

# Margin Lending Guarantee – Terms and Conditions

This document supplements the General Terms of Business. If you require a further copy of the General Terms of Business, please contact your financial adviser or Morgan Stanley Margin Lending.

## Important Notice

If you plan to be a guarantor, you should consider carefully whether guaranteeing the performance of the obligations of the borrower is appropriate to you and your particular financial circumstances.

As a guarantor, you should be aware of the following before deciding to provide a guarantee:

(a) The borrower is exposed to the risks of the volatility of the share market if they take out a margin loan. Your obligations as guarantor are also subject to the borrower's risks.

(b) Your obligations as guarantor of the borrower's obligations and Morgan Stanley Wealth Management's rights to deal with the securities in respect of which you have granted us a security interest are subject to the terms of this guarantee. You should read this document carefully. In particular, you should consider carefully the consequences for you of the borrower drawing against the value of the securities over which you have granted us a security interest and in some cases the borrower's right to trade in your securities.

(c) Morgan Stanley Wealth Management may sell the securities without notice to the borrower or guarantor. If the borrower is required to make up any shortfall in security, Morgan Stanley Wealth Management may exercise its rights against any security held for it whether or not you, as guarantor, have received notice of the shortfall.

## Part A: Guarantee – Terms and Conditions

### 1. DEFINITIONS

Unless otherwise defined in this document, capitalised terms used in this document have the meaning given to them in the General Terms of Business.

**Borrower** means the person listed as the borrower in the Guarantor Application Form.

**Borrower Agreement** means Margin Lending Terms and Conditions entered into between the Borrower and Morgan Stanley Wealth Management, as amended from time to time.

**Cash Account** means the account opened by the Nominee on your behalf in accordance with clause 5.1 of this document.

**CHESS** stands for Clearing House Electronic Subregister System and has the meaning in the ASX Settlement Operating Rules. It is a computerised system of registering securities.

**Control** includes "control" as defined in the PPSA.

**Default Rate** means Morgan Stanley Wealth Management's variable interest margin loan rate, from time to time, plus 3.0% p.a.

**Facility** means the Borrower's margin lending facility, the terms and conditions of which are contained in the Borrower Agreement.

**General Terms of Business** means the General Terms of Business & Sponsorship Agreement entered into between you and us, as amended from time to time.

**Guaranteed Money** means all loan and other amounts that are or may become payable or which remain unpaid by the Borrower under or in connection with the Borrower's Facility.

**Guarantor** means each person who agrees to be a guarantor of the Borrower's Facility on the terms set out in this document.

**Guarantor Application Form** means the application form accompanying or provided with this document.

**Nominee** has the meaning given to it in the Nominee Agreement.

**Nominee Agreement** means the document entitled "Nominee Agreement – Terms and Conditions" between you and us, as amended from time to time.

**Secured Assets** means the present and future right, title and interest in any Financial Products or other property over which the Guarantor has granted a Security Interest under this document, and which is acceptable to us as forming part of the security.

### 2. GUARANTEE AND INDEMNITY

#### Guarantee

2.1 The Guarantor unconditionally and irrevocably guarantees to us that the Borrower will duly and punctually pay us the Guaranteed Money.

## Important Notice

### Part A: Guarantee

### Part B: Nominee Agreement

2.2 If the Borrower does not pay the Guaranteed Money on time and in accordance with the terms of the Borrower Agreement, the Guarantor agrees to pay the Guaranteed Money to us on demand. A demand may be made by us at any time and from time to time and whether or not we have made a demand on the Borrower.

2.3 The Guarantor acknowledges that we are acting in reliance on that Guarantor incurring obligations and giving rights under this document.

#### **Indemnity by the Guarantor**

2.4 To the fullest extent permitted by law, the Guarantor unconditionally and irrecoverably releases, discharges and indemnifies and agrees to keep us, our agents and delegates, our affiliates, the Nominee and our affiliates' and the Nominees' agents and delegates and any of our or their employees, officers or directors (each an "**Indemnified Person**") indemnified from and against all sums of money, actions, proceedings, suits, claims, demands, losses, damages, costs, expenses (including legal and administrative fees), liabilities and any other amounts which any Indemnified Person may suffer or incur directly or indirectly (whether present or future, fixed or unascertained, actual or contingent) as a result of, or in connection with:

(a) the Guaranteed Money not being recoverable from, or enforced against, the Guarantor or the Borrower because of any circumstances whatsoever if:

(i) the Guarantor or the Borrower does not, is not obligated to, or is unable to, pay us the Guaranteed Money in accordance with this document or the Borrower Agreement, as applicable;

(ii) the Guarantor or the Borrower is not obliged to pay us an amount under this document or the Borrower Agreement, as applicable; or

(iii) we are obliged, or we agree to pay an amount to a trustee in bankruptcy, liquidator or controller (as defined in the Corporations Act) (or to a bankrupt person or insolvent company) in connection with a payment by any other guarantor or you (for example we may have to or may agree to pay interest on the amount); or

(b) the Guaranteed Money not being paid to us for any other reason whatsoever including, without limitation, by reason of:

(i) any legal limitation, disability, incapacity, lack of any power or lack of authority of or affecting the Guarantor or the Borrower;

(ii) the arrangement being void, voidable or unenforceable (whether or not any of the matters or facts relating thereto have been or ought to have been within our knowledge); or

(iii) any other fact, matter or thing whatsoever.

2.5 The liability of the Guarantor under this clause 2 is as principal debtor.

2.6 Everything described in clause 2.4 applies even if we knew of the problem, or should have known. It applies even if, because of the problem, the Borrower never has been required to pay us the borrowed amount.

#### **3. CONTINUING OBLIGATION AND INTEREST**

3.1 This guarantee and indemnity is a continuing obligation and extends to all of the Guaranteed Money. The Guarantor waives any right it has of first requiring us to commence proceedings or enforce any other right, against any other person before claiming from the Guarantor under this guarantee and indemnity.

3.2 This guarantee and indemnity does not merge with or adversely affect, and is not adversely affected by, any of the following:

(a) any other guarantee, indemnity, or any Security Interest, charge or other encumbrance, or other right or remedy to which we are entitled; or

(b) a judgment which we obtain against a Guarantor or any other person in connection with the Guaranteed Money.

3.3 We may still exercise our rights under this guarantee and indemnity as well as under the judgment, other encumbrance or other right or remedy.

3.4 The Guarantor agrees to pay interest at the Default Rate on that part of the Guaranteed Money on which interest is not payable by the Borrower and on any amount payable by the Guarantor under this guarantee and indemnity not being Guaranteed Money. The interest is payable from when the amount becomes due for payment by the Guarantor under this guarantee and indemnity, during the period that it remains unpaid under this guarantee and indemnity. The interest is payable on demand or at times determined by us, calculated on daily balances.

3.5 Interest which is not paid when due for payment may be capitalised by us at intervals which we determine from time to time or, if no determination is made, at monthly intervals. Interest is payable on capitalised interest at the rate and in the manner referred to in clause 3.4. The Guarantor's obligation to pay the Guaranteed Money is not affected by this clause or clause 3.4.

#### **4. MORE THAN ONE GUARANTOR**

4.1 Where there is more than one guarantor of the Guaranteed Money, each guarantor is individually liable under the relevant guarantee for the full amount of the Guaranteed Money, even if:

(a) a person named as a Guarantor has not signed this document or the Guarantor Application Form;

(b) one or more of the other Guarantors is not bound by the guarantee;

(c) one or more of the guarantors becomes an additional guarantor; or

(d) one or more of the others in the future stops being liable under the guarantee (for example, because Morgan Stanley Wealth Management releases such person).

4.2 Morgan Stanley Wealth Management can demand payment from one or more guarantors without demanding it from the others.

#### **5. CASH ACCOUNT**

5.1 You authorise the Nominee to open a deposit account with an Australian deposit-taking institution or a cash management account on your behalf, on the terms and conditions set out in the Nominee Agreement.

5.2 You are not entitled to withdraw, charge, encumber, or otherwise deal with your Cash Account unless either:

(a) the liabilities of the Borrower under the Facility have been fully and finally discharged; or

(b) we otherwise consent.

5.3 The Cash Account may only be used with our consent to:

(a) repay the Guaranteed Money and any other amount owing under this document; or

(b) to purchase new Financial Products, subject to our consent, which will form part of the Secured Assets.

#### **6. SECURITY INTEREST GRANTED BY A GUARANTOR**

6.1 For the purposes of securing payment to us of the Guaranteed Money the Guarantor agrees to grant a Security Interest to us over all Financial Products, cash, Cash Account and other assets

referred to below, in which the Guarantor has an interest or to which the Guarantor are entitled, on the terms set out in clause 26 of the General Terms of Business:

(a) all Financial Products and other assets from time to time deposited in or credited to each account in your name held with us (“**Account**”);

(b) the benefit of any Account and any rights against any banker, custodian or other person on whose books that Account exists, to which any Financial Products and other assets are from time to time credited;

(c) all Financial Products and other assets in respect of which title has been transferred by way of security to us or to our order;

(d) all other Financial Products and assets which (or the certificates or documents of title to which) are held by us (or our nominee of custodian);

(e) all of your right, title and interest in and to all Financial Products and other assets which are from time to time held by, to the order, for the account of or under the Control or direction of us or which are from time to time held by any securities custody or clearing system (or any depository therefor) on behalf of, for the account of or to the order of us;

(f) all sums of money held by us (or our nominee of custodian) for you, the benefit of all accounts in which any such money may from time to time be held and all your right, title and interest under any trust (arising by agreement or otherwise) relating to that money or to those accounts; and

(g) all your rights, title and interest, present and future, in and to all cash and sums of money from time to time standing to the credit of your Account, or any account linked to your Account, or any account established by us (or our nominee or custodian) for your benefit (including but not limited to the balance of the Cash Account).

6.2 The Security Interest is a continuing Security Interest for the Guaranteed Money. It continues until it is finally discharged by us. It will not be considered satisfied or discharged by anything which happens in the meantime and which might otherwise affect the Security Interests at law or in equity.

#### **Release of Secured Assets of a Guarantor**

6.3 We are not obliged to release any of the Secured Assets of a Guarantor, but may do so if we are satisfied that after the release, the value of the Secured Assets will be, and is likely to remain, greater than the Guaranteed Money.

#### **Discharge by a guarantor**

6.4 If the Guaranteed Money is paid in full we will release that Guarantor from the Security Interest or otherwise transfer back to that Guarantor all of the interest in its Secured Asset, if that Guarantor so requests.

#### **Further assurances**

6.5 In addition to the obligations set out in clause 26 of the General Terms of Business the Guarantor must:

(a) immediately after becoming aware of any defect in the ownership of the Secured Assets, immediately inform us and take steps to rectify it;

(b) comply with any reasonable conditions we attach to any approvals or consents we give in connection with the Secured Assets and/or any Security Interest;

(c) notify us at least 14 days before: (i) changing its name as recorded in a public register in the jurisdiction of incorporation or in the constituent documents; or (ii) any ACN or ARBN allocated to

the Guarantor (or any ABN or ARSN allocated to a trust) changes, is cancelled or otherwise ceases to apply to the Guarantor (or if the Guarantor or any trust do not have any such applicable number, one is allocated, or otherwise starts to apply, to the Guarantor or the trust);

(d) enable us to exercise our rights in connection with the Secured Assets.

The Guarantor’s obligations under this clause 6.5 are to allow us to perfect or register the Security Interest or enforce our rights under this document (including any Security Interest) or protect the value of, or perfect our interest in, the Secured Assets.

6.6 The Guarantor must pay any calls or instalments that the Guarantor is required to pay in respect of a Secured Asset. If the Guarantor does not pay any calls or instalments or any other amounts that become payable in connection with the Secured Assets, we may pay any of those amounts. We will give the Borrower notice of any amount so paid and it will form part of the loan amount.

6.7 The Guarantor must not, without our express prior written consent:

(a) sell, part with possession or otherwise deal with any interest in the Secured Assets;

(b) give Control of the Secured Assets to any person other than us (or our nominee or custodian);

(c) create or allow any Security Interest to come into existence which affects the Secured Assets and/or the Security Interest under this document;

(d) create any trust, power or lien in connection with the Secured Assets or allow one to continue;

(e) abandon, settle, compromise, discontinue any proceedings against any person in respect of any right that the Guarantor has in relation to the Secured Assets;

(f) take steps to change any of the Secured Assets to certificated securities;

(g) waive any of the Guarantor’s rights or release any person from its obligations in relation to the Secured Assets; or

(h) otherwise do anything that might impair the effectiveness or validity of any Security Interests.”

#### **7. OUR RIGHTS UNDER THE SECURITY INTEREST**

7.1 We may take any action that we consider fit at any time to:

(a) register the Security Interest over the Secured Assets under the PPSA on the PPSR;

(b) register the Secured Assets in our name;

(c) maintain the Secured Assets;

(d) obtain the benefit of any agreement entered into by the Guarantor in relation to the Secured Assets;

(e) exercise any corporate action rights in respect of the Secured Assets;

(f) do or cause anything to be done to protect the priority of any Security Interest granted by the Guarantor or arising under this document;

(g) give up the possession of the Secured Assets at our absolute discretion;

(h) do anything that the Guarantor should have done under this document, but that we consider the Guarantor has not done or not done properly; or

(i) retain all instruments and documents of title in relation to the Secured Assets until the Secured Assets are released from the Security Interest granted by the Guarantor.

7.2 Despite any other term of this document, the parties agree that for the purposes of section 275(6) of the PPSA neither of them will disclose information of the kind mentioned in section 275(1), unless section 275(7) of the PPSA applies.

7.3 You must do anything we reasonably consider necessary for the purpose of:

(a) providing more effective security over the Secured Assets (or any other property in respect of which you are required to grant us a security interest under this document) for payment of the Guaranteed Money including:

(i) if it is possible under CHES for the Secured Assets to be subject to a reserved subposition or similar restriction in our favour or for our benefit you must execute any further documents that we ask you to do so as to make the Secured Assets subject to such subposition or similar restriction;

(ii) if for any reason any securities held in any CHES holder identification number account of which we become the sponsoring broker become securities which are not eligible for trading on the CHES subregister you must ensure that all certificates issued in respect of those securities are deposited with us or a person nominated by us; and

(iii) if we as the controlling participant under the sponsorship agreement become unable or ineligible to continue to perform our obligations under the sponsorship agreement or we resign, you must enter into a sponsorship agreement on terms, and with another persons, both reasonably acceptable to us;

(b) ensuring that any Security Interest under this document is enforceable, perfected or otherwise effective;

(c) ensuring that we have control of the Secured Assets at all times;

(d) enabling us to apply for any registration, or give any notification, in connection with any Security Interest so that our Security Interest has the priority we require;

(e) enabling us to exercise our rights in connection with the Secured Assets.”

#### **8. OBLIGATIONS OF A GUARANTOR**

The Guarantor must:

(a) carry out on time all its obligations, observe any restrictions, and do anything we require in connection with this document and the Secured Assets;

(b) immediately after becoming aware of any defect in its ownership of the Secured Assets, immediately inform us and take steps to rectify it;

(c) do anything else that we notify a Guarantor is necessary to maintain the Secured Assets;

(d) not, without our express prior written consent sell, part with possession or otherwise deal with any interest in the Secured Assets, or otherwise do anything that might impair the effectiveness or validity of the Security Interest granted by that Guarantor.

#### **9. DISPOSAL OF SECURED ASSETS**

The Guarantor agrees that if we sell or otherwise dispose of the Secured Assets:

(a) we may do so in any way we think appropriate, and we are not required to act in accordance with any instructions the relevant Guarantor purports to give;

(b) the disposal will not be open to challenge for any reason (including on the ground that we were not entitled to dispose of the Secured Assets or that the Guarantor did not receive notice of the intended disposal or that the Secured Assets were sold at a price which the Guarantor considers is unacceptable for any reason); and

(c) the person who acquires the Secured Assets need not check whether we have the right to dispose of the Secured Assets or whether we are exercising that right properly.

#### **10. MATTERS FOR WHICH WE ARE NOT LIABLE**

We are not liable for any omission or delay in, or for any involuntary losses or irregularities which occur due to our exercising or failing to exercise our powers, authorities or rights under the Security Interest granted by a Guarantor.

#### **11. GUARANTOR DEFAULT**

11.1 Default occurs in respect of a Guarantor if:

(a) an event of default occurs under the Borrower Agreement;

(b) that Guarantor does not pay any of the Guaranteed Money on time and in the manner required under this document;

(c) that Guarantor does something which it has agreed not to do or does not do something it has agreed to do under this document;

(d) that Guarantor gives us incorrect or misleading information in connection with this document;

(e) that Guarantor becomes insolvent or bankrupt or steps are taken to make it so or an order is made to wind it up, or an administrator, liquidator, receiver, controller or similar officer is appointed to that Guarantor or becomes subject to any arrangement, assignment or composition;

(f) we reasonably believe that the ability of that Guarantor to comply with this document has been reduced due to a change in the business, assets or financial position of that Guarantor;

(g) (if that Guarantor is a natural person) that person dies, becomes insane or is declared incapable of administering their affairs;

(h) in our reasonable opinion, our interest in any of the Secured Assets is materially adversely affected;

(i) this document or any Security Interest granted under it is or becomes wholly or partly void, voidable or unenforceable, or is claimed to be so, by that Guarantor or by anyone acting on behalf of that Guarantor.

11.2 If default occurs in respect of a Guarantor, then we may do any one or more of the following:

(a) notify that Guarantor that the Guaranteed Money is immediately due and payable, and demand immediate payment of all or part of the Guaranteed Money;

(b) exercise all of our rights under that Guarantor's Security Interest to sell, appropriate or otherwise deal with the Secured Assets, or undertake any other action authorised by this document or by law;

(c) sue that Guarantor for the Guaranteed Money;

(d) do anything with the Secured Assets that the owner or a receiver of it could do, including selling or assigning it (or any part of it) on any terms we choose and apply the proceeds of sale towards satisfaction of the Guaranteed Money in the order we choose.

11.3 We need not give a Guarantor or any other person any notice before we take any of the actions described in clause 11.2 above.

11.4 A Guarantor's liability under this document (including its obligation to pay us the Guaranteed Money) is not limited to the net proceeds realised on the disposal of the Secured Assets. To the extent we do not recover all money owing to us under this document through such disposal, we may recover the balance of moneys owing under this document from a Guarantor personally as we consider appropriate.

## **12. ACKNOWLEDGEMENTS AND SET-OFF**

12.1 The Guarantor acknowledges that it is responsible for making itself aware of the Borrower's financial position.

12.2 The Guarantor acknowledges that the Borrower Agreement may be varied or replaced from time to time. The Guarantor confirms that the Guaranteed Money includes any amount payable under this document as varied or replaced, regardless of:

- (a) how the Borrower Agreement is varied or replaced;
- (b) the reasons for the variation or replacement; and
- (c) whether the Guaranteed Money decreases or increases or the Borrower Agreement is otherwise more onerous as a result of the variation.

12.3 The Guarantor must pay all amounts due under the guarantee and indemnity in full without setting off amounts a Guarantor believes we or any of our affiliates or related entities owe to you and without counterclaiming amounts from us.

12.4 All payments the Guarantor makes must also be free of any withholding or deduction for taxes, unless the law prevents this.

12.5 We may set off any money we or any of our affiliates or related entities owe the Guarantor against any money the Guarantor owes us under the guarantee and indemnity in this document.

## **13. ENFORCEMENT OF THE SECURITY INTEREST**

13.1 The Guarantor agrees that if we sell, appropriate or otherwise deal with the Secured Assets as permitted or contemplated by this document:

- (a) we may do so in any way we think appropriate, and we are not required to act in accordance with any instructions the Guarantor purport to give;
- (b) the disposal will not be open to challenge on the ground that the Secured Assets were sold at a price or time which the Guarantor considers is unacceptable for any reason;
- (c) the disposal will not be open to challenge on the ground that the Guarantor has failed to update your contact details (for the provision of notice); and
- (d) the person who acquires the Secured Assets need not check whether we have the right to dispose of the Secured Assets or whether we are exercising that right properly.

13.2 The title of the person relying on this clause 13 is not affected by any express or constructive notice of the matters referred to in this clause 13.

13.3 We are not liable for any omission or delay in, or for any involuntary losses or irregularities which occur due to our exercising or failing to exercise our powers, authorities or rights under any Security Interest granted by the Guarantor or under any law.

13.4 In enforcing the Security Interest provided by a Guarantor, we are entitled to resort to any of the Secured Assets of that Guarantor and we may also recover the balance of any moneys owing under this document from any Guarantor personally as we consider appropriate.

## **14. REPRESENTATION AND WARRANTIES**

Guarantor represents and warrants to Morgan Stanley Wealth Management that:

(a) it has had the opportunity to seek its own independent financial, legal, risk, tax, accounting and other commercial advice in relation to this document and it has thereafter independently decided to enter into this document and thereby guarantee the obligations of the Borrower as provided herein;

(b) no undue influence or pressure of any kind has been placed upon it to enter into this document;

(c) no assurance or promise or guarantee has been given to it by Morgan Stanley Wealth Management as to the likelihood of this document ever being acted upon;

(d) it is capable of understanding the risks associated with entering into this document, it understands those risks, and it is capable of assuming those risks and does assume those risks, by signing this document;

(e) no consent, approval by or authorisation of any other third person or government or other authority, or filing with any governmental or other authority, or any other action, is required to authorise this document;

(f) the signing and performance of this document by it do not conflict with, or constitute a breach or default of any law or regulation by which it is bound, or of any agreement entered into or binding upon it;

(g) it has the requisite power and authority to enter into and perform its obligations under this document; and

(h) this document constitutes binding obligations on it in accordance with its terms.

## **15. TRUSTEE DECLARATIONS AND UNDERTAKINGS**

15.1 If the Guarantor has entered into this document in the capacity of a trustee of a trust and make this document in that capacity, then the trustee declares to the best of its knowledge and having made due enquiries that:

(a) the Guarantor is the only trustee of the trust, the trust has been properly constituted and the trust deed is valid and enforceable;

(b) no action has been taken or proposed to remove the Guarantor as trustee or to appoint additional or alternative trustees;

(c) the Guarantor has given us an original or a copy certified to our satisfaction of the complete and up to date trust deed and other documents relating to the trust which contain all the terms of the trust (but acknowledge that it is the Guarantor's responsibility to ensure that the provisions of the trust deed are complied with in entering into this document);

(d) all necessary resolutions have been duly passed and all consents, approvals and other procedural matters have been obtained or attended to as required by the trust deed;

(e) the Guarantor has the power to enter into this document, to perform its obligations under this document and to allow them to be enforced;

(f) the Guarantor has entered into this document in both its personal capacity and also in its capacity as trustee;

(g) the Guarantor has the right to be indemnified out of the trust fund for all of the obligations the Guarantor incurs under this document and the trust fund is sufficient to cover the Guarantor's right of indemnity;

(h) no action has been taken or proposed to terminate the trust or revoke any of the Guarantor's powers and (so far as the Guarantor is aware) no one intends to take any such action;

(i) our rights under this document have priority over the interests of the beneficiaries;

(j) no property of the trust has been resettled or satisfied or transferred to any other trust or trusts;

(k) any Secured Assets are the property of the trust;

(l) the Guarantor has not, and never have been, in default under the trust deed; and

(m) the Guarantor has carefully considered the purpose of this document and consider that entry into this document is for the benefit of the beneficiaries and the terms of this document are fair and reasonable.

15.2 Each of the declarations named in clause 15.1 above continue after the Guarantor makes this document. The Guarantor must tell us immediately if anything has happened which prevents the Guarantor from repeating any one or more of those declarations at any time.

15.3 The Guarantor agrees to:

(a) act in accordance with the provisions of the trust deed at all times;

(b) not do anything which may negatively affect its obligations to us as trustee of the trust;

(c) ensure that, unless we agree in writing:

(i) the trust is not terminated;

(ii) the Guarantor does not retire or cease to act;

(iii) the Guarantor is not replaced or removed and no new trustee is appointed; and

(iv) the terms of the trust deed are not otherwise varied;

(d) notify us at least 14 days before:

(i) the Guarantor or the trust changes its name as recorded in a public register in its jurisdiction of incorporation or in its constituent documents;

(ii) any ACN or ARBN allocated to the Guarantor (or any ABN or ARSN allocated to the trust) changes, is cancelled or otherwise ceases to apply to it (or if the Guarantor or the trust does not have any such applicable number, one is allocated, or otherwise starts to apply); or

(iii) the Guarantor become trustee of a trust not otherwise stated in this document.

## **16. POWER OF ATTORNEY**

16.1 You irrevocably appoint us, the Nominee and each authorised officer of us and the Nominee separately as attorney.

16.2 If we ask, you must formally approve anything that an attorney does.

16.3 Each attorney may do anything which you as owner of the Secured Assets can do or which you are obliged to do under this document (including completing blanks in this document, executing deeds, selling, assigning or otherwise dealing with the Secured Assets, signing any off market share transfer, or authorising, instructing or requesting the amendment of your details as necessary), or sending messages or communications by which Secured Assets can be disposed of.

16.4 Neither we nor any attorney are liable for any loss or penalty incurred by you as a result of:

(a) any delay by an attorney in exercising their powers; or

(b) an attorney not exercising their powers, except if caused by fraud or gross negligence.

16.5 You indemnify each attorney against, and therefore you must pay each attorney within two Business Days of receiving notice demanding payment of such amounts, any loss or costs they suffer or incur in exercising powers under the power of attorney.

## **17. MISCELLANEOUS**

### **Confidentiality**

17.1 The Guarantor must not disclose this document to any person except:

(a) to any professional or other adviser consulted by it in relation to any of its rights or obligations under this document;

(b) in connection with the enforcement of its rights under this document;

(c) to any of its affiliates, agents or other authorised representatives where the disclosure is made on the basis that the recipient of the information will comply with this clause in the same way that the Guarantor is required to do;

(d) if required by law;

(e) otherwise with the prior written consent of Morgan Stanley Wealth Management.

### **Disclosure of information**

17.2 The Guarantor consents to the disclosure to the Borrower of any information relating to it (including personal data), its accounts, transactions, any loan, credit, trading or other facility which Morgan Stanley Wealth Management may extend to it and any assets held on its behalf.

### **Assignment**

17.3 We may assign or otherwise deal with our right under this document, without prior notice to you. In order to exercise this right we may disclose documents and personal information concerning you.

17.4 Your rights under this document are personal and may not be assigned without our written consent.

### **Applicable law**

17.5 This Agreement is governed by the law in force in New South Wales, and you submit to the exclusive jurisdiction of the courts of New South Wales.

### **Application form**

17.6 The Guarantor Application Form forms a part of this document.

## Part B: Nominee Agreement – Terms and Conditions

The client (“you”) and Morgan Stanley Wealth Management Australia Pty Ltd (ABN 19 009 145 555) (“Morgan Stanley”, “we”, “our” or “us”) agree to the following additional terms:

### 1. NOMINEE SERVICES

1.1 You understand and agree that the terms under this Nominee Agreement are in addition to Morgan Stanley’s General Terms of Business, as amended from time to time (“Terms of Business”) and that unless the contrary intention appears, any capitalised term in this Nominee Agreement will have the meaning ascribed to it in the Terms of Business. Any reference to a clause in the Terms of Business shall be taken to be a reference to that clause as amended from time to time.

1.2 You agree that all Financial Products (defined in the Terms of Business) and any other assets, rights or products that may not come within the definition of Financial Product (“Other Products”) that you or we nominate to be held in custody on your behalf, shall be purchased and held by us through our nominee, being “Morgan Stanley Nominees” (as defined in clause 1.3 below). You further agree that Morgan Stanley Nominees will act as nominee for the purpose of this Nominee Agreement, and will hold on your behalf any Financial Products and Other Products that you or we nominate to be held in custody. We may do this by engaging sub-nominees. On reasonable request by you we will provide you with written confirmation of the manner in which we hold the Financial Products and Other Products.

1.3 **Morgan Stanley Nominees** means either Bow Lane Nominees Pty Ltd (ABN 94 005 734 145) or any other nominee of Morgan Stanley as appointed by us from time to time. We may substitute any other entity as nominee from time to time, in which case we will provide you with prior written notice of the identity and contact details of the other nominee entity. Where practicable, we will provide you with prior written notice before arranging for another nominee entity to be appointed to hold your Financial Products and Other Products.

1.4 You acknowledge that Morgan Stanley Nominees may be an Authorised Representative (as defined in the Corporations Act) of Morgan Stanley under its Australian financial services licence. **Morgan Stanley** means Morgan Stanley Wealth Management Australia Pty Ltd (ABN 19 009 145 555); Morgan Stanley Nominees and any body of which Morgan Stanley is the successor or transferee; the new person formed if Morgan Stanley is reconstituted or amalgamated with a new body; and any person to which some or all of Morgan Stanley’s business, including its right to receive the amount owing, is transferred or assigned.

1.5 You authorise Morgan Stanley on your behalf to collect or otherwise receive all principal, dividends, interest, other amounts and entitlements relating to Financial Products or Other Products held in custody on your behalf and Morgan Stanley must account to you in respect thereof.

1.6 You further authorise Morgan Stanley to credit any of your accounts with any moneys received by it on your behalf, and to open accounts in its name with any Australian Authorised Deposit-taking Institution (“ADI”) and to deposit moneys held for you in such accounts.

1.7 We, Morgan Stanley Nominees and any other nominee under this Nominee Agreement (“Principal Nominee”) may appoint sub-nominees or sub-custodian to hold any Financial Products or Other Products on behalf of the Principal Nominee, and to

perform such other functions of the nominee as the Principal Nominee considers necessary or desirable. Where practicable, we will provide you with prior written notice before arranging for a sub-nominee to be appointed to hold your Financial Products and Other Products. In any event, we will provide you with prior written notice of the identity and contact details of any sub-nominee appointed under this clause. Persons appointed or engaged by the Principal Nominee under this Nominee Agreement may be related to, or associated with, the Principal Nominee and may be paid and receive their normal fees or commissions.

### 2. INSTRUCTIONS

2.1 Morgan Stanley, subject to clause 16 of the Terms of Business, is entitled to act in relation to:

(a) the Financial Products or Other Products held in custody on your behalf; and

(b) any matter to which the terms of this Nominee Agreement relate,

on electronic, written or verbal instructions from you or from any other person you have authorised to issue instructions on your behalf. You authorise each Morgan Stanley Nominee to provide instructions on your behalf.

2.2 If you are a company within the meaning of the Corporations Act, Morgan Stanley may act on electronic, written or verbal instructions given by any director or secretary or any other person recognised by the Corporations Act as your director, officer or agent.

2.3 If Morgan Stanley request instructions and no instructions are received by the time stipulated in the request, then Morgan Stanley is not obliged to and may not take any step or other action in connection with or relating to Financial Products or Other Products held in custody on your behalf.

2.4 If Morgan Stanley cannot exercise a discretion on your behalf, or in the absence of an instruction from you or given on your behalf to reinvest or redeem any Financial Products or Other Products held in custody, Morgan Stanley will return the funds (representing the value of the Financial Products or Other Products at the relevant date) to you by cheque or in accordance with your usual nominated settlement instructions.

### 3. NOTICES

3.1 Morgan Stanley is not obliged to inform you of any written notice or other communication received by it from any person or corporation relating to any of your Financial Products and/or where applicable Other Products held in custody other than:

(a) all new issues and other similar rights (whether renounceable or not) relating to the Financial Product or Other Products held in custody;

(b) all calls and other moneys payable by you in respect of the Financial Products or Other Products held in custody; and

(c) the date of exercise of options held in custody.

3.2 Any notice or other communication by Morgan Stanley to you is deemed to have been provided to you (whether or not actually received by you) if delivered or mailed or sent by telex, electronically or to the facsimile number or address as notified by you.

### 4. VOTING

Neither Morgan Stanley nor Morgan Stanley Nominees are obliged to request your instructions or attend meetings of corporations or other entities in which the Financial Products or Other Products are held in custody on your behalf, or vote in respect of any of those Financial Products or Other Products. However,

Morgan Stanley may, but is not obliged to, use its reasonable endeavours to cause Morgan Stanley Nominees to exercise, if instructed by you or another person authorised to issue instructions on your behalf the voting rights attached to Financial Products or Other Products held in its custody on your behalf.

#### **5. CERTIFICATES/HOLDING STATEMENTS**

Unless Morgan Stanley otherwise agrees, all certificates, holding statements and other documents or evidence of title relating to your Financial Products or Other Products held in custody on your behalf will be retained by Morgan Stanley Nominees, its sub-nominee or a Morgan Stanley Authorised Representative.

#### **6. NO MORTGAGES**

You must not mortgage or otherwise encumber the Financial Products or Other Products held in custody without the prior written approval of Morgan Stanley.

#### **7. UNAUTHORISED DEALINGS**

You warrant and represent that you:

(a) have not and will not assign, charge, declare a trust over or otherwise grant a security over the accounts, bank bills, Financial Products or Other Products that you or we nominate to be held in custody;

(b) will not create or allow a third party or any other agent to agree to an assignment, charge, declaration of trust over or otherwise grant a security over the accounts, bank bills, Financial Products or Other Products that you or we nominate to be held in custody.

#### **8. FEES AND EXPENSES**

8.1 You must pay Morgan Stanley's rates of brokerage, commission and other fees agreed or advised from time to time for any transaction undertaken by Morgan Stanley, Morgan Stanley Nominees, its sub-nominee or a Morgan Stanley Authorised Representative in respect of the Financial Products or Other Products held in custody on your behalf.

8.2 You must also, upon request from Morgan Stanley Nominees, pay all the costs, fees, taxes, losses, damages and liabilities ("Losses and costs") incurred by Morgan Stanley Nominees for acting in accordance with this Nominee Agreement.

8.3 Morgan Stanley may debit any account maintained on your behalf with:

(a) all fees, charges and other moneys payable to Morgan Stanley by you under this Nominee Agreement, the Terms of Business or otherwise; and

(b) any call or other moneys owing or paid in respect of any Financial Product or Other Product held on your behalf in custody.

8.4 If any amount payable by you to Morgan Stanley on any account is not paid by the due date for payment then, without prejudice to any other rights of Morgan Stanley under this Nominee Agreement, the Terms of Business or at law, Morgan Stanley may sell any Financial Products or Other Products held by it in custody for you without being responsible for any loss or damage incurred and may apply the proceeds in reduction of your liability to Morgan Stanley.

8.5 Morgan Stanley may, by not less than 30 days written notice to you, revise all or any of the fees. You must pay those revised fees to Morgan Stanley from the date specified in the notice.

8.6 Morgan Stanley Nominees may apply any money held by it as your nominee, whether or not in the cash account, in or towards satisfaction of any amount owing by you to us or Morgan Stanley Nominees.

8.7 Notwithstanding any other term of this Nominee Agreement, Morgan Stanley Nominees may not take or grant a charge, mortgage, lien or other encumbrance over, or in relation to, the assets held under this Nominee Agreement unless the charge, mortgage, lien or other encumbrance is:

(a) for expenses and outlays made within the terms of this Agreement (other than our unpaid fees); or

(b) in accordance with your written instructions (which may be contained in the terms of this Nominee Agreement or in any other agreement between you and us from time to time, including any amendments thereto).

#### **9. POWER OF ATTORNEY**

You irrevocably appoint Morgan Stanley and each director and secretary of Morgan Stanley severally as your attorney to sign, seal, deliver, execute and do on your behalf and in your name or otherwise as the attorney thinks fit all instruments, writings, matters, acts and things which the attorney may think necessary or desirable to assign or transfer all Financial Products or Other Products held in custody to you or otherwise to give effect to your obligations under these terms and conditions. You ratify and confirm and agree to ratify and confirm whatsoever the attorney does or purports to do by virtue of that power of attorney.

#### **10. INDEMNITY**

10.1 To the fullest extent permitted by law, you release, discharge and indemnify and agree to keep us, our agents and delegates, our affiliates, our affiliates' agents and delegates and any of our or their employees, officers or directors (each an "Indemnified Person") indemnified from and against all sums of money, actions, proceedings, suits, Claims, demands, Losses and any other amounts which any Indemnified Person may suffer or incur directly or indirectly as a result of, or in connection with:

(a) any default, whether by act or omission, of yours under this Nominee Agreement or a transaction which has been effected by or for you;

(b) any breach by you (or any person purporting to act on your behalf) of this Nominee Agreement, the Rules or any applicable law including the Corporations Act;

(c) any representation or warranty made or given by you under this Nominee Agreement proving to be untrue or incorrect;

(d) any error, omission, fraud, malfeasance, negligence, misappropriation or criminal act or omission by you (or any person purporting to act on your behalf);

(e) any failure of any of your computer or electronic systems or networks or any telecommunications service used by you to perform, be available or successfully transmit data to the Indemnified Person, or any error or inadequacy in the data or information input into such systems or networks by you;

(f) anything lawfully done by the Indemnified Person in accordance with or pursuant to this Nominee Agreement or a transaction which has been effected by or for you;

(g) any request, instruction or direction given by you (or any person purporting to act on your behalf);

(h) any delay or error in the transmission or execution of any transaction or instructions given or placed by or for you, except in respect and to the extent of any gross negligence, fraud or dishonesty by us or any claim under any applicable law;

(i) the Indemnified Person complying with any direction, request or requirement of:

A. the ASX Group, an Approved Market Operator, any applicable law including the Corporations Act, ASIC, a court of law or any other regulatory, statutory or judicial body; or

B. any other person who either has or proposes to commence proceedings or investigations (including private matters pertaining to your personal or business affairs) on your behalf or on behalf of another person;

(j) the Indemnified Person in good faith accepting and acting on instructions received by facsimile transmission which are signed by or purported to be signed by you.

10.2 This is a continuing indemnity and will survive the termination of this Nominee Agreement. The Indemnified Person holds the benefit of this indemnity for itself and on trust for each of its officers, employees, agents and representatives.

#### **11. LIMITATION OF LIABILITY**

11.1 Morgan Stanley does not exclude or limit the application of any statute where to do so would contravene that statute or cause any part of this Nominee Agreement to be void. Morgan Stanley excludes all conditions, warranties or terms implied by statute, general law or custom except to the extent that such exclusion would contravene any statute or cause this clause 11 to be void. Morgan Stanley's liability for a breach of any provision implied by law which cannot be excluded is limited to supplying of the services again.

11.2 Notwithstanding anything else in this Nominee Agreement, Morgan Stanley will be liable to you if you suffer a loss due to our failure (or our nominee's or sub-nominee's failure) to:

(a) comply with our duties under this Nominee Agreement or other agreement between us relating to holding the Financial Products and Other Products; or

(b) observe reasonable standards generally applied by providers of custodial or depository services for holding Financial Products and Other Products of the kind contemplated by this Nominee Agreement,

provided that Morgan Stanley shall not be liable if the loss results from a failure of our nominee or any sub-nominee where that nominee or sub-nominee is insolvent, so long as Morgan Stanley has taken reasonable care in engaging and monitoring compliance by that nominee or sub-nominee.

#### **12. GUARANTEE**

If you are a company, you will on request by Morgan Stanley procure a guarantee and indemnity in a form approved by Morgan Stanley, in respect of your company's liabilities and obligations to Morgan Stanley from such of its directors or any other persons Morgan Stanley may nominate.

#### **13. INTEREST**

You agree to pay interest on any amount under this Nominee Agreement which is not paid to Morgan Stanley on the due date for payment. The interest accrues daily from (and including) the due date, and the rate of interest applying to each daily balance is calculated at a rate determined at Morgan Stanley's discretion.

#### **14. CHANGES IN ADDRESS OR RESIDENCY**

You must immediately notify Morgan Stanley in writing of any change in your address, telephone or facsimile number or your residency for taxation purposes of the beneficial owners of the Financial Products or Other Products held in custody.

#### **15. INTEREST AND TAXES**

15.1 Morgan Stanley is entitled to deduct or withhold from any dividend, interest or other amount payable to you all withholding and other taxes, duties and imposts required to be deducted or withheld by law and pay the amount so deducted or withheld to the appropriate taxing or other authority.

16.2 Goods and Services Tax ("GST") will be imposed on taxable supplies we make. Any estimates given and prices quoted in this Nominee Agreement do not include any allowance for GST. If we reasonably decide that we are liable to pay GST on any supply that we make to you in connection with this Nominee Agreement, then you agree to pay us an additional amount equal to the consideration payable for the supply multiplied by the prevailing GST rate. The additional amount is payable at the same time and in the same manner as the consideration for the supply to which the additional amount relates.

#### **16. DOCUMENTATION**

If you are an agent, corporation, trustee, executor or administrator, you must deliver to Morgan Stanley (unless previously sighted by it) the relevant Power of Attorney, Constitution, Certificate of Incorporation, Trust Deed, Letters of Administration or Probate or other relevant document (as the case may be).

#### **17. PERSONAL PROPERTY SECURITIES ("PPS") ACT**

17.1 Where transactions under this Nominee Agreement may give rise to a Security Interest, the following clauses are intended to protect any interest that Morgan Stanley (or its nominee), as the secured party with a Security Interest, has in:

(a) the financial products;

(b) the cash that may be held by Morgan Stanley (or its nominee) in a deposit account, a Cash Account or any other account ("ADI Account") with an Authorised Deposit-taking Institution ("ADI");

(c) the collateral;

(d) the agreed approved security, (collectively, the "Security Assets").

17.2 Where cash or collateral is held by Morgan Stanley (or its nominee) in an ADI Account with an ADI, you agree that, at all times until the termination of this Nominee Agreement, when sums are due to Morgan Stanley (or its nominee), it may direct disposition of funds from the ADI Account without reference to you, the third party and any of your authorised agents (collectively, "Authorised Agents").

17.3 You acknowledge and agree that at all times until the termination of this Nominee Agreement:

(a) Morgan Stanley (or its nominee), as the secured party with a security interest over Secured Assets may initiate or Control sending instructions in relation to the transfer of, or other dealings relating to the Secured Assets;

(b) to the extent that Morgan Stanley (or its nominee) has a Security Interest in any of the Security Assets, you must do anything (including executing any document, obtaining any consent or agreement or giving any notice) that Morgan Stanley (or its nominee) requires to enable Morgan Stanley (or its nominee) to perfect and protect any Security Interest provided for by this Nominee Agreement;

(c) Security Interests arising out of this Nominee Agreement of the transactions contemplated by this Nominee Agreement, are first ranking Security Interests, and if a default under this Nominee Agreement occurs, Morgan Stanley (or its nominee), in addition to any other right that it may have, may severally enforce its Security Interest provided for by this Nominee Agreement;

(d) Morgan Stanley (or its nominee) may register one or more financing statements in relation to its Security Interest. If permitted by the PPSA, you waive your right under section 157 of the PPSA to receive notice of any verification statement or any related financial change statement;

(e) to the extent that any affiliate of Morgan Stanley (or its nominee) holds a Security Interest under this Nominee Agreement, it may do so as trustee or agent on behalf of any other affiliate;

(f) none of the provisions of the PPSA specified in paragraphs (a) to (r) inclusive of section 115 of the PPSA will apply in relation to any collateral the subject of a PPSA Security Interest established under or contemplated by this Nominee Agreement, to the extent that this is permitted by the relevant paragraph of section 115 of the PPSA in relation to that provision. For the avoidance of doubt, terms and expressions defined in the PPSA shall have the same meaning when used in this Nominee Agreement;

(g) you will not to disclose information of a kind mentioned in section 275(1) of the PPSA, except in circumstances required by section 275(7)(b) to (e) of the PPSA. You agree that you will only authorise the disclosure of information under section 275(7)(c) or request information under section 275(7)(d), if Morgan Stanley approves such disclosure. Nothing in this sub-clause (g) will prevent any disclosure by Morgan Stanley if it believes such disclosure is necessary to comply with its other obligations under the PPSA.

17.4 If a term used in this clause 17 has a particular meaning in the PPSA, it has the same meaning in this clause.

#### **18. COMPLIANCE WITH APPLICABLE LAWS**

18.1 You warrant and represent that you:

(a) will comply in all respects with all applicable laws, rules, regulations, policies, and practices applicable to you, including but not limited to, the relevant provisions of the ASX Market and ASX Clear Operating Rules, the ASX Settlement Operating Rules, Australian Federal Privacy Act (1988), the Corporations Act and all other laws in respect of the Financial Products and Other Products held in custody including the giving of any substantial shareholding notice; and

(b) will not cause Morgan Stanley or the Morgan Stanley Nominees to breach any of the rules or laws in sub-clause (a).

18.2 You authorise Morgan Stanley and Morgan Stanley Nominees to disclose any information in relation to you and the Financial Products and Other Products held in custody as may be required by law, the ASX Market or Listing Rules, ASX Settlement Rules or the constituent documents of the corporation or other entity in which those Financial Products or Other Products are held.

#### **19. CONFIDENTIALITY**

19.1 Morgan Stanley and you must treat as confidential (both during and after the termination of our relationship) any information learned about the other, its investment strategy, holdings, products or services in the course of our relationship and shall not disclose the same to any third party except on the other's instructions or with the other's written consent.

19.2 Neither you nor Morgan Stanley may disclose the Nominee Agreement to any person except:

(a) to any professional or other adviser consulted by it in relation to any of its rights or obligations under this Nominee Agreement;

(b) in connection with the enforcement of its rights under this Nominee Agreement;

(c) to any of its affiliates, agents or other Authorised Representatives where the disclosure is made on the basis that the recipient of the information will comply with this clause in the same way that the party is required to do;

(d) where the information is already in the public domain, or where the disclosure would not otherwise breach any duty of confidentiality;

(e) if required by law in Australia or elsewhere; to any state, national or international regulatory, enforcement, exchange body or court anywhere in the world as required or allowed by applicable law or regulation anywhere in the world or at such person's request; or

(f) to any person as required or allowed by applicable law or regulation anywhere in the world;

(g) otherwise with the prior written consent of the non-disclosing party.

#### **20. RECORDS AND REPORTING**

20.1 Records of your Financial Products or Other Products held in custody by us, including any transactions relating to those Financial Products or Other Products (including how, by whom and when they were authorised), are maintained electronically, and will be made available to you on reasonable request.

20.2 Morgan Stanley applies verification procedures for the reconciliation and checking of your Financial Products or Other Products held in custody by us.

20.3 Statements or confirmations of your Financial Products or Other Products held in custody by us will generally be provided to you periodically (depending on what kind of Financial Products or Other Products we hold for you), or otherwise on reasonable request.

#### **21. BUSINESS CONTINUITY**

Morgan Stanley has and maintains arrangements designed to enable us to continue to provide the services contemplated by this Nominee Agreement in any contingency.

#### **22. FORCE MAJEURE**

A failure by Morgan Stanley in respect of the performance of its obligations to you does not give rise to any right of action or claim against Morgan Stanley if the failure or omission arises from any cause beyond its control.

#### **23. TERMINATION**

23.1 This appointment may be terminated in accordance with clause 32 of the Terms of Business. You must pay all fees outstanding at the date of termination.

23.2 On termination, Morgan Stanley will transfer (subject to being paid all amounts due to it) all Financial Products or Other Products held in custody to you, or as otherwise lawfully directed by you, within a reasonable period of time. You are responsible to register any transfer (unless attended to by Morgan Stanley at your cost and expense) and to pay all stamp and other duties and taxes in respect thereof.

#### **24. VARIATION OF TERMS AND CONDITIONS**

Morgan Stanley may vary the terms and conditions of this Nominee Agreement by not less than 14 days written notice to you and thereafter these terms and conditions as varied by that notice will apply and take effect as if originally incorporated in this Nominee Agreement.

**25. TAX FILE NUMBER ("TFN")**

You understand that pursuant to clause 15 of this Nominee Agreement, that Morgan Stanley is entitled to deduct or withhold from any amounts payable to you in respect of Financial Products or Other Products held in nominee on your behalf, all withholding and other taxes, duties and imposts required to be deducted or withheld by law and pay the amount so deducted or withheld to the appropriate taxing or other authority. You acknowledge that if you do not provide your TFN to us that we may deduct any such taxes, duties or imposts at the top marginal rate from any Financial Products or Other Products that we hold in nominee for you.

**26. GENERAL**

(a) You warrant to Morgan Stanley that all information provided by you to Morgan Stanley regarding the Financial Products or Other Products held or to be held in custody or any other matter relating to or incidental to the subject matter of this Nominee Agreement is or will be, when given, complete, accurate and not misleading in any respect. In the event of any material change in such information you agree to promptly notify Morgan Stanley.

(b) It is a condition of this Nominee Agreement that you acknowledge that you have read, understood and agree to be bound by the Terms of Business in addition to the terms of the Nominee Agreement. You understand that the Terms of Business including any terms in respect of the account opening documentation you have been required to complete are binding upon you.

(c) To the extent of any inconsistency, the terms of this Nominee Agreement shall prevail over the Terms of Business.

(d) You must not provide any instructions to us or Morgan Stanley Nominees that are inconsistent with this Nominee Agreement.

(e) Termination of Morgan Stanley Nominees' appointment does not affect any rights or obligations accrued up and until the time of termination.

(f) The terms and conditions of this Nominee Agreement bind you and your legal personal representatives and successors.

(g) In this Nominee Agreement references in the singular include the plural and vice versa.

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## **Morgan Stanley Wealth Management**

Morgan Stanley Wealth Management Australia Pty Ltd  
ABN 19 009 145 555

### **Margin Lending**

PO Box 360 Collins Street West Vic 8007  
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Toll Free 1800 062 794  
Email [marginadmin@morganstanley.com](mailto:marginadmin@morganstanley.com)

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Toll Free 1800 808 576  
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