



Over Fifty Seniors Equity Release Pty Ltd

ABN 12 095 362 388

Seniors Home Equity Release Loan Terms and Conditions

IMPORTANT

BEFORE YOU SIGN THIS CONTRACT:

- you must read and make sure you understand both the "Seniors Home Equity Release Loan - Loan Schedule" and this booklet. If you have any questions ask before you sign.
- you must obtain independent legal advice about this loan.

We also strongly recommend that before you sign this *contract*:

- you obtain independent financial advice from your accountant or independent financial adviser;
- if you receive any government income support payments, you seek advice from an accountant or an independent financial adviser on the impact of this loan on your entitlements.

This booklet does not contain all of the information we must give you before you enter into the *contract*. The rest of the information is in the document called "Seniors Home Equity Release Loan - Loan Schedule". The *contract* consists of both documents. They should be read together.

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1 WHAT WE LEND

- 1.1 We agree to lend you the *amount of credit*, subject to clauses 1.2 and 1.3 below.
- 1.2 However, we will not lend the *amount of credit* until we have received each of the following in a form satisfactory to us:
- each *security* and any documents we require in relation to any *security* or the *security property*; and
 - evidence that there is sufficient insurance for an amount acceptable to us current over the *security property* with our interest as mortgagee noted on the policy; and
 - any report (including but not limited to a credit report) or valuation we require; and
 - any certificate of independent advice from a solicitor or declaration from you in relation to any such advice we require; and
 - any certificate of financial advice from a financial adviser we require; and
 - any pre-nuptial agreement to which any of you is a party; and
 - evidence that you have paid or have made satisfactory arrangements to pay any applicable conveyance or transfer stamp duty or similar impost in connection with each *security*; and
 - any certificate of occupancy from a residential care facility that we require; and
 - any certified financial report in respect of you we require; and
 - approval from our lender's mortgage insurer (if any); and
 - any permits, approvals or authorisations we require; and
 - any other document or information we require; and
 - payment of any credit fees and charges that are payable by you on or by the *settlement date*.
- 1.3 If:
- (a) any of the items listed at clause 1.2 above are not paid or are not satisfactory to us; or
 - (b) your circumstances, financial condition or affairs have changed since the *disclosure date* (including if in our opinion you have become incapacitated); or
 - (c) any *security* has been withdrawn or is otherwise ineffective or is not satisfactory to us; or
 - (d) the *security* is not a first registered mortgage over real property; or
 - (e) any information which you gave to us or which we have about you or any *security* is not correct, is misleading because of something you did not tell us or has changed since we obtained it; or
 - (f) we think that the value of the *security property* has, or may have, reduced; or
 - (g) you are in breach under this *contract* or a *security*; or
 - (h) you are *insolvent*; or
 - (i) you have not obtained any of the *amount of credit* within 120 days of the *disclosure date*, we do not have to lend all or any of the *amount of credit* and can end this *contract* before we have lent you the *amount of credit* or any of them.
- 1.4 We can debit all or any part of the *amount of credit* to your *loan account*. We can debit it (so that you pay interest charges on the amount) on the day we lend you the amount.
- 1.5 If this *contract* is ended you must still pay all amounts you are required to pay up to that time under this *contract*. If this *contract* is ended before you have obtained any of the *amount of credit* you must also pay all amounts you are required under this *contract* to pay on the *settlement date* except for fees and charges in respect of any of our *costs* we no longer have to pay.

2 THINGS YOU MUST TELL US, GIVE US OR DO

- 2.1 You must tell us immediately if at any time:
- (a) there is a material change in your personal circumstances (including if you separate, divorce or remarry) or in your financial condition or affairs from those which you have told us about; or
 - (b) anything happens which makes any of the statements made by you in this *contract* or in any application for this *contract* untrue or misleading; or
 - (c) anything happens which reduces the value of the *security property* or which has, or might have, a material adverse effect on the *security property*; or
 - (d) you are planning to sell the *security property*; or
 - (e) if, at the time you enter into this *contract*, the *security property* is your principal place of residence, the *security property* no longer is your principal place of residence.
- You must tell us by giving us a notice in writing (such as by sending us a letter).
- 2.2 You must give us any information or documents we ask for about your personal or financial circumstances or any *security property* within the time we specify when we ask for it, or, if we do not specify a time, as soon as possible after we ask for it.

- 2.3 If the *security property* is your principal place of residence at the time you enter into the *contract*:
- (a) you must complete and return to us within 14 days of our request a certificate of occupancy, in a form requested by us, signed by you, which confirms that the *security property* continues to be your principal place of residence. If you cannot truthfully sign that certificate, you must tell us immediately;
 - (b) you authorise us to conduct an inspection of the *security property* in order to determine whether the *security property* is your principal place of residence at any time we reasonably suspect that the *security property* may not be your principal place of residence. Unless it is an emergency, we will give you reasonable notice of the inspection.
- 2.4 If the *security property* is not your principal place of residence at the time you enter into the *contract*, you must complete and return to us within 14 days of our request a certificate, in a form requested by us, signed by you, which confirms that the *security property* has not been passed to your estate.
- 2.5 If you die, your executor or legal personal representative must provide us with evidence satisfactory to us (in our absolute discretion) that you have died and that the person is your executor or legal personal representative, including a copy of your last will and testament, and any order in connection with your last will and testament, evidencing that probate has been granted in respect of that will. Subject to the requirements of any *law*, we will not provide a discharge of any *security* or consent to any transfer of the *security property* to, or as directed by, your executor or legal personal representative until we have received that evidence and the *total amount owing* has been paid.

3 OBTAINING THE CREDIT

- 3.1 You must obtain the *amount of credit* as follows:
- (a) Where the *annual percentage rate* is or includes the *Seniors Home Equity Release Fixed Rate* at a particular date, in one lump sum on the *settlement date*.
 - (b) Where the *annual percentage rate* is only the *Seniors Home Equity Release Variable Interest Rate*, in accordance with a direction from you in a form satisfactory to us to pay the *amount of credit*:
 - (i) as an initial drawdown on the *settlement date*;
 - (ii) in monthly payments for a period of not less than the minimum time period and not more than the maximum time period that we determine from time to time; or
 - (iii) for part of the *amount of credit*, which we describe as a *Cash Reserve*, at a time or times to be specified by you (although any amount must be drawn down within 15 years of the *settlement date* or such longer period as we determine); or
 - (iv) as a combination of some or all of (i), (ii) and (iii) above.
 - (c) Where the *annual percentage rate* is the *Seniors Home Equity Release Fixed For Life Rate* at a particular date, in accordance with a direction from you prior to the *settlement date* in a form satisfactory to us to pay the *amount of credit*:
 - (i) as an initial drawdown on the *settlement date*; or
 - (ii) in fixed monthly payments for a period of not less than the minimum time period and not more than the maximum time period that we determine prior to the *settlement date*; or
 - (iii) as a combination of (i) and (ii) above.

If the *annual percentage rate* is the *Seniors Home Equity Release Fixed For Life Rate* at a particular date and you direct us to pay the *amount of credit* in fixed monthly payments, then on and after the *settlement date* you may not direct us to vary or stop those monthly payments.
- 3.2 We will only provide you with monthly payments in accordance with a direction to pay until you have obtained all of the *amount of credit* or, if you have elected to have a *Cash Reserve*, until you have obtained all of the *amount of credit* less the *Cash Reserve*. If you obtain the *amount of credit* other than as one lump sum, each *amount of credit* drawn down, including any monthly payment, cannot be less than the minimum amount as determined by us from time to time.
- 3.3 We do not charge interest charges on any *amount of credit* until we have lent that amount to you. This means you will not be charged interest charges on any undrawn sums in the *Cash Reserve* or any undrawn monthly payments.

- 3.4 We will pay the *amount of credit* only as follows:
- (a) if this *contract* is entered into by you under a Power of Attorney, by bank cheque to, or by electronic funds transfer into a bank account in Australia of, a residential care facility specified by you; or
 - (b) otherwise by bank cheque to you or by electronic funds transfer into a bank account in Australia in your name or, if there is more than one of you, in either or both of your names, as directed by you.
- 3.5 Notwithstanding clause 3.4 above, we may pay all or part of the *amount of credit* to a person or organisation as directed by you in order to settle an existing debt that you have with that person or organisation.

4 INTEREST CHARGES

- 4.1 Interest charges for each day are calculated on a daily basis by applying the *daily percentage rate* to the *daily balance*.
- 4.2 We can debit interest charges to your *loan account* monthly on the last day of each month. We can also debit interest charges to your *loan account* at the following times:
- (a) immediately before we credit to your *loan account* a payment that equals or exceeds the *loan account balance* at that time; and
 - (b) on the day the *total amount owing* becomes due under clause 13 below; and
 - (c) at the end of the *loan term*.
- 4.3 The amount of interest charges debited to your *loan account* will comprise the sum of interest charges calculated for each day in the period commencing on:
- in the case of the first interest charge debit, the *settlement date*;
 - otherwise, the day following the last day for which an interest charge was last debited;
- and ending:
- where the interest charge debit takes effect earlier than immediately before the end of the day on which it is debited, the day before the day on which the interest charge is debited;
 - otherwise, the day on which the interest charge is debited.
- 4.4 We can change the *annual percentage rate* at any time (except we will not change the *annual percentage rate* if it is the *Seniors Home Equity Release Fixed For Life Rate* or change the *annual percentage rate* during a *fixed rate period*). If any *law* regulates that change, we may only make the change to the extent permitted by, and subject to, the requirements of that *law*.
- 4.5 You can find out the current *annual percentage rate* under this *contract* or any current reference rate under this contract by telephoning us or by visiting our website.

5 FEES AND CHARGES

- 5.1 You must pay to us the following fees and charges (which are authorised by this *contract*):
- *government charges*, and they are payable when they are debited to your *loan account*; and
 - the credit fees and charges set out in the *Schedule*, and they are payable at the times set out in the *Schedule*.
- 5.2 We can debit these fees and charges to your *loan account* when they are payable or at any time after that.
- 5.3 We can debit the *government charges* to your *loan account* when the receipt or withdrawal to which those charges relate occurs.
- 5.4 We can change the fees and charges. If any *law* regulates that change, we may only make the change to the extent permitted by, and subject to, the requirements of that *law*. We can also change the *contract* to introduce new credit fees and charges (see clause 17 below).

6 WHAT YOU OWE US

- 6.1 Once we debit an amount to your *loan account*, (if it is not already owed) you owe us that amount.

7 PAYMENTS DURING A FIXED RATE PERIOD

We may charge you an Early Payment Adjustment Fee if:

- (a) during a *fixed rate period*, you make a payment (including where you pay out this *contract*) or the *annual percentage rate* is changed by agreement to another type of rate; or
- (b) your *annual percentage rate* is the *Seniors Home Equity Release Fixed For Life Rate* as at a particular date and you make a payment (including where you pay out the *contract*), other than as a result of a sale of the *security property* after the *borrower* (or if there is more than one, the last *borrower*) dies, or the *annual percentage rate* is changed by agreement to another type of rate.

However, we will only charge you an Early Payment Adjustment Fee to the extent we estimate we make a loss as a result of the payment or the change. We calculate this loss as the amount we have to pay to break or vary the funding arrangements put in place to provide you with the relevant *annual percentage rate* under this *contract* (plus an administrative charge of \$50, which is set out in the *Schedule*).

The amount of any Early Repayment Adjustment Fee payable will vary depending on:

- the size of your payment or, in the case of a change to the type of your *annual percentage rate*, the size of your *loan account balance* at the time of the change;
- the *expected remaining loan term* at the time of the payment or change; and
- the amount by which relevant interest rates have changed since the start of your *fixed rate period* or since the date on which the *Seniors Home Equity Release Fixed For Life Rate* first applied.

If you ask us in writing, we will give you a statement setting out our calculation of our loss as a result of the payment or change. We are not obliged to pay you any early repayment benefits in any circumstances.

WARNING

The amount of the Early Payment Adjustment Fee could be substantial, particularly if interest rates fall. You should contact us for an estimate, or the amount, of the Early Payment Adjustment Fee if you are considering doing either of the things in (a) or (b) above.

8 REPAYMENTS

- 8.1 You may pay all or part of the *total amount owing* at any time. However, if you do so fees may apply - see clause 7 above.
- 8.2 You must pay the repayment set out in the *Schedule* and it must be made at the time set out in the *Schedule*.
- 8.3 You must make the repayment in the manner we specify from time to time.
- 8.4 We do not treat a payment as made until we credit it to your *loan account*.

9 VALUATIONS

- 9.1 We can obtain, and you authorise us to enter the *security property* to obtain, a valuation of the *security property* from an external valuer of our choice:
 - (a) every 3 years; and
 - (b) after fifteen years from the *settlement date*, every twelve months; and
 - (c) at any time we reasonably suspect that the value of the *security property* may have, or has, decreased.We can debit the cost of any such valuation to your *loan account*. However, if we obtain a valuation of the *security property* more frequently than every three years, we may not ask you to pay for the valuation (unless we have obtained the valuation because we reasonably suspect that the value of the *security property* may have, or has, decreased). We will give you at least 2 weeks notice of the date of inspection unless we reasonably believe that urgent action is necessary to protect the *security property*.
- 9.2 Any valuation or report we obtain is for our benefit, not yours. You may not rely on it.
- 9.3 We do not make any promises or guarantee about:
 - (a) the value of the *security property*; or
 - (b) the condition or state of repair of the *security property* or its permitted use.

- 9.4 The valuer is not our agent for the purposes of any valuation or report. The valuer is an independent contractor and we do not make any representation that the valuation or report about the *security property* is correct in any respect. To the extent permitted by *law*, we are not responsible for any valuation, or report about the *security property*.

10 SELLING SECURITY PROPERTY

- 10.1 You must notify us as soon as practicable after you decide to sell or transfer, and in any event before you sell or transfer, any *security property*.
- 10.2 You must not sell or transfer any *security property* without first obtaining our written consent. We will not unreasonably withhold our consent. We may attach reasonable conditions to our consent.
- 10.3 If the price for which you propose to sell the *security property* is less than the *total amount owing*, we may obtain, and you authorise us to enter the *security property* to obtain, a current valuation from any external valuer of our choice and we can debit the cost of that valuation to your *loan account*.
- 10.4 You may seek our written confirmation that the sale of the *security property* to a particular person for a particular amount is, in our opinion, an arms length orderly sale. We do not have to give our confirmation but we will not unreasonably withhold our confirmation.

11 APPLICATION OF PAYMENTS

- 11.1 Payments received by us under the *contract* may be applied by us to any amounts you owe us under the *contract* in any order we determine.

12 INCONSISTENCY

- 12.1 The *Schedule, Terms and Conditions* and any *security* given by you set out the entire agreement between you and us. They override any representations made by us before you entered into the *contract*.
- 12.2 If there is any conflict or inconsistency between the *Schedule, Terms and Conditions* and any *security*, those documents will prevail in that order to the extent of the inconsistency.

13 DEFAULT AND ENFORCEMENT

- 13.1 You are in default if:
- (a) you do not pay, on or before its due date for payment, any amount payable under this *contract*; or
 - (b) you are in breach of any other provision of this *contract*; or
 - (c) you become *insolvent*, or steps are taken to make you so; or
 - (d) you or another *person* gives us incorrect or misleading information in connection with this *contract*, a *security* or a *security property*; or
 - (e) we reasonably believe you or another *person* has acted or may act fraudulently in connection with this *contract*, a *security* or a *security property*; or
 - (f) you give a *security interest* over the *security property* to another person without our prior written consent; or
 - (g) you are in default under a *security* or any other *security interest* that has been given to us by you; or
 - (h) you are in default under any other credit contract you have entered into with us; or
 - (i) you do anything that materially reduces the value of the *security property*; or
 - (j) a power of sale arises under any *security interest* over any *security property*; or
 - (k) you sell, or propose to sell, the *security property* for an amount that is less than the *total amount owing* and, in our opinion, that sale is not an arms length orderly sale; or
 - (l) at any time it is unlawful for you to perform any of your obligations under the *contract* or any *security*.
- 13.2 If you are in default, subject to any *law* (including requirements as to notice), the *total amount owing* automatically becomes due and payable.
- 13.3 You agree to pay us all reasonable enforcement expenses we reasonably incur arising from any default under the *contract* or any *security*. We can debit these amounts to your *loan account*.

14 SUBSTITUTING SECURITY

- 14.1 You may ask us in writing to allow you to substitute a new *security interest* for a *security*. We do not have to agree but, if we do, we will almost certainly impose conditions.
- 14.2 Even if we agree to the substitution, the *security* to be replaced is not affected until (and then only to the extent that) we give a written discharge for it.

15 SECURITY

15.1 For any *security* that is a mortgage:

- you must ensure the mortgagor's obligations under the mortgage are performed;
- any expenses incurred by us in preserving or maintaining property subject to that mortgage (including insurance, rates and taxes payable for the property) after a breach occurs and which are authorised by the mortgage will be an enforcement expense under clause 13; and
- you must ensure that insurance over that property for the following amount of cover and that is otherwise acceptable to us is maintained and ensure that our interest as mortgagee is noted on the policy:
 - (a) if the *security property* is part of a *shared scheme* anywhere other than Victoria, an amount of cover of at least the total amount secured by all mortgages and charges over the *security property*;
 - (b) otherwise, an amount of cover of at least the full insurable value of the *security property* and any buildings situated on it on a replacement and reinstatement basis (unless, in the case of a property which is part of a *shared scheme* in Victoria, the *governing body* has insured the *security property* and the shared property, in which case you must take out insurance for the sum by which the *total amount owing* exceeds the amount of the *governing body* insurance attributable to the *security property* and its share in the shared property).

If you do not, we may take out that insurance on your behalf and any premium we pay will be an enforcement expense under clause 13. If we do take out that insurance, we will take it out for an amount of cover equal to the replacement value of any buildings situated on the *security property* as specified in the most recent valuation of the *security property* undertaken by an external valuer or, where the *security property* is part of a *shared scheme* anywhere other than Victoria, the *total amount owing*. We make no warranty as to whether this is equal to the replacement value of those buildings.

15.2 You must give us copies of all insurance policies and any other evidence of insurance cover we require within 14 days of us asking for them.

16 STATEMENTS

We will send you a statement of account at least once every six months. However, we will not send you a statement of account if we are not required to do so by *law*, including if:

- no amount was credited or debited to your *loan account* during the statement period and your *loan account balance* is less than \$10; or
- we wrote off your debt during the statement period and no further amount has been debited or credited to your *loan account* during the statement period; or
- you have been in default under this *contract* during the statement period and we have commenced enforcement proceedings.

17 CHANGES

17.1 We may change this *contract* at any time. If any *law* regulates that change, we may only make the change to the extent permitted by, and subject to, the requirements of that *law*. The changes we may make include:

- introducing new credit fees or charges and changing the amount or time for, or frequency of, payment of a credit fee or charge or any of them;
- changing the basis upon which we calculate interest or the time at which it is debited;
- changing the *annual percentage rate* (except we will not change the *annual percentage rate* if it is the *Seniors Home Equity Release Fixed For Life Rate* at a particular date or change the *annual percentage rate* during a *fixed rate period*);
- changing the repayment (however, we will not change the *contract* without your consent to impose regular repayments or to change the *no negative equity pledge* in a way that increases the amount you have to pay to us).

We will exercise our power to change the *contract* reasonably.

17.2 We will notify you when we:

- (a) change any reference rate or any *annual percentage rate* that is determined by referring to a reference rate that applies to this *contract*. Where such a change does not reduce your obligations we will notify you either by advertising in a newspaper circulating throughout the *jurisdiction* or in writing to you not later than the day on which the change takes effect;
- (b) discontinue any reference rate or change the manner in which interest is calculated or applied under this *contract*. Where such a change does not reduce your obligations, we will give you at least 20 days prior written notice;
- (c) change the amount or time for, or frequency of, payment of a credit fee or charge or impose a new credit fee or charge. Where a change to the amount of a credit fee or charge or the imposition of a new credit fee or charge does not reduce your obligations or does not extend the time for payment, we will give you at least 20 days prior notice either by advertisement in a newspaper circulating throughout the *jurisdiction* or in writing to you. If we notify you by advertisement we will also provide you with such particulars of the change as are required by *law* before or when we provide your next statement of account after the change takes effect. Where a change to the frequency of payment of a credit fee or charge does not reduce your obligations or does not extend the time for payment, we will give at least 20 days prior notice in writing to you. Where a change to the amount or frequency of payment of a credit fee or charge or the imposition of a new credit fee or charge reduces your obligations or extends the time for payment, we will notify you before or when we provide your next statement of account after the change takes effect;
- (d) change the repayment. We will give at least 20 days prior written notice to you unless the change reduces your obligations or extends the time for payment, in which case we will give you written notice no later than before or when we provide your next statement of account after the change takes effect;
- (e) change the terms and conditions of the *contract* and fees and charges (other than in the ways set out in sub-clauses 17.2(a) to 17.2(d)). We will do this either in writing to you or by newspaper advertisement or both.

17.3 We may choose at any time to waive any of our rights under the *contract*. Subject to any applicable *law*, a waiver by us is not a change to, and does not reduce our rights under, the *contract* unless we give you written notice that it is a change to the *contract*.

18 YOUR REQUEST TO CHANGE TYPE OF RATE

18.1 You may ask us to change the type of *annual percentage rate* that applies under your *contract* to any other type of rate which is then available from us (for example, you may ask us to change your rate from a variable rate to a fixed rate). We do not have to agree to your request and if we do agree we can impose conditions.

18.2 The request must be made in writing to us.

18.3 If we agree to your request, we will give you a written notice setting out particulars of the change to your *contract* and any other information required by *law*. If we agree to change the type of *annual percentage rate*, then the new type of *annual percentage rate* will apply under your *contract* from the date set out in that notice as the day that new type of rate applies (the "re-set date").

18.4 If we agree to change the type of *annual percentage rate* to a fixed rate (other than the *Seniors Home Equity Release Fixed for Life Rate*) then, unless we otherwise agree:

- (a) the new *fixed rate period* will apply and will begin on the re-set date;
- (b) the fixed rate will apply under your *contract* during that *fixed rate period*; and
- (c) at the end of that *fixed rate period* the standard variable rate for that type of facility then available from us will apply under your *contract*.

18.5 If we agree to change the type of *annual percentage rate* to a variable rate, then unless we otherwise agree, the *fixed rate period* (if there is one) will end on the re-set date.

19 GENERAL MATTERS

19.1 We take no responsibility for any decision you make:

- (a) to enter into the *contract*;
- (b) to obtain the loan;
- (c) about the kind of interest rate (for example fixed or variable interest rate) you want under the *contract*.

- 19.2 Our employees and agents do not have the authority to:
- (a) make any predictions about what might happen to our or anyone else's interest rates;
 - (b) tell you what kind of interest rate would best suit you; or
 - (c) make any other representation, prediction or statement of opinion about any other matter or thing affecting the *contract* or the *security property*.

If you have any doubt at all about any of these matters you should seek help from an independent financial adviser or obtain legal advice or both.

- 19.3 To the extent permitted by *law* we may exercise a right or remedy or give or refuse to give our consent in any way we consider appropriate including by imposing conditions.
- 19.4 If we do not exercise a right or remedy fully or at a given time, we can still exercise it later.
- 19.5 Our rights and remedies under this *contract* are in addition to other rights and remedies provided by *law* independently of it.
- 19.6 Our rights and remedies under this *contract* may be exercised by any of our employees or any other *person* we authorise.
- 19.7 We are not liable for loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising, a right or remedy.
- 19.8 You consent to us disclosing information about you relating to this *contract* or any *security* to any person you have indicated is your next of kin, financial adviser or solicitor in your application form or in writing to us.

Our certificates

- 19.9 We may give you a certificate about a matter or about an amount payable in connection with this *contract*. The certificate is sufficient evidence of the matter or amount, unless it is proved to be incorrect.

Assignment

- 19.10 We may assign or otherwise deal with our rights under this *contract* in any way we consider appropriate. You agree that we may disclose any information or documents we consider desirable to help us exercise this right. You also agree that we may disclose information or documents at any time to a person to whom we assign our rights under this *contract*.
Your rights are personal to you and may not be assigned without our written consent.

Blanks

- 19.11 You agree that we may fill in any blanks in any document related to this *contract* (such as an acknowledgement). If we make a mistake in any statement, or when we give you any information, in relation to your *loan account*, that will not affect the amount that you owe us or must pay to us under this *contract*.

Notices, other communications and serving documents

- 19.12 Communications from us may be signed by any of our employees.
- 19.13 Communications for us may be:
- (a) given personally to one of our employees at, or sent by post or facsimile to, our registered office; or
 - (b) given by any other means permitted by *law*.
- 19.14 Communications for you may be:
- (a) given to you personally or left at:
 - (i) any address specified by you; or
 - (ii) your residential or business address last known to us; or
 - (b) sent by pre-paid post to any of these places; or
 - (c) sent by facsimile to your residential or business facsimile number last known to us; or
 - (d) given by any other means permitted by *law*.

- 19.15 The communications take effect from the time they are received unless a later time is specified in them. If they are sent by post, they are taken to be received on the day they would be received in the ordinary course of the post. If they are sent by a facsimile machine which produces a transmission report, they are taken to be received on the date the transmitting machine produces a report indicating the communication was sent to the recipient's facsimile number. If they are given by newspaper advertisements, they are taken to be received on the date they are first published.

19.16 We may serve any document in a court action (including a writ of summons, other originating process or third or other party notice) on you by delivering it to your address last known to us or by leaving it there. This does not prevent any other method of service.

Consumer credit legislation

19.17 Clauses 19.18 and 19.19 apply to the extent that the Consumer Credit Code applies to this *contract*.

19.18 If:

- (a) that Code would otherwise make a provision of this *contract* illegal, void or unenforceable; or
 - (b) a provision of this *contract* would otherwise contravene a requirement of that Code or impose an obligation or liability which is prohibited by that Code,
- this *contract* is to be read as if that provision were varied to the extent necessary to comply with that Code or, if necessary, omitted.

19.19 If that Code is inconsistent with this *contract*, that Code overrides this *contract* to the extent of the inconsistency.

Set-Off

19.20 Except to the extent you have a right of set-off granted by *law* which we cannot exclude by agreement (such as under a Consumer Credit Code), you must pay all amounts due under this *contract* in full without setting off amounts you believe we owe you and without counterclaiming from us.

Severance

19.21 Subject to clauses 19.18 and 19.19, any provision of this *contract* that is illegal, void or unenforceable shall be ineffective to the extent only of such illegality, voidness or unenforceability without invalidating the remaining provisions of this *contract*.

Inconsistent law

19.22 To the extent allowed by *law* and subject to clauses 19.18, 19.19 and 19.21, this *contract* prevails to the extent it is inconsistent with any *law*.

Applicable law

19.23 This *contract* is governed by the *law* of the *jurisdiction*.

20 MEANING OF WORDS

amount of credit is the amount we agree to lend you under this *contract* from time to time. As at the *disclosure date*, it is the amount stated in the *Schedule* and described as the "Amount of Credit".

annual percentage rate means the rate described as an *annual percentage rate* in the *Schedule* (as varied from time to time).

borrower means the person or persons named as borrower in the *Schedule*.

business day means a day other than a Saturday or Sunday, or a public or bank holiday in Victoria.

Cash Reserve means any part of the *amount of credit* that you elect, on or prior to the *settlement date*, to draw down at a time or times to be specified by you other than as monthly payments or as one lump sum on the *settlement date*.

contract means the loan contract (as varied from time to time) you make with us by accepting the offer in the *Schedule*.

costs includes charges and expenses and costs, charges and expenses in connection with legal and other advisers.

daily balance means:

- for a day on which an interest charge is debited to your *loan account* and where the debit made on that day includes the interest charge for that day, the *loan account balance* immediately before the end of that day; and
- for any other day, the *loan account balance* at the end of that day.

daily percentage rate means the *annual percentage rate* applicable divided by 365 or, in a leap year, 366.

disclosure date is the date at which all information in the *Schedule* is disclosed and is the date described as that in the *Schedule*.

Early Payment Adjustment Fee Method means the method of calculating the Early Payment Adjustment Fee described in clause 7.

expected remaining loan term when used in clause 7 means, as at a particular date:

- (a) when a payment or change to the annual percentage rate occurs during a fixed rate period, the term remaining until the expiry of the fixed rate period; or
- (b) if your annual percentage rate is the Seniors Home Equity Release Fixed For Life Rate as at a particular date, a period equal to the life expectancy of the borrower based on the borrower's age and standard mortality tables (such as the Australian Life Tables published by the Australian Government Actuary) or, if there is more than one borrower, the greatest period of life expectancy of any borrower determined using this method. For example, if a borrower is aged 75 and using standard mortality tables we calculate that her life expectancy will be to 85 years of age, the expected remaining loan term at the date of that calculation will be ten years.

fixed rate period is the period described as that in the *Schedule* (as varied from time to time) or any other period we advise you is a fixed rate period.

governing body has the same meaning that it has under the *security interest* described in the *Schedule* under "Security".

government charges means bank accounts' debits tax and all additional government stamp and other duties payable on receipts or withdrawals under this *contract* or a *security*.

including or **such as** when introducing an example, does not limit the meaning of the words to which the example relates to that example or examples of a similar kind.

insolvent means being an insolvent under administration or insolvent or having a controller appointed (each as defined in the *Corporations Act 2001*- such as being bankrupt), in receivership, in receivership and management, in liquidation, in provisional liquidation, under administration, wound up, subject to any arrangement, assignment or composition, protected from creditors under any statute, dissolved (other than to carry out a reconstruction while solvent) or otherwise unable to pay debts when they fall due.

jurisdiction means the State or Territory of the Consumer Credit Code that applies to this *contract* (if any) or if a Consumer Credit Code does not apply to this *contract*, Victoria.

law means common law, principles of equity and laws made by parliament (and includes regulations and other instruments under laws made by parliament and consolidations, amendments, re-enactments or replacements of any of them).

loan account means the account or accounts we establish in your name for the purposes of this *contract*.

loan account balance means the difference between all amounts debited and all amounts credited to your *loan account*.

loan term is the loan term starting on the *settlement date* and ending at the time described in the *Schedule*. If the loan term is varied, it will be the term as varied.

no negative equity pledge has the meaning set out in the *Schedule*.

person includes an individual, a firm, a body corporate, an unincorporated association or an authority.

proceeds of the sale means the sale price of the *security property* less reasonable costs incurred by you in the sale of the *security property*. For the avoidance of doubt, reasonable costs incurred by you in the sale of the *security property* exclude any liability for taxes imposed on capital gains or otherwise on net income or other similar taxes.

Schedule means the document called "Seniors Home Equity Release Loan - Loan Schedule".

security means each *security interest* described in the *Schedule* under "Security" or any substitute *security interest* given or to be given in connection with this *contract* and any additional *security interest* given or to be given in connection with this *contract*.

security interest means any mortgage, charge, lien, pledge, trust, power or other rights given or to be given as or in effect as *security* for the payment of money or performance of obligations. *Security interest* also includes a guarantee or an indemnity.

security property means the property the subject of any *security*.

Seniors Home Equity Release Fixed Rate means the reference rate we determine from time to time and which we call the "Seniors Home Equity Release Fixed Rate".

Seniors Home Equity Release Fixed For Life Rate means the reference rate we determine from time to time and which we call the "Seniors Home Equity Release Fixed For Life Rate".

Seniors Home Equity Release Variable Interest Rate means the reference rate we determine from time to time and which we call the "Seniors Home Equity Release Variable Interest Rate".

settlement date means the date we first lend you all or any part of the *amount of credit*.

shared scheme has the same meaning that it has under the *security interest* described in the *Schedule* under "Security".

such as see **including**.

Terms and Conditions means the terms and conditions set out in this booklet.

total amount owing means the *loan account balance* plus any accrued interest charges, enforcement expenses and fees and charges that have not yet been debited to the *loan account* and are unpaid.

we, us and **our** means the entity named in the *Schedule* as the credit provider under this *contract* and its successors and assigns.

you and **your** means the *person* or *persons* named in the *Schedule* as "Borrower". If there are more than one, **you** and **your** means each of them separately and every two or more of them jointly. **You** and **your** includes your successors (including your executors and legal personal representatives) and assigns. The singular includes the plural and vice versa.

A reference to:

- (i) a document includes any variation or replacement of it; and
- (ii) any thing includes the whole and each part of it.

If the *amount of credit* is to be applied wholly or predominantly for business or investment purposes, the Consumer Credit Code and the Information Statement set out below will not apply to this contract. This information below does not form part of the terms and conditions of your contract.

INFORMATION STATEMENT

section 14(1)(b) of the Code
section 11 of the regulation

THINGS YOU SHOULD KNOW ABOUT YOUR PROPOSED CREDIT CONTRACT

This statement tells you about some of the rights and obligations of yourself and your credit provider. It does not state the terms and conditions of your contract.

If you have any concerns about your contract, contact your credit provider and, if you still have concerns, your Government Consumer Agency, or get legal advice.

THE CONTRACT

1. How can I get details of my proposed credit contract?

Your credit provider must give you a precontractual statement containing certain information about your contract. The precontractual statement, and this document, must be given to you before -

- your contract is entered into; or
- you make an offer to enter into the contract;

whichever happens first.

2. How can I get a copy of the final contract?

If the contract document is to be signed by you and returned to your credit provider, you must be given a copy to keep.

Also, the credit provider must give you a copy of the final contract within 14 days after it is made. This rule does not, however, apply, if the credit provider has previously given you a copy of the contract document to keep.

If you want another copy of your contract write to your credit provider and ask for one. Your credit provider may charge you a fee. Your credit provider has to give you a copy-

- within 14 days of your written request if the original contract came into existence 1 year or less before your request; or
- otherwise within 30 days of your written request.

3. Can I terminate the contract?

Yes. You can terminate the contract by writing to the credit provider so long as -

- you have not obtained any credit under the contract; or
- a card or other means of obtaining credit given to you by your credit provider has not been used to acquire goods or services for which credit is to be provided under the contract.

However, you will still have to pay any fees or charges incurred before you terminated the contract.

4. Can I pay my credit contract out early?

Yes. Pay your credit provider the amount required to pay out your credit contract on the day you wish to end your contract.

5. How can I find out the pay out figure?

You can write to your credit provider at any time and ask for a statement of the pay out figure as at any date you specify. You can also ask for details of how the amount is made up.

Your credit provider must give you the statement within 7 days after you give your request to the credit provider. You may be charged a fee for the statement.

6. Will I pay less interest if I pay out my contract early?

Yes. The interest you can be charged depends on the actual time money is owing. However, you may have to pay an early termination charge (if your contract permits your credit provider to charge one) and other fees.

7. Can my contract be changed by my credit provider?

Yes, but only if your contract says so.

8. Will I be told in advance if my credit provider is going to make a change in the contract?

That depends on the type of change. For example -

- you get at least same day notice for a change to an annual percentage rate. That notice may be a written notice to you or a notice published in a newspaper.
- you get 20 days advance written notice for -
 - a change in the way in which interest is calculated; or
 - a change in credit fees and charges; or
 - any other changes by your credit provider;

except where the change reduces what you have to pay or the change happens automatically under the contract.

9. Is there anything I can do if I think that my contract is unjust?

Yes. You should first talk to your credit provider. Discuss the matter and see if you can come to some arrangement. If that is not successful you could apply to the court. Contact the Government Consumer Agency or get legal advice on how to go about this.

INSURANCE

10. Do I have to take out insurance?

Your credit provider can insist you take out or pay the cost of types of insurance specifically allowed by law. These are compulsory third party personal injury insurance, mortgage indemnity insurance or insurance over property covered by any mortgage. Otherwise, you can decide if you want to take out insurance or not.

11. Will I get details of my insurance cover?

Yes, if you have taken out insurance over mortgaged property or consumer credit insurance and the premium is financed by your credit provider. In that case the insurer must give you a copy of the policy within 14 days after the insurer has accepted the insurance proposal.

Also, if you acquire an interest in any such insurance policy which is taken out by your credit provider then, within 14 days of that happening, your credit provider must ensure you have a written notice of the particulars of that insurance.

You can always ask the insurer for details of your insurance contract. If you ask in writing your insurer must give you a statement containing all the provisions of the contract.

12. If the insurer does not accept my proposal, will I be told?

Yes, if the insurance was to be financed by the credit contract. The insurer will inform you if the proposal is rejected.

13. **In that case, what happens to the premiums?**

Your credit provider must give you a refund or credit unless the insurance is to be arranged with another insurer.

14. **What happens if my credit contract ends before any insurance contract over mortgaged property?**

You can end the insurance contract and get a proportionate rebate of any premium from the insurer.

MORTGAGES

15. **If my contract says I have to give a mortgage, what does this mean?**

A mortgage means that you give your credit provider certain rights over any property you mortgage. If you default under your contract, you can lose that property and you might still owe money to the credit provider.

16. **Should I get a copy of my mortgage?**

Yes. It can be part of your credit contract or, if it is a separate document, you will be given a copy of the mortgage within 14 days after your mortgage is entered into.

However, you need not be given a copy if the credit provider has previously given you a copy of the mortgage document to keep.

17. **Is there anything that I am not allowed to do with the property I have mortgaged?**

The law says you cannot assign or dispose of the property unless you have your credit provider's, or the court's, permission. You must also look after the property. Read the mortgage document as well. It will usually have other terms and conditions about what you can or cannot do with the property.

18. **What can I do if I find that I cannot afford my repayments and there is a mortgage over property?**

See the answers to questions 22 and 23.

Otherwise you may -

- if the mortgaged property is goods - give the property back to your credit provider, together with a letter saying you want the credit provider to sell the property for you;
- sell the property, but only if your credit provider gives permission first;

OR

- give the property to someone who may then take over the repayments, but only if your credit provider gives permission first.

If your credit provider won't give permission contact your Government Consumer Agency for help.

If you have a guarantor, talk to the guarantor who may be able to help you.

You should understand that you may owe money to your credit provider even after mortgaged property is sold.

19. **Can my credit provider take or sell the mortgaged property?**

Yes, if you have not carried out all of your obligations under your contract.

20. **If my credit provider writes asking me where the mortgaged goods are, do I have to say where they are?**

Yes. You have 7 days after receiving your credit provider's request to tell your credit provider. If you do not have the goods you must give your credit provider all the information you have so they can be traced.

21. **When can my credit provider or its agent come into a residence to take possession of mortgaged goods?**

Your credit provider can only do so if it has the court's approval or the written consent of the occupier which is given after the occupier is informed in writing of the relevant section in the Consumer Credit Code.

GENERAL

22. What do I do if I cannot make a repayment?

Get in touch with your credit provider immediately. Discuss the matter and see if you can come to some arrangement. You can ask your credit provider to change your contract in a number of ways, for example -

- to extend the term of the contract and either reduce the amount of each payment accordingly or defer payments for a specified period; or
- to simply defer payments for a specified period.

23. What if my credit provider and I cannot agree on a suitable arrangement?

If you have been unemployed, sick or there is another good reason why you are having problems with your contract, then your contract may be able to be changed to meet your situation.

You may be able to apply to the court. Contact your Government Consumer Agency or get legal advice on how to go about this.

There are other people, such as financial counsellors, who may be able to help.

24. Can my credit provider take action against me?

Yes, if you are in default under your contract. But the law says that you cannot be unduly harassed or threatened for repayments. If you think you are being unduly harassed or threatened, contact your Government Consumer Agency or the Trade Practices Commission, or get legal advice.

25. Do I have any other rights and obligations?

Yes. The law will give you other rights and obligations. You should also **READ YOUR CONTRACT** carefully.

**IF YOU HAVE ANY DOUBTS, OR WANT MORE INFORMATION,
CONTACT YOUR GOVERNMENT CONSUMER AGENCY OR GET LEGAL ADVICE.
PLEASE KEEP THIS INFORMATION STATEMENT. YOU MAY WANT SOME
INFORMATION FROM IT AT A LATER DATE.**