

To: the Parties (identified in Schedule 1, **Part A**)

to the AAP UJV dated **[insert date]** establishing the **Aggregator Assurance Plan**

From (Applicant / AAP Lender):

Full Name _____
ACN _____
Registered Office Address _____

Contact details:

Name of Contact Person: _____
Telephone Number: _____
email: _____
Preferred Start Date: _____

Background

- A. The Aggregator Assurance Program (**AAP** or the **Project**) has been established by the Parties to provide a mechanism for participating mortgage lenders jointly to obtain assurance reviews in respect of the compliance systems of participating Aggregators in a more consistent and efficient manner and to streamline and remove duplication for multiple review projects, for the benefit of aggregators, lenders and the community.
- B. The Applicant wishes to join the Project as an AAP Lender in order to request and receive relevant Reviews under the Project.
- C. The ASPs have been appointed by the Parties to provide each AAP Lender the opportunity to acquire assurance reviews under the Project.
- D. An authorisation in respect of participation in the Project was granted by the Australian Competition and Consumer Commission on **[insert date]**.
- E. The Applicant will comply with the terms and conditions of the Project as provided herein as amended from time to time, including the use of Reviews received under the Project.

1. Joining the Project

1.1 Approval by Operating Committee

- (a) By executing this Deed, the Applicant applies to become an AAP Lender under the AAP and agrees, from notice of acceptance of this application, to be bound by the terms hereof.
- (b) This Deed becomes binding on the date that is the earlier of:
 - (i) the date that the Operating Committee or an ASP (as agent for the Operating Committee) gives notice to the Applicant that the Applicant has been accepted as a participant in the Project by the Operating Committee; and
 - (ii) the date that an ASP first requests a non-binding expression of interest (**EOI**) from the Applicant in accordance with clause 1.5 of this Deed.
- (c) On the occurrence of either event under clause 1.1(b), the Applicant becomes an AAP Lender for the purposes of this Deed and the AAP.

1.2 Participation rights

The AAP Lender acknowledges and agrees that:

- (a) it will comply with the requirements of the Operating Committee who are responsible for setting the terms of participation in the Project as amended from time to time;
- (b) it will not unreasonably delay any action, consent or decision required by it under this Deed;
- (c) it will promptly notify the applicable ASPs or Operating Committee if the AAP Lender commits or is subject to a Material Default; and
- (d) it will comply with the Competition Protocol.

1.3 Reviews

Unless otherwise determined by the Operating Committee, the AAP Lender acknowledges that:

- (a) Reviews of participating 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;
- (b) the Reviews will generally be conducted in six monthly cycles (each a **Review Cycle**); and
- (c) 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) any other matter deterred by the Operating Committee; and
 - (iii) the implementation and/or progress of action plans by the Aggregator arising from prior Deep Dive Reviews.

1.4 Opt-In Lender Fees

- (a) The AAP Lender agrees that it will be responsible for the fees payable to the relevant ASP for each Report requested by the AAP Lender (**Opt-In Lender Fees**).
- (b) For each Review, the Opt-In Lender Fees payable by the AAP Lender for each Review will be the lesser of:
 - (i) \$5,000 (excluding GST); or
 - (ii) 50% of the cost of Review, divided equally between those AAP Lenders who are Opt-In Lenders for that Review.
- (c) 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).
- (d) The cost of any Additional Review Items requested by the AAP Lender (as set out in its applicable Opt-In Notice or otherwise agreed by that AAP Lender with the ASP for that Review).

1.5 Process to Engage an ASP for Reviews

- (a) **(Engagement of ASP)** For each proposed Review Cycle, the AAP Lender will be offered the opportunity to engage the relevant ASP allocated by the Operating Committee to conduct to provide the Reports as agreed with the ASP.
- (b) **(ASP request for EOIs)** The AAP Lender acknowledges that it is anticipated that, prior to engagement of an ASP and for each proposed Review Cycle, each ASP will give the AAP Lender notice of:
 - (i) the Aggregators intended to be reviewed by that ASP in that Review Cycle;
 - (ii) the anticipated Review topics;
 - (iii) any Additional Review Items that may be offered;
 - (iv) a fee estimate for the total cost of each completed Review and each Additional Review Items;
 - (v) the expected Review delivery date, and
 - (vi) the ASP engagement terms **(ASP Engagement Terms)**.
- (c) **(AAP Lender EOI)** If the AAP Lender intends to participate in a Review Cycle, the AAP Lender must give an ASP a non-binding EOI **(EOI)** by the date specified by the ASP, nominating:
 - (i) the applicable Review Cycle requested;
 - (ii) from the list of Aggregators which the ASP has given notice that it intends to Review in that Review Cycle, the Aggregator(s) for which the AAP Lender seeks review; and
 - (iii) any Additional Review Items requested.
- (d) **(ASP Engagement)** In response to the EOI, the AAP Lender acknowledges that it is anticipated that each ASP will confirm its ASP Engagement Terms for the Review, including estimated Opt-In Lenders Fees, Report delivery date, and required date to opt-in to the Review Cycle(s) **(ASP Engagement)**.
- (e) For the avoidance of doubt, the AAP Lender acknowledges and accepts that the ASPs will keep confidential, and will not inform the AAP Lender of which other AAP Lenders have also requested Reviews of the same Aggregator(s) as those requested by the AAP Lender.
- (f) For each proposed Review Cycle, it is anticipated that each ASP will provide to Aggregator(s) a list of the Opt-In Lenders and any Party who participates in that Review Cycle.

1.6 Engagement of ASP for Reviews

- (a) **(Opt-In Notice)** If the AAP Lender wishes to engage an ASP for a Review Cycle, it must (by the date specified in the applicable ASP Engagement) provide notice to the ASP **(Opt-In Notice)** confirming:
 - (i) for which Aggregator(s) the AAP Lender requests a Review and Report;

- (ii) any Additional Review Items requested by the AAP Lender; and
- (iii) its acceptance of the applicable ASP Engagement Terms for that Review Cycle,

by which notice the AAP Lender will become an **Opt-In Lender** for that Review Cycle.

- (b) **(Opt-In Notice binding)** Subject to paragraph 1.6(c), the AAP Lender's Opt-In Notice constitutes a binding and irrevocable engagement of the applicable ASP for each Review it nominates, and to comply with the terms of participation for that Review and irrevocable commitment to pay the Opt-In Lender Fees to that ASP.
- (c) **(ASP may vary engagement to reflect number of Opt-In Lenders in each Review)** The AAP Lender acknowledges that it is anticipated that if there is a change in the number of Opt-In Lenders for any Review, an ASP may revise the Opt-In Lender Fees for that Review and the AAP Lender may, within the time nominated by the ASP, withdraw or vary the scope of its Opt-In Notice or confirm its Opt-In Notice duly amended.

1.7 Limited right of access to Reports

Subject to this Deed, the AAP Lender acknowledges that it will be only entitled to receive the outcome of the Reviews and/or the Report(s) in respect of any Aggregator for which it has provided an Opt-In Notice, provided that:

- (a) the AAP Lender will not be entitled to receive any Additional Review Items that are not set out in its applicable Opt-In Notice or otherwise agreed by that AAP Lender with the relevant ASP;
- (b) where the AAP Lender requests any Additional Review Items for a Review, those items will be contained in an attachment to the relevant Report available only to the AAP Lender and to any other Opt-In Lender requesting the same Additional Review Items; and
- (c) the AAP Lender is not in breach or default of this Deed, which has not been cured or remedied.

2. Confidentiality protocol in respect of Reports

2.1 Confidentiality of Reports

The AAP Lender acknowledges that the following are essential and fundamental conditions of its participation in the Project:

- (a) Reports are treated as Confidential Information and only to be provided by the relevant ASP to relevant Opt-In Lenders, and to the relevant Aggregator;
- (b) Reports are solely to be used by the AAP Lender for its internal consideration and compliance purposes, which include if the AAP Lender so determines, for confidential bilateral discussions between the AAP Lender and the relevant Aggregator;
- (c) subject to clause 2.1(d), the AAP Lender must not share or communicate or disclose to any Party, any other AAP Lender (including an Opt-In Lender), or any third party:
 - (i) any actual or proposed views, decisions or responses by the AAP Lender in response to a Review; or

- (ii) any discussions held with the Aggregator regarding the findings or contents of a Review, or any remedial actions to be taken or proposed by the AAP Lender or Aggregator in response to the Review;
- (d) the AAP Lender may discuss or communicate on a confidential basis with the ASP in respect of a Review for the purposes of clarification of the Review findings and any recommendations made in a Report;
- (e) EOs and Opt-In Notices are kept confidential as between each ASP and the AAP Lender (save that ASPs are permitted to report to the Operating Committee as to the identity of the AAP Lender, its Opt-In Notices and other relevant information regarding the AAP Lender's participation which is necessary or desirable for the operation of the Project or enforcement of this Deed); and
- (f) the AAP Lender does not share or communicate its EOs or Opt-in Notices to any other AAP Lender or participant in the Project other than the ASP to which the EOs and/or Opt-in Notices relate.

2.2 Use of Confidential Information

The AAP Lender must:

- (a) only use Confidential Information disclosed in a Report or otherwise during a Review under this Deed for its internal use, discussions with the relevant Aggregator and the purposes of exercising its rights and performing their respective obligations under this Deed, and the Project; and
- (b) subject to clause 2.3, keep the Confidential Information confidential.

2.3 Permitted exemptions

The restriction in clause 2.2(b) 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 another AAP Deed relating to the Project;
- (b) **(Prior written consent)** is disclosed for a lawful purpose and with the prior written consent of the Aggregator;
- (c) **(Third party access)** subsequently comes lawfully into the possession of the AAP Lender 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 required or requested to be disclosed to an Australian regulatory authority, provided that (subject to any requirements of the relevant regulator), notice is given to the Aggregator to which the information relates, of the disclosure to the regulatory authority,

and the AAP Lender may disclose the Confidential Information to any of its employees, advisors, or agents. The AAP Lender must procure that any of its employees, advisors, or agents to whom Confidential Information is disclosed is informed of, and complies with, the confidentiality liability of the AAP Lender under this Deed.

2.4 Remedies for unauthorised disclosure

The AAP Lender agrees that monetary damages alone would not be a sufficient remedy for a breach of or default under this clause 2 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 2 is entitled to any interim, interlocutory or permanent injunction to prevent breach of or default under and compel specific performance of this clause 2.

2.5 Privacy

The AAP Lender must comply with all applicable Privacy Legislation in relation to all activities it undertakes in relation to the Project and this Deed.

2.6 Survival

This clause 2 survives termination of this Deed.

3. Limited Liability for Reports

3.1 Limited Liability

The AAP Lender acknowledges that its sole rights and remedies in respect of participation in the Project and the receipt and reliance in any way upon a Report or a Review are confined to the ASP Engagement Terms as referred to in this Deed. Save for:

- (a) the liability and responsibility of an ASP under the applicable ASP Engagement Terms for a Review; and
- (b) any rights which by statute may not be excluded or limited,

the AAP Lender releases from liability and waives any rights it has, or may in the future have, to make or bring a Claim against any 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.

3.2 Error or Inaccuracy

To the fullest extent permitted by law, the AAP Lender acknowledges and accepts that:

- (a) the relevant ASP is responsible for the Review and the content of each Report;
- (b) the Parties are not liable for Reviews or Reports; and
- (c) the Parties exclude all express, statutory and implied conditions, warranties, and guarantees, as to the quality, fitness for a particular purpose, suitability or accuracy of a Report or the Review.

3.3 Indemnity by AAP Lender

- (a) Subject to clause 3.3(b), the AAP Lender indemnifies each Party against all Losses arising as a result of or in connection with a breach of, or default under this Deed by the AAP Lender.
- (b) To the maximum extent permitted by law and notwithstanding any other provision of this Deed:
 - (i) the maximum aggregate amount that the AAP Lender is liable for with 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
- (ii) the AAP Lender is not liable to any other Party under the indemnity in clause 3.3(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 AAP Lender is alleged to have committed a breach or default under this Deed.

3.4 Survival

This clause 3 survives termination of this Deed.

4. Project relationship

- (a) (**Relationship exclusions**) this Deed does not create, and must not be construed to create, any express or implied relationship between the AAP Lender, and any Party or any ASP of:
 - (i) employment;
 - (ii) principal and agency;
 - (iii) partnership; or
 - (iv) any fiduciary obligations.
- (b) (**Contractual freedom**) This Deed does not prohibit the AAP Lender from:
 - (i) acquiring any assurance services from any third person similar to those offered under the AAP; or
 - (ii) executing any agreement with any third person relating to any business activity or project, whether in the nature of or similar to the Project or otherwise, as decided by that AAP Lender, subject to compliance with any liability of the AAP Lender under any other provision of this Deed.
- (c) Despite any other provision of this Deed:
 - (i) failure by any other AAP Lender, any Party or an ASP to perform any obligation of that party does not relieve the AAP Lender from its liability to perform its obligations under the terms of this 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.

5. Dispute resolution

5.1 Project Disputes

The AAP Lender acknowledges and agrees that save for any dispute arising in relation to any claim that the AAP Lender has not complied with clause 2 of this Deed in relation to the confidential treatment and use of any Report or Review under the Project (which claims and disputes are governed by clause 5.3 of this Deed) the dispute resolution process set out in this clause 5 is intended to provide a transparent and consultative process for the resolution of any

other dispute or difference (**Dispute**) amongst and/or between the AAP Lender and a Party or Parties, arising out of, or in connection with, this Deed or the Project, including in relation to:

- (a) (**Interpretation**) this Deed or its interpretation;
- (b) (**Rights**) any right or liability of the AAP Lender or any Party under this Deed other than under clause 2 of this Deed; or
- (c) (**Action**) the performance of any action by the AAP Lender or any Party under or arising out of this Deed, other than under clause 2 of this Deed, whether before or after its termination.

5.2 Dispute negotiation and determination – with a Party or Parties

- (a) (**Dispute notification**) A party claiming that a Dispute has arisen shall notify the other Party specifying details of the Dispute.
- (b) (**Negotiation**) Each party involved in the dispute (together, the **Relevant Parties**) must use its best efforts to resolve the Dispute in good faith through negotiation within 20 Business Days following the dispute notification as per clause 5.2(a) or longer period agreed between the Relevant Parties. If the Relevant Parties cannot agree on a resolution within the timeframe referred to above, either Relevant Party may refer the Dispute to an Expert for determination.
- (c) (**Referral to Expert**) An Expert will be appointed as provided herein and will be instructed to determine the matter or matters in dispute in accordance with the Resolution Institute Expert Determination Rules, and the AAP Lender agrees to the following:
 - (i) the Expert determination will take place in Sydney, New South Wales, and each Relevant 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).
- (d) (**Compliance**) The AAP Lender must comply with the determination of the Expert, as applicable, and the determination will be final and binding on the Relevant Parties.
- (e) (**Process termination**) The Relevant Parties may collectively terminate the dispute resolution process by each Relevant Party giving notice to each other Relevant

Party that the Dispute is resolved at any time prior to the Expert giving notice to the parties of his or her determination of the Dispute in accordance with clause 5.2(c).

5.3 Urgent relief

- (a) Subject to clause 5.3(b), the AAP Lender must not commence court proceedings about a Dispute unless it has complied with this clause 5.
- (b) Any party may at any time apply to a court of competent jurisdiction for any equitable or other remedy for reasons or urgency, in relation to any claim that the AAP Lender has not complied with clause 2 of this Deed, despite anything contained in this clause 5.

5.4 Continued performance

The AAP Lender must continue to meet or perform any liability or obligations in compliance with this Deed relating to any issue in dispute, despite and during any dispute negotiation or determination being conducted under this clause 5.

6. Resignation from the Project

6.1 Voluntary resignation

- (a) The AAP Lender may, by giving no less than 60 Business Days' notice to the chairperson or a member of the Operating Committee, terminate its participation in the Project subject to the provisions of this Deed.
- (b) Resignation under this Deed has no effect on any obligations of the AAP Lender owed to an ASP under the ASP Engagement Terms and any other agreement between the AAP Lender and an ASP.

6.2 Resignation effect

- (a) Any resignation by a AAP Lender 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.
- (b) Subject to any applicable ASP Engagement Terms, the AAP Lender agrees that if it resigns from the Project, it will be entitled to receive the outcome of the Reviews and/or the Report(s) in respect of any Aggregator for which it has provided an Opt-In Notice, and paid its Opt-In Lender Fees, provided that:
 - (i) the AAP Lender is not in breach or default of this Deed, which has not been cured or remedied; and
 - (ii) the AAP Lender continues to be bound by the provisions in this Deed that are expressed to survive termination.

7. Termination or suspension for AAP Lender default

7.1 Material Default events

The AAP Lender is in default if it:

- (a) fails to rectify any breach of, or liability under, this Deed, within 14 days following the issuance of a Material Default Notice by the Operating Committee requiring

performance or rectification of such breach or default within that period or any longer period permitted by the Operating Committee; or

- (b) is the subject of an Insolvency Event.

7.2 Participant default suspension or termination

If the AAP Lender receives a Material Default Notice:

- (a) **(Rights suspension)** its rights to participate in the Project will, unless otherwise determined by the Operating Committee, be suspended until the Material Default is cured;
- (b) **(Suspension or termination)** if the Material Default is not cured or rectified within the time required by the Operating Committee, the Operating Committee may by notice terminate this Deed; and
- (c) **(Other liabilities not affected)** the suspension or termination of the rights of the AAP Lender by the Operating Committee does not affect the AAP Lender’s liability to pay all outstanding Opt-In Lender Fees and other monies payable under this Deed and the AAP Lender continues to be bound by its confidentiality obligations under this Deed.

7.3 Termination of the MoU

- (a) This AAP Deed will terminate automatically upon the termination of the MoU.
- (b) Termination of this Deed releases the AAP Lender from any further performance of any liability under this Deed but does not:
 - (i) affect any provision of this Deed expressed to operate or have effect after termination; or
 - (ii) have any prejudicial effect on any accrued right of the Parties or the ASP in relation to any breach or default under this Deed by the AAP Lender occurring before termination.
- (c) Termination of this Deed will not affect the rights of the AAP Lender under the applicable ASP Engagement Terms to receive the outcome of the Reviews and/or the Report(s) in respect of any Aggregator for which it has provided an Opt-In Notice, and paid its Opt-In Lender Fees, provided that the AAP Lender continues to be bound by the provisions in this Deed that are expressed to survive termination.

8. Notices

8.1 How notice is to be given

Each communication (including each notice, consent, approval, request and demand) to be given to the AAP Lender must be given as set out below (or as otherwise notified by the AAP Lender to an ASP from time to time):

AAP Lender name	Attention	Address (for hand delivery or delivery by courier or post)	Email address

[insert]	[insert] [confidential]	[insert] [confidential]	[insert] [confidential]
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8.2 When notice is taken to be received

Without limiting the ability of the AAP Lender 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; and
- (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).

8.3 Notices sent by more than one method of communication

If a communication delivered or sent under this clause 8 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 8.2.

9. General

9.1 Governing law

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

9.2 Jurisdiction

The AAP Lender irrevocably submits to the non-exclusive jurisdiction of the courts sitting in New South Wales, and the courts competent to determine appeals from those courts.

9.3 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 AAP Lender 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 the AAP Lender under this Deed is only effective and binding on that AAP Lender if it is given or confirmed in writing by that AAP Lender.
- (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.

9.4 Further acts and documents

The AAP Lender must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to the AAP Lender) required by law or reasonably requested by a Party or an ASP to give effect to this Deed.

9.5 No Assignment

The AAP Lender cannot assign, novate or otherwise transfer any of its rights or obligations under this Deed without the prior consent of each Party.

9.6 No representation or reliance

- (a) The AAP Lender acknowledges that no Party and / or ASP (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) The AAP Lender acknowledges and confirms that it does not enter into this Deed in reliance on any representation or other inducement by or on behalf of a Party.

9.7 Expenses

Except as otherwise provided in this Deed, the AAP Lender must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed.

9.8 Entire agreement

To the extent permitted by law, in relation to its subject matter, and subject to any changes to the Project notified to the AAP Lender by the Operating Committee from time to time, this Deed:

- (a) embodies the entire understanding of, and constitutes the entire terms of the AAP Lender's participation in the Project; and
- (b) supersedes any prior written or other agreement concerning the Project.

9.9 Representations

The AAP Lender represents and warrants to each Party that at any time during the continuance of this Deed:

- (a) **(Corporate status)** the AAP Lender is a corporation duly incorporated and validly existing under the law of the country or jurisdiction of its incorporation or registration;
- (b) **(Corporate powers)** the AAP Lender has the corporate power to enter this Deed;
- (c) **(Solvency)** no Insolvency Event has occurred in relation to it;
- (d) **(Legal compliance)** the execution or performance of this Deed by the AAP Lender does not contravene any provision of:
 - (i) the constitution of the AAP Lender;

- (ii) any agreement or document created or executed by the AAP Lender;
 - (iii) any law; or
 - (iv) any regulatory consent or licence from any governmental or public agency relating to the AAP Lender or its assets; and
- (e) **(Corporate compliance)** the AAP Lender 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.

9.10 Communications concerning the Project

The AAP Lender acknowledges and agrees that, save for any disclosure it is required to make by law or by a governmental authority, regulatory authority or other public agency, the AAP Lender must not issue or release any public statements to the media or any third party which relate to the Project, its participation in the Project or this Deed, without the prior written consent of each Party.

9.11 Indemnities

- (a) Subject to clause 3.3(b)(ii), each indemnity in this Deed is a continuing obligation, separate and independent from the other obligations of the AAP Lenders, and survives termination, completion or expiration of this Deed.
- (b) The AAP Lender acknowledges that it is not necessary for a Party or ASP to incur expense or to make any payment before enforcing a right of indemnity conferred by this Deed.
- (a) Subject to clause 3.3(b)(i), the AAP Lender must pay on demand any amount it must pay under an indemnity in this Deed.

10. Definitions and interpretation

10.1 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 Australian Credit Licence and an existing distribution agreement (or similar) with an Aggregator;
- (b) is not a Party;
- (c) has executed this Deed to enable it to request access to one or more Reviews, and this Deed has not been terminated; and
- (d) has been provided an acceptance notice by an ASP in accordance with clause 1.1 of this Deed.

AAP UJV means the unincorporated joint venture deed between the Parties to establish and implement the Project (and anything incidental or related thereto).

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 which elects to participate in the Project, as approved by the Operating Committee.

ASP means an assurance service provider appointed from time to time, and who may be replaced by the Operating Committee.

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.

Competition Protocol means the obligations in Error! Reference source not found. Attachment 4 that the Parties and AAP Lenders are bound by.

Confidential Information means (whether or not in material form and whether or not disclosed before or after the date of this Deed):

- (a) each Report, EOI and Opt-In Notice;
- (b) any information of whatever kind disclosed by an ASP or the AAP Lender, 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; 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).

Deed means this AAP Deed Poll.

Deep Dive Reviews has the meaning given in clause 1.3(a).

Dispute has the meaning given in clause 5.1.

Effective Date means the date on which the AAP UJV is executed.

EOI has the meaning given in clause 1.1(b)(ii).

Expert means the person appointed as contemplated by clause 5.2(c)(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.

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).

Lenders means 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 the AAP Lender.

Material Default by or in relation to the AAP Lender Party, means the occurrence, without the prior consent of each Party, of any breach or default specified in clause 7.1, whether or not within the power or control of that Party.

Material Default Notice means a written notification by the Operating Committee or an OC Representative to the AAP Lender of a Material Default which specifies the nature of the breach of, or default under, this Deed by the AAP Lender.

OC Representative means any member of the Operating Committee.

Operating Committee means:

- (a) the Operating Committee created by the Parties to the AAP UJV; or
- (b) the OC Representatives acting collectively.

Opt-In Lender has the meaning given in clause 1.6(a).

Opt-In Lender Fees has the meaning given in clause 1.4(a).

Opt-In Notice has the meaning given in clause 1.6(a).

Party or Parties means:

- (a) as at the date of this Deed, each of the Parties to the AAP UJV; and
- (b) any future party to the AAP UJV.

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 has the meaning given in the Background to this Deed.

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 the MoU.

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, will address the matters stated in Schedule 2 and such other matters as may be determined from time to time by 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 1.3(b).

Targeted Reviews has the meaning given in clause 1.3(c).

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) a reference to **\$** or **dollar** is to Australian currency; and

(k) **includes** in any form is not a word of limitation.

10.2 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.

Executed as a deed poll in favour of all Parties from time to time.

[Note: This Deed Poll may be signed electronically if the parties signing are in NSW, Queensland or Victoria when they sign this deed. Otherwise wet ink signatures will be required.]

Executed by **[insert Applicant's name]** in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director

Full name of director who states that they are a director of **[insert Applicant's name]**

Signature of company secretary/director [~~delete position as appropriate~~]

Full name of company secretary/director [~~delete position as appropriate~~] who states that they are a company secretary/director [~~delete position as appropriate~~] of **[insert Applicant's name]**

Schedule 1 – Parties to the AAP UJV and ASPs

Part A – Parties

The Commonwealth Bank of Australia (ABN 48 123 123 124) of Level 8, 201 Sussex St, 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)

Part B – ASPs

[Insert details]

Draft 8 December 2023

Schedule 2 – Matters to be Addressed in each Report

[insert amended Review Scope]

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 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

1.6 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.

- 1.7 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.*
- 1.8 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.
- 1.9 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.
- 1.10 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**).
- 1.11 These guidelines are provided to the Parties and AAP Lenders as general guidelines only and are not a substitute for legal advice.
2. Information and Matters which can be shared and discussed by the Parties and AAP Lenders
- 2.1 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.
- 2.2 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.
- 2.3 The Program will be designed to report on the systems, processes and policies 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.

- 2.4 Each ASP will be instructed to provide a Report only to Opt-in Lenders, which will address the following matters about an aggregator's systems, processes and policies 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.
- 2.5 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.
- 2.6 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.
- 2.7 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.
- 2.8 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.
- 2.9 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.

3. Criteria for OC Representatives

- 2.10 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.

4. Process for Operating Committee and Party Discussions

- 2.11 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.
- 2.12 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.
- 2.13 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.
- 2.14 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.
- 2.15 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.
- 2.16 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.
- 2.17 Decisions as to selection of successful ASPs will be made by the Operating Committee.
- 2.18 The costs of Reports / fees payable to an ASP are to be borne by Opt-In Lenders, in accordance with the UJV deed and AAP Lender Deed.
3. Information and matters which cannot be shared and discussed by the Parties and AAP Lenders

- 3.1 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.
- 3.2 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.
- 3.3 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.
- 3.4 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.

4. Confidentiality

4.1 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).

- 4.2 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.
- 4.3 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 _____

