

PEXA KEY SECURE COMMUNICATION GUARANTEE

PEXA provides the **PEXA Key Secure Communication Guarantee** (the “**Guarantee**”) in respect of the sale and purchase of residential property that is settled through the PEXA platform and where bank account details are communicated via PEXA Key. The Guarantee is provided in order to protect buyers and sellers of residential property for an amount up to the cap referred to below if the communication between PEXA Key and the relevant PEXA Workspace is transmitted incorrectly (for example, where bank account details are corrupted within PEXA Key or intercepted due to fraud). The buyer or seller may elect to invoke the protection on the terms and subject to the conditions below, as an alternative to itself seeking to recover its loss by other means.

1. WHEN THE GUARANTEE APPLIES

1.1 Guarantee for Sellers:

For sellers, the Guarantee applies where:

- (a) the seller’s practitioner communicates with the seller via PEXA Key requesting bank account details into which the vendor’s funds are to be disbursed at settlement;
- (b) the seller enters bank account details for the deposit of vendor’s funds into PEXA Key; and
- (c) the bank account details for vendor’s funds communicated to the corresponding PEXA Workspace via PEXA Key are not the same as the bank account details entered into PEXA Key by the seller.

1.2 Guarantee for Buyers:

For buyers, the Guarantee applies where:

- (a) The buyer’s practitioner via PEXA Key provides the buyer with source account details and requests the buyer to deposit purchaser’s funds into that account.
- (b) The buyer’s practitioner correctly enters bank account details for the source account into PEXA Key.
- (c) The bank account details for the source account displayed to the buyer via PEXA Key are not the same as the bank account details entered into PEXA Key by the buyer’s practitioner in step (b).

1.3 Claim form

Both the claimant and the claimant’s practitioner must have signed and given to PEXA a formal request for payment and notification that the Guarantee applies (**claim form**). The claim form must be in the form prescribed by PEXA and must be received by PEXA within 3 business days or such longer period as PEXA in its absolute discretion will allow after settlement occurring. The claim form is available through the PEXA website.

2. GUARANTEE

Where the Guarantee applies in relation to a settlement of a residential property, subject to the terms of the Guarantee (including the cap and exclusions referred to below), PEXA will pay to the buyer or seller (as applicable) that claims under the Guarantee (**claimant**) the amount calculated under paragraph 5 below by deposit into the bank account nominated by the claimant’s representative (as applicable).

3. TIMING OF PAYMENT

If the Guarantee applies, PEXA will make the payment within 10 Business Days after receiving the claim form.

4. CAP ON THE AMOUNT THAT CAN BE CLAIMED

The maximum liability of PEXA under the Guarantee in respect of a single settlement is \$2 million (**cap**). Accordingly, if the amount determined under paragraph 5 would but for this paragraph exceed the cap, the amount payable will be the cap.

5. WHAT PEXA WILL PAY

Subject to the cap, the amount that PEXA will pay pursuant to the Guarantee is:

- (a) the amount paid to an incorrect bank account which has not been recovered, returned or frozen by the receiving bank at the time the payment is made by PEXA;
- (b) interest on that amount, from the date of settlement until the date of payment by PEXA pursuant to paragraph 3, payable at the published RBA cash rate; and
- (c) where the incorrect communication of bank account details in PEXA Key has resulted in the claimant failing to settle on a purchase of another residential property on the due date of that subsequent settlement, any rescission notice fees, penalty interest, reasonable accommodation expenses, reasonable legal costs and additional storage and removalist costs incurred by the claimant.

6. WHAT PEXA IS AUTHORISED TO DO

By signing and giving to PEXA a claim form under the Guarantee, the claimant authorises PEXA (and PEXA's agents) to:

- (a) deal with investigating authorities and the bank/s that received the payment/s in PEXA's own right;
- (b) deal with investigating authorities and the bank/s that received the payment/s on the claimant's behalf;
- (c) conduct all enquiries and investigations in relation to the matter, including seeking all information from the claimant's practitioner to satisfy itself that the Guarantee applies;
- (d) deal with the claimant's practitioner in PEXA's own right;
- (e) deal with the claimant's practitioner on the claimant's behalf;
- (f) make claims, commence proceedings and undertake any other activities to recover the claimant's funds, including, where PEXA suspects that a fraud has been committed, any claim/s against the fraudster on the claimant's behalf, and any other person which PEXA believes to be liable or complicit in respect of the fraud, and to settle any claims or proceedings as described below; and
- (g) provide any and all information (including the claimant's personal information) relating to the incident to investigating authorities (including the police and the relevant banks).

7. CLAIMANT'S RELEASE

- (a) Where PEXA pays an amount in satisfaction of a claim pursuant to the Guarantee, the claimant relinquishes any right or claim to any funds recovered by PEXA whether by action or otherwise and acknowledges PEXA's right to receive and retain all recovered funds up to the amount paid (plus interest and costs as described below). Accordingly, if PEXA recovers an amount, PEXA will be entitled to receive and retain that amount (plus interests and costs) before paying any excess to the claimant in accordance with paragraph 7(b) below.
- (b) Any amounts recovered in excess of the sum of the amount paid by PEXA under the PEXA Guarantee plus any interest recovered on that amount plus an amount equal to any costs (including without limitation administrative, recovery agent, funding and legal costs) which PEXA has incurred in taking any recovery action, will be paid to the claimant.

8. PEXA SUBROGATED TO CLAIMANT'S RIGHTS

- (a) By signing and giving to PEXA a claim form under the Guarantee, the claimant acknowledges and confirms PEXA's right to be subrogated to the rights of the claimant in respect of any claim under this Guarantee (including the claimant's right to recover the amount paid to the incorrect bank account). Accordingly, PEXA may:
- (i) if it chooses, take steps to recover from any person which PEXA believes to be liable or complicit in respect of the circumstances giving rise to the claim (including a fraudster or the claimant's practitioner);
 - (ii) take such recovery action, without the claimant's consent, using the claimant's name, and whether or not the claimant has been, or has a right to be, fully compensated for any or all of the loss or damage by PEXA or anybody else; and
 - (iii) if it chooses, compromise or settle the claimant's claim on such terms as PEXA sees fit.
- (b) In relation to any amount recovered in a recovery action by PEXA as described above, the claimant agrees that PEXA will be entitled to receive and keep the amount PEXA has paid, or is obliged to pay, under the Guarantee plus any interest recovered on that amount and an amount equal to any costs (including without limitation administrative, recovery agent, funding and legal costs) which PEXA has incurred in taking the recovery action.
- (c) The claimant will be obliged to give PEXA all the information and co-operation that PEXA requires to take any recovery action.
- (d) By signing and giving to PEXA a claim form under the Guarantee, the claimant agrees:
- (i) not to do anything which prejudices PEXA in taking any recovery action; and
 - (ii) not to take recovery action except with PEXA's prior written consent and then only in accordance with any conditions which PEXA in its discretion imposes.
- (e) The claimant must have proper regard for PEXA's interests in respect of loss covered by the Guarantee.

9. EXCLUSIONS FROM THE GUARANTEE

The Guarantee does not apply in respect of any of the following:

- (a) a sale of residential property by a commercial vendor;
- (b) a purchase of property by a commercial buyer;
- (c) any line item in a financial settlement schedule containing bank account details for a source account or vendor's funds that, as a result of action by the claimant's practitioner, is not the same as the bank account details received into the PEXA Workspace via PEXA Key;
- (d) where there has been any fraud by the claimant or the claimant is otherwise responsible for the payment into the incorrect bank account; or
- (e) where there has been any dishonest or fraudulent conduct by the claimant's practitioner.

10. REVISIONS TO AND WITHDRAWAL OF THE GUARANTEE

PEXA reserves the right to review and revise the terms of the Guarantee from time to time. PEXA may change any term of the Guarantee by giving notice to all PEXA member practitioners and on its website with:

- a) immediate effect where the change does not reduce the availability of the PEXA Residential Seller Guarantee or introduce additional exclusions;
- b) 30 days' notice where the change reduces the availability of the PEXA Residential Seller Guarantee or introduces any additional exclusion; or
- c) 3 months' notice to bring an end to the Guarantee.

11. GUARANTEE DOES NOT DIMINISH THE CLAIMANT'S PRACTITIONER'S RESPONSIBILITIES

The Guarantee is intended to protect buyers and sellers of residential property. It is not intended to diminish the responsibility of a practitioner to:

- (a) correctly enter settlement details into the PEXA Platform (including the bank account details received into the PEXA Workspace via PEXA Key);
- (b) carefully check that all of the settlement details recorded in the PEXA platform are accurate at the time they approve those details by signing the financial settlement schedule by applying their personal digital certificate and PIN before settlement. Each time those settlement details are changed, for whatever reason, the practitioner will need to approve the amended details by applying their personal digital certificate and PIN, and it is the responsibility of the practitioner to carefully check those details each time they approve them; and
- (c) comply with the Participation Agreement entered between the practitioner and PEXA, including the obligations in the Security Policy.

12. DEFINITIONS AND INTERPRETATION

- (a) In this document:

business day means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Melbourne.

buyer means the transferee represented by the buyer's practitioner in the relevant PEXA Workspace.

buyer's practitioner means a law practice or conveyancing practice that has entered into a Client Authorisation Form with the buyer and represents the buyer in the PEXA platform and includes any principal, employee, agent, contractor of the practice, or any individual authorised by the practice to access and use the PEXA platform on behalf of the practice.

claimant means a buyer or seller making a claim under this Guarantee.

claimant's practitioner means the buyer's practitioner or the seller's practitioner (as applicable).

Client Authorisation Form means the form in the latest published version of the Model Participation Rules (available at www.arnec.gov.au).

commercial buyer means the buyer of a property to be used for a commercial purpose.

commercial vendor means a vendor who:

- (a) is registered or is required to be registered for GST and claims the sale is GST exempt where the sale is part of a going concern; or
- (b) is liable for GST on the sale.

purchaser's funds means the funds to be deposited into the source account and used to contribute funds to a financial settlement.

RBA cash rate means the Reserve Bank of Australia's operational target for the implementation of monetary policy, as published on the website of the Reserve Bank of Australia at 9am (Melbourne time) on the date of settlement [see: <https://www.rba.gov.au/statistics/cash-rate/>]

residential property means real property that is used, or is intended to be used, for residential purposes but does not include real property that is used primarily for the purposes of industry, commerce or primary production.

seller means the transferor represented by the seller's representative in the relevant PEXA Workspace.

seller's practitioner means a law practice or conveyancing practice that has entered into a Client Authorisation Form with the seller and represents the seller in the PEXA platform and includes any principal, employee, agent, contractor of the practice, or any individual authorised by the practice to access and use the PEXA platform on behalf of the practice.

settlement means the exchange of funds between financial institutions in accordance with the instructions of the parties entered into the PEXA Workspace.

source account means the account used by the relevant practitioner for the purpose of the buyer contributing funds to a settlement and includes the PEXA Source Account and the practitioner's trust account.

vendor's funds means the amount of funds entered into the financial settlement schedule in the category "vendor's funds" and represents the funds that are due to the seller after deducting other payments including property outgoings and the mortgagee on title's payout figure(s).

- (b) headings are for convenience only, and do not affect interpretation;
- (c) the following rules also apply in interpreting the Guarantee, except where the context makes it clear that a rule is not intended to apply:
 - (i) a reference to:
 - (A) a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (B) a document (including this document) or agreement, or a provision of a document (including this document) or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (C) a party to this document or to any other document or agreement includes a successor in title, permitted substitute or a permitted assign of that party;
 - (D) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
 - (E) anything (including a right, obligation or concept) includes each part of it;
 - (ii) a singular word includes the plural, and vice versa;
 - (iii) a word which suggests one gender includes the other genders;
 - (iv) if a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning; and
 - (v) if an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.