
1800 633 100

[www.ubs.com/equitysolutions](http://www.ubs.com/equitysolutions)