

Joint Venture Deed

In respect of the Aggregator Assurance
Program

Contents

- 1. Definitions and interpretation 1**
 - 1.1 Definitions 1
 - 1.2 Interpretation..... 6
 - 1.3 Performance 7
- 2. Project creation 7**
 - 2.1 Formation of UJV 7
 - 2.2 Term..... 8
 - 2.3 Parties’ objectives..... 8
 - 2.4 Implementation 8
 - 2.5 Contractual relationship 9
 - 2.6 Indemnity and Losses..... 9
- 3. Project Oversight by Parties 10**
 - 3.1 Standing Offer for AAP Lenders to Procure Reviews, and no profit intention 10
 - 3.2 Cost recovery..... 11
 - 3.3 Participation interest 11
 - 3.4 Commitment limitation 11
- 4. Participation AAP Lenders 12**
 - 4.1 Open participation..... 12
 - 4.2 AAP Lender indemnity 12
- 5. Reviews of Aggregator systems 12**
 - 5.1 Reviews 12
 - 5.2 Review Cycle and ASP Pricing..... 13
 - 5.3 Opt-In Lender’s Limited right of access to Reports 13
- 6. RFT process for engagement of ASP 13**
 - 6.1 Participation and issue of RFT 13
 - 6.2 Criteria of RFT 14
 - 6.3 Evaluation of responses 14
- 7. Appointment and functions of ASPs 15**
 - 7.1 Appointment of ASPs and ASP Agreement 15
 - 7.2 Management of the ASPs..... 15
 - 7.3 Functions of the ASPs 15
- 8. Limits to Party liability 17**
- 9. Formation of Operating Committee 17**
 - 9.1 Appointment of OC Representatives 17
 - 9.2 Criteria for OC Representatives 17
 - 9.3 Party Representative appointment 17
 - 9.4 Non-Party Representative appointment 18
 - 9.5 Chair, deputy chair and secretary..... 19
 - 9.6 Alternate representatives..... 19
 - 9.7 Removal of Party Representative 19
 - 9.8 Resolutions 19
 - 9.9 Committee meetings..... 19
 - 9.10 Operating Committee meeting quorum 20
 - 9.11 Voting, conflicts and material personal interests 21
 - 9.12 No OC Representative remuneration 21
- 10. Operating Committee powers 21**
 - 10.1 Project management..... 21
 - 10.2 Voting by Super Majority Consent generally required 21

10.3	Unanimous decisions.....	22
10.4	Operating Committee referral to Parties.....	23
10.5	Consultation regarding Review scope and standard.....	23
11.	Aggregators.....	23
11.1	Invitation to submit to Reviews.....	23
11.2	Aggregator Agreement.....	24
12.	Project budgeting.....	24
12.1	Initial AAP Plan and Budget.....	24
12.2	Subsequent AAP Plan and Budget.....	25
13.	Participation transfer and New Parties.....	25
13.1	Transfer restriction.....	25
13.2	Permitted transfer.....	25
13.3	Security interest restriction.....	25
13.4	Future Participant Undertaking.....	25
13.5	Addition of New Parties.....	25
14.	Party default.....	25
14.1	Material Default events.....	25
14.2	Party default enforcement.....	26
14.3	Party remedies.....	26
15.	Party exit and New Parties.....	26
15.1	Party Exit Events.....	26
15.2	Voluntary resignation and deemed transfer of Participation Interest ..	26
15.3	Party Exit Event effect.....	27
16.	Termination.....	27
16.1	Termination events.....	27
16.2	Termination effect.....	28
16.3	Continuing remedies.....	28
16.4	Project liquidation.....	28
17.	Dispute resolution.....	28
17.1	Internal Disputes.....	28
17.2	Internal Dispute negotiation and determination.....	28
17.3	Urgent relief.....	30
17.4	Continued performance.....	30
17.5	Disputes with the AAP Lenders and an ASP.....	30
18.	Confidentiality and privacy.....	30
18.1	Confidentiality of Reports.....	30
18.2	Confidentiality liability.....	31
18.3	Permitted exemptions.....	31
18.4	Communications concerning the Project.....	32
18.5	Remedies.....	32
18.6	Privacy.....	32
18.7	Survival.....	32
19.	Notices.....	32
19.1	How notice to be given.....	32
19.2	When notice taken to be received.....	33
19.3	Notices sent by more than one method of communication.....	34
20.	General.....	34
20.1	Governing law.....	34
20.2	Jurisdiction.....	34
20.3	Amendments.....	34
20.4	Waiver.....	34

20.5 Further acts and documents 35

20.6 Consents 35

20.7 Assignment 35

20.8 Counterparts 35

20.9 No representation or reliance 35

20.10 Expenses 35

20.11 Entire agreement 35

20.12 Indemnities 35

20.13 Representations..... 36

Schedule 1 – List of Aggregators 37

Schedule 2 – Matters to be Addressed in each Report 38

Schedule 3 – AAP Lender Deed 39

Attachment 1 – Competition Protocol 40

Attachment 2 – Operating Committee Protocol 47

Attachment 3 – Initial AAP Plan and Budget 49

Joint Venture Deed

Date _____ **2023**

Parties

The Commonwealth Bank of Australia (ABN 48 123 123 124) of Level 8, 201 Sussex Street, Sydney, NSW, 2000 (**CBA**)

Australia and New Zealand Banking Group Limited (ABN 11 005 357 522) of 833 Collins Street, Docklands, VIC, 3008 (**ANZ**)

National Australia Bank Limited (ACN 004 044 937) of Level 26, 395 Bourke Street, Melbourne VIC 3000 (**NAB**)

Westpac Banking Corporation (ABN 33 007 457 141) of Level 10, Tower Two, 200 Barangaroo Avenue, Sydney, NSW, 2000 (**WBC**)

Macquarie Bank Limited (ABN 46 008 583 542) of 1 Shelley Street, Sydney, NSW, 2000 (**MBL**)

Background

- A. The Parties and other mortgage lenders each require appropriate assurance that their broker and aggregator channels have well established compliance systems to meet legal and regulatory requirements in relation to mortgage lending.
- B. The Parties have developed the Aggregator Assurance Program (**AAP**) to allow lenders and participating aggregators to jointly procure independent assurance reviews in respect of the systems, processes, policies, and controls of Aggregators.
- C. The purpose of the Project is for assurance reviews in respect of the compliance systems of Aggregators to be procured in a more consistent and efficient manner and to streamline and remove duplication that arises from review programs being conducted individually, for the benefit of Aggregators, lenders and the community.
- D. The Project is open to all mortgage lenders and aggregators in Australia in relation to residential and property investment lending through mortgage aggregators and mortgage brokers.
- E. The Parties have agreed to enter into this deed to establish and implement the AAP (and anything incidental or related thereto) as an unincorporated joint venture on the terms set out in the deed (**UJV**).

Operative provisions

1. Definitions and interpretation

1.1 Definitions

In this deed:

AAP has the meaning given in the Background to this deed.

AAP Lender means a mortgage lender (Australian or otherwise) carrying on business in Australia who:

- (a) has an ACL and an existing distribution agreement (or similar) with an Aggregator;
- (b) is not a Party;
- (c) has executed an AAP Lender Deed required to become an Opt-In Lender and engage an ASP to provide one or more Reviews, and that AAP Lender Deed has not been terminated; and
- (d) has been provided an acceptance notice by an ASP in accordance with clause 1.1 of the AAP Lender Deed.

AAP Lender Deed means a deed poll to be signed by an AAP Lender in substantially the same form as set out at Schedule 3 or as otherwise amended by Unanimous Consent of the Operating Committee.

AAP Plan and Budget means:

- (a) in relation to the first full or part Financial Year applicable from the Effective Date, the Initial AAP Plan and Budget; and
- (b) in relation to any Financial Year after the full or part Financial Year the subject of the Initial AAP Plan and Budget, the Subsequent AAP Plan and Budget.

ACL means Australian Credit Licence within the meaning of the National Consumer Credit Protection Act 2009.

Additional Review Items means, in respect of a Report, one or more matters that were requested by an Opt-In Lender to be (and which are) the subject of that Report which were not requested by all other Opt-In Lenders for that Report.

Aggregator means each aggregator listed in Schedule 1, which list may be amended from time to time by the Super Majority Consent of the Operating Committee.

Aggregator Agreement means an agreement between an ASP and an Aggregator which requests participation in the AAP.

ASP means an assurance service provider who is engaged by the Parties under clause 7.

ASP Agreement means an umbrella agreement between an ASP and the Parties providing for the engagement of the ASP as manager and assurance service provider for the AAP under clause 7.1, as renewed or varied from time to time.

ASP Pricing means the fees payable to an ASP by each Opt-In Lender for a Report, as determined by the ASP and approved by the Operating Committee pursuant to clause 10.2(b).

ASP Standing Offer has the meaning given in clause 3.1(a).

Business Day means a day on which banks are open for business excluding Saturdays, Sundays and national public holidays in New South Wales, Australia.

Claim means any allegation, cause of action, claim, cross-claim, demand or proceeding of any nature howsoever arising and whether present or future, fixed or unascertained, known or unknown, actual or contingent and whether at law, in equity, under statute or otherwise.

COBA means the Customer Owned Banking Association (ABN 98 137 780 897).

Competition Protocol means the obligations at Attachment 1 that the Parties and AAP Lenders are bound by.

Complying Party at any time, means any Party not being a Defaulting Party as at that time.

Confidential Information means (whether or not in material form and whether or not disclosed before or after the Effective Date):

- (a) any information of whatever kind disclosed by a Party to another Party, under or in relation to this deed:
 - (i) that is by its nature confidential;
 - (ii) that is designated by the Party disclosing such information as confidential; or
 - (iii) where the Party receiving such information knows or reasonably ought to know that the information is confidential;
- (b) any terms of this deed which the Parties agree to keep confidential; and
- (c) any information regarding the AAP that is not in the public domain (or which is in the public domain, only as a consequence of a breach of this deed or a AAP Lender Deed).

Consequential Loss means any loss which does not arise naturally and in the usual course of things from the relevant facts or circumstances giving rise to the breach or loss, and includes any indirect loss which is loss of goodwill, loss of business reputation, loss of opportunity, loss of future reputation or adverse publicity.

Deep Dive Reviews has the meaning given in clause 5.1(a).

Defaulting Party means a Party where a Material Default has occurred in relation to that Party.

Effective Date means the date on which all Parties have executed this deed.

Evaluation Criteria means each 'Evaluation Criteria' provided with respect to each 'Area of Focus' stated in Schedule 2.

Expert means the person appointed as contemplated by clause 17.2(j)(ii).

Financial Year means each period of 12 months commencing on 1 July in any year and ending on 30 June in the following year or any other period as the Operating Committee may approve from time to time with Super Majority Consent.

Initial AAP Plan and Budget means, in relation to the first full or part Financial Year applicable from the Effective Date, the business plan and budget for the Project Business attached as Attachment 3 as may be revised pursuant to clause 12.2.

Insolvency Event means, in relation to an entity:

- (a) a receiver, receiver and manager, liquidator, provisional liquidator, administrator or similar officer is appointed in respect of it or any of its assets;
- (b) an application is made to court (and is not stayed or dismissed within 20 Business Days after being made) or a resolution is passed or an order is made for its winding up or dissolution other than for the purposes of solvent reconstruction or amalgamation;
- (c) it implements or resolves to implement a scheme of arrangement or other compromise with its creditors or any class of them, other than for the purposes of a solvent reconstruction or amalgamation; or

- (d) it is unable to pay its debts when they become due or is deemed unable to pay its debts under any applicable law (other than as a result of a failure to pay a debt or claim which is the subject of a good faith dispute).

Intellectual Property or IPR means:

- (a) any patent, trade mark, service mark or design (whether registered or unregistered) and any applications for, or rights to apply for, registration of any patent, trade mark, service mark or design;
- (b) any copyright;
- (c) any utility model, eligible layout right or plant variety right;
- (d) any business, trade or commercial name or designation, brand name, internet website domain name, logo, symbol, source indication or origin appellation;
- (e) any other industrial, commercial, agricultural or extractive right derived from intellectual knowledge or activity of any industrial, scientific, literary or artistic nature or description, having effect anywhere in world, whether relating to any manufactured or natural product or otherwise;
- (f) any legal action or proceeding, or the right to commence any legal action or proceeding, relating to any previous item;
- (g) any licence or other right to use or grant the user, or to become the registered proprietor or user of, any applicable previous item; and
- (h) any document of title, letters patent, deed of grant or other document or agreement relating to any applicable previous item, whether registered or unregistered or recorded or unrecorded, stored or incorporated in any medium of any nature or description.

Lender means any one of the Parties and the AAP Lenders.

Loss means any cost (including legal costs and expenses of whatsoever nature or description), damages, debts, expenses, liabilities or losses, and for the avoidance of doubt, includes, to the extent permitted by law, any civil penalty or regulatory sanction incurred by a Party by reason of a breach of this deed by another Party.

Material Default by or in relation to a Party, means the occurrence, without the prior consent of each other Party, of any breach or default specified in clause 14.1, whether or not within the power or control of that Party.

Material Default Notice means a written notification by any Complying Party to any Defaulting Party of a Material Default in relation to that Defaulting Party which specifies the nature of the breach of, or default under, this deed by that Defaulting Party.

MFAA means the Mortgage & Finance Association of Australia Limited (ACN 006 085 5052).

New Party has the meaning given in clause 13.4.

Non-Party Representative means any member of the Operating Committee appointed under clause 9.4.

OC Representative means any member of the Operating Committee appointed or elected under clause 9.1.

Operating Committee means:

- (a) the Operating Committee created under clause 9; or
- (b) the OC Representatives acting collectively.

Operating Committee Protocol means the obligations of Non-Party Representatives set out at Attachment 2.

Opt-In Lender means any Lender who participates in a Review Cycle of the AAP for any Aggregator.

Opt-In Notice means a written confirmation from a Lender to an ASP, to be given to the ASP by a date nominated by the ASP, under which that Lender requests to participate in one or more Review Cycles.

Participant Undertaking means a deed poll in a form approved by the Operating Committee under which a New Party agrees to acquire a Participation Interest and to become liable under this deed as a Party (on and from the date that the New Party signs the deed poll).

Participation Interest has the meaning given in clause 3.3(a).

Participation Percentage in relation to each Party, means its proportionate interest or share in the Project (having regard to clause 3), being 20% unless otherwise amended pursuant to this deed or varied by the addition of New Parties as referred to in clause 13.5.

Parties means:

- (a) as at the date of this deed, each of CBA, ANZ, NAB, WBC and MBL separately; and
- (b) any future holder of a Participation Percentage pursuant to clause 13.

Party Representative has the meaning given in clause 9.2.

Privacy Legislation means the *Privacy Act 1988* (Cth) and any other legislation affecting privacy, personal information or the collection, handling, storage, processing, use or disclosure of personal information.

Project means the project to establish and implement the AAP (and anything incidental or related thereto) on the terms set out in this deed.

Project Asset means any asset (excluding Intellectual Property), and all the interests held by a Party in that asset, purchased or possessed by, created by, or transferred by any other Party to, a Party or the Project Business for the purpose of the Project Business at any time.

Project Business means the establishment and management of the AAP and any activity incidental or related thereto, and includes any other activity as agreed between the Parties in accordance with the terms of this deed.

Project Cost means:

- (a) any cost, outgoing, loss or other liability incurred in the performance of any business activity of the Project Business including but not limited to those as contained in an AAP Plan and Budget; and
- (b) any other cost, outgoing, loss or other liability (including any legal and filing fees or other costs) incurred in relation to the Project Business in accordance with this deed.

Project Liability means in relation to any Party, any liability of the Project Business where that Party is liable to pay that liability in whole or in part in compliance with this deed.

Prospective ASPs means the prospective assurance firms who are invited to participate in the RFT~~P~~ by the Operating Committee.

Related Entity includes a body corporate and a trust and in relation to:

- (a) a body corporate, means a related body corporate within the meaning of Division 6 of Part 1.2 of the Corporations Act 2001 (Cth); and
- (b) a trust, means a trust that would be a related body corporate within that meaning assuming that the trust were a body corporate and that a subsidiary meant a subsidiary for the purposes of that meaning.

Report means the report prepared by an ASP following a Review which, ~~at a minimum unless otherwise determined by Unanimous Consent of the Operating Committee~~, will address the Evaluation Criteria with respect to each of the matters stated in Schedule 2 and other matters/or to be specified in the engagement of an ASP by each Opt In Lender, and such other matters as may be determined from time to time by Unanimous Consent of the Operating Committee.

Review means an assurance review of an Aggregator carried out by an ASP as part of the Project Business to produce a Report.

Review Cycle has the meaning given in clause 5.2(a).

RFT means a Request for Tender to appoint an ASP.

Subsequent AAP Plan and Budget means, in relation to any Financial Year after the full or part Financial Year the subject of the Initial AAP Plan and Budget, the business plan and budget for the Project Business, prepared, approved and revised at any time under clause 12.2.

Super Majority Consent means any decision made, voted, resolved or passed at any time with the consent of 80% or more of the OC Representatives (excluding those OC Representatives who are precluded from providing consent under the terms of this deed).

Targeted Reviews has the meaning given in clause 5.1(b).

UJV has the meaning given in the Background to this deed.

Unanimous Consent means any decision made, voted, resolved or passed at any time with the consent of all of the OC Representatives (other than those OC Representatives who are precluded from providing consent under the terms of this deed).

1.2 Interpretation

In this deed:

- (a) headings are for convenience only and do not affect interpretation;

and unless the context indicates a contrary intention:

- (b) an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them severally;
- (c) **person** includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;

- (d) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation;
- (e) a reference to a document (including this deed) is to that document as varied, novated, ratified or replaced from time to time and a reference to a clause, schedule, exhibit and annexure of a document includes the equivalent clause, schedule, exhibit and annexure in any replacement of that document;
- (f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (h) a reference to a clause, schedule, exhibit, attachment or annexure is a reference to a clause, schedule, exhibit, attachment or annexure to or of this deed, and a reference to this deed includes all schedules, exhibits, attachments and annexures to it;
- (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (j) **includes** in any form is not a word of limitation;
- (k) a reference to **\$** or **dollar** is to Australian currency; and
- (l) security interest means:
 - (i) any mortgage, charge, pledge, lien, trust or power created or conferred in relation to any asset; and
 - (ii) any title retention interest or other proprietary title or legal or equitable interest retained or reserved in any asset under or in connection with any credit or conditional sale agreement, lease, hire purchase agreement, sale and lease-back agreement, bailment or other agreement,by way of security for the payment or performance of any liability.

1.3 Performance

Any action required to be performed under any provision of this deed on or before a day which is not a Business Day must be performed on or before the immediately following Business Day.

2. Project creation

2.1 Formation of UJV

- (a) The Parties agree to participate in the Project Business by forming an unincorporated joint venture on, and subject to, the provisions of this deed.
- (b) For a Party with multiple wholly owned or controlled lending brands or companies, representation of that Party and those brands or companies in the AAP will be limited to a single representative of that group who will be deemed for all purposes to have authority to bind that Party group.

2.2 Term

- (a) This deed takes effect on the Effective Date and continues in full force and effect for a period of three years after the Effective Date (**Initial Term**) and will be automatically extended in accordance with clause 2.2(b) unless terminated in accordance with its terms.
- (b) The Initial Term will automatically renew for each subsequent three-year period from the expiry of the Initial Term until it is terminated in accordance with the terms of this deed, and the terms of this deed (and the Parties' rights and obligations under this deed) will continue unchanged unless otherwise agreed by the Parties.
- (c) The Parties agree to jointly discuss and assess the viability of the AAP prior to the renewal of the Initial Term and each other subsequent term, if applicable.

2.3 Parties' objectives

Each Party has entered into this deed for the purpose of:

- (a) (**AAP**) establishing and conducting the AAP to provide a framework for the Parties and relevant AAP Lenders to procure high quality assurance reviews of participating aggregators, in a form which may be relied on, so as to achieve better compliance assurance outcomes on the most efficient basis, in compliance with applicable competition laws including the Competition Protocols;
- (b) (**Project expertise**) enabling the use and availability of its business skills, know-how, experience and expertise to manage and oversee the AAP on an efficient basis;
- (c) (**Decision processes**) regulating the decision-making procedures of the AAP and Project Business; and
- (d) (**Value enhancement**) ensuring that the AAP and Project Business is managed efficiently to achieve the objectives described.

2.4 Implementation

Each Party must:

- (a) (**Information**) subject to clause 2.4(e), provide accurate information to each other Party in relation to any business activity of the Project Business;
- (b) (**Voting**) subject to clause 2.4(e), perform, or procure the performance of, any action within its power or control necessary or desirable to perform this deed, including casting any vote as a Party and causing any OC Representative appointed or nominated to the Operating Committee to implement this deed;
- (c) (**Decisions**) subject to clause 2.4(e), not unreasonably delay any action, consent or decision required by that Party or its OC Representative under this deed;
- (d) (**Project manager**) subject to clause 2.4(e), perform any action within its power and control necessary or desirable to procure the performance of this deed;
- (e) (**Competition Protocol**) comply with the Competition Protocol and procure that each OC Representative is provided with a copy of the Competition Protocol and this deed and agrees to comply with Competition Protocol prior to commencing their term as OC Representative; and
- (f) (**Operating Committee Protocol**) procure that each of the Non-Party Representatives is provided with a copy of the Operating Committee Protocol and

this deed and agree to comply with Operating Protocol prior to commencing their term as OC Representative.

2.5 Contractual relationship

- (a) **(Independent contractor)** Each Party acts in the capacity of an independent contractor, as between that Party, and any other Lender or other Party in the liability for or performance of this deed, or any AAP Lender Deed.
- (b) **(Relationship exclusions)** This deed and any AAP Lender Deed does not create, and must not be construed to create, any express or implied relationship between any Party, any other Lender and any other Party of:
 - (i) employment;
 - (ii) principal and agency;
 - (iii) partnership; or
 - (iv) any fiduciary obligations.
- (c) **(Joint Activities)** The Parties will carry on the UJV jointly and acknowledge that performing their respective obligations under this deed and under any ancillary agreements or understandings is for the purposes of and reasonably necessary for undertaking the Project.
- (d) **(Contractual freedom)** This deed does not prohibit or restrict any Party (and the Parties do not intend to restrict any AAP Lender) from acquiring any similar assurance services from, or executing any agreement with, any third person relating to any assurance activity, project or joint venture, whether in the nature of or similar to the Project Business or otherwise, as decided by that party or AAP Lender.

2.6 Indemnity and Losses

- (a) Subject to clause 2.6(b), each Party (**First Party**) indemnifies each other Party against all Losses arising as a result of or in connection with a breach of, or default under this deed by the First Party.
- (b) To the maximum extent permitted by law and notwithstanding any other provision of this deed:
 - (i) each Party excludes, and will not be liable for or with respect to, any Consequential Loss suffered by another Lender;
 - (ii) the maximum aggregate amount that a Party is liable for in respect to all Claims under this deed (whether by damages or otherwise) is:
 - A. for all Claims notified by any and all Parties in the period commencing on the Effective Date and concluding at the end of the Financial Year in which the first Targeted Review is conducted (each date inclusive), \$1 million (**First Cycle**); and
 - B. for all Claims notified by any and all Parties in each subsequent 24 month period following the First Cycle, \$1 million; and
 - (iii) a First Party is not liable to any other Party under the indemnity in clause 2.6(a) unless it has received a notice of the claim by the relevant Party

no later than 12 months after the date on which the First Party is alleged to have committed a breach or default under this deed.

3. Project Oversight by Parties

3.1 Standing Offer for AAP Lenders to Procure Reviews, and no profit intention

The Parties' intentions are that, unless otherwise determined by Unanimous Consent of the Operating Committee:

- (a) the Parties will seek to appoint two or more ASPs to each provide a standing offer available to each Party and AAP Lender over each Review Cycle which governs an ASP's obligations, terms and ASP Pricing, to undertake and deliver Reviews on request, in order to meet the requirements of the AAP (each, an **ASP Standing Offer**);
- (b) each ASP Standing Offer will, as far as practicable, identify all material terms for the ASP to be engaged by the Opt-In Lenders to undertake Reviews, including the permitted reliance on Reports, ASP Pricing, permitted use and other matters as determined by the Operating Committee;
- (c) for each proposed Review Cycle:
 - (i) the Operating Committee will assign each Review of an Aggregator to an ASP at its sole discretion having regard to any matters which it considers relevant, including:
 - A. the terms of an ASP's ASP Standing Offer;
 - B. skills and experience of an ASP, including prior experience and capability;
 - C. resources available to an ASP during the period when the Review is required;
 - D. the number of Reviews assigned to an ASP at the time;
 - E. past performance of an ASP;
 - F. any other matter as determined by the Operating Committee from time to time; and
 - (ii) the Parties and the AAP Lenders will be invited to opt-in and enter into a specific client engagement with an ASP for each Review they request, on the basis of that ASP's ASP Standing Offer;
- (d) the only costs anticipated to be required to be incurred by the Parties and the AAP Lenders in order to participate and join the AAP, as applicable, will be the ASP Pricing under an ASP Standing Offer for the delivery of Reports and Reviews;
- (e) the Project is operated on a 'user pays' and cost recovery basis only in accordance with clause 3.2 so that:
 - (i) the Parties and AAP Lenders are not, as far as practicable, otherwise required to fund Reviews or their participation in the Project or incur further liabilities by reason of their participation in the Project, other than meeting their share of ASP Pricing in accordance with this deed where they request a Review as an Opt-In Lender; and

- (ii) to the extent that, despite the foregoing, any Project Costs may be incurred, and become a Project Liability, the Parties agree to share such costs or liabilities between them in accordance with their Participation Percentage; and
- (f) subject to clause 3.3(a)(ii), no surplus profit or gain is intended to be made from the operation of the Project or to be distributed to any Party.

3.2 Cost recovery

(a) For each Review:

~~(a)(i)~~ an AAP Lender who is an Opt-In Lender will pay the lesser of:

~~(i)A.~~ \$5,000 (excluding GST); or

~~(i)B.~~ 50% of the cost of Review, divided equally between those AAP Lenders who are Opt-In Lenders for that Review;

~~(b)(ii)~~ each Party who is an Opt-In Lender will pay equal shares of the cost of the Review remaining after subtracting the amount in (a); and

~~(b) For the avoidance of doubt, any Additional Review Item is not within the scope of this deed. The cost of any Additional Review Items requested by the AAP Lender will be negotiated bilaterally between the relevant ASP and the Opt-In Lender requesting the Additional Review Item. The requesting Opt-In Lender shall be responsible for any fees it negotiates for an Additional Review Item. (as set out in its applicable Opt In Notice or otherwise agreed by that AAP Lender with the ASP for that Review).~~

3.3 Participation interest

- (a) **(Rights)** Each Party has a proportionate share or interest in the Project, created under this deed comprising of its Participation Percentage of the legal or equitable interest of that Party (**Participation Interest**) in and to any:
 - (i) Project Asset, in which each Party holds an interest as tenant-in-common with an undivided interest equal to the Participation Percentage of that Party as at that time; and
 - (ii) right to receive any share of net profit of the Project Business, if any;
- (b) **(IPR)** to the extent that any IPR in relation to the Project, a Report or Review is created and owned by a Party, that Party grants to each other Party and each Opt-In Lender for a Review Cycle a non exclusive, irrevocable, royalty free, perpetual and worldwide licence to use that IPR for the purposes of the Project and, in respect of an Opt-In Lender, for that Opt-In Lender's own use in relation to the relevant Aggregator; and
- (c) **(Liability)** subject to clause 3.1, the liability of each Party to pay or contribute towards payment of any Project Costs which have not been recovered from any Opt-In Lender will equate to the proportion of any Project Liability equal to the Participation Percentage of that Party subject to and in compliance with the provisions of this deed.

3.4 Commitment limitation

No Party is required to pay, invest or contribute funds or other moneys, or advance or extend any loan, credit or other financial accommodation to or in the Project Business, except as

expressly provided for in this clause 3 or as determined by Unanimous Consent of the Operating Committee.

4. Participation AAP Lenders

4.1 Open participation

- (a) The intention of the Parties is that the opportunity to join the Project and procure Reviews under the AAP will be open to any mortgage lender in Australia which:
 - (i) deals with one or more Aggregators and wishes to obtain access to Reviews on the terms of an AAP Lender Deed; and
 - (ii) executes and complies with the terms of its AAP Lender Deed including obligations regarding the use of the Reviews and Reports.
- (b) The intention of the Parties is that AAP Lenders cannot participate in engaging an ASP to provide Reviews under the AAP unless and until:
 - (i) they execute and deliver to the ASP an AAP Lender Deed in a form satisfactory to the ASP and the Operating Committee; and
 - (ii) their participation is approved by the Operating Committee pursuant to clause 1.1(a).
- (c) For the avoidance of doubt:
 - (i) the Parties intend for an ASP to only provide Reports under the AAP to AAP Lenders who have adhered to the obligations in clause 4.1(b) and the Operating Committee will procure the ASP's agreement to only provide Reports to AAP Lenders who have adhered to the obligations in clause 4.1(b)); and
 - (ii) each AAP Lender will not be entitled to, or have any interest in, any Participation Percentage (but will have the right under and subject to the AAP Lender Deed to engage an ASP under that ASP's ASP Standing Offer to provide a Report).

4.2 AAP Lender indemnity

The Parties will require each AAP Lender Deed to impose obligations on each AAP Lender (**Indemnifying Lender**) to indemnify each Party against any and all Loss (up to an agreed amount) arising as a result of or in connection with a breach of, or default under, the AAP Lender Deed by the Indemnifying Lender.

5. Reviews of Aggregators

5.1 Reviews

Subject to clause 5.2 and unless otherwise determined by the Operating Committee, the Parties will request each ASP to provide its ASP Standing Offers to AAP Lenders and the Parties in the expectation that:

- (a) Reviews of all Aggregators (**Deep Dive Reviews**) will be offered and conducted so that the first Deep Dive Review will occur as soon as practicable after the Effective Date (which may potentially occur across two Financial Years) and then every Financial Year following a Targeted Review; and

- (b) additional targeted Reviews (**Targeted Reviews**) will be offered and conducted in the Financial Year following the Financial Year(s) in which the Deep Dive Reviews are conducted, primarily to review any material changes of the business of the Aggregator having regard to:
 - (i) any applicable regulatory requirements;
 - (ii) the findings and recommendations arising from the Deep Dive Reviews; and
 - (iii) any other matter otherwise determined by Unanimous Consent of the Operating Committee.

5.2 Review Cycle and ASP Pricing

- (a) The Reviews will generally be conducted in six monthly cycles (each a **Review Cycle**), unless otherwise determined by the Operating Committee.
- (b) The Operating Committee will be responsible for negotiating an ASP Standing Offer (and any variations thereto from year to year) with an ASP in the expectation that the ASP will commit to offer the opportunity to every Opt-In Lender to engage the ASP to provide Reviews on the terms of the ASP Standing Offer where a Review is assigned to that ASP by the Operating Committee in accordance with clause 3.1(c)(i).
- (c) The Operating Committee will instruct each ASP to give each Lender for each Review Cycle, notice of the intended Reviews that have been assigned to that ASP by the Operating Committee in that Review Cycle, the anticipated Review topics, including, each matter listed in Schedule 2, and any Additional Review Items that may be offered as specified in the AAP Lender Deed.

5.3 Opt-In Lender's Limited right of access to Reports

The Operating Committee will instruct each ASP that an Opt-In Lender will be only entitled to receive the specific Reviews and/or the Report(s) in respect of any Aggregator under the AAP for which the Lender has provided an Opt-In Notice, provided that:

- (a) where an Opt-In Lender has requested any Additional Review Items,
 - (i) these items will be addressed in an attachment to the relevant Report;
 - (ii) in a format agreed between that Opt-in Lender and the ASP assigned to that Review;
 - (iii) the relevant attachment to the Report will be available only to that Opt-In Lender; and
- (b) no Opt-In Lender will be entitled to receive any Additional Review Items that it has not elected to receive by way of an Opt-In Notice or as otherwise agreed by that Opt-In Lender with an ASP.

6. RFT process for engagement of ASP

6.1 Participation and issue of RFT

- (a) The Parties authorise the Operating Committee to invite Prospective ASPs to participate in an RFT process which will be conducted by the Operating Committee.

- (b) The Parties will instruct the Operating Committee to use its reasonable endeavours to prepare and issue an RFT to Prospective ASPs.

6.2 Criteria of RFT

The Operating Committee has authority to prepare and issue one or more RFTs in such form and manner and timing as the Operating Committee determines, noting that the RFT may include the following, as relevant to the appointment of an ASP, together with any other criteria considered relevant:

- (a) skills and experience and basic company profile information of the Prospective ASP, including prior experience and capability;
- (b) proposal for the structure of the account management model for the Project, including quality assurance, governance structures and reporting capabilities;
- (c) details about the Prospective ASP's approach to confidentiality, data privacy, data protection and information security;
- (d) acceptance that Opt-In Lenders may make use of, and place appropriate reliance on, Reports and details about the Prospective ASP's approach to risk management in addressing risks specific to the Review and the Project;
- (e) details of the Prospective ASP's capability to reliably estimate and determine Opt-In Lenders Fees and to complete Reviews within reasonable estimates, and proposed management of any out of scope or additional costs that may be incurred;
- (f) feedback on the proposed Review scope, including ideas for enhancement;
- (g) proposal for the Review schedule and approach for Aggregator engagement;
- (h) capability to perform the duties of an ASP, including the six-monthly fee estimation and invoicing cycle (to align with each Review Cycle);
- (i) value for money and details of the proposed pricing model(s) for the Review/s;
- (j) a standard fee schedule for Reviews and for additional Review requirements as may be requested by the Operating Committee on a case by case basis;
- (k) confirmation that the ASP will grant to each Opt-In Lender a licence to use any IPR created and owned by the ASP for the purposes of considering and relying on a Report, including discussions with the subject aggregator, disclosure to Australian regulatory authorities and other uses permitted by the Operating Committee; and
- (l) any other matter as determined by the Operating Committee from time to time.

6.3 Evaluation of responses

The Operating Committee has the final authority and discretion to evaluate the responses from each Prospective ASP that submits a response to the RFT (**ASP Proposal**), noting that the following criteria (which are not set out in a particular order) are relevant but not binding to the appointment:

- (a) compliance with the criteria of the RFT as outlined in clause 6.2;
- (b) agreement to contract on the basis specified in the RFT;
- (c) completeness and clarity of the ASP Proposal;
- (d) value for money and competitiveness of offer in the ASP Proposal;

- (e) capacity and capability of the Prospective ASP;
- (f) proposed service model and performance measurement framework for the provision of services;
- (g) commercial risk level of the Prospective ASP; and
- (h) any other criteria as determined by the Operating Committee from time to time.

7. Appointment and functions of ASPs

7.1 Appointment of ASPs and ASP Agreement

- (a) Following any RFT process as set out in clause 6, or such other selection process as the Operating Committee determines, the Operating Committee will appoint a minimum of two ASPs by entering into ~~may enter into~~ ASP Agreements ~~to appoint two or more with~~ Prospective ASPs ~~as ASP~~, for a period of 24 months and may seek further proposals if necessary from tenderers or additional providers.
- (b) The Operating Committee will have authority to negotiate with a Prospective ASP and finalise the proposed ASP Agreement, including pricing, terms of each ASP's ASP Standing Offer, permitted use and reliance by AAP Lenders and the liability of the ASP regarding each Review and Report.
- (c) The ~~Parties~~ Operating Committee may:
 - (i) finalise the terms of ~~, and each enter into,~~ an ASP Agreement; and
 - (ii) ~~by unanimous consent, authorise the Operating Committee to finalise the terms of, and to enter into,~~ an ASP Agreement on behalf of the Parties, on the terms finalised in accordance with clause 7.1(c)(i) to the extent and subject to any terms and conditions authorised by the Parties.
- (d) Each Party will provide all necessary authorities and consents to authorise the person or persons nominated in accordance with clause 7.1(c) to execute an ASP Agreement on behalf of that Party and to bind that Party to an ASP Agreement which is in the form approved by the Operating Committee.
- (e) The objective of the Parties is that an ASP will be engaged on the basis that the Parties and the relevant Opt-In Lenders will have reasonable rights of use, reliance and accountability on the relevant Report/s.

7.2 Management of the ASPs

The Operating Committee is responsible for the management and oversight of the ASPs, including, but not limited to:

- (a) compliance with the applicable ASP Agreement and quality and timeliness of services provided, and determination of fees to be paid to the ASPs; and
- (b) procuring consent from each ASP to permit use and reliance by Opt-In Lenders on and of Reports, and quality control assurance of the output of the ASP, including the quality of any Reviews and the Reports prepared in relation to those Reviews.

7.3 Functions of the ASPs

- (a) The ASPs will be engaged to perform any functions and duties conferred or imposed on it under the RFT or its ASP Agreement, and as otherwise agreed by the Operating Committee.

- (b) The responsibilities of each ASP (to be included in the ASP Agreement) will be determined by the Operating Committee and may include any of the following matters:
- (i) **(ASP Standing Offer)** to make the ASP Standing Offers to Lenders, and entering into engagements with Opt-In Lenders;
 - (ii) **(Reviews and Reports)** conducting Reviews and preparing Reports to the standard required by the Operating Committee;
 - (iii) **(AAP Plan and Budget)** preparation of the AAP Plan and Budget;
 - (iv) **(Upfront Fee Budgets)** budgeting for ASP Pricing on the basis that the ASP must provide to relevant Lenders an accurate and reasonable forecast of the ASP Pricing for each Review. For the avoidance of doubt, each Lender will be responsible for paying its proportion of any ASP Pricing directly to the ASP, with such costs not included in (or forming part of) any Project Costs;
 - (v) **(Invoicing Opt-In Lenders)** invoicing and collecting payment from each Opt-In Lender for the fees payable for a Report ;
 - (vi) **(Obtain Aggregators Consent to Reviews and Waivers)** entering into an Aggregator Agreement with each Aggregator in a form approved by the Operating Committee, to include all relevant consents and waivers from each Aggregator which may be required to conduct the relevant Review and for Reports to be provided to each Opt-In Lender for its use and evaluation (which may include subsequent discussions with the relevant aggregator and provision to any Australian regulatory authority (if required or requested by any relevant Australian regulatory authority));
 - (vii) **(No charge to Aggregators)** the ASP not levying any charge or fee on any Aggregator in relation to conducting a Review of that Aggregator (without the consent of the Operating Committee);
 - (viii) **(Conflicts of interest)** avoiding conflicts of interest;
 - (ix) **(Impartiality)** acting impartially as between Lenders;
 - (x) **(Confidentiality)** ensuring an Aggregator's information is kept strictly confidential, except for any reporting format agreed with the Aggregator;
 - (xi) **(Privacy)** ensuring the ASP complies with the Privacy Legislation and that the Parties can be satisfied this is the case;
 - (xii) **(Assurance reports)** producing Reports and issuing them to the relevant Opt-In Lenders in a standard, agreed format (subject to clause 5.3). Where an Opt-In Lender requires additional matters to be included in a Report, the ASP is to be instructed that that must be agreed between the ASP and that Opt-In Lender, with those additional matters reported only to that Opt-In Lender as an attachment to the agreed form of report (in a format agreed between that Opt-In Lender and the ASP); and
 - (xiii) **(Review information)** ensuring Review information (and any Report prepared in relation to that Review) is, subject to clause 5.3, kept confidential and subject to the Competition Protocol and disclosed only to:

- A. the level permitted by the relevant Aggregator in accordance with an applicable Aggregator Agreement; and
 - B. the relevant Opt-In Lenders who participate in that Review; and
- (xiv) **(Commitment to the AAP)** ensuring the ASP only provides Reviews and Reports of an Aggregator produced under its engagement by Opt-In Lenders to those Opt-In Lenders and that the ASP does not otherwise (except as required by law or where required or requested by an Australian regulatory authority) use or disclose the work product or contents or findings of any Review or Report for or to any other client, lender or third party without the consent of the Operating Committee.

8. Limits to Party liability

- (a) Subject to clause 2.6, and save for any rights which by statute may not be excluded or limited, each of the Parties release from liability and waive any rights they have, or may in the future have, to make or bring a Claim against another Party in relation to or arising out of the Project Business, any Reviews and/or the content of any Reports conducted and prepared by an ASP, respectively.
- (b) Despite any other provision of this deed:
 - (i) failure by any Party to perform any obligation does not relieve any other Party from its liability to perform its obligations under the terms of this deed and, where applicable, the AAP Lender Deed; and
 - (ii) no Party is liable for the acts or omissions of any other Party unless expressly authorised in writing by the former Party.

9. Formation of Operating Committee

The Parties must create and maintain an Operating Committee to oversee and manage the Project Business in compliance with this clause 9.

9.1 Appointment of OC Representatives

The Operating Committee is to be comprised of:

- (a) one OC Representative for each Party holding a Participation Percentage (**Party Representatives**); and
- (b) ~~at least~~^{up to} two OC Representatives, as nominated from time to time by COBA and/or the MFAA in accordance with clause 9.4 (**Non-Party Representatives**).

9.2 Criteria for OC Representatives

The Parties must not appoint an ~~OC-Party~~ Representative under clause 9.3 ~~or and Operating Committee must not appoint an OC Representative under~~ clause 9.4 ~~and clause Error! Reference source not found.~~ that is (or is intended to be) responsible for the making of commercial and/or strategic decisions, including pricing decisions, that may (directly or indirectly), involve or impact upon competition between the Parties, in relation to businesses for which there is a competitive overlap with the businesses of the Parties and/or an AAP Lender.

9.3 Party Representative appointment

Each Party holding a Participation Percentage:

- (a) **(Appointment)** must appoint one Party Representative as a member of the Operating Committee by written notice to each other Party within 14 days of the Effective Date; and
- (b) **(Substitution)** may, by notice to the other Parties, replace its Party Representative at any time and appoint a new Party Representative, and must do so if its current Party Representative ceases to be able to attend Operating Committee meetings for any reason or if its current Party Representative otherwise resigns his or her position as that Party's Party Representative.

9.4 Non-Party Representative appointment

- (a) The Parties acknowledge COBA and MFAA may each nominate a Non-Party Representatives to the Operating Committee from time to time by written notice to the Operating Committee. Subject to clause 9.4(b), the Parties must appoint the person nominated to be a Non-Party Representative.
- (b) The Parties must only appoint a Non-Party Representative if the nominee:
 - (i) is a lender;
 - ~~(ii) is not currently employed by, or a material professional adviser or material consultant to a Party or a Related Body Corporate to a Party;~~
 - ~~(iii)(ii) is not currently employed by, or a material professional adviser or material consultant to, a member of COBA, MFAA or a Related Body Corporate to a member of COBA or MFAA.~~
- (c) The term of office of each Non-Party Representative expires on the earlier of:
 - (i) the conclusion of the eighth meeting of the Operating Committee following the Non-Party Representative's appointment;
 - (ii) receipt of written notice of resignation from the Non-Party Representative;
 - (iii) receipt of written notice from the Non-Party's nominating organisation (either COBA or MFAA) nominating a new Non-Party Representative in place of the existing Non-Party Representative;
 - (iv) removal from office by unanimous resolution of the Operating Committee (excluding the Non-Party Representative).
- (d) For the avoidance of doubt:
 - (i) the Parties intend for each of COBA and MFAA to nominate one Non-Party Representative each unless either COBA or MFAA notify the Parties they do not wish to nominate a representative;
 - (ii) where either COBA or MFAA notifies the Parties that it does not wish to nominate a representative, the other organisation may nominate an additional representative;
 - ~~(iii) where both COBA and MFAA notify the Parties that they do not wish to nominate one or more representatives, the ~~Operating Committee~~Parties may will appoint up to two Non-Party Representatives that satisfies the criteria set out in clause 9.4(b).~~

~~(iii)~~

9.5 Chair, deputy chair and secretary

The chairperson, deputy chairperson (if any) and secretary (if any) of the Operating Committee will be elected on a rotating and alternating basis, determined annually by the OC Representatives (who are to ensure that each Party's OC Representative has an opportunity to be the chairperson of the Operating Committee) or as otherwise decided by the OC Representatives in the event of any absence of or vacancy in the chair.

9.6 Alternate representatives

Each Party will procure that if an OC Representative is not available to attend any meeting, the OC Representative must, by notice to each other OC Representative, appoint an alternate OC Representative that meets the criteria set out in clause 9.2 and has requisite authority to attend Operating Committee meetings and vote on its behalf.

9.7 Removal of Party Representative

A Party Representative ceases automatically to hold that position when that Party ceases to be a Party as referred to in clause 15.1.

9.8 Resolutions

The Operating Committee may pass a resolution without a meeting of the Operating Committee being held, if the form of the resolution has been notified to each OC Representative and sufficient OC Representatives required to pass that resolution in accordance with clauses 10.2 or 10.3 (as relevant), and who are entitled to vote on the resolution, sign a statement that they are in favour of the resolution set out in the document.

9.9 Committee meetings

- (a) **(Meetings)** There must be at least one meeting of the Operating Committee held per quarter of every Financial Year. The chairperson of the Operating Committee is responsible for:
 - (i) seeing that a meeting schedule is prepared by the Operating Committee for each Financial Year;
 - (ii) all meetings being convened by appropriate notice and with an agenda; and
 - (iii) all meetings being appropriately minuted and minutes circulated promptly following the meeting.
- (b) **(Additional meetings)** Any additional meeting of the Operating Committee must be convened by the chairperson within a reasonable timeframe following any written request by any OC Representative to the other OC Representatives.
- (c) **(Venue)** Meetings of the Operating Committee must be held either digitally or at any venue agreed at any time by the chairperson of the Operating Committee or the OC Representatives.
- (d) **(Methods)** Any meeting of the Operating Committee may be conducted by written resolution, telephone conference, video conference or any similar means of audio or audio-visual communication.
- (e) **(Notices)** Save for urgent circumstances or as determined by the chairperson of the Operating Committee, each OC Representative must receive prior written notice of any meeting of the Operating Committee, together with an agenda, at least 5 Business Days before that meeting.

- (f) **(Agendas)** The agenda for any meeting of the Operating Committee must be decided by the chairperson of the Operating Committee or, in the case of a meeting convened at the request of any Party or OC Representative, by that Party or OC Representative.
- (g) **(Standing agenda)** The standing agenda for any meeting of the Operating Committee will include approval of previous minutes, any declarations of conflicts under clause 9.11, updates on action items, confirmation of the parties' adherence to the Competition Protocol and an update provided by the ASPs of any complaints or issues received in relation to the AAP since the last meeting of the Operating Committee.
- (h) **(Resolutions)** Unless Unanimous Consent is given, the Operating Committee must not pass any resolution at any meeting where notice of that resolution has not been given in the prior agenda for that meeting. Resolutions can be passed at any meeting for matters on the standing agenda or as permitted by clause 9.8.
- (i) **(ASP)** The ASPs will generally be invited to provide a representative to attend as an observer such parts of the meetings of the Operating Committee as determined by the chairperson.
- (j) **(Attendance)** ASP representatives and other persons who are not OC Representatives may be invited to observe a meeting of the Operating Committee if permitted by the chairperson.
- (k) **(External lawyer)** Each meeting of the Operating Committee must be attended by an external lawyer engaged by the Parties and instructed by the parties to immediately advise the attendees if, during the course of the meeting, there is a risk of breach of the Competition Protocol.

9.10 Operating Committee meeting quorum

- (a) **(Minimum attendance)** Subject to clauses 9.10(b), 9.10(d) and 9.11, a quorum for any meeting of the Operating Committee is created by the attendance, in person or by alternate means, of:
 - (i) ~~one-two~~ Party Representatives which, at the time of the relevant meeting, ~~are~~ not, and ~~are~~ not deemed to be, a Defaulting Party; and
 - (ii) all at least one Non-Party Representatives ~~(to the extent any have been appointed).~~
- (b) **(Exception to minimum attendance)** If an OC Representative is not entitled to vote on a matter in accordance with the provisions of this deed, that OC Representative will not be required to form a quorum for a meeting (including any adjourned meeting) of the Operating Committee.
- (c) **(Meeting adjournment)** A meeting of the Operating Committee must be adjourned, if a quorum is not present within 30 minutes of the time specified for the meeting, to a date and time seven days following the time of, and at the same place as, the original meeting to be notified to all OC Representatives.
- (d) **(Failure to attend adjournment quorum)** Any three or more OC Representatives present at any meeting adjourned because of insufficiency of quorum create a sufficient quorum for that adjourned meeting quorum for all purposes of this deed (including, notwithstanding clause 9.11(a), for the purposes of passing a vote at that meeting, subject, at all times, to the provisions of this deed including the conflict provisions in clause 9.11).

9.11 Voting, conflicts and material personal interests

- (a) **(Voting power)** Subject to this deed, each OC Representative is entitled to cast one deliberative vote at any meeting of the Operating Committee.
- (b) **(Notice of Conflict)** If an OC Representative has a material personal interest in any matter to be considered by the Operating Committee, or if the Party which appointed that OC Representative has a material interest in a matter before the Operating Committee, which may conflict with the proper purposes and/or best interests of the Project, the OC Representative and/or the relevant Party must promptly give notice of that interest to each other OC Representative and to the other Parties and request the notice to be included in the agenda and minutes for that meeting.
- (c) **(Waiver of Conflict)** Where an OC Representative or Party has given notice under clause 9.11(b), the other OC Representatives (**Non-Conflicted OC Representatives**) may, by Unanimous Consent of the Non-Conflicted OC Representatives, determine, and upon any conditions as they determine, that the OC Representative or Party which gave notice under clause 9.11(b) is, despite the notice, permitted to participate in and vote upon the matter which relates to the material interest notified by that OC Representative.
- (d) **(Revocation of voting power)** Subject to any resolution as referred to in clause 9.11(c), an OC Representative's entitlement to cast a deliberative vote on any matter to be considered by, or at any meeting of, the Operating Committee is deemed to be revoked if the Party who appointed the relevant OC Representative or the OC Representative has a material conflict of interest regarding the subject matter of the vote or is otherwise precluded to vote in accordance with clause 14.2(a).
- (e) **(Disputes)** Any dispute as to whether or not an OC Representative, or a Party, is permitted to vote on a matter, or is subject to a material conflict of interest in relation to a matter before the Operating Committee, is to be resolved as if it was a dispute between the Party who appointed the relevant OC Representative and the other Parties pursuant to the dispute procedures in clause 17.
- (f) **(Chairperson)** The chairperson of the Operating Committee is not entitled to any deciding or casting vote in the event of any equality of votes at any meeting of the Operating Committee.

9.12 No OC Representative remuneration

Any OC Representative is not entitled to payment of any fee, salary or other remuneration or reimbursement of any cost by any Party or any other person for or incurred in the attendance of any meeting of the Operating Committee by that OC Representative.

10. Operating Committee powers

10.1 Project management

The Operating Committee has full powers of management and control of any business activity of the Project Business, upon and subject to the provisions of this deed.

10.2 Voting by Super Majority Consent generally required

Subject to any contrary indication in this deed, Super Majority Consent of the Operating Committee is required for **all decisions** including:

- ~~(a) (AAP Lenders) the participation of an AAP Lender in the Project;~~

- ~~(b)~~(a) **(ASP Standing Offer)** approval or amendments to an ASP Standing Offer;
- ~~(c)~~ **(Review standards)** subject to clause **Error! Reference source not found.**, the creation, and any subsequent amendment, of the quality standards for Reviews to be conducted, including the review scope;
- ~~(d)~~(b) **(Fees payable by Opt-In Lenders)** the approval of the applicable Project Costs and ASP Pricing payable by each Opt-In Lender for each Review Cycle;
- ~~(e)~~(c) **(RFT)** the issuance of an RFT to appoint two or more ASPs to conduct the Reviews, including matters relating to the administration and process associated with the RFT;
- ~~(f)~~(d) **(Aggregator participation)** the appointment or removal of an Aggregator's participation in the Project;
- ~~(g)~~(e) **(Aggregator Agreement)** any approval or amendment of any Aggregator Agreement between an ASP and an Aggregator;
- ~~(h)~~(f) **(Complaints)** the management of any complaints or disputes that may arise in the Review process between an Aggregator(s) and an ASP or an Opt-In Lender;
- ~~(i)~~(g) **(Operating Committee)** the management and administration of the Operating Committee, including, but not limited to, decisions relating to meeting facilitation, minutes, agendas and attendees other than OC Representatives;
- ~~(j)~~(h) **(Disputes with AAP Lenders or an ASP)** the determination of disputes between any of the Parties and/or an ASP, and any disputes between any of the Parties and an Opt-In Lender as per clause 17.1; and
- ~~(k)~~(i) **(Super majority issues)** any decision expressly required under this deed to be made, voted, resolved or passed by the Super Majority Consent of the Operating Committee.

10.3 Unanimous decisions

The Unanimous Consent of the Operating Committee is required for any decision relating to:

- ~~(a)~~ **(Activities of Project Business)** any creation or amendment to any activity or purpose of the AAP and the Project Business, or any change in strategic direction of the Project Business;
- ~~(a)~~(b) **(Review standards)** subject to clause 10.5, the creation, and any subsequent amendment, of the quality standards for Reviews to be conducted, including the review scope;
- ~~(b)~~(c) **(AAP Plan and Budget)** any approval or amendment of any AAP Plan and Budget;
- ~~(c)~~(d) **(AAP Lenders)** the **participation by**, removal or suspension of an AAP Lender from the Project subject to the terms of the applicable AAP Lender Deed;
- ~~(d)~~(e) **(ASP)** the appointment or removal of an ASP and determination of matters or disputes in relation to fees to be paid to an ASP;
- ~~(e)~~(f) **(Asset transfers)** the transfer of any Project Asset to another entity;
- ~~(f)~~(g) **(Unanimous issues)** any decision expressly required under this deed to be made, voted, resolved or passed by Unanimous Consent of the Operating Committee,

~~(g)~~(h) (Committee delegation) the delegation of any power or function of the Operating Committee to any person(s), including any delegation to a Party, OC Representative(s), any subcommittee or an ASP and the creation by the Operating Committee of any subcommittee;

~~(h)~~(i) (Competition protocol) any amendments to the Competition Protocol; and

~~(i)~~(j) (Statements about the Project) subject to clause 18.4, issue or release of any statements, or submissions or responses to information requests by media, any regulator, public agency or other third party which relate to the Project, the Project Business or this deed, including but not limited to matters relating to any request by any Lender or Aggregator to join or exit the Project.

10.4 Operating Committee referral to Parties

The Operating Committee may, from time to time, by Unanimous Consent or by the decision of the chairperson, if a deadlock arises, determine that a matter (or types of matters) should be resolved by the Parties in lieu of the Operating Committee. If the Operating Committee or the chairperson makes such a determination, the same thresholds and limitations that would apply to the Operating Committee when making a decision on the particular matter (or types of matters) will apply to the Parties.

10.5 Consultation regarding Review scope and standard

In the event the Operating Committee proposes to ~~materially~~ amend the scope and/or standard of Reviews:

~~(a)~~ any proposed revision must not reduce or limit the scope and/or standard of Review as set out in Schedule 2;

~~(a)~~(b) the Operating Committee must undertake a consultation process with AAP Lenders which will include (at a minimum);

- (i) providing written notice of the revisions to the AAP lenders at least 1 month prior to the vote of the Operating Committee on the revisions, including a description of the revisions and the rationale;
- (ii) inviting AAP Lenders to provide their views on the proposed revisions to the Operating Committee no later than 2 weeks prior to the vote of the Operating Committee on the revisions;
- (iii) taking into account any views provided by AAP Lenders under cl 10.5(b)(ii); and

~~(b)~~(c) a meeting in which the Operating Committee intends to vote on revisions:

- (i) may be observed by any AAP Lender; and
- (ii) will include AAP Lender views on the proposed revisions as an agenda item prior to the vote.

11. Aggregators

11.1 Invitation to submit to Reviews

- (a) Prior to any Review being conducted, the Operating Committee will instruct each ASP to approach each Aggregator which they have been assigned for the Review Cycle and invite the Aggregator to submit to Reviews on terms to be agreed with

the ASP, which are to be approved by Super Majority Consent of the Operating Committee.

- (b) If an Aggregator agrees to submit to Reviews, each ASP will be instructed to request that the Aggregator:
- (i) execute an Aggregator Agreement in a form approved by the Operating Committee and in a form acceptable to the ASP;
 - (ii) consent to the Aggregator Agreement being shared with the Operating Committee; and
 - (iii) submit to Reviews:
 - A. in accordance with the applicable Aggregator Agreement; and
 - B. on terms otherwise contemplated by the engagement terms of the ASP,
- with the Operating Committee procuring that the ASP ensures that the same is documented in the applicable Aggregator Agreement.

11.2 Aggregator Agreement

The Operating Committee will instruct each ASP as to the relevant terms and conditions which are required or appropriate for each Aggregator Agreement to contain, which may include the following and such other matters as determined by the Operating Committee:

- (a) **(Claims)** provisions waiving or limiting any rights that an Aggregator has or may in the future have to bring a Claim against the Lenders, or the ASP in relation to or arising out of any Reviews and/or the content of any Reports conducted and prepared by the ASP, respectively;
- (b) **(Consent)** consent by the relevant Aggregator for the ASP to conduct a Review and disclose the Review and any Report prepared in relation to that Review to the relevant Opt-In Lender(s);
- (c) **(Review of Drafts)** an opportunity for the Aggregator to review and comment on any draft findings contained in Reports relating to it (including any Additional Review Items);
- (d) **(Confidentiality)** restrictions on the use and disclosure of Reviews and Reports in order to protect the Aggregators' and the Lenders' Confidential Information, which will be without prejudice to any existing confidentiality arrangements between a Lender and an Aggregator; and
- (e) **(Dispute resolution)** dispute resolution mechanisms governing disputes involving an Aggregator, consistent with clause 17.

12. Project budgeting

12.1 Initial AAP Plan and Budget

The Operating Committee will require each ASP to produce the Initial APP Plan and Budget for approval by the Operating Committee, to apply for the first full or part Financial Year applicable from the Effective Date on the assumptions and basis agreed with that ASP.

12.2 Subsequent AAP Plan and Budget

The Operating Committee will instruct each ASP to prepare an original or revised Subsequent AAP Plan and Budget for each Financial Year after the full or part Financial Year the subject of the Initial AAP Plan and Budget in a form approved by the Operating Committee.

13. Participation transfer and New Parties

13.1 Transfer restriction

Each Party must not, at any time during the continuance of this deed, directly or indirectly, transfer the legal or equitable or beneficial interest of that Party's Participation Percentage, except in compliance with this clause 13, clause 14.2(b), clause 15 or with the prior consent of each other Party.

13.2 Permitted transfer

Any Party may at any time transfer the legal or equitable or beneficial interest of that Party's Participation Percentage to any Related Entity of that Party.

13.3 Security interest restriction

Each Party must not, at any time during the continuance of this deed, directly or indirectly, create any security interest affecting or relating to that Party's Participation Percentage without the prior consent of each other Party.

13.4 Future Participant Undertaking

Where a Party elects, or is required, to transfer all or part of its Participation Interest under this deed to another person (**New Party**), the New Party must deliver to the chairperson of the Operating Committee a Participant Undertaking signed by the New Party.

13.5 Addition of New Parties

The Party Representatives may unanimously agree to invite one or more Lenders to become additional Parties to the UJV, or to join the UJV in place of any existing Party which has given notice of resignation under clause 15.2, and in that event, subject to the terms of this deed, if the Lender(s) accept the invitation to become a New Party, the Parties agree to execute any amending deed necessary either to approve the transfer of the resigning Party(s) Participation Percentage to the New Party(s) or to assign and transfer the required percentage of each continuing Party's Participation Percentage which is necessary to ensure that, on the date the New Party or Parties join the UJV, each Party including the New Party(s) will hold an equal Participation Percentage in the Project.

14. Party default

14.1 Material Default events

For the purposes of this deed, a Party is in default as a Defaulting Party if:

- (a) the Party fails to rectify any breach of, or liability under, this deed, within 30 days following the issuance in good faith of a Material Default Notice requiring performance or rectification of such breach or default;
- (b) the Party fails to appoint (or substitute) a Party Representative as required by clause 9.1 and fails to rectify that failure within 14 days of notice by any other Party requiring such appointment being to be made;

- (c) the Party fails to ensure that its Party Representative or alternate Party Representative attends at least three duly convened meetings of the Operating Committee in each calendar year without the consent of the chairperson for the time being of the Operating Committee; or
- (d) the Party is the subject of an Insolvency Event.

14.2 Party default enforcement

If a Defaulting Party receives a Material Default Notice which has been issued in good faith:

- (a) **(Rights suspension)** that Defaulting Party's Party Representative will not be permitted to:
 - (i) cast a vote at any meeting of the Operating Committee; or
 - (ii) sign any written resolution before the Operating Committee as contemplated in clause 9.8,and clause 9.11(d) will apply until the Material Default is cured; and
- (b) **(Compulsory transfer)** the Operating Committee will have a period of 30 days to vote on whether the Defaulting Party will exit from the UJV (**OC Exit Decision**), in which case that Defaulting Party will, 7 days after the date of that OC Exit Decision, be deemed to have transferred its Participation Percentage for no consideration to all remaining Parties on a pro-rata basis.

14.3 Party remedies

Any Complying Party, following any Material Default Notice under clause 14.1, retains any right under this deed against any Defaulting Party in relation to any breach of or default by that Defaulting Party, in addition to any other right provided by law, except to the extent that the liability of that Defaulting Party is excluded or limited under any provision of this deed.

15. Party exit and New Parties

15.1 Party Exit Events

A Party ceases to be a Party when:

- (a) a voluntary resignation takes effect in accordance with clause 15.2;
- (b) that Party's Participation Percentage is dealt with in accordance with clause 14.2(b); or
- (c) the Party assigns its interest in the UJV to a New Party with the consent of all remaining Parties which has complied with clause 13.4,

(together, the **Party Exit Events**).

15.2 Voluntary resignation and deemed transfer of Participation Interest

- (a) A Party may, by giving no less than 60 Business Days written notice to all other Parties, resign as a Party from the UJV provided that such Party has complied with its obligations under this deed.
- (b) If a Party resigns in accordance with clause 15.2(a), subject to clauses 13.5 or 15.3(d), the Participation Percentage of that resigning Party will be deemed to be transferred for no consideration to either:

- (i) a New Party, if appointed with effect from the same date; or
- (ii) all other Parties on a pro-rata basis.

15.3 Party Exit Event effect

- (a) Any Party Exit Event:
 - (i) will be subject to the finalisation of any outstanding fees, costs, charges and expenses owed by the applicable Party to the UJV, or ASP, and/or any other relevant party as a result of its participation in the UJV accrued as at the date of the Party Exit Event taking effect; and
 - (ii) shall not affect any right or liability arising under this deed before that resignation takes effect or arising in respect of any act, matter or thing occurring prior to that time.

For the avoidance of doubt, the occurrence of a Party Exit Event does not, of itself, have any effect on the rights or obligations of the relevant Party in its capacity (if any) as an Opt-In Lender that exist prior to or on the date of the relevant Party Exit Event.

- (b) If a Party Exit Event occurs, the relevant Party will continue to be bound by this deed in respect of:
 - (i) the confidentiality obligations set out in clause 18;
 - (ii) any act, matter or thing occurring prior to the time such Party Exit Event takes effect or as a result of such Party Exit Event;
 - (iii) any right or liability under this deed which relates to or may arise at any future time from any breach of this deed which occurred prior to or on the date of such Party Exit Event; and
 - (iv) any fees, costs, charges and expenses which may be levied on, or which are to be reimbursed by, it in accordance with this deed in respect of periods which commence prior to the time such Party Exit Event takes effect or which relate to any such act, matter or thing.
- (c) Subject to clause 15.3(d), if a Party is resigning in accordance with clause 15.2, it must transfer its Participation Percentage to all remaining Parties on a pro-rata basis or to a New Party as referred to in clause 13.5, prior to the resignation taking effect.
- (d) Where a Party Exit Event occurs, the remaining Parties or the Operating Committee may consider opportunities for other parties to join as Parties as referred to in clause 13.5.

16. Termination

16.1 Termination events

This deed terminates upon the occurrence of any of the following, whichever occurs first:

- (a) **(Single holder of interest)** the occurrence of a single Party being the holder of all the participating interest in the UJV; or
- (b) **(Agreement)** any agreement or resolution by all Parties to that effect, and as from the date specified in such agreement or resolution.

16.2 Termination effect

Termination of this deed releases any Party from any further performance of any liability under this deed but does not:

- (a) **(Continuing liability)** affect any provision of this deed expressed to operate or have effect after termination; or
- (b) **(Accrued rights)** have any prejudicial effect on any accrued right of any Party in relation to any breach or default under this deed by any other Party occurring before termination.

16.3 Continuing remedies

Each Party, following termination of this deed under this clause 16, retains any right against any other Party under this deed in relation to any breach or default by that other Party, in addition to any other right provided by law, except to the extent that the liability of that other Party is excluded or limited under any provision of this deed.

16.4 Project liquidation

Following the termination of this deed, the Operating Committee must, in relation to all Parties on behalf of the Parties:

- (a) **(Account)** prepare a full and general account of Project Assets and Project Liabilities;
- (b) **(Asset realisation)** collect, realise, sell and convert into money all Project Assets, except where each Party agrees to distribution of any Project Asset to any Party;
- (c) **(Liabilities)** pay or make provision for all outstanding Project Liabilities; and
- (d) **(Distribution)** distribute all residual money proceeds to each Party in compliance with its Participation Percentage.

17. Dispute resolution

17.1 Internal Disputes

The Parties acknowledge and agree that the dispute resolution process set out in this clause 17 is intended to provide a transparent and consultative process for the resolution of any dispute or difference (**Internal Dispute**) amongst and/or between two or more Parties, arising out of, or in connection with, this deed, including in relation to:

- (a) **(Interpretation)** this deed or its interpretation;
- (b) **(Rights)** any right or liability of any Party under this deed; or
- (c) **(Action)** the performance of any action by any Party under or arising out of this deed, whether before or after its termination.

17.2 Internal Dispute negotiation and determination

- (a) **(Dispute notification)** A Party claiming that an Internal Dispute has arisen shall notify the other Party specifying details of the Internal Dispute.
- (b) **(Negotiation)** Each Party involved in the dispute (together, the **Relevant Parties**) must use its best efforts to resolve the Internal Dispute in good faith through negotiation within 20 Business Days following the dispute notification as per clause

17.2(a) or longer period agreed between the Relevant Parties. If the Relevant Parties cannot agree on a resolution, either Party must refer the Internal Dispute to the Operating Committee (**OC Referral**).

- (c) (**OC Consideration**) The Operating Committee must assess the nature of the Internal Dispute within 10 Business Days following the OC Referral to determine whether it is appropriate for the Operating Committee to consider and decide on the outcome of the Internal Dispute or if the Internal Dispute should be referred to an Expert for determination.
- (d) The decision to have the Internal Dispute resolved by the Operating Committee or an Expert will, subject to clause 17.2(h), be resolved by Unanimous Consent of the relevant permitted voting members of the Operating Committee who are not appointed by or associated with the Relevant Parties to the Internal Dispute (if any), and the decision must be made within 20 Business Days following the OC Referral, failing which the Operating Committee and/or the Relevant Parties must, as soon as practicable, submit the Internal Dispute for determination to an Expert.
- (e) (**OC Determination**) If the Operating Committee decides that the Internal Dispute can be considered and determined by the Operating Committee, subject to clause 17.2(h), the determination must be made by Unanimous Consent of the permitted voting members of the Operating Committee who are not appointed by or associated with the Relevant Parties to the Internal Dispute (if any).
- (f) When considering and determining the Internal Dispute, the Operating Committee must act fairly and impartially as between the Relevant Parties and provide each Party a reasonable opportunity to put its case and to respond to an opposing Party's case.
- (g) Subject to clause 17.2(h), any Party Representative appointed by a Party who is party to the Internal Dispute cannot vote and is not a permitted voting member (and will not be counted in the quorum for a meeting of the Operating Committee) on the outcome of the Internal Dispute.
- (h) If all Parties are party to the Internal Dispute, then notwithstanding any other provision of this deed, all of the Party Representatives appointed by those Parties will be entitled to vote (and be counted in the quorum for a meeting of the Operating Committee) on the outcome of the Internal Dispute.
- (i) If the Operating Committee has not reached a decision within 20 Business Days of receipt of the OC Referral, the Operating Committee and/or the Relevant Parties must, as soon as practicable, submit the Internal Dispute for determination to an Expert appointed as provided in clause 17.2(j).
- (j) (**Referral to Expert**) If the Operating Committee decides that the Internal Dispute cannot be determined by the Operating Committee (or fails to make a decision in accordance with clause 17.2(e)), the chairperson of the Operating Committee and/or a Relevant Party must submit the Internal Dispute for determination to an Expert who will determine the matter or matters in dispute in accordance with the Resolution Institute Expert Determination Rules, and the Parties agree to the following:
 - (i) the Expert determination will take place in Sydney, New South Wales, and each Party is entitled to legal representation;
 - (ii) an Expert must be selected by agreement between the Relevant Parties or, if the Relevant Parties have not agreed on the Expert within 10 Business Days after they commence discussing the selection of an Expert, the Expert will be the person nominated by the Chair of the Resolution Institute (or the Chair's appointed nominee);

- (iii) the parties must promptly supply the Expert with any information, assistance and co-operation (subject to any proper privilege claim) requested in writing by the Expert in connection with its determination. All correspondence between the Expert and a Party must be copied to the other Relevant Parties;
- (iv) in the absence of agreement between the Relevant Parties, the Expert will decide the procedures to be followed to resolve the matters in dispute; and
- (v) the costs of a determination by the Expert must be borne by the Relevant Parties in such manner as the Expert determines (having regard to the merits of the Internal Dispute).
- (k) **(Compliance)** Each Party must comply with the determination of the Operating Committee or the Expert, as applicable, and the determination will be final and binding on the Relevant Parties.
- (l) **(Process termination)** The parties to an Internal Dispute may collectively terminate the dispute resolution process by each Party giving notice to each other Party that the Internal Dispute is resolved at any time prior to the Expert giving notice to the parties of his or her determination of the Internal Dispute in accordance with clause 17.2(j).

17.3 Urgent relief

A Party must not commence court proceedings about an Internal Dispute unless it has complied with this clause 17. A Party may at any time apply to a court of competent jurisdiction for any equitable remedy for reasons or urgency, despite anything contained in this clause 17.

17.4 Continued performance

Any Party must continue to perform any liability of that Party in compliance with this deed relating to any issue in dispute, despite and during any dispute negotiation or determination being conducted under this clause 17.

17.5 Disputes with the AAP Lenders and an ASP

- (a) The Parties acknowledge that each AAP Lender Deed will contain a dispute resolution mechanism clause that will specify how a dispute between a AAP Lender and any one or more Parties or an ASP is to be resolved.
- (b) Each Party agrees to:
 - (i) adhere to the terms of the dispute resolution processes set out in the AAP Lender Deeds; and
 - (ii) resolve a dispute between a Party and a AAP Lender in accordance with the terms of the relevant AAP Lender Deed.

18. Confidentiality and privacy

18.1 Confidentiality of Reports

- (a) The Parties acknowledge that a fundamental requirement of the Project is that Reports are only provided by an ASP to:

- (i) Opt-In Lenders as permitted by clause 5.3, and by the consent arrangements of the relevant Aggregator as arranged by the ASP and otherwise are confidential; and
- (ii) the Aggregator to which that Report relates.
- (b) The Parties waive any rights to seek access to any Report to the extent that a Party is not, in relation to any Report, a relevant Opt-In Lender for that Report.
- (c) The Parties agree that if they receive a Report as a relevant Opt-In Lender following a Review, they will not, subject to clause 18.1(d), share, disclose or communicate about that Report to any other Party or other third person unless required by law.
- (d) For a Party with multiple wholly owned or controlled lending brands or companies (**Associated Brands**) who receives a Report as a relevant Opt-In Lender following a Review, that Party will be entitled to share, disclose or communicate about that Report to any of its Associated Brands.

18.2 Confidentiality liability

Subject to the Competition Protocol, any Party may only use the Confidential Information of another Party for the purposes of exercising their rights and performing their respective obligations under this deed and, subject to clause 18.3, must keep that Confidential Information confidential and must:

- (a) (**Disclosure restriction**) not publish or disclose the Confidential Information to any person except with the prior consent of the disclosing Party or as permitted under any provision of this deed; and
- (b) (**Legal compliance**) comply with all applicable privacy and consumer laws.

18.3 Permitted exemptions

Subject to the Competition Protocol, clause 18.2 does not apply to any Confidential Information which:

- (a) (**Public information**) at the date of this deed, is in or at any subsequent time comes into the public domain, except through breach of or default under this deed or a AAP Lender Deed;
- (b) (**Prior written consent**) is disclosed with the prior written consent of the disclosing Party, or where relating to the Project Business, is disclosed with prior written Unanimous Consent of the Operating Committee;
- (c) (**Third party access**) subsequently comes lawfully into the possession of the recipient party from a third party;
- (d) (**Legal process**) is required by compulsion of law to be disclosed to a third party; or
- (e) (**Regulatory authority**) is requested or required to be disclosed by an Australian regulatory authority, including the Australian Competition and Consumer Commission or the Australian Competition Tribunal for the purposes of obtaining an authorisation granted under Part VII of the *Competition and Consumer Act 2010* (Cth) (or required to be disclosed for the purposes of obtaining such authorisation),

and each Party may disclose the Confidential Information to any employee, advisor or agent of that Party or its Related Entities, an ASP (or any Prospective ASP), or to a bona fide potential transferee or assignee of a Participation Percentage to the extent reasonably necessary or desirable for the purposes of this deed. Furthermore, each Party may disclose Confidential Information to any employee, advisor or agent of its Associated Brands. Each Party (**Relevant**

Party) must procure that any of its employees or agents referred to in this clause is informed of, and complies with, the confidentiality liability of the Relevant Party under this deed.

18.4 Communications concerning the Project

The Parties acknowledge and agree that, save for:

- (a) each Party's ability to confirm publicly its participation in the Project (and to that extent only, its support based on its participation in the Project); and
- (b) any disclosure a Party is required to make by law or by a governmental authority, Australian regulatory authority or other public agency,

any **substantive external / public communication** in relation to or arising out of the Project, the Project Business or this deed is a matter for consultation with and Unanimous Approval of the Operating Committee as provided in clause 10.3(j).

18.5 Remedies

Each Party agrees that monetary damages alone would not be a sufficient remedy for a breach of or default under this clause 18 and, in addition to any other legal remedy, or equitable relief as may be deemed proper by a court of competent jurisdiction, the disclosing Party whose Confidential Information is the subject of a breach of this clause 18 is entitled to any interim, interlocutory or permanent injunction to prevent breach of or default under and compel specific performance of this clause 18.

18.6 Privacy

The Parties must comply with all applicable Privacy Legislation in relation to all activities they undertake in relation to this deed.

18.7 Survival

This clause 18 survives termination of this deed.

19. Notices

19.1 How notice to be given

Each communication (including each notice, consent, approval, request and demand) under or in connection with this deed:

- (a) must be given to a Party:
 - (i) using one of the following methods (and no other method) namely, hand delivery, courier service, prepaid express post or email; and
 - (ii) using the address or other details for the Party set out in the below table (or as otherwise notified by that Party to each other Party from time to time under this clause 19):

Party name	Attention	Address (for hand delivery or delivery by courier or post)	Email address
[REDACTED]	[REDACTED]	[REDACTED] [REDACTED] [REDACTED]	[REDACTED]
[REDACTED]	[REDACTED] [REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED] [REDACTED] [REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED] [REDACTED] [REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED] [REDACTED] [REDACTED]	[REDACTED]

- (b) must be in legible writing and in English;
- (c) (in the case of communications other than email) must be signed by the sending Party or by a person duly authorised by the sending Party; and
- (d) (in the case of email) must state the name of the sending Party.

19.2 When notice taken to be received

Without limiting the ability of a Party to prove that a notice has been given and received at an earlier time, each communication (including each notice, consent, approval, request and demand) under or in connection with this deed is taken to be given by the sender and received by the recipient:

- (a) (in the case of delivery by hand or courier service) on delivery;
- (b) (in the case of prepaid express post sent to an address in the same country) on the second Business Day after the date of posting;
- (c) (in the case of prepaid express post sent to an address in another country) on the fourth Business Day after the date of posting;
- (d) (in the case of email, whether or not containing attachments) the earlier of:
 - (i) the time sent (as recorded on the device from which the sender sent the email) unless, within 4 hours of sending the email, the Party sending the email receives an automated message that the email has not been delivered;
 - (ii) receipt by the sender of an automated message confirming delivery; and
 - (iii) the time of receipt as acknowledged by the recipient (either orally or in writing).

19.3 Notices sent by more than one method of communication

If a communication delivered or sent under this clause 19 is delivered or sent by more than one method, the communication is taken to be given by the sender and received by the recipient whenever it is taken to be first received in accordance with clause 19.2.

20. General

20.1 Governing law

This deed is governed by and must be construed according to the law applying in the New South Wales.

20.2 Jurisdiction

For the purposes of clauses 17.3 and 18.5, each Party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those courts.

20.3 Amendments

Other than the list of Aggregators, the list of Reviews required by each Opt-In Lender and the Competition Protocol (each of which may be amended from time to time by Super Majority Consent of the Operating Committee) and the form of a AAP Lender Deed (which may be amended by Unanimous Consent of the Operating Committee), this deed may only be varied by a document signed by or on behalf of each Party.

20.4 Waiver

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this deed by a Party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this deed.
- (b) A waiver or consent given by a Party under this deed is only effective and binding on that Party if it is given or confirmed in writing by that Party.

- (c) No waiver of a breach of a term of this deed operates as a waiver of another breach of that term or of a breach of any other term of this deed.

20.5 Further acts and documents

Each Party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that Party) required by law or reasonably requested by another Party to give effect to this deed.

20.6 Consents

Consent required under this deed from a Party may be given or withheld, or may be given subject to any conditions, as that Party (in its absolute discretion) thinks fit, unless this deed expressly provides otherwise.

20.7 Assignment

A Party cannot assign, novate or otherwise transfer any of its rights or obligations under this deed without the prior consent of each other Party, except in the case of any transfer by a Party of its Participation Percentage in compliance with this deed.

20.8 Counterparts

This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes an original of this deed, and all together constitute one agreement.

20.9 No representation or reliance

- (a) Each Party acknowledges that no Party (nor any person on a Party's behalf) has made any representation or other inducement to it to enter into this deed except for representations or inducements expressly set out in this deed.
- (b) Each Party acknowledges and confirms that it does not enter into this deed in reliance on any representation or other inducement by or on behalf of any other Party, except for representations or inducements expressly set out in this deed.

20.10 Expenses

Except as otherwise provided in this deed, each Party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this deed.

20.11 Entire agreement

To the extent permitted by law, in relation to its subject matter, this deed:

- (a) embodies the entire understanding of the Parties, and constitutes the entire terms agreed by the Parties; and
- (b) supersedes any prior written or other agreement of the Parties.

20.12 Indemnities

- (a) Subject to clause 2.6(b)(iii), each indemnity in this deed is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this deed.
- (b) It is not necessary for a Party to incur expense or to make any payment before enforcing a right of indemnity conferred by this deed.

- (c) Subject to clause 2.6(b)(ii), a Party must pay on demand any amount it must pay under an indemnity in this deed.

20.13 Representations

Each Party represents and warrants to each other Party that at any time during the continuance of this deed:

- (a) **(Corporate status)** that Party is a corporation duly incorporated and validly existing under the law of the country or jurisdiction of its incorporation or registration;
- (b) **(Corporate powers)** that Party has the corporate power to own its assets and perform any business activity as contemplated at any time by this deed;
- (c) **(Solvency)** no Insolvency Event has occurred in relation to it;
- (d) **(Legal compliance)** the execution or performance of this deed by that Party does not contravene any provision of:
 - (i) the constitution of that Party;
 - (ii) any agreement or document created or executed by that Party;
 - (iii) any law; or
 - (iv) any regulatory consent or licence from any governmental or public agency relating to that Party or its assets; and
- (e) **(Corporate compliance)** that Party has full power, and has procured all corporate consents necessary or desirable for the execution, performance, validity or enforceability of this deed, including any resolution or minutes or extracts from minutes of any meetings or written resolution of directors or members or power of attorney which has been executed in compliance with its constitution documents and any applicable law.

Schedule 1 – List of Aggregators

- Australian Finance Group Ltd (AFG)
- Connective Lender Services Pty Ltd
- Vow Financial Pty Ltd (including Yellow Brick Road)
- Finsure Finance and Insurance Pty Ltd (including, Beagle, Loankit, Finconnect and eChoice)
- Mortgage Specialists Pty Ltd (SFG)
- Outsource Financial Pty Ltd
- National Mortgage Brokers Pty Ltd
- REA Group Ltd (Mortgage Choice and Smartline)
- Astute Financial Management Pty Ltd
- AHL Investments Pty Ltd (including Lendi, Aussie)
- Loan Market Group (including Plan, Choice, FAST and Loanmarket)

Schedule 2 – Matters to be Addressed in each Report

[insert amended Review Scope]

Schedule 3 – AAP Lender Deed

[Note: Agreed form AAP Lender Deed to be attached]

Attachment 1 – Competition Protocol

Protocol for lenders participating in the Aggregator Assurance Program

1. Background

- 1.2 This Protocol applies to all participants (including the Parties, AAP Lenders, ASPs and OC Representatives) which participate in the **Aggregator Assurance Program (Program)**.
- 1.3 Capitalised terms have the same meaning as in the Deed between the Parties (ANZ, CBA, Macquarie, NAB and Westpac to establish the Program (**Program Deed**) unless specified otherwise. A lender may agree to join the Program by executing and delivering the **AAP Lender Deed (AAP Lender)**.
- 1.4 This Protocol is to be read subject to and as supportive of the confidentiality obligations applicable (respectively) to each Party under the Program Deed and to each AAP Lender under the AAP Lender Deed. In the event of any inconsistency between any provision of this Protocol, and anything in the Program Deed or AAP Lender Deed, the Program Deed and / or the AAP Lender Deed (as appropriate) will prevail.

1.5 Purpose of the Aggregator Assurance Program (Purpose)

- (a) Mortgage lenders each require appropriate assurance that their broker and aggregator channels have well established compliance systems to meet legal and regulatory requirements in relation to mortgage lending.
- (b) Recent regulatory and industry changes require increased oversight by lenders of aggregator groups and their mortgage broker networks to ensure regulatory obligations are met and good customer outcomes are delivered.
- (c) The Parties to the Program Deed have developed the Program to offer the opportunity to any lender which wishes to participate in the Program to 'opt in' to request assurance reviews (**Reviews**) in respect of participating aggregators and their compliance systems.
- (d) The Purpose of the Program is for Reviews in respect of the compliance systems, controls, processes and policies of Aggregators to be procured in a more consistent and efficient manner and to streamline and remove duplication for multiple review programs, for the benefit of Aggregators, lenders and the community.
- (e) The Program contemplates the engagement of an Assurance Service Provider (**ASP**) to provide standing terms of engagement to any AAP Lender to "opt in" to engage an ASP to conduct a Review of a participating Aggregator and to provide a confidential Report to that Opt-In Lender and to any other Opt-In Lender which requested the same Review.
- (f) Development of and participation in the Program, and all communications for this purpose, are to be subject to the guidance in this Protocol.

2. Reasons for this Protocol

- 2.1 These guidelines have been prepared to assist personnel from the Parties and AAP Lenders to comply with the *Competition and Consumer Act 2010* (Cth) (**CCA**), which prohibits certain anticompetitive conduct and anticompetitive contracts, agreements and understandings.

2.2 In particular, the CCA prohibits:

- (a) **cartel conduct** regardless of the effect it has on competition. Cartel conduct includes an agreement (a contract, arrangement or an understanding) between competitors that has a purpose or effect or likely effect of price fixing, or that has the purpose of allocating markets/territories/customers, restricting output or acquisition levels or bid rigging. A cartel agreement can be informal or oral, and include a 'gentlemen's agreement' or a 'nod and a wink';
- (b) any agreement (a contract, arrangement or an understanding) between competitors that has a purpose or effect or likely effect of **substantially lessening or hindering competition** in a market; and
- (c) **anti-competitive concerted practices**, which is a prohibition intended to capture information sharing that might not otherwise constitute cartel conduct. A concerted practice is prohibited if it has the purpose, effect or likely effect of substantially lessening or hindering competition in a relevant Australian market. A concerted practice is defined as: *any form of cooperation between two or more firms (or people) or conduct that would be likely to establish such cooperation, where this conduct substitutes, or would be likely to substitute, cooperation in place of the uncertainty of competition.*

2.3 For competing organisations to agree on a particular course of action in some circumstances may give rise to risks of cartel arrangements and/or concerted practices.

2.4 These guidelines therefore apply to any engagement or communications between representatives of any of the Parties and AAP Lenders and OC Representatives, whether in person, via email or telephone or some other means, in relation to the Purpose and the proposed Program, including:

- (a) evaluating options for establishing, and designing, the Program;
- (b) preparing and issuing the RFTs to assurance firms;
- (c) engaging an ASP to conduct a Review and provide a Report; and
- (d) considering a Report and communication with other AAP Lenders or taking decisions in relation to the recommendations or other findings of any Report.

2.5 These guidelines proceed on the basis that the Program will not be implemented as a joint program by any lender until authorisation or interim authorisation has been granted by the Australian Competition and Consumer Commission (**ACCC**).

2.6 These guidelines are provided to the Parties and AAP Lenders as general guidelines only and are not a substitute for legal advice.

3. Information and Matters which can be shared and discussed by the Parties and AAP Lenders

3.1 The Parties may discuss and share relevant and lawful information for the purposes of establishing and conducting the Program in the recognition that the Parties will not share any information that may be regarded as competitively sensitive or which relate to the competitive or market activities of any of the Parties or any AAP Lenders.

3.2 Participation in the Program will be voluntary for any aggregator or lender and it is understood no Party or AAP Lender will require any aggregator to consent to participate in the Program.

3.3 The Program will be designed to report on systems and process compliance within an aggregator and will not provide any specific information which could be used to identify any specific broker or lender or borrower or any specific conduct in relation thereto.

3.4 Each ASP will be instructed to provide a Report to the Opt-in Lenders and Aggregator for the relevant Review, which will address the following matters about the Aggregator's systems including:

- (a) Broker onboarding and accreditation processes (upfront)
- (b) Broker accreditation processes (ongoing)
- (c) Broker licensing and industry memberships
- (d) Broker development and ongoing training
- (e) Responsible Lending / Regulatory Management
- (f) Broker oversight and consequence Management
- (g) IT and System Access Controls
- (h) Data Security and Privacy, and

- (i) Outsourcing and Third Parties, and
 - (j) such other matters as may be approved by the Operating Committee from time to time.
- 3.5 Each ASP will be instructed to ensure that any remedial recommendations in a Review will be system or process related and not specific to resolving or addressing any particular conduct relating to a particular transaction, finance application, broker or borrower.
- 3.6 Nothing in relation to the Program will require any Party or AAP Lender to procure or agree to procure assurance services from any particular assurance firm that may be appointed to provide services under the UJV Agreement or AAP Lender Deed (as applicable). Each lender remains free at all times to engage any assurance firm(s) that it wishes so as to receive any assurance or other services in relation to its aggregator network or otherwise.
- 3.7 Information which may be shared, provided to and received from the Parties, AAP Lenders and OC Representatives for the Purpose includes:
- (a) relevant publicly available information;
 - (b) information as to the regulatory and compliance risks intended to be addressed by the Program;
 - (c) the number of aggregators a lender deals with and expects to consent to participate in the Program;
 - (d) the proposed mechanics and operations of the Program, including:
 - (i) the formal structure of the Program;
 - (ii) the operations of the Operating Committee appointed by the Parties to oversee the Program;
 - (iii) the types of compliance issues and level of information which lenders may request assurance services to cover;
 - (iv) expectations for the scope, frequency and format of the assurance services;
 - (v) the terms of the RFT and the Scope of Work for an ASP;
 - (vi) engagement with relevant aggregators regarding participation in the Program; and
 - (vii) how to structure the delivery of information and Reports by an ASP to ensure compliance with applicable laws; and
 - (e) for the sole purpose of seeking ACCC authorisation for the Program.
- 3.8 The guiding principles regarding information shared between Parties, AAP Lenders and OC Representatives is that it must:
- (a) be limited to the minimum necessary to facilitate legitimate feasibility / planning for the Purpose; and
 - (b) not affect the continuing independent conduct of the lenders' respective businesses.
- 3.9 In the instance of uncertainty about whether a specific piece or type of information can be shared between Parties AAP Lenders and/ or OC Representatives, specific legal advice should be sought by the concerned parties.

4. Criteria for OC Representatives

Neither the Parties or Operating Committee will appoint an OC Representative that is (or is intended to be) responsible for the making of commercial and/or strategic decisions, including pricing decisions, that may (directly or indirectly), involve or impact upon competition between the Parties, in relation to businesses for which there is a competitive overlap with the businesses of the Parties and/or an AAP Lender.

5. Process for Operating Committee and Party Discussions

- 5.1 An agenda should be prepared and circulated for any meetings, including online, between the Parties in relation to the Program, and discussions generally confined to the agenda items unless otherwise agreed at the time.
- 5.2 Minutes recording discussions and attendance of meetings of the Operating Committee and /or Parties related to the Program to be taken and circulated to attendees.
- 5.3 Where appropriate any documents circulated for legal review or legal comment should be marked "confidential and privileged", and legal advice received should be kept confidential so that legal professional privilege may be maintained.
- 5.4 Each meeting of the Operating Committee must be attended by an external lawyer engaged by the Parties and instructed by the parties to immediately advise the attendees if, during the course of the meeting, there is a risk of breach of this Protocol.
- 5.5 OC Representatives should exercise control over the dissemination within their organisation of the materials generated jointly for the Purpose on a confidential and "need to know" basis.
- 5.6 The Parties may discuss and agree as to the Program scope features and assurance regime for which they propose to invite proposals for participation from aggregators and AAP Lenders.
- 5.7 Decisions as to selection of successful ASPs will be made by the Operating Committee.
- 5.8 The costs of Reports / fees payable to an ASP are to be borne by Opt-In Lenders, in accordance with the UJV Agreement and AAP Lender Deed.

6. Information and matters which cannot be shared and discussed by the Parties and AAP Lenders

- 6.1 Representatives of the Parties and AAP Lenders and OC Representatives must not discuss or exchange any non-public or commercially or competitively sensitive information not relating to the Program. By way of general guidance, information is "competitively sensitive" if a business manager would be concerned about sharing it with a competitor or any other lender outside of the context of the proposed Program.
- 6.2 The information which cannot be discussed between participating lenders (including Parties and / or AAP Lenders) includes:
 - (a) any fee or cost or price-related matters, including the price lenders currently pay or the costs they incur for assurance services, or broker services or any other prices or fees paid to any third party;
 - (b) customer/borrower/applicant information or data;
 - (c) lenders' views or opinions about particular aggregators or brokers;
 - (d) lenders' intentions or proposed actions upon receipt of assurance information in relation to a particular aggregator or broker, including where that information is negative or positive; and

- (e) lenders' current or future decision-making process in relation to aggregators and brokers.

6.3 Each lender will make its own separate decisions as to what steps it may take in respect of any Aggregator the subject of any Report.

6.4 Accordingly, no Party or AAP Lender should discuss or communicate to any other lender what steps should, or might be considered to be taken in response to a Report in respect of any identified aggregator.

7. Confidentiality

7.1 In this section:

Confidential Information means:

- (a) all information that relates to a Party or AAP Lender or any of its related bodies corporate, the Party or AAP Lender's business or the Permitted Use and is disclosed by or on behalf of the Party or AAP Lender to a representative of another Party or AAP Lender or OC Representative subject to a clear statement that it is 'confidential' (whether orally, in writing or in any other form); and
- (b) does not, however, include any information that was publicly known prior to the time of disclosure, becomes publicly known after disclosure through no action or inaction of the recipient, is already in the possession of recipient at the time of disclosure, or is obtained by recipient from a third party lawfully in possession of such information and without a breach of such third party's obligations of confidentiality.

Permitted Use means:

- (a) for the Parties and / or AAP Lenders to evaluate and engage in discussions in relation to the Program,
- (b) for OC Representatives to carry out their duties and exercise their powers as members of the Operating Committee; and
- (c) for Opt-in lenders to use a Report of a Review in accordance with the terms of permitted use under the Program (meaning the UJV Deed or AAP Lender Deed applicable to the Report when delivered to that lender).

7.2 Any information shared by Parties, AAP Lenders and OC Representatives during the course of participating in the Program must only be used for the Permitted Use and not for any other purpose.

7.3 Upon receipt of another lender's Confidential Information, a the recipient and its representatives must:

- (a) keep the Confidential Information confidential and must not use, disclose, reproduce or otherwise provide the Confidential Information to a third party or permit the Confidential Information (or any copy of it) to go out of its possession, custody or control;
- (b) use the Confidential Information only for the Permitted Use; and
- (c) at the request of the lender to whom the Confidential Information relates, either return or destroy the Confidential Information.

Accepted by:

Name _____

Signature _____

Title _____

Representative of _____

Date _____



Attachment 2 – Operating Committee Protocol

Protocol for Non-Party Representatives on Program Operating Committee

1. Background

- (a) This Protocol has been developed to support the participation of the Non-Party Representatives in the Operating Committee of the **Aggregator Assurance Program (Program)** and to ensure the exercise of powers of OC Representatives are consistent with the Deed between the Parties (ANZ, CBA, Macquarie, NAB and Westpac to establish the Program (**Program Deed**)).
- (b) Capitalised terms have the same meaning as in the Program Deed unless specified otherwise.
- (c) This Protocol is to be read subject to and as supportive of the obligations of the Parties and OC Representatives under the Program Deed. In the event of any inconsistency between any provision of this Protocol and anything in the Program Deed, the Program Deed will prevail.

2. Operating Committee participation

Non-Party Representatives acknowledge and agree:

- (a) that they will carry out their duties and exercise their powers as OC Representatives consistently with the terms of the Program Deed;
- (b) they will comply with the Competition Protocol and provide an executed version of the Competition Protocol to the Operating Committee commencing their role as a Non-Party Representative;
- (c) in the event that they are not available to attend any meeting, they may by notice to each other OC Representative, arrange for an alternative representative from the relevant nominating organisation (COBA or MFAA, as applicable) that meets the criteria set out in clause 3(a) below to attend Operating Committee meetings and vote on its behalf;
- (d) they are not entitled to payment of any fee, salary or other remuneration or reimbursement of any cost for or incurred in the attendance of any meeting of the Operating Committee as an OC Representative;
- (e) any substantive external / public communication in relation to or arising out of the Program is a matter for consultation with and Unanimous Approval of the Operating Committee save for:
 - (i) each Party's ability to confirm publicly its participation in the Project (and to that extent only, its support based on its participation in the Project); and
 - (ii) any disclosure a Party is required to make by law or by a governmental authority, Australian regulatory authority or other public agency; and
- (f) in the event of a breach of the terms of this Protocol, the Parties may terminate the Non-Party Representative's membership of the Operating Committee at their sole discretion.

Attachment 3 – Initial AAP Plan and Budget

Executed as a deed.

Executed by The Commonwealth Bank of Australia (ABN 48 123 123 124) in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director

Signature of company secretary/director

Full name of director

Full name of company secretary/director

Executed by Australia and New Zealand Banking Group Limited (ABN 11 005 357 522) in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director

Signature of company secretary/director

Full name of director

Full name of company secretary/director

Executed by National Australia Bank Limited (ACN 004 044 937) in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director

Signature of company secretary/director

Full name of director

Full name of company secretary/director

