



## Specific security agreement (marketable securities)

**Description:** This is a precedent specific security agreement (including drafting notes) for the granting of security interests over personal property of the Grantor that is marketable securities, including shares

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## Specific security agreement (m

*Author's note:*

*This precedent has been prepared following the Property Securities Act 2009 (2009) (PPSA) and the Corporations Act.*

*This precedent is intended to be used in connection with the granting of security interests over specific types of collateral securities". It is intended to operate as a standard form of agreement (such as a loan agreement is not required). This document is intended to be used in connection with the granting of security interests over marketable securities (such as a mortgage of shares).*

*This document is similar to a specific security agreement over other types of personal property (eg motor vehicle) or a general security agreement that deals with a broader range of collateral (various collateral)". However this precedent is intended to be used in connection with the granting of security interests over marketable securities (such as a mortgage of shares).*

*It includes a general definition of 'marketable securities' under section 92 of the Corporations Act 2001 and a definition of 'investment instruments' as wide as the equivalent definition under the Corporations Act. Section 10 of the PPSA defines 'investment instruments' to include shares, debentures, stocks, bonds, derivatives, investment schemes and units in shares in a body corporate or foreign exchange contracts under this type of contract (which may dictate other requirements).*

*Whilst the document has not been drafted to include provisions that particular circumstances require a wider definition of 'marketable securities' however does cover the PPSA definition of 'investment instruments' (including derivatives and foreign exchange contracts) and 'investment instruments'.*

*Where you are dealing with securities in an unincorporated trust (for example) the following matters are relevant:*

- *you will need to review the constitution of the trust to ensure that the transfer of shares (as this will restrict a secured party's preemptive rights provisions that require the consent of the shareholders prior to sale. These restrictions are not covered by the grantor's constitution. Note however that the document is intended to be used in connection with the granting of security interests over all of the assets of the grantor and the restrictions are irrelevant as the secured party is not a shareholder.*
- *ensure that the grantor has 'control'. Section 92 of the Corporations Act 2001 provides that particular collateral is perfected if the security interest is enforceable against a third party. This is achieved by the grantor holding investment instruments or intermediated securities. Sections 26 and 27 discussed below.*
  - *for investment instruments evidence of control is achieved if the grantor issues share certificates or a trust deed that gives the grantor control of 'investment instruments'.*

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- (a) the secured party has possession
- (b) the secured party (or its authorised representative)
  - transfer the certificates to it
  - otherwise deal with the certificates

The secured party must obtain from the issuer the share, trust or other certificates but blank transfer forms and blank transfer forms if it acquires a security by way of a

- o for investment instruments that are uncertificated, the secured party must also
  - (a) there is an agreement in force between the issuer and the secured party (or its authorised representative) that the issuer (or its authorised representative) is able to initiate or vary the investment instrument could be made under the PPSA).

- possession of instruments may also be relevant to the secured party's rights under section 10 of the PPSA as 'rights of a person in possession of investment instruments that are not certificated'. The secured party (or its authorised representative) has possession of the certificate if the certificate specifies the person (possessor) who is entitled to exercise the rights under the investment instrument may be registered or otherwise dealt with (section 26(3)).

Where you are dealing with securities that are listed on a securities exchange, the circumstances in which a secured party has possession of securities are set out in section 10 of the PPSA as 'rights of a person in possession of securities'. Control can be gained by the secured party or its authorised representative is able to initiate or vary the securities by way of messages or other electronic communications by the issuer or otherwise dealt with (section 26(3)).

In relation to securities listed on ASX, the secured party will also need to consider the CHESSE sponsorship agreement which includes provisions relating to the secured party. You will also need to consider the ASX rules (you should be aware that a CHESSE sponsorship agreement is an ASX participant's obligation to deal with messages or other communications).

Where the authorised representative is a third party, the secured party will need to require additional provisions to safeguard the secured party from dealing with the securities and the arrangements available to the secured party and the arrangements available to the secured party.

For securities not listed on a securities exchange, the secured party will usually fall within the scope of the PPSA to ensure that you comply with the 'control' requirements.

# Specific security agreement (mar

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**Deed** made on *[date]*

**Parties** *[Name of Grantor]* ACN *[insert]* of  
*[Name of Secured Party]* ACN *[ins*

**It is agreed**

## **1 Definitions and interpretation**

### **1.1 Definitions**

In this document the following definitions apply:

- (1) **Accounting Standards** means the accounting standards applicable under the applicable law or otherwise generally accepted practice;
- (2) **Accounts** means profit and loss accounts, balance sheets, statements, reports and notes, including any schedules, attached to or intended to be read with the accounts or balance sheets;
- (3) **After-acquired Securities** means securities that the Party acquires an interest (whether legal or equitable) in after the date of this document other than the Party;
- (4) **ASX Rules** means the rules relating to the operation of the Settlement Operating Rules as published by ASX;
- (5) **Attorney** means any attorney (including a solicitor) named in this document and any person who by deed or otherwise acts as an attorney;
- (6) **Authorisation** includes any consent, approval, authorisation, document, notarisation, certificate, exemption prescribed by law or regulation or otherwise required;
- (7) **Authorised Officer** means:
  - (a) in relation to the Grantor the secretary of the Grantor or the Secured Party as an authorised officer to the Secured Party as an authorised officer in connection with notices or documents in connection with the deed, when accompanied by specimen powers of attorney;
  - (b) in relation to the Grantor the secretary of the Grantor or the Secured Party as an authorised officer to the Secured Party as an authorised officer in connection with notices or documents in connection with the deed, when accompanied by specimen powers of attorney;
  - (c) in relation to the Secured Party the secretary of the Secured Party whose title or office includes secretary, company secretary, or any other person appointed as an authorised officer in connection with notices or documents in connection with the deed, when accompanied by specimen powers of attorney;

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- (8) **Business Day** means a day that is a Business Day in the Relevant Jurisdiction;
- (9) **Certificate** means the certificate of Marketable Security and **Certificate**
- (10) **CHESS** means the Clearing House
- (11) **Collateral** means:
- (a) Present Securities;
  - (b) After-acquired Securities;
  - (c) New Rights; and
  - (d) Documents of Title;
- (12) **Collateral Security** means any document, instrument, security, or other agreement in favour of the Secured Party, any Guarantee in favour of the Secured Party, any agreement at any time created or entered into by the Secured Party or the Secured Money;
- (13) **Constitutional Documents** means:
- (a) the constitutional documents of the Company;
  - (b) [OPTIONAL: the constitutional documents of the Company in relation to a trust of which the Company is a trustee]; and
  - (c) any other agreement between the Company and the Secured Party, including any agreement relating to the acquisition of Securities;
- (14) **Controller** has the meaning given in the Companies Act 2006;
- (15) **Corporations Act** means the Corporations Act 2006;
- (16) **Documents of Title** includes:
- (a) documents of title and negotiable instruments;
  - (b) each Transfer; and
  - (c) any Certificate, notice of endorsement (whether negotiable or not) that the Secured Party has issued under this document;
- (17) **Event of Default** means any event of default or other event otherwise specified in this document;
- (18) **Government Agency** means any government, semi-governmental or judicial entity or other organisation established under applicable law;
- (19) **Guarantee** means any guarantee, indemnity, letter of comfort or offer (whatever called and of whatever nature)

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## **2 Security**

### **2.1 Grant of security**

The Grantor grants to the Secured Party the payment of the Secured Money and the obligations to the Secured Party at any time.

### **2.2 Consideration**

The Grantor acknowledges and confirms the Secured Party's Security Interest in the C Transaction Document or by providing or accommodation to a Transaction Party.

### **2.3 Attachment**

The Grantor acknowledges and confirms

- (1) nothing in any Transaction Document or Security Interest under this document attached to section 19(2) of the PPSA; and
- (2) it has not made any other agreement or attachment of a Security Interest between the Grantor and the Secured Party.

### **2.4 No subordination**

The Grantor acknowledges that nothing in this agreement to subordinate any Security Interest in favour of any person.

### **2.5 Priority**

The parties acknowledge that the Security Interest has priority over all other Security Interests in relation to all Secured Money, including future advances.

### **2.6 Security Interest continues**

If the Grantor disposes of or otherwise deals with any Transaction Document, the Grantor and the Secured Party agree that

- (1) the Secured Party has not:
  - (a) authorised any disposal or dealing of the Security Interest held by the Grantor;
  - (b) agreed that any disposal or dealing of the Security Interest held by the Grantor is subject to the Security Interest held by the Secured Party.
- (2) the Secured Party's Security Interest continues to exist in relation to the Transaction Document or dealing or agreement to deal.

## **3 Grantor must pay Secured Money**

The Grantor must pay the Secured Money in accordance with the Transaction Documents.

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## 4 Dealing with Collateral

### 4.1 Permitted dealing

Until an Event of Default occurs or the Collateral Representative's name:

- (1) but subject to the provisions of article 1.1, the Secured Party may receive and retain free of the Secured Party's claims (including returns on capital) all dividends and interest payments from any New Rights distributed to the Grantor;
- (2) the Grantor:
  - (a) may attend meetings and exercise voting rights in connection with the Release of the Collateral;
  - (b) must not vote in favour of or exercise any rights of the Grantor [*OPTIONAL*] which would or adversely affect the value of the Collateral or the rights attached to the Collateral.

### 4.2 Restricted dealing

- (1) Except as specified in clause 4.1, the Grantor must not or must not permit the Secured Party, the Grantor must not or must not permit (whether by one transaction or a series of transactions, voluntary or involuntary) any of the following:
  - (a) create or attempt to create a security interest over the Collateral other than the Secured Party;
  - (b) sell, assign, transfer, decedent, or otherwise dispose of the Collateral; or
  - (c) give control or possession of the Collateral to the Secured Party.
- (2) If a proposal is made or action commenced which would or will convert any Certificated Marketable Securities the Grantor must:
  - (a) immediately notify the Secured Party and
  - (b) at the request of the Secured Party to enforce and protect its rights, including:
    - (i) entering into a special assignment agreement with the Secured Party in a form approved by the Secured Party including a provision that the Collateral not be dealt with without the consent of the Secured Party; or
    - (ii) transferring those Securities to the Secured Party that term is defined in the Secured Party.

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4.3 **Creation of other Security Interest with**

- (1) Subject to **clause 4.3(2)** if a law en Security Interest (other than a Per Collateral without the consent of t to require the Grantor to obtain th allowing that other Security Intere
- (2) If the Grantor intends to create or **clause 4.3(1)** the Grantor agrees t
  - (a) notify the Secured Party a creating that Security Inte
  - (b) if the Secured Party so re accordance with **clause 4.** request by the time the ot accommodation which wo discretion of the Secured Document.
- (3) Nothing in this **clause 4.3** limits cl:

4.4 **Priority agreement**

- (1) If requested by the Secured Party other Security Interest enters into Secured Party to regulate the prio and any other Security Interest cr Collateral.
- (2) The Grantor agrees to comply with connection with the Collateral.

4.5 **Default**

- (1) If an Event of Default occurs and
  - (a) *[ALTERNATIVE 1: the rig cease] [ALTERNATIVE 2 contained in the other Tra*
  - (b) the Secured Party is entit
    - (i) receive any New t accordance with c procure that all div Collateral are paid
    - (ii) attend meetings a connection with th
  - (c) the Grantor must at its ow
    - (i) execute proxies a require to enable rights; and

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### 7.3 Grantor's undertakings

The Grantor must:

#### (1) Accounts

prepare and keep books and Accounts in a demand, make available for inspection and Accounts of the Grantor;

#### (2) registration

- (a) give to the Secured Party a
  - (i) enable the Secured Party to perfect its Security Interest;
  - (ii) ensure that it continues to be perfected;
- (b) at its own cost, immediately register the Security Document with any Government authority to perfect the Security Interest and to give priority of the Secured Party.

#### (3) information

give to the Secured Party:

- (a) information and reports as to the financial condition of the Grantor;
- (a) promptly on being notified that a claim is given to a debtor of a Transaction, if the debtor may owe money to a Transaction, to advise the Secured Party if it is claimed that the Transaction is a claim against the Collateral;
- (b) promptly on demand:
  - (i) full particulars of all claims against the Collateral;
  - (ii) any other information in the possession of the Grantor that in the opinion of the Secured Party is relevant to the Collateral or the Transaction;
  - (iii) a certificate signed by a director and secretary of the Grantor, certifying that the Secured Party has no Event of Default has occurred, and that the Secured Party has no particulars of the a claim against the Collateral to remedy it;
- (c) promptly on becoming aware of any steps to register or register the Collateral;
- (d) [OPTIONAL: at the time the Collateral is sent or given by the Grantor to the Secured Party, creditors or any class of creditors, the Secured Party, Commission, licence holder]

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#### 7.4 **Rights of Secured Party**

Clause 7.2 is not to be construed as negating the rights of the Secured Party under section

### **8 Default**

#### 8.1 **Events of Default**

Each of the following events listed in this section (which are wholly or partly within the control of the Grantor):

(1) **obligations under Transaction Documents**

a Transaction Party fails to:

- (a) pay or repay in accordance with the Transaction Documents any part of the amount due;
- (b) comply with any of its obligations under any condition of any warranty or agreement in connection with any Transaction Document.

(2) **misrepresentation**

a representation, warranty or statement made in a Transaction Document, or in a document incorporated by reference into a Transaction Document, is not true in all material respects when made or repeated;

(3) **Insolvent**

a Transaction Party becomes Insolvent;

(4) **enforcement against assets**

a Security Interest becomes enforceable or other execution is levied or enforced against the assets of a Transaction Party ;

(5) **reduction of capital**

without the prior consent in writing of the Grantor, a Transaction Party reduces its capital (including a purchase of shares or redemption of redeemable Marking Instruments) in breach of section 254N(1) of the Corporations Act 2006;

(6) **investigation**

an investigation into all or part of the affairs of a Transaction Party is conducted under any law in circumstances that are likely to result in the enforcement of a Security Interest;

(7) **Related Body Corporate**

anything referred to in the preceding paragraphs has a substantially similar effect, occurs or is likely to occur in relation to a Transaction Party;

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**Schedule 1**

- Item 1      *[OPTIONAL: Issuer*  
*[Name of Issuer] ACN      ]*
  
- Item 2      **Present Securities**  
  
# Grantor's interest in the Marke
  
- Item 3      **Relevant Jurisdiction**  
  
# Jurisdiction #
  
- Item 4      **Trust and Trust Deed**  
  
*[Not applicable/The # name of tr*  
*of Settlement # (Trust Deed) da*  
*settlement #]*  
  
*[Note: include this item if there is*  
*appropriate]*
  
- Item 5      **Address for service of each pa**  
  
The Secured Party:      # Nar  
  
Address:      # Sec  
  
  
Facsimile:      # facs  
  
Email address      # ema  
  
Attention:      # atte  
  
  
The Grantor:      # Nar  
  
Address:      # Gra  
  
  
Facsimile:      # facs  
  
Email address      # ema  
  
Attention:      # atte



**Executed** as a deed and delivered on the date

Executed by **# name of Grantor #**  
ACN in accordance with  
section 127 of the *Corporations Act 2001*:

..... D  
Director/Company Secretary

..... N  
Name of Director/Company Secretary  
(BLOCK LETTERS) (B

..... #  
Signed and sealed for and on behalf of **#**  
**name of Secured Party #** ACN by a  
its attorney **# name of attorney #** under  
power of attorney number **#** power of  
attorney number **#** in the presence of:  
.....

.....  
Signature of witness

.....  
Name of witness (BLOCK LETTERS)

.....  
Address of witness

[*Note: this is a standard power of attorney executed  
if appropriate.*]

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