



## **SMSF Standard Terms - (03/2010 version)**

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## SMSF Standard Terms

### About this facility agreement

The terms and conditions of your facilities are set out in the facility offer and in these standard terms.

### Key words

The meaning of words printed *like this* and of some other common key words is explained at the end of these standard terms.

### Important Notice

You must satisfy yourself that the transaction complies with *SIS Laws* and the laws generally. If we review your compliance, we do so for our own purposes, and not so that you can rely on it.

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## Part A - Conditions to using the facilities and declarations

- |     |   |       |   |
|-----|---|-------|---|
| 1   | <b>Conditions to using the facilities</b>   | (ii)  | investment strategy (s 52(2)(f));   |
| 1.1 | We require you to:  | (iii) | related-party acquisitions (s 66);  |
|     | (a) request drawings a reasonable time before the requested drawdown date;  | (iv)  | in-house assets (s 71);   |
|     | (b) comply with any specific drawdown requirements specified in this facility agreement;  | (v)   | arms-length dealings (s 109);   |
|     | (c) complete a request for a drawing in any form we require;  | (vi)  | the prohibition against charging (reg 13.14); and   |
| 1.2 | We will only lend to you if:  | (d)   | we have received, in relation to you:   |
|     | (a) you have given us in a form satisfactory to us:   | (i)   | a certificate of independent legal advice satisfactory to us from a solicitor who does not work for the firm of solicitors acting for us in relation to your loan; or |
|     | (i) documents constituting the <i>superannuation fund</i> and its investment guidelines;  | (ii)  | a statutory declaration from you satisfactory to us stating that you have received independent legal advice prior to signing this agreement;                          |
|     | (ii) a copy of the contract of sale of the property that will be held by the <i>security custodian</i> ;  |       | stating that you have received full and general advice about:   |
|     | (iii) a copy of the <i>custodian document</i> ; and   | (iii) | the terms and structure of your loan;   |
|     | (b) you have satisfied us that you enter this agreement and acquire the property:   | (iv)  | the legal risks associated with borrowing by a self-managed superannuation fund; and  |
|     | (i) through the <i>security custodian</i> ;   | (v)   | your obligations as a trustee of a self-managed superannuation fund (including the things mentioned in paragraph (c)); and  |
|     | (ii) as trustee of the <i>superannuation fund</i> ;   |       |   |
|     | (iii) in accordance with your duties and powers; and  |       |   |
|     | (iv) in accordance with your <i>investment guidelines</i> ; and   |       |   |
|     | (c) you have provided us with evidence satisfactory to us that you have complied with the <i>SIS Laws</i> including their requirements regarding: | (e)   | we have received, in relation to you:   |
|     | (i) the sole purpose test (s 62);   | (i)   | a certificate of independent financial advice satisfactory to us from an adviser who does not work for us; or   |

- (ii) a statutory declaration from you satisfactory to us stating that you have received independent financial advice prior to signing this agreement;
- stating that you have received advice about:
- (iii) the economic benefit of the loan to you; and
- (iv) the financial risks associated with borrowing by a self-managed superannuation fund; and
- (f) we have received, in relation to any *guarantor*:
- (i) confirmation from our securities department or solicitors that each *guarantor* has received a copy of the facility offer, this facility agreement and the security documents;
- (ii) confirmation that the *guarantor* has waived any right of contribution, subrogation and indemnity (and any other equivalent right) against you and the *security custodian*;
- (iii) we have received:
- a certificate of independent legal advice satisfactory to us for each *guarantor* from a solicitor who does not work for the firm of solicitors acting for you or the firm acting for us in relation to your loan; or
  - a statutory declaration satisfactory to us by each *guarantor* that they have received independent legal advice prior to signing the security documents; and
  - a certificate of independent financial advice satisfactory
- to us from an adviser who does not work for us; or
- a statutory declaration from the *guarantor* satisfactory to us stating that they have received independent financial advice prior to granting *security*;
- (g) we have received anything else we require and any other settlement requirement we specify has been complied with.
- 1.3 We need not provide any drawing if:
- (a) you or a *guarantor* is in default or in our reasonable opinion is likely to be in default under an arrangement with us; or
- (b) after providing the drawing, the total amount owing would exceed the facility limit; or
- (c) we have given you notice that the facility in respect of which the drawing is requested, is terminated; or
- (d) any of the declarations in this facility agreement would be incorrect at the time we receive the request or at the *drawdown date*.
- 1.4 You may use a facility only for the purpose of acquiring property conforming to your investment guidelines and the law, to be held by the *security custodian* on trust for you as an investment, as set out in the facility offer for that facility.
- 2 Declarations**
- 2.1 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 any *arrangement with us* or entering transactions or performing obligations under them and that all necessary authorisations to do so have been obtained; and

- (b) your obligations under each *arrangement with us* to which you are a party are valid and binding and enforceable in accordance with its terms; and
- (c) you benefit by entering into this facility agreement and the transactions contemplated by it; and
- (d) all the 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 any arrangement with us; and
- (f) you have not withheld any information that might have caused us not to enter into any arrangement with us; and
- (g) because you sign this *arrangement with us* as a trustee of the *superannuation fund*, you declare that:
- (i) the *arrangement with us* is for the benefit of the *superannuation fund*; and
  - (ii) you are the sole trustee of the *superannuation fund*; and
  - (iii) you have authority to enter the *arrangement with us*; and
  - (iv) you have the right to be fully indemnified out of the *superannuation fund* assets for obligations incurred under the *arrangement with us*; and
  - (v) no action has been taken or proposed to terminate the *superannuation fund*; and
- (vi) the copies of the *superannuation fund* trust deed and other documents relating to the *superannuation fund* have been provided to us and disclose all the terms of the trust; and
- (vii) you have not delegated any of your powers as trustee or exercised any power of appointment; and
- (viii) you have complied with the *superannuation fund* trust deed; and
- (h) you are not in default (see clause 13); and
- (i) all declarations made by you in each other *arrangement with us* are correct and not misleading; and
- (j) you have power to carry on your business and you are not in breach of any law or obligation (including taxation laws); and
- (k) you have complied with the *SIS Laws*, including their requirements regarding:
- (i) the sole purpose test (s 62);
  - (ii) investment strategy (s 52(2)(f));
  - (iii) related-party acquisitions (s 66);
  - (iv) in-house assets (s 71);
  - (v) arms-length dealings (s 109);
  - (vi) the prohibition against charging (reg 13.14); and
- (l) there is no pending or threatened court or other proceeding affecting you except those in which a decision against you would be insignificant.

2.2 You warrant that your use of the services we provide will not breach any law of Australia or any other country. Where we consider it

necessary for us to meet our regulatory and compliance obligations:

- (a) you must provide us with any information we reasonably request;
- (b) we will disclose information we hold to regulatory and law enforcement agencies, other financial institutions, third parties and members of the St. George Group; and
- (c) we may delay, block or refuse to provide any of our services.

We will not be liable to you or any other person for any loss or damage of any kind that may be suffered as a result of us exercising our rights under this clause.

- 2.3 You must tell us whenever anything happens which would mean you could not truthfully repeat all the declarations in this facility agreement.

## Part B – SMSF Loans

### 3 Interest

- 3.1 You must pay interest for each facility for each day. Interest for a facility for a day is calculated at the daily interest rate for that facility on the *balance owing* for that facility for the end of that day.
- 3.2 The daily *interest rate* for a facility is the facility's *interest rate* for that day divided by 365, even in a leap year. If the facility is not in Australian dollars we may change the number in the denominator by notice to you.
- 3.3 Interest for a drawing accrues daily from and including its *drawdown date*.
- 3.4 If you repay early the *total amount owing*, you must pay, at the time of repayment, all interest accrued on the amount repaid.
- 3.5 Information on current *interest rates* is available from us on request.

### 4 Break costs

\* This clause 4 applies only to facilities with a fixed *interest rate*.

- 4.1 Whenever the *interest rate* for a facility is a fixed rate a “*break costs event*” is taken to have occurred if:
- you repay early all or any part of the total amount owing for that facility before the end of a fixed interest period; or
  - the total amount owing for that facility becomes repayable because you are in default.

If a *break costs event* occurs we may suffer loss (which we call our “*break costs*”).

Our *break costs* is an amount equal to our reasonable estimate of our loss (if any) arising from a *break costs event*. This loss usually arises because of changes in market interest rates between the start of the *fixed interest period* and when the *break costs event* occurs.

- 4.2 We calculate *break costs* using the *break costs method*. The *break costs method* is a calculation of the difference, if positive, between an amount calculated by reference to the rate equivalent to our cost of funds at the start of the *fixed interest period* and an amount calculated by reference to the rate equivalent to our cost of funds at the time of the *break costs event*, over the remainder of that *fixed interest period*. This is then discounted back to the net present value at the rate equivalent to our cost of funds at the time of the *break costs event*.

#### Warning

*Break costs* can be high and increase the amount you owe us as a result, for example, of your default. You can get an estimate of applicable *break costs* at any time by contacting us.

### 5 What we can do if you are in default

- 5.1 If you are in default (see clause 13):
- we no longer need provide any facility; and
  - subject to clause 28 (limited recourse), the sum of the *total amount owing* for all facilities is:
    - in the case of a breach of clause 8.1(b) (loan to valuation ratio), payable within 30 business days of the day we give you notice of the breach and the total amount owing; and
    - in all other cases, payable on demand.
- 5.2 If any of the amount you pay us under clause 5.1(b) remains after the satisfaction of all your other obligations to us under all facilities, then we agree to repay the surplus to you.



## Part C – The *secured property*

### 6 Mortgage

- 6.1 You must ensure that the *security custodian* does everything that it is obliged to do under the *mortgage*, and does not do anything that it is forbidden to do under the *mortgage*.
- 6.2 The following clauses of the *mortgage* apply to you as well as to the *security custodian*:
- (a) Clause 2 (Rates, taxes and levies);
  - (b) Clause 3 (Looking after the property);
  - (c) Clause 4 (Insurance);
  - (d) Clause 5 (Insurance claims);
  - (e) Clause 6 (Building and other work);
  - (f) Clause 7 (The property and adjoining land) but excluding clause 7.1(c);
  - (g) Clause 8 (Dealings – such as selling, renting or mortgaging);
  - (h) Clause 9 (Other security interests)
  - (i) Clause 10 (Caveats, notifications or dealings);
  - (j) Clause 11 (Consents);
  - (k) Clause 12 (Payments such as compensation);
  - (l) Clause 13 (Administrative Matters);
  - (m) Clause 14 (Shared schemes);
  - (n) Clause 15 (Crown land);
  - (o) Clause 16 (Rural land);
  - (p) Clause 17 (Licences);
  - (q) Clause 18 (Mining); and
  - (r) Clause 22 (Things we may do at any time).

## Part D – General

### 7 Information

7.1 On each anniversary of the first *drawdown date* you must supply us with a declaration (in a form satisfactory to us) that you have complied with the *SIS Laws*.

7.2 If you are a corporation, you must supply us with:

- (a) a copy of your annual return and any notification of change of officeholders, when lodged;
- (b) details of any notice received from the Australian Investments and Securities Commission in connection with any offence or alleged offence; and
- (c) (if you are listed on a stock exchange), a copy of each release or notice you give the stock exchange or any notice received from the stock exchange in connection with any offence or alleged offence.

7.3 If we ask, you must supply us with any other information about or documents relating to:

- (a) any *arrangement with us*; or
- (b) any *secured property*; or
- (c) your and the *superannuation fund's* financial affairs or business, or the financial affairs or business of any *guarantor*.

All information or documents provided under this facility agreement must be in the form we require and certified by you to be true and up to date. We may require financial information to be audited.

### 8 General undertakings

8.1 You must:

- (a) ensure that in each financial year or, if shorter, the period from the *drawdown date* until we conduct a review of the facility and thereafter the period until the next review, all

income received (if the *superannuation fund* accounts on a cash basis) or accrued (if the *superannuation fund* accounts on an accruals basis) in relation to the *secured property* is at least 1.25 times the interest and fees accrued under this agreement in that financial year; and

- (b) ensure that the ratio, expressed as a percentage, of the *total amount owing* to the latest valuation of the *secured property* accepted by us is not at any time more than:

- (i) if you have acquired a residential property with your loan, 90% of our standard loan to valuation ratio for residential property of the kind acquired with your loan, as notified to you;
- (ii) if you have acquired a *non-specialised commercial property* with your loan, 65% of the valuation for property of that kind, as notified to you; or
- (iii) if you have acquired a *specialised commercial property* with your loan, 90% of our standard loan to valuation ratio for property of that kind, as notified to you,

and, if it does exceed it, on demand repay sufficient of the loan to ensure that the ratio does comply; and

- (c) remain as sole trustee or trustees of the *superannuation fund*; and
- (d) comply with your duties as trustee of the *superannuation fund* and the *superannuation fund* trust deed; and
- (e) comply with the *SIS Laws*; and

- (f) not amend the *superannuation fund* trust deed without our prior written consent.

**9 Financial undertakings**

You must:

- (a) not, without our consent:
  - (i) provide financial accommodation to; or
  - (ii) permit financial accommodation to remain owing to you by  
*a related entity* or satisfy any financial accommodation you now or in the future owe to a *related entity*;
- (b) if you are a corporation, not, without our consent, pay any dividend, make any distribution or provide any loan otherwise than in the ordinary course of your ordinary business;
- (c) not deposit money with a person in circumstances where the money is not repayable unless you perform obligations (including to pay money) to that person; and
- (d) if you are a corporation, ensure that your capital is not reduced or made capable of being called up only in certain circumstances.

If you are a corporation, you must ensure that none of your subsidiaries does anything which you are prohibited from doing under this clause on the basis each reference to “you” is to be read as a reference to the subsidiary.

**10 Your business**

You must:

- (a) conduct your business (including keeping accurate books of account and collecting debts owed to you) in a proper, orderly and efficient manner; and

- (b) not without our consent, stop payments generally, cease conducting your business or change the general character of any business you conduct (or threaten to do any of these things).

**11 Administrative matters**

11.1 You must:

- (a) obtain, renew on time and comply with the terms of each authorisation necessary for you to enter into the *arrangements with us*, observe obligations under them and allow them to be enforced; and
- (b) obtain, renew on time and comply with the terms of each authorisation necessary for you to use the *secured property* for its current purpose and, if we ask, use your best efforts to obtain permission to use the *secured property* for any purpose we reasonably specify.

11.2 We may do anything which you should have done under this facility agreement but which you have either not done or in our opinion have not done properly. If we do so, you must, subject to clause 28 (limited recourse), pay our *costs* when we ask.

**12 Valuers, investigators and consultants**

12.1 We may obtain a valuation report on any *secured property* at any time. Subject to clause 28 (limited recourse), you must pay us all *costs* in connection with the valuation. (However, you need only pay the *costs* of the valuation of any *secured property* that is land twice in any twelve month period unless you are in default.)

12.2 If we reasonably believe you are or may be in default or we reasonably believe that circumstances exist which could lead to default, we may appoint a person to investigate whether this belief is accurate. You must co-operate with and comply with every reasonable request made by this person. Subject to clause 28 (limited recourse), you must pay us all *costs* in connection with the investigation.

- 12.3 Subject to clause 28 (limited recourse), you must pay us all *costs* in connection with any valuer or consultant we appoint.
- 12.4 Any valuer, investigator or consultant we may use is an independent contractor and is not our agent or employee. We are not responsible for any representation, action or inaction by them.
- 12.5 Any report we obtain from the valuer, investigator or consultant is for our use only. Even if we give you a copy of the report, you cannot rely on it. You cannot sue us, the valuer, investigator or consultant if the report is wrong. You must obtain your own report if you wish to rely on it.
- 13 When are you in default?**
- You are in default if:
- (a) you do not pay on time any amount payable under an *arrangement with us* in the manner required by it; or
  - (b) you do something you agree not to do under an *arrangement with us* or you don't do something you agree to do under an *arrangement with us*; or
  - (c) you are, or a *guarantor* or another person is, in default under any *arrangement with us* or an event of default, however described, occurs under an *arrangement with us*; or
  - (d) you give, or a *guarantor* or another person gives, us incorrect or misleading information (including through your declarations in this facility agreement) in connection with an *arrangement with us*; or
  - (e) you do not, or another person does not, carry out in full an undertaking given in connection with an *arrangement with us*, within the period specified, or within seven days if no period is specified; or
  - (f) you are or become, or a *guarantor* is or becomes, insolvent or steps are taken to make you or a *guarantor* insolvent; or
  - (g) if you are a corporation, you are or become deregistered, or a *guarantor* (if it is a corporation) is or becomes deregistered, or steps are taken to deregister you or a *guarantor*; or
  - (h) an arrangement with us is, becomes or is claimed to be, void or unenforceable or any security does not have or loses the priority it is intended to have; or
  - (i) a change occurs in your or a *guarantor's* financial circumstances which, in our opinion, may have a material adverse effect on your or a *guarantor's* ability to observe its obligations under this facility agreement or another *arrangement with us*; or
  - (j) distress is levied or a judgment, order or *security interest* enforced, against you, a *guarantor* (or any of your or their property), for more than \$10,000; or
  - (k) we believe on reasonable grounds that urgent action is necessary to protect any *secured property*; or
  - (l) in our opinion, the value of the *secured property* materially decreases from its value at the date of this facility agreement or the *secured property* becomes less saleable than its saleability at the date of this facility agreement; or
  - (m) a person is appointed to investigate or manage your affairs or the affairs of a *guarantor*; or
  - (n) you cease to be trustee of the *superannuation fund*;
  - (o) if you are a corporation and you do not inform us that:
    - (i) a change takes place in your directors; or
    - (ii) a transfer of shares in your capital is registered (unless you are listed on a stock exchange); or

- (iii) new shares, convertible notes or options for shares in your capital are issued; or
- (p) if you are a corporation, you cease to be a subsidiary of the company which is your holding company at the date of this facility agreement or a company ceases to be your subsidiary; or
- (q) if you are a corporation, the persons who at the date of this facility agreement have *control* of you cease to have such *control* or one or more persons acquire *control* of you after that date; or
- (r) you do not, or a *guarantor* does not, meet all your or their monetary obligations (whether present or future) on time or within any applicable grace period or any of these obligations become, or can be rendered, payable early otherwise than at your or the *guarantor's* election; or
- (s) if you, or a *guarantor*, is a partnership, that partnership is dissolved, an application is made for its dissolution or more than 20% of the partners retire in any 6 month period; or
- (t) if you, or a *guarantor*, is a joint venture partner, that joint venture is terminated; or
- (u) you are in default under a document creating a *security interest* (such as a mortgage); or
- (v) the *security custodian* is in default under the *mortgage*; or
- (w) any of the events specified in this clause 13 happens in relation to the *security custodian*.
- 14.2 Unless you have already paid them, you authorise us to debit these fees and charges to your account. We may do so on or after the date we pay them or the date they become due or payable by you or us (whichever is earlier). We need not notify you first.
- 14.3 Any fees calculated in arrears by reference to the *facility limit* as at the last day of the month, are calculated **before** taking into account any repayment you make under the facility on that day.
- 14.4 Any fee or charge (including a service charge or a discount charge) expressed as a percentage per annum is calculated on the basis of a 365 day year, even in a leap year. However, if the facility is not in Australian dollars we may change this basis of calculation.
- 14.5 We may introduce new fees and charges at any time. When we do we provide written notice of the introduction at least 30 days before the fee or charge takes effect.
- We may vary fees and charges at any time. When we do we notify you in writing or by newspaper advertisement no later than the day on which the variation takes effect.
- 14.6 Subject to clause 28 (limited recourse), you must also pay us an amount equal to any government charges and duties on receipts or withdrawals under this facility agreement, calculated in accordance with the relevant legislation. These are payable whether or not you are primarily liable for such charges and duties. We debit these amounts to your account.
- 14.7 If we:
- (a) reasonably decide that we are liable to pay *GST* on a supply made in connection with an *arrangement with us*; and
- (b) certify to you that we have not priced the supply to include *GST*,
- then, subject to clause 28 (limited recourse), you must pay us on demand an additional

## 14 Fees and charges

- 14.1 Fees and charges payable or which may become payable under this facility agreement, and when they are payable, are set out in the facility offer and in fees and charges booklets which are revised

then, subject to clause 28 (limited recourse), you must pay us on demand an additional

amount equal to the consideration payable for the supply multiplied by the prevailing *GST* rate.

- 14.8 Information on standard fees and charges is available from us on request.

## 15 Default interest

- 15.1 We may charge you interest at a higher rate, the *default rate*:
- (a) on any amount overdue for payment, from the time the amount is overdue for payment until it is paid; and
  - (b) if you are in default (see clause 13) other than a default under clause 13(a), on the *total amount owing* from the date specified in our notice to you that you are in default until the date we advise you that you are no longer in default.

These interest charges are calculated daily or at any other intervals we choose.

- 15.2 Unless otherwise indicated, the *default rate* for a facility is always 3% per annum more than the *interest rate* for that facility. If the *interest rate* changes, so does the *default rate*.
- 15.3 Subject to clause 28 (limited recourse), you must pay interest owing under this clause when we specify.
- 15.4 Each month (or any other period we choose) we may add to the overdue amount any interest under this clause which has not been paid. You are then liable for interest under this clause on the total amount.
- 15.5 If any amount you must pay under any *arrangement with us* 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 in clause 15.2 or the rate in the court order (whichever is higher). You must pay interest under this clause on demand from us.
- 15.6 Your obligation to pay on time is not cancelled by the provisions of this clause.

## 16 Information on interest rates and fees

Information on current *interest rates* and our normal fees and *costs* is available from us on request.

## 17 Other costs and indemnities

- 17.1 You indemnify us against, and subject to clause 28 (limited recourse), you must therefore pay us on demand for, liability, loss or *costs* we suffer or incur:
- (a) if you default under an *arrangement with us*; or
  - (b) in connection with any person exercising, or not exercising, rights under an *arrangement with us*; or
  - (c) under any indemnity we give a *controller* or administrator appointed:
    - (i) in respect of you; or
    - (ii) over any of the *secured property*; or
  - (d) in connection with any *arrangement with us* or any *secured property*; or
  - (e) in connection with finance which you request not being provided in accordance with your request for any reason (other than our default); or
  - (f) in connection with unauthorised use by any person of any telephone or internet based service we provide in connection with a facility (including Phone Banking and Internet Banking).

- 17.2 You must pay for anything that you must do under an *arrangement with us*.

## 18 General provisions in relation to payments

- 18.1 You agree to maintain at least one account with us.
- 18.2 We may assign any date we consider appropriate to a debit or credit to an account (except that, in the case of a debit, the date must not be earlier than the date on which the relevant transaction occurs). However,

we credit payments to an account as soon as practicable after we receive them. This may not be on the date of payment.

18.3 If an amount is due on a day which is not a *business day*, you must pay it to us on the next following *business day* unless that day falls in the next calendar month, in which case you must pay it to us on the preceding *business day*.

18.4 Unless we agree otherwise in writing, all payments to us under this facility agreement must be received by us in full without set-off, counterclaim or deduction.

18.5 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.

18.6 If:

- (a) a law requires us to deduct an amount in respect of *taxes* from a payment by us to an entity from which we raise funds used by us in funding or maintaining any drawing; and
- (b) that entity requires us to make an additional payment to it so that it actually receives on the due date the

full amount which it would have otherwise received from us,

then, subject to clause 28 (limited recourse), you agree to pay to us an amount equal to the additional payment we are required to make to that entity.

## 19 Compensation for unforeseen circumstances

19.1 Subject to clause 28 (limited recourse), you must compensate us on demand if we determine that:

- (a) a *directive*, or change in *directive*, in either case which comes into operation after the date of this facility agreement; or
- (b) a change in a *directive's* interpretation or administration by an authority after the date of this facility agreement; or
- (c) compliance by us or any of *related entities* with such *directive*, changed *directive* or changed interpretation or administration,

directly or indirectly:

- (i) increases the cost of any facility to us; or
- (ii) reduces any amount received or receivable by us, or our effective return, in connection with any facility; or
- (iii) reduces our return on capital allocated to any facility, or our overall return on capital.

However, a reference to a *directive* does not include a *directive* imposing or changing the basis of a *tax* on our overall net income.

Compensation need not be in the form of a lump sum and may be demanded as a series of payments.

19.2 You must compensate us whether or not the increase or reduction could have been avoided. However, at your request, we agree to consider ways of minimising any increase or reduction.

## 20 Illegality or impossibility

20.1 This clause applies if we determine that:

- (a) a change in a *directive*; or
- (b) a change in the interpretation or administration of a *directive* by an authority; or
- (c) a *directive*,

taking effect after the date of this facility agreement, makes it (or will make it) illegal or impossible for us to fund, provide, or continue to fund or provide any facility. In these circumstances, by giving a notice to you, we may suspend or cancel some or all of our obligations under this facility agreement as indicated in the notice.

The suspension or cancellation:

- (a) must apply only to the extent necessary to avoid the illegality or impossibility; and
- (b) in the case of suspension, may continue only for so long as the illegality or impossibility continues.

If the illegality or impossibility related to a drawing under a loan facility, by giving a notice to you, we may require repayment of all or part of the affected drawing and interest accrued on that part;

You agree to pay the amount specified within 30 *business days* after receiving the notice (or, if earlier, on the date the illegality or impossibility arises).

## 21 Statements

We issue statements for a facility under which we provide financial accommodation (such as a loan facility) each six months (or, if you request, quarterly or monthly).

## 22 Reliance on communications from you

Despite anything else you and we have agreed, you are bound by, and we may act on, any communication (written or oral) that we believe comes from you, even if it is made by an unauthorised person. You may not hold us liable for any loss you suffer as a result.

## 23 Notices and other communications

23.1 Except as otherwise provided in this facility agreement, notices, certificates, consents, approvals and other communications in connection with this facility agreement must be in writing. Written communications from you must be signed by you, or if you are a corporation, by a director or another person we approve.

23.2 Written communications 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 office where you arrange this facility agreement or any other office 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.

23.3 Written communications take effect from the time they are received unless a later time is specified in them.

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

23.5 If written communications 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.

## 24 Certificates

We may give you a certificate about a matter or about an amount payable in connection



	with this facility agreement. The certificate is sufficient evidence of the matter or amount, unless it is proved to be incorrect.	28	<b>Limited recourse</b>
		28.1	Limit and release
25	<b>Prompt performance</b>  If this facility agreement specifies when you must perform an obligation, you must perform it by the time specified. You must perform all other obligations promptly.		Despite any other provision of this facility agreement, we may not have recourse to you or your assets or the <i>superannuation fund</i> assets under or in connection with this facility agreement, except we may have recourse to the <i>secured property</i> and its proceeds and the total amount available to us as a result of a realisation of the <i>secured property</i> (after payment of enforcement costs etc).
26	<b>How we may exercise our rights</b>		
26.1	We may exercise a right or remedy or give or refuse our consent in any way we consider appropriate, including by imposing conditions.	28.2	Security custodian
26.2	If we do not exercise a right or remedy fully or at a given time, we can still exercise it later.		Clause 28.1 does not affect your obligations to the <i>security custodian</i> .
26.3	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, whether or not caused by our negligence.	28.3	Unrestricted remedies
26.4	Our rights and remedies under this facility agreement:	(a)	<b>(Charges and guarantees)</b> Subject to sub-paragraph (b), nothing in clause 28.1 <b>(Limit and release)</b> limits us in:
	(a) are in addition to other rights and remedies given by law independently of this facility agreement; and		<ul style="list-style-type: none"> <li>• exercising our rights or powers under any <i>security</i>;</li> <li>• obtaining an injunction or other order to restrain any breach of this loan agreement by any party; or</li> <li>• obtaining declaratory relief.</li> </ul>
	(b) may be exercised even if this involves a conflict of duty or we have a personal interest in their exercise.	(b)	<b>(Limited agency)</b> In exercising any right, power or remedy under this facility agreement, neither we nor any receiver, receiver and manager, agent or attorney appointed under this facility agreement 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 clause 28.1 <b>(Limit and release)</b> .
26.5	Our rights and remedies under this facility agreement may be exercised by any of our directors, any of our employees whose job title includes the word “manager” or any other person we authorise.	(c)	<b>(Amount owing)</b> For the purpose of determining the amount owing liability of any <i>guarantor</i> in relation to the amount outstanding, the limit on your liability under clause 28.1 <b>(Limit and release)</b> will be disregarded.
27	<b>Indemnities</b>  The indemnities in this facility agreement are continuing obligations, independent of your other obligations under this facility agreement. It is not necessary for us to incur expense or make payment before enforcing a right of indemnity conferred by this facility agreement.		

- 28.4 Restricted remedies
- Except as provided in clause 28.3 (**Unrestricted remedies**), we will not, in relation to any liability for which you are not liable under clause 28.1 (**Limit and release**):
- (a) (**judgment**) obtain a judgment for the payment of money or damages by you;
  - (b) (**statutory demand**) issue any demand under s459E(1) of the Corporations Act 2001 (or any analogous provision under any other law) against you;
  - (c) (**winding up**) apply for the winding up of you;
  - (d) (**execution**) levy or enforce any distress or other execution to, on or against any of your assets other than the *secured property*;
  - (e) (**court appointed receiver**) apply for the appointment by a court of a receiver to any of your assets other than the *secured property*; and
  - (f) (**set-off or counterclaim**) exercise or seek to exercise any set-off or counterclaim against you,
- or take proceedings for any of the above and we waive our rights in respect of those applications and proceedings.
- 29 Variation and waiver**
- 29.1 A provision of this facility agreement, or right created under it, may not be waived except in writing signed by the party or parties to be bound.
- 29.2 We may vary any one or more of:
- (a) any *interest rate* or the way any *interest rate* is determined (for example, we can change any applicable margin). However we cannot vary any fixed *interest rate* during the relevant *fixed interest period*;
  - (b) the term of any facility;
- (c) the repayment arrangements including the amount, frequency and number of repayments, the time for repayments or the method of calculation or repayments; and
  - (d) the method of calculation of interest.
- We may vary any other term or condition of this facility agreement but not in a way which would cause you to be in breach of the *SIS Laws*.
- If we make any variation referred to above, we must notify you as required or permitted by the Code of Banking Practice if it applies to the variation. If the Code of Banking Practice does not apply, we will notify you in writing (which may be by email) or by newspaper advertisement no later than the day on which the variation takes effect.
- 30 Inconsistent law**
- To the extent permitted by law, this facility agreement prevails to the extent it is inconsistent with any law.
- 31 Dealings**
- 31.1 Your rights are personal to you and may not be assigned or a *security interest* created over them without our consent.
- 31.2 We may assign or otherwise deal with our rights under this facility agreement or another *arrangement with us* 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 facility agreement or the *arrangement with us*) any right of set-off or other rights you have against us. At our request you must execute and deliver to us or any other person we specify any document we reasonably require for this purpose.
- 32 Disclosure of information**
- Information you provide to us may be disclosed:
- (a) if you consent (you may not unreasonably withhold your consent); or

- (b) if required by any stock exchange or if allowed or required by law; or
- (c) to any person in connection with our exercising rights or dealing with rights or obligations under any *arrangement with us* (including in connection with preparatory steps such as negotiating with any potential assignee or potential participant of our rights or other person who is considering contracting with us in connection with an *arrangement with us*); or
- (d) to our officers and employees and to legal advisers, auditors 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 *guarantor* or proposed *guarantor*; or
- (h) if we consider the disclosure appropriate in connection with the operation or administration of this facility agreement.

### 33 Consent to telephone recording

You consent to us recording our telephone conversations with you. There is not necessarily a warning tone when we do so.

### 34 Code of Banking Practice

The relevant provisions of the Code of Banking Practice apply to this facility agreement if you are an individual or a *small business*.

### 35 Applicable law and serving documents

- 35.1 This facility agreement is governed by the law of the State or Territory of our contact details given in the facility offer. You and we submit to the non-exclusive jurisdiction of the courts of that place.
- 35.2 We may serve any document in a court action on you by delivering it to, or leaving it at, your address set out in the facility offer or such other address as you and we agree at

any time. This clause does not prevent any other method of service.

### 36 Meaning of words

***accountable taxes*** means *taxes* imposed by a *relevant country* other than those 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 this facility agreement, each *security* and each other arrangement (including any agreement or a *security interest*) under which you or a *guarantor* has or could in the future have obligations to us or any of our *related entities*.

***balance owing*** means, for a particular facility and at any time, the difference between all amounts credited and all amounts debited to you in connection with that facility at that time. When this amount is to be calculated for the end of a day, it includes all debits and credits assigned to that day.

***break costs*** has the meaning described in clause 4.

***break costs event*** has the meaning described in clause 4.

***break costs method*** has the meaning described in clause 4.

***business day*** means a day we are open in the State or Territory of our contact details given in the facility offer. It does not include a public or bank holiday in that State or Territory.

***business loan rate*** means the rate we publish from time to time as our business loan rate, or a name we substitute for that name.

***commercial loan rate*** means the rate we publish from time to time as our commercial loan rate, or a name we substitute for that name.

***control*** of a corporation includes the direct or indirect power to directly or indirectly:

- direct the management or policies of the corporation; or
- control the membership of its board of directors,

whether or not the power has statutory, legal or equitable force or is based on statutory, legal or equitable rights and whether or not it arises by means of trusts, agreements, arrangements, understandings, practices, the ownership of any interest in shares or stock of the corporation or otherwise.

**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).

**custodian document** means the deed, approved by us, under which a security custodian agrees to hold on trust for you the property acquired with a loan.

**default rate** means a per annum rate of interest payable under clause 15.

**directive** means a treaty, a law, an official directive or request having the force of law, and an official directive, request, guideline or policy with which financiers carrying on business in Australia generally comply.

**drawdown date** means, for a facility, the date on which that facility is drawdown.

**facility** means a facility we agree to provide you under this facility agreement.

**facility limit** means, for a facility, the meaning given to it in the facility details section of the offer relating to that facility.

**facility offer** means the most recent facility offer which incorporates these standard terms.

**fixed interest period** means a fixed interest period offered by us and selected under a fixed rate loan.

**for example** see **including**.

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

**guarantee** includes an indemnity.

**guarantor** means each person (other than you) who gives a *security*.

**including, such as or for example** 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.

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* 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, proposal 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 an 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.

**interest rate** means, for a facility, the interest rate for that facility as described in the section for that facility in the facility offer or as notified to you from time to time in accordance with the terms of this facility agreement.

**mortgage** means the mortgage entered into between us and the *security custodian* in respect of the *secured property*.

**non-specialised commercial property** means property which is:

- not *specialised commercial property*;
- or
- property we notify you is “non specialised commercial property”.

**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 or an authority.

**receiver** means any receiver or receiver and manager appointed over any of the *secured property*.

**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 *guarantor* is either incorporated or is resident or domiciled for any tax purpose or in which you or a *guarantor* carry on business or own or lease property or from which, or through which, any payment under an *arrangement with us* is made.

**secured property** means property over which a *security* is held.

**security** means each security described in the security details section of the facility offer and any additional *security interest* given in connection with an *arrangement with us*.

**security custodian** means the security custodian specified in the *custodian document*.

**security interest** means any security for the payment of money or performance of obligations including a mortgage, charge, lien, pledge, trust, power, title retention or flawed deposit arrangement. *Security interest* also includes a guarantee.

**SIS Laws** means Superannuation Industry (Supervision) Act 1993 (Cth) and Superannuation Industry (Supervision) Regulations 1994 (Cth).

**small business** means a business having:

- less than 100 full time (or equivalent) people if the business is or includes the manufacture of goods; or
- in any other case, less than 20 full time (or equivalent) people,

unless the banking service we provide is provided for use in connection with a business that does not meet the elements in (a) or (b) above.

**specialised commercial property** means commercial property that is built for a specific business purpose and cannot be easily converted to other uses or has a specific licence attached which is integral to its value.

**St. George fixed base rate** means the fixed rate we publish from time to time as the St. George fixed base rate, or a name we substitute for that name.

**such as** see **including**.

**superannuation fund** means the superannuation fund of which you are trustee.

**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, or calculated having regard to, our overall net income.

**term** means, for a facility, the meaning given to it in the section dealing with that facility in the facility offer.

**this facility agreement** means the agreement arising out of your acceptance of the offer contained in the facility offer.

**total amount owing** means, for a particular facility and at any time:

- where we provide you with loans under the facility, the *balance owing* for the facility plus all accrued interest and *costs* and other amounts you owe us in connection with that facility which have not been debited to the facility account at that time; and
- where we incur contingent obligations on your behalf or at your request under the facility, the sum of those contingent obligations existing at that time plus all other amounts you owe us in connection with that facility at that time; and
- in relation to any other facility, all amounts you owe us in connection with that facility at that time.

**we** means whichever is named in the facility offer of St. George Bank – A Division of Westpac Banking Corporation ABN 33 007 457 141 or another entity related to it, and its successors and assigns.

**you** means, for a facility, the person or persons named in the facility offer as the

facility's "Borrower". If there are more than one, **you** means each of them separately and every two or more of them jointly. **You** includes your successors and assigns.

When used in sections of the facility offer relating to a specific facility the expressions *balance owing*, *drawdown date*, *facility limit*, *interest rate*, *term* and *total amount owing* refer to those expressions as they apply to that facility.

The singular includes the plural and vice versa.

An accounting term used in this facility agreement has the meaning given to it in accounting principles and standards generally accepted in Australia, unless otherwise expressly defined.

A reference to:

- a document 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 them)
- the Corporations Act is a reference to the Corporations Act 2001 (Cwlth)
- any thing (such as an amount) includes the whole and each part of it

**More information about banking**

There is a booklet called “Corporate and Business Accounts and Payment Services - Terms and conditions and general information” which is available on request from any of our branches. This booklet contains all types of information about banking services and the Code of Banking Practice, such as account opening procedures, confidentiality and complaint handling procedures, combining accounts, bank cheques, cheques and cheque clearing, the advisability of your notifying us if you are in financial difficulty, and the advisability of your reading the terms and conditions applying to any banking service we offer you which you may find helpful.