



**Westpac Banking Corporation**

ABN 33 007 457 141

## Guarantee and indemnity (SMSF Security Custodian)

### Important notice

**You need to read this guarantee and indemnity.**

- If you sign this guarantee and indemnity, you could become liable instead of or as well as the *customer*.
- It may become necessary for you to sell your assets so that you can pay us.
- You should have the full consequences of the guarantee and indemnity explained to you by an independent lawyer before you agree to sign it.
- By signing this guarantee and indemnity, you take on a personal liability to guarantee that we will receive payment. This is additional to any liability you have under any *encumbrance* (such as a mortgage) that you give us in connection with this guarantee and indemnity.

### Key words

The meaning of words printed *like this* and of some other common key words is explained at the end of this guarantee and indemnity.

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## Details

### Financier ("we")

Name	Westpac Banking Corporation
ABN	33 007 457 141
Address	275 Kent Street, Sydney NSW 2000
Telephone	0403 754 267
Fax	(02) 4961 5132
Attention	Helen Sutton

### Guarantor ("you")

(If more than one trustee refer to a schedule and include details in the schedule.)

Name of security custodian	Mews Bowral Pty Ltd as trustee for The Holding Trust – 8/11 Bundaroo Street, Bowral NSW
Trust's ABN	
Trust deed date	5 March 2015
Trustee's name	Mews Bowral Pty Ltd
Trustee's ACN	603 671 487
Trustee's address	c/- Heather Byrne Accountant, 175 Argyle Street, Moss Vale NSW 2577
Trustee's telephone	
Trustee's fax	
Attention	

### Customer

Name of the superannuation fund	The HB and AP Superannuation Fund
Superannuation fund's ABN	64 675 349 412
Superannuation trust deed date	19 December 2003
Superannuation trustee's name	How Heavenly Pty Ltd
Superannuation trustee's ACN	169 433 587

### Property

Title description (e.g. volume and folio)	Folio Identifier 8/SP49134
Location	The Mews 8/11-13 Bundaroo Street, Bowral NSW 2576

### Limits - special conditions

See special conditions attached as Attachment A
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**Date of guarantee  
and indemnity**

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# Provisions

## 1 Purpose of this guarantee and indemnity and extent of your obligations

- 1.1 This guarantee and indemnity is entered into in consideration of us providing or continuing to provide financial accommodation to the *customer* or not immediately enforcing rights against the *customer* at your request.
- 1.2 By signing this guarantee and indemnity, you could become liable to pay us:
- (a) under the guarantee in clause 2;
  - (b) under the indemnity in clause 3;
  - (c) *costs* and other expenses under clause 4;
  - (d) interest under clause 5.

However, the maximum amount we can recover from you is set out in the special conditions attached to this guarantee and indemnity.

- 1.3 You are liable for all the obligations under this guarantee and indemnity both separately on your own and jointly with any one or more other persons named in this guarantee and indemnity as guarantor.
- 1.4 This guarantee and indemnity takes effect as a cross-guarantee and cross-indemnity when one or more of the *customers* are the same as one or more of you. In those circumstances it is a separate guarantee and indemnity in relation to each *customer* as if that person were:
- (a) the only person included in the definition of "*customer*"; and
  - (b) excluded from the definition of "*you*".

## 2 Guarantee

- 2.1 You unconditionally and irrevocably guarantee payment to us of the *guaranteed money*. If the *customer* does not pay the *guaranteed money* on time and in accordance with any arrangement under which it is expressed to be owing, then you agree to pay the *guaranteed money* to us on demand from us (whether or not we have made demand on the *customer*).
- 2.2 The guarantee in clause 2.1 is a continuing obligation and extends to all of the *guaranteed money*.
- 2.3 You acknowledge that any *arrangement with us* may be varied or replaced from time to time.

You confirm that the *guaranteed money* includes any amount payable under any *arrangement with us* as varied or replaced. You confirm that this applies regardless of:

- (a) how the *arrangement with us* is varied or replaced;
- (b) the reasons for the variation or replacement; and
- (c) whether the *guaranteed money* decreases or increases or the *arrangement with us* is otherwise more onerous as a result of the variation or replacement.

This clause does not limit clause 8.

## 3 Indemnity

- 3.1 You unconditionally and irrevocably indemnify us against, and you must therefore pay us on demand for, liability, loss or *costs* we suffer or incur if:
- (a) the *customer* does not, is not obliged to, or is unable to, pay us the *guaranteed money* in accordance with any arrangement under which it is expressed to be owing; or
  - (b) you are not obliged to pay us an amount under clause 2; or
  - (c) we are obliged, or we agree, to pay an amount to a trustee in bankruptcy or liquidator (or a bankrupt person or *insolvent* company) in connection with a payment by you or the *customer*. (For example, we may have to, or may agree to, pay interest on the amount.); or
  - (d) if you default under this guarantee and indemnity; or
  - (e) in connection with any person exercising, or not exercising, rights under this guarantee and indemnity.

You as principal debtor agree to pay us on demand a sum equal to the amount of any such liability, loss or *costs*.

- 3.2 You must pay us an amount equal to any liability, loss or *costs* of a kind referred to in clauses 3.1(d) and (e) suffered or incurred by any of our employees, officers, agents, attorneys or contractors.

- 3.3 The indemnity in clause 3.1 and the other indemnities in this guarantee and indemnity are continuing obligations, independent of your other obligations under this guarantee and indemnity. They continue even after those other obligations end. It is not necessary for us to incur expense or make

payment before enforcing a right of indemnity conferred by this guarantee and indemnity.

#### **4 Our costs and other expenses**

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4.1 You must pay us for:

- (a) our reasonable costs in arranging, administering (including giving and considering consents, variations, discharges and releases, producing title documents or enforcing, attempting to enforce or taking any other action in connection with our rights) and terminating this guarantee and indemnity; and
- (b) all taxes, fees, and charges payable in connection with this guarantee and indemnity and any transaction (such as a payment or receipt) under it, and any interest, penalties, fines and expenses in connection with them.

You must pay us these amounts when we ask. We can also debit any of these amounts to any account you have with us even if we do not expressly ask you to pay us.

4.2 You agree to compensate us on demand if we determine that, as a direct or indirect result of the imposition of GST, our costs in connection with this guarantee and indemnity are increased. If we:

- (a) reasonably decide that we are liable to pay GST on a supply made in connection with this guarantee and indemnity; and
- (b) certify that we have not priced the supply to include GST,

then you agree to pay us an additional amount equal to the consideration payable for the supply multiplied by the prevailing GST rate.

4.3 If a judgment, order or proof of debt in connection with the *guaranteed money* is expressed in a currency other than that in which the *guaranteed money* is due, then you indemnify us against, and you must therefore pay us on demand for:

- (a) any difference arising from converting the other currency if the exchange rate we use for converting the other currency when we receive a payment in the other currency is less favourable to us than the exchange rate used for the purpose of the judgment, order or acceptance of proof of debt; and
- (b) the costs of conversion.

You acknowledge that it might be necessary to convert the other currency through more than one currency to determine the exchange rate available to us.

#### **5 Interest**

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5.1 You must pay interest on any amount under clauses 3 or 4 which is due for payment. The interest accrues daily from (and including) the due date up to (but excluding) the date of actual payment and is calculated on actual days elapsed and a year of 365 days. You must pay interest owing under this clause 5 on demand from us.

5.2 The rate of interest applying to each daily balance is the rate specified by us from time to time or (if no rate is specified) our unarranged lending rate.

5.3 Each month (or any other period we choose), we may add to the amount you owe us any interest under this clause 5 which has not been paid. You will then be liable for interest under this clause 5 on the total amount.

5.4 If any amount you must pay under this guarantee and indemnity becomes covered by a court order, you must pay interest on that amount as a separate obligation. The interest accrues from and including the date we first ask you for the amount until but excluding the date that amount is paid. This obligation is not affected by the court order. The rate is the rate that applies under clause 5.3 or the rate in the court order (whichever is higher).

#### **6 Your own costs and other expenses**

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You must pay for anything which you must do under this guarantee and indemnity.

#### **7 Reinstatement of rights**

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Under law relating to *insolvency*, a person may claim that a transaction (including a payment) in connection with this guarantee and indemnity or the *guaranteed money* is void or voidable. If a claim is made and upheld, conceded or compromised, then:

- (a) we are immediately entitled, as against you, to the rights in respect of the *guaranteed money* to which we were entitled immediately before the transaction; and
- (b) on request from us, you agree to do anything (including signing any document) to restore to us any *encumbrance* we held from you immediately before the transaction.

## 8 Our rights are protected

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8.1 Rights given to us under this guarantee and indemnity, and your liabilities under it, are not affected by any act or omission by us or by anything else that might otherwise affect them under law or otherwise, including:

- (a) the fact that we vary or replace any arrangement under which the *guaranteed money* is expressed to be owing, such as by adding, replacing or changing the purpose of a facility, increasing the credit limit or extending the term including in accordance with a restructuring or refinancing of the *guaranteed money*; or
- (b) the fact that we release the *customer* or give them a concession, such as more time to pay; or
- (c) the fact that the *customer* opens another account with us; or
- (d) the fact that we release, lose the benefit of or do not obtain any *encumbrance*; or
- (e) the fact that we do not register any *encumbrance* which could be registered; or
- (f) the fact that we release any person who guarantees any of the *customer's* obligations; or
- (g) the fact that the obligations of any person who guarantees any of the *customer's* obligations may not be enforceable; or
- (h) the fact that any person who was intended to guarantee any of the *customer's* obligations does not do so or does not do so effectively; or
- (i) the death, mental or physical disability or *insolvency* of any person including you or the *customer*; or
- (j) changes in the membership, name or business of a firm, partnership, committee or association.

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

- (a) any other guarantee, indemnity, *encumbrance* or other right or remedy to which we are entitled; or
- (b) a judgment or order which we obtain against you in respect of the *guaranteed money* or any other amount payable under this guarantee and indemnity.

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

8.3 This guarantee and indemnity binds each person who signs as guarantor even if another person who was intended to sign does not sign it or is not bound by it.

## 9 Your rights are suspended

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As long as any of the *guaranteed money* (or any other amounts secured by any *encumbrance* that secures amounts included in the *guaranteed money*) remains unpaid, you may not, without our consent:

- (a) reduce your liability under this guarantee and indemnity by claiming that you or the *customer* or any other person has a right of set-off or counterclaim against us; or
- (b) claim or exercise any legal rights to claim to be entitled to the benefit of another guarantee, indemnity or *encumbrance*:
  - (i) given in connection with the *guaranteed money* or any other amount payable under this guarantee and indemnity. (For example, you may not try to enforce any mortgage we have taken to ensure repayment of the *guaranteed money*); or
  - (ii) in favour of a person other than us in connection with any obligations of, or any other amounts payable by, the *customer* to, or for the account of, that other person; or
- (c) claim an amount from the *customer*, or another guarantor of the *customer's* obligations (including a person who has signed this guarantee and indemnity with you), under a right of indemnity or contribution; or
- (d) claim an amount in the *insolvency* of the *customer* or another guarantor of the *guaranteed money* (including a person who has signed this guarantee and indemnity with you).

If we ask, you agree to notify any relevant person of the terms of this clause and other parts of this guarantee and indemnity that

may be relevant. You also authorise us to do so at any time without first asking you. This applies despite anything else in this guarantee and indemnity.

This clause continues after this guarantee and indemnity ends.

## **10 What you acknowledge and declare**

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- 10.1 You acknowledge that you are responsible for making yourself aware of the financial position of the *customer* and any other person who guarantees the *guaranteed money*.
- 10.2 You declare that:
- (a) neither you, nor, if you are a corporation, any director or other person breaches any law or any obligation to another person by signing this guarantee and indemnity and that all necessary authorisations to do so have been obtained; and
  - (b) your obligations under this guarantee and indemnity are valid and binding and enforceable in accordance with its terms; and
  - (c) if you are a corporation, you benefit by entering into this guarantee and indemnity; and
  - (d) all information given by you or on your behalf (such as financial statements) is correct and not misleading; and
  - (e) since the date the information was given there has been no change in your financial circumstances which may have a material adverse effect on your ability to meet your obligations under this guarantee and indemnity; and
  - (f) you have not withheld information that might have caused us not to enter into any *arrangement with us*; and
  - (g) unless otherwise stated in this guarantee and indemnity, you are not signing this guarantee and indemnity as a trustee of any trust or settlement; and
  - (h) all declarations made by you in each other *arrangement with us* are correct and not misleading; and
  - (i) you have power to carry on your business and you are not in breach of any law or obligation; and
  - (j) there is no pending or threatened court or other proceeding affecting you except those in which a

decision against you would be insignificant.

- 10.3 You must tell us whenever anything happens which would mean you could not truthfully repeat all the declarations in clause 10.2.

## **11 What happens to money we receive?**

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- 11.1 Subject to clause 11.2, we may use any money paid by or for the *customer* towards meeting any part of the *guaranteed money* we choose. We may use any money paid by you under this guarantee and indemnity towards paying any part we choose of the *guaranteed money* or any other amount you owe us under this guarantee and indemnity. This applies even if that part or that amount only falls due after we give a notice of demand.
- 11.2 We may retain any money we receive in connection with this guarantee and indemnity for as long as we think appropriate. We may hold it in an interest bearing account. We may use it (and any net interest after tax - including income tax) towards paying the *guaranteed money*.
- 11.3 We must pay any money remaining after the *guaranteed money* is paid either to you or to another person entitled to it. We do not pay you interest on any money remaining after the *guaranteed money* is paid.
- 11.4 We only credit payments as soon as practicable after we receive them.

## **12 General**

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### **Information**

- 12.1 If we ask, you must supply us with any information about, or documents affecting, your financial affairs or business, such as financial statements.

### **Currency conversions**

- 12.2 You must make each payment in the currency in which it is due.
- 12.3 If we receive an amount in a currency other than that in which it is due:
- (a) we may convert the amount received into the due currency (to do this it might be necessary to convert through a third currency) on the day and at such rates as we consider appropriate. We may deduct our usual costs in connection with the conversion; and
  - (b) you satisfy your obligation to pay in the due currency only to the extent of the amount of the due currency obtained from the conversion after

deducting the *costs* of the conversion.

(e) given in any other way permitted by law.

### Payment in full

12.4 You must pay us the *guaranteed money* in full without set-off, counterclaim or deduction.

12.5 However, we may set off against the *guaranteed money* any money we owe you (whether or not due for payment).

12.6 If a law requires you to deduct an amount in respect of *taxes* from a payment under an *arrangement with us* with the result that we would not actually receive on the due date the full amount provided for under the *arrangement with us*, then:

- (a) you agree to deduct the amount for the *taxes* (and any further deduction applicable to any further payment due under paragraph (c) below); and
- (b) you agree to pay an amount equal to the amount deducted to the relevant authority in accordance with applicable law and give the original receipts to us; and
- (c) if the amount deducted is in respect of *accountable taxes*, the amount payable is increased so that, after making the deduction and further deductions applicable to additional amounts payable under this clause, we are entitled to receive (at the time the payment is due) the amount we would have received if no deductions had been required.

### Notices and other communications

12.7 Notices, certificates, consents, approvals and other communications in connection with this guarantee and indemnity must be in writing. If you are a corporation, communications from you must be signed by a director or another person we approve.

12.8 They may be:

- (a) given personally (if they are for you and you are a corporation, to one of your directors; if they are for us, to one of our employees at the address stated in the Details or any other address we tell you); or
- (b) left at the address last notified; or
- (c) sent by prepaid post to the address last notified; or
- (d) sent by fax to the fax number last notified; or

12.9 They take effect from the time they are received unless a later time is specified in them.

12.10 If they are sent by post, they are taken to be received three days after the date of posting.

12.11 If they are sent by a fax machine that produces a transmission report, they are taken to be received at the time shown in a transmission report that indicates that the whole fax was sent.

### Our certificates

12.12 We may give you a certificate about a matter or about an amount payable in connection with this guarantee and indemnity. The certificate is sufficient evidence of the matter or amount, unless it is proved to be incorrect.

### When must you pay?

12.13 A demand may be made at any time and from time to time. However, if a special condition restricting the time when we can make a demand on you is attached to this guarantee and indemnity, we may only make a demand as set out in that special condition.

12.14 You must pay any amount payable to us under this guarantee and indemnity by 5.00pm (Australian Eastern Standard Time) on the date which we specify.

### Prompt performance

12.15 If this guarantee and indemnity specifies when you must perform an obligation, you must perform it by the time specified. You must perform all other obligations promptly.

### You must take further steps

12.16 You must do anything (such as obtaining consents, signing and producing documents, and getting documents completed and signed) which we ask and consider necessary for the purposes of:

- (a) providing more effective security over any property over which we hold an *encumbrance*;
- (b) ensuring that an *encumbrance* created under any *arrangement with us* is enforceable, perfected (including, where possible, by control in addition to registration) and otherwise effective;
- (c) enabling us to apply for any registration, or give any notification, in connection with an

*encumbrance* so that it has the priority we require;

- (d) enabling us to exercise our rights in connection with any *arrangement with us*;
- (e) binding you and any other person intended to be bound under any *arrangement with us* (including this guarantee and indemnity); or
- (f) showing whether you are complying with any *arrangement with us*.

### How we may exercise our rights

12.17 We may exercise a right or remedy or give or refuse our consent in any way we consider appropriate, including by imposing conditions.

12.18 We may claim against you under this guarantee and indemnity before we enforce other rights or remedies:

- (a) against the *customer* or any other person (including any other person who signs this guarantee and indemnity as guarantor); or
- (b) under another document such as a guarantee or *encumbrance*.

If we have more than one guarantee and indemnity or *encumbrance*, we may enforce them in any order that we choose.

12.19 If we do not exercise a right or remedy fully or at a given time, then we can still exercise it later.

12.20 We are not liable for any loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising, a right or remedy, whether or not caused by our negligence.

12.21 Our rights and remedies under this guarantee and indemnity:

- (a) are in addition to any other rights and remedies provided by law independently of this guarantee and indemnity or by any *encumbrance* (such as a mortgage); and
- (b) may be exercised even if this involves a conflict of duty or we have a personal interest in their exercise.

12.22 Our rights and remedies under this guarantee and indemnity may be exercised by any of our directors, any of our employees whose job title includes the word “manager”, “solicitor”, “team leader”

or “supervisor”, or any other person we authorise.

### Dealing with rights under this guarantee and indemnity

12.23 We may assign or otherwise deal with our rights under this guarantee and indemnity in any way we consider appropriate. If we do this, you may not claim against any assignee (or any other person who has an interest in this guarantee and indemnity) any right of set-off or other rights you have against us.

However, you may not assign or otherwise deal with your rights under this guarantee and indemnity unless we consent.

### Disclosure of information

12.24 Information you provide to us may be disclosed:

- (a) if you consent (you may not unreasonably withhold your consent); or
- (b) if we reasonably believe the disclosure is required by any law, stock exchange or rating agency (except this paragraph does not permit us to disclose any information of the kind referred to in section 275(1) of the *PPSA* unless section 275(7) of the *PPSA* applies); or
- (c) to any person in connection with our exercising rights or dealing with rights or obligations (including preparatory steps such as negotiating with any potential assignee of our rights or other person who is considering contracting with us in connection with this guarantee and indemnity); or
- (d) to our officers and employees, to receivers and to legal and other advisers; or
- (e) to any of our *related entities*; or
- (f) if the information is generally and publicly available; or
- (g) to any other *debtor/guarantor*.

### Consents

12.25 You must comply with all conditions in any consent which we give in connection with this guarantee and indemnity.

### Variation and waiver

12.26 A provision of this guarantee and indemnity, or right created under it, may not be waived or varied except in writing signed by the party or parties to be bound.

## Trustee provisions

Clauses 12.27 to 12.29 apply if the Details indicate that you enter into this guarantee and indemnity as trustee of any trust or settlement.

12.27 You declare that:

- (a) this guarantee and indemnity is for the benefit of the trust;
- (b) you are the sole trustee of the trust (together with anyone else who signs this guarantee and indemnity as trustee);
- (c) you have authority to enter into this guarantee and indemnity and comply with its terms;
- (d) you are not, and never have been, in default under the trust deed;
- (e) you have the right to be fully indemnified out of the trust assets for obligations incurred under this guarantee and indemnity and the trust property is sufficient to satisfy that right of indemnity and all other obligations for which you are entitled to be indemnified out of trust property;
- (f) no action has been taken or proposed to terminate the trust nor has any event for the vesting of the trust property occurred;
- (g) true copies of the trust deed and other documents relating to the trust have been provided to us and disclose all the terms of the trust; and
- (h) you have not delegated any of your powers as trustee or exercised any power of appointment.

You must tell us whenever anything happens which would mean you could not truthfully repeat all these declarations.

12.28 You must:

- (a) comply with your obligations as trustee of the trust; and
- (b) ensure that you remain the sole trustee of the trust (with anyone else who signs this guarantee and indemnity as trustee).

12.29 You must not do anything, or permit anything to be done or fail to do anything, which may:

- (a) effect or facilitate the variation of the trust deed;
- (b) resettle, set aside or distribute any of the trust property; or

- (c) result in the trust property being mixed with other property.

## Code of Banking Practice

12.30 The Code of Banking Practice does not apply to this guarantee and indemnity and the transactions in connection with it.

## Inconsistent law

12.31 To the extent permitted by law, this guarantee and indemnity prevails to the extent it is inconsistent with any law.

## Applicable law and serving documents

12.32 This guarantee and indemnity is governed by the law of the State or Territory where our address specified in the Details is situated. You and we submit to the non-exclusive jurisdiction of the courts of that place.

12.33 We may serve any document in a court action on you (including a writ of summons, other originating process or third or other party notice) by delivering it to, or leaving it at, your address set out in the Details or such other address as you and we agree at any time. This clause does not prevent any other method of service.

## 13 Meaning of words

**accountable taxes** means taxes imposed by a relevant country other than those:

- imposed on, or calculated having regard to, our net income, or
- which would not be required to be deducted by you if we provided you with any of our name, address, registration number or similar details or any relevant tax exemption or similar details.

**arrangement with us** means an arrangement (including an agreement or an *encumbrance*) under which a *debtor/guarantor* has or could in the future have obligations to us or any of our *related entities*.

**controller** has the meaning given to it in the Corporations Act.

**costs** includes charges and expenses; and costs, charges and expenses in connection with advisers (in the case of legal advisers on a full indemnity basis or solicitor and own client basis, whichever is higher).

**customer** means each named in the Details as customer. If there are more than one, **customer** means each of them separately and every two or more of them jointly. **Customer** includes their successors and assigns.

**debtor/guarantor** means:

- the *customer*; and
- you and any other person who guarantees payment of any part of the *guaranteed money*; and
- any other person you and we agree is to be a “*debtor/guarantor*” for the purpose of this guarantee and indemnity.

**encumbrance** means any:

- security interest under the *PPSA* or security for the payment of money or performance of obligations including a mortgage, charge, lien, pledge, trust, power, or title retention or flawed deposit arrangement; or
- right, interest or arrangement which has the effect of giving another person a preference, priority or advantage over creditors including any right of set-off; or
- right that a person (other than the owner) has to remove something from land (known as a *profit à prendre*), easement, public right of way, restrictive or positive covenant, lease or licence to use or occupy; or
- third party right or interest or any right arising as a consequence of the enforcement of a judgement,

or any agreement to create any of them or allow them to exist.

**GST** has the same meaning as in the A New Tax System (Goods and Services Tax Act) 1999 (Cwlth).

**guaranteed money** means all money which:  
at any time;

for any reason or circumstance in connection with any agreement (including a loan agreement, guarantee, indemnity, lease or other facility document), transaction, engagement, document, instrument (whether or not negotiable), event, act, omission, matter or thing whatsoever;

whether arising under law or otherwise (including liquidated or unliquidated damages for default or breach of any obligation);

and whether or not of a type within the contemplation of you, of us or of the *customer* at the date of this guarantee and indemnity:

- the *customer* is or may become actually or contingently liable to pay to us; or

- we have advanced or paid on the *customer's* behalf or on the *customer's* express or implied request; or
- we have paid or are liable to pay as a result of the *customer's* act or omission; or
- the *customer* would have been liable to pay to us but the amount remains unpaid by reason of the *customer's insolvency*.

This definition applies:

- irrespective of the capacity in which we or the *customer* became entitled to the amount concerned;
- irrespective of the capacity in which we or the *customer* became liable in respect of the amount concerned;
- whether we or the *customer* are liable as principal debtor, as surety, or otherwise;
- whether the *customer* is liable alone, or together with another person;
- even if the *customer* owes an amount or obligation to us because it was assigned to us, whether or not:
  - the assignment was before, at the same time as, or after this guarantee or indemnity is executed; or
  - we or the *customer* consented to or were aware of the assignment; or
  - the assigned obligation was secured;
- even if this guarantee and indemnity was assigned to us, whether or not:
  - you consented to or were aware of the assignment; or
  - any of the *guaranteed money* was previously not guaranteed;
- if you are a trustee, whether or not you have a right of indemnity from the trust fund.

A person is **insolvent** if:

- they are (or state that they are) an insolvent under administration or insolvent (each as defined in the Corporations Act); or
- they have had a *controller* appointed, are in liquidation, in provisional liquidation, under administration or wound up or have had a receiver or receiver and manager appointed to any part of their property; or

- they are subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute, or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by us); or
- an application or order has been made, resolution passed, proposed put forward, or any other action taken, in each case in connection with them, which is preparatory to or could result in any of the things referred to above; or
- they are taken (under section 459F of the Corporations Act) to have failed to comply with a statutory demand; or
- they are the subject of any event described in section 459C(2)(b) or section 585 of the Corporations Act (or they make a statement from which we reasonably deduce they are so subject); or
- they are otherwise unable to pay their debts when they fall due; or
- something having a substantially similar effect to any of the things referred to above happens in connection with them under the law of any jurisdiction.

**PPSA** means the Personal Property Securities Act 2009 (Cwlth).

**property** means the property described in the Details.

**related entity** has the meaning given to it in the Corporations Act.

**relevant country** means any country, or political sub-division of one or more countries, or any federation or association of countries in which you or a *debtor/guarantor* is either incorporated or is resident or domiciled for any tax purpose or in which you or a *debtor/guarantor* carry on business or own or lease property or from which, or through which, any payment under an *arrangement with us* is made.

**taxes** means taxes, levies, imposts, charges and duties (including stamp and transaction duties) imposed by any authority together with any related interest, penalties, fines and expenses in connection with them, except if imposed on our overall net income.

**we** means the person or persons named in the Details as financier. If there are more than one, we means each of them separately and every two or more of them jointly. **We** includes our successors and assigns.

**you** means each person named in the Details as guarantor. If there are more than one, **you** means each of them separately and every two or more of them jointly.

The singular includes the plural and vice versa.

A reference to:

- a document or agreement includes any variation or replacement of it;
- law means common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them and consolidations, amendments, re-enactments or replacements of any of them);
- **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 to examples of a similar kind;
- **payable**, in relation to an amount, means an amount which is currently payable or will or may be payable in the future;
- **person** includes an individual, a firm, a body corporate, an unincorporated association and an authority;
- any thing (including the *guaranteed money*) includes the whole and each part of it;
- the Corporations Act means the Corporations Act 2001 (Cwlth).

# Signing page

**EXECUTED** as a deed

**Signed sealed and delivered** on behalf of **Mews Bowral Pty Ltd** by:

\_\_\_\_\_  
Secretary/Director

\_\_\_\_\_  
Director

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Print name

**SIGNED, SEALED AND DELIVERED** for and on )  
behalf of **WESTPAC BANKING CORPORATION** by its )  
attorney, under the Power of Attorney dated 17 )  
January 2001 who states, by executing this document, )  
has received no notice of revocation of the Power of )  
Attorney, in the presence of:

.....  
Signature of witness

.....  
Tier Three Attorney (block letters)

.....  
Name of witness (block letters)

## Special Conditions

### Limit to a particular facility/facilities

- 1 The maximum amount we can recover from you under this guarantee and indemnity is all amounts payable:
  - by the *customer* in connection with the Business Finance Agreement dated 12 March 2015 between the *customer* and us; plus
  - by you under clauses 4, 5 or 7; plus
  - by you for breach of an obligation you owe (other than an obligation to pay money) under this guarantee and indemnity.
- 2 Special condition 1 does not limit the amount we can claim from you - it just limits the amount we can ultimately recover from you. For example, we might claim more than the maximum amount we can recover if you are bankrupt or being wound up and we want to maximise the distribution we receive from your trustee in bankruptcy or liquidator.
- 3 You acknowledge that the arrangements described in special condition 1 may be varied or replaced from time to time. You confirm that the *guaranteed money* includes any amount payable under those arrangements as varied or replaced. You confirm that this applies regardless of:
  - how the arrangement is varied or replaced;
  - the reasons for the variation or replacement;
  - whether the *guaranteed money* decreases or increases or the arrangement is otherwise more onerous as a result of the variation or replacement.

### Limited recourse

- 4 You unconditionally and irrevocably waive, and agree not to claim, any right of contribution, subrogation and indemnity (and any other equivalent right) against the *customer* arising from or in connection with this guarantee and indemnity.
- 5 Despite any other provision of this guarantee and indemnity:
  - (a) we may not have recourse to you or to your assets; and
  - (b) neither we nor you may have recourse to the *customer* or the *customer's* assets, under or in connection with this guarantee and indemnity, except we may have recourse to the *property* and its proceeds and the total amount available to us as a result of a realisation of the *property* (after payment of enforcement costs etc).
- 6 Subject to special condition 5(b), nothing in special condition 5 limits us in:
  - (a) exercising our rights or powers over the *property* or in respect of any *encumbrance* granted to us;
  - (b) obtaining an injunction or other order to restrain any breach of this guarantee and indemnity by any party; or
  - (c) obtaining declaratory relief.
- 7 In exercising any right, power or remedy under this guarantee and indemnity:

- (a) neither we nor any receiver, receiver and manager, agent or attorney appointed under this guarantee and indemnity shall incur, or have the authority to incur, any liability on your behalf or for your account except a liability which is itself subject to the limitation in special condition 5; and
  - (b) neither we, you, nor any receiver, receiver and manager, agent or attorney appointed under this guarantee and indemnity shall incur, or have the authority to incur, any liability on behalf of the *customer* or for the *customer's* account except a liability which is itself subject to the limitation in special condition 5.
- 8 For the purpose of determining the amount of the *guaranteed money*, the limit on your and the *customer's* liability under special condition 5 will be disregarded.
- 9 We will not, in relation to any liability for which you or the *customer* is not liable under special condition 5:
- (a) obtain a judgment for the payment of money or damages by you or the *customer*;
  - (b) issue any demand under s459E(1) of the Corporations Act (or any analogous provision under any other law) against you or the *customer*;
  - (c) apply for the winding up of you or the *customer*;
  - (d) levy or enforce any distress or other execution to, on or against any of your or the *customer's* assets other than the *property*;
  - (e) apply for the appointment by a court of a receiver to any of your or the *customer's* assets other than the *property*; and
  - (f) exercise or seek to exercise any set-off or counterclaim against you or the *customer*, or take proceedings for any of the above and you and we waive your rights in respect of those applications and proceedings.