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## SMSF borrowing (LRBAs), related party loans and 1 July 2016 - there's more involved than you think. Are you ready?

### Cooper Grace Ward

Australia | March 8 2016

The ATO has been highlighting their concerns with related party loans in SMSF borrowing arrangements (LRBAs), and particularly whether they have been made on commercial terms. A new announcement by the ATO has highlighted the importance of acting quickly to ensure compliance.

The ATO's current view is that all loans to SMSFs must be on arm's length terms (see our previous alert).

Last year, the ATO announced it would not take action on existing LRBAs provided 'commercial terms are in place by 1 July 2016' (see our previous alert).

The ATO has now been reported in a recent *SMSF Adviser* as stating that LRBAs involving a related party must be on commercial terms **for the whole of the 2015/16 year** by 1 July 2016. This is very different to making sure everything is in place and effective from 1 July 2016.

Putting a loan on commercial terms involves more than charging the same interest rate as a bank. Other aspects of the arrangement must also align with what an arm's length financier would require, including:

- a written document containing the same sort of terms; ✓ PTO
- requirements for interest and principal repayments; ✓ PTO
- a similar loan to value ratio to that required by banks for LBRAs; and ✓ PTO
- adequate security (including registering a mortgage and taking guarantees). ✓ PTO

And it is essential all agreed terms are actually complied with, and enforced if necessary.

The ATO is working with the industry on safe harbour standards so there is certainty around what must be in place. The best evidence is mirroring the terms of a formal written offer or proposal from an arm's length financier.

Advisers must ensure they take action now to ensure LRBAs are documented with commercial terms, and have operated from at

will tell client to ensure \$11K is paid on the last day of the calendar month.

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## Schedule 1

### Loan Details

#### Item 1 Advance

\$850,000.00

#### Item 2 Interest Rate

As agreed between the parties. If agreement cannot be reached between the parties, the Interest rate will be:

- (a) the Commonwealth Bank of Australia (**CBA**) Better Business Loan variable rate charged by the CBA to the Lender from time to time (which at the date of this document is 7.41% per annum) on the first \$300,000 of the Money Owing;
- (b) the CBA Business Line of Credit variable rate charged by the CBA to the Lender from time to time (which at the date of this document is 5.1% per annum) on the balance of the Money Owing).

Where any part of the Money Owing is repaid during the Term of the Facility, the amount repaid shall be applied firstly to reduce the amount referred to in Item 2(a) above.

#### Item 3 Payment Dates

The last day of each calendar month. ✓

#### Item 4 Repayment Date

The date which is 25 years after the Settlement Date. ✓

#### Item 5 Authorised Investment

15-17 Kabi Circuit, Deception Bay, Queensland 4508 being Lot 47 on SP 193956, County of Stanley and Parish of Redcliffe

#### Item 6 Settlement Date

20 December 2013

LVR: Currently 25%  
(was 62% when purchased)

CURRENT TITLE SEARCH

DEPT OF NATURAL RESOURCES AND MINES, QUEENSLAND

Request No: 21535921

Search Date: 05/08/2015 09:33

Title Reference: 50659209

Date Created: 17/04/2007

Previous Title: 13919244

REGISTERED OWNER

Dealing No: 715549599 17/01/2014

NEIL ALEXANDER MULLER  
KAREN ANN MULLER TRUSTEE  
UNDER INSTRUMENT 715549599

ESTATE AND LAND

Estate in Fee Simple

LOT 47 SURVEY PLAN 193956  
County of STANLEY Parish of REDCLIFFE  
Local Government: MORETON BAY

EASEMENTS, ENCUMBRANCES AND INTERESTS

1. Rights and interests reserved to the Crown by  
Deed of Grant No. 10437133 (POR 510)
2. EASEMENT IN GROSS No 710482651 05/04/2007 at 14:50  
burdening the land  
CABOOLTURE SHIRE COUNCIL  
over  
EASEMENT G ON SP193981
3. MORTGAGE No 715554539 21/01/2014 at 13:39  
NEIL ALEXANDER MULLER  
KAREN ANN MULLER JOINT TENANTS

ADMINISTRATIVE ADVICES - NIL  
UNREGISTERED DEALINGS - NIL

CERTIFICATE OF TITLE ISSUED - No

Caution - Charges do not necessarily appear in order of priority

\*\* End of Current Title Search \*\*

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Requested By: D APPLICATIONS GLOBAL X

DUR025



# LOAN AGREEMENT

**Neil Alexander Muller and Karen Ann Muller**

**Neil Alexander Muller and Karen Ann Muller as trustee of the N & K  
Muller Superannuation Fund**

Level 14 Central Plaza One  
345 Queen Street  
BRISBANE QLD 4000  
Tel: (07) 3231 0600  
Fax: (07) 3221 0479  
Our ref: NJD:DJN:93626

[www.mcw.com.au](http://www.mcw.com.au)

**Brisbane**  
Maroochydore  
Southport

Affiliated office  
Sydney

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## LOAN AGREEMENT

**DATE** 13 December 2013

**DETAILS OF PARTIES**

---

Name Neil Alexander Muller  
Label **Neil**  
Address 35 Redgum Drive  
Morayfield Qld 4506

---

Name Karen Ann Muller  
Label **Karen**  
Address 35 Redgum Drive  
Morayfield Qld 4506

---

Name Neil Alexander Muller as trustee for the N & K Muller Superannuation Fund  
Label **Neil Trustee**  
Address 35 Redgum Drive  
Morayfield Qld 4506

---

Name Karen Ann Muller as trustee for the N & K Muller Superannuation Fund  
Label **Karen Trustee**  
Address 35 Redgum Drive  
Morayfield Qld 4506

---

### BACKGROUND

- A. The Fund is a Regulated Fund and the Borrower is the trustee for the Fund.
- B. The Borrower has asked the Lender to provide the Advance.
- C. The Lender has agreed to provide the Advance in accordance with the terms and conditions in this document.
- D. The Advance is intended to comply with the requirements of sections 67A, 67B and 71(8) of the *Superannuation Industry (Supervision) Act 1993* (Cth).

### OPERATIVE PROVISIONS

#### 1. DEFINITIONS AND INTERPRETATION

##### 1.1 Definitions

The following definitions apply in this document:

**Advance** means the amount specified in Item 1 of Schedule 1, advanced or to be advanced by the Lender to the Borrower pursuant to the terms of this document.

**Associate** has the meaning in section 318 of the *Income Tax Assessment Act 1936* (Cth).

**Authorised Investment** means the investment specified in Item 5 of Schedule 1.

**Borrower** means Neil Trustee and Karen Trustee.

**Business Day** means a day on which banks are open for retail banking, other than a Saturday, Sunday or public holiday, in Brisbane, Australia.

**Collateral Security** means any present or future Guarantee or Security Interest taken by the Lender or given in favour of the Lender or entered into by the Borrower or any other person as security for compliance with this document and payment of the Money Owed.

**Custodian** means Neil Alexander Muller as custodian of the N & K Muller Super Property Trust.

**Defunct Body** means a body or agency that has ceased to exist, been renamed or replaced, or had its powers or functions removed.

**Encumbrance** means any:

- (a) Security Interest;
- (b) easement, restrictive covenant or right of access;
- (c) caveat;
- (d) restriction on dealing with or using property;
- (e) profit a prendre or right to remove something from land;
- (f) lease, licence or right to occupy or use;
- (g) right in connection with enforcement of a judgment; or
- (h) agreement or option to create any thing in (a) to (f),

whether registered, unregistered or statutory.

**Event of Default** means any of the events or circumstances described in clause 10.2.

**Fund** means the N & K Muller Superannuation Fund.

**Government Authority** means:

- (a) a local, state or federal government;
- (b) a minister, department or agency of any government in (a);
- (c) a corporation, authority or body that is constituted under statute or regulation for a public purpose;
- (d) a holder of a statutory office for a public purpose, or a person charged with the administration of a law; or
- (e) a court, tribunal or commission constituted under statute or regulation.

---

**GST** has the meaning given by the GST Law.

**GST Law** has the meaning given to "GST law" in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Guarantee** means any undertaking or obligation to:

- (f) pay money owed by;
- (g) perform obligations of;
- (h) indemnify against the consequences of default by; or
- (i) be responsible for the obligations, indebtedness or liability of, another person.

**Insolvency Event** means:

- (a) if the party is an individual, the party:
  - (i) signs an authority under section 188 of the *Bankruptcy Act 1966* (Cth);
  - (ii) becomes a party to a personal insolvency agreement as debtor;
  - (iii) gives a written proposal for a debt agreement under s 185C of the *Bankruptcy Act 1966* (Cth);
  - (iv) becomes a party to a debt agreement as debtor;
  - (v) has a creditor's petition presented against him or her;
  - (vi) has a sequestration order made against his or her estate;
  - (vii) presents a debtor's petition; or
  - (viii) becomes bankrupt;
- (b) if the party is a company or body corporate, the party:
  - (i) has an application made against it for an order that it be wound up;
  - (ii) has an order made against it that it be wound up;
  - (iii) resolves that it be wound up voluntarily;
  - (iv) has an administrator appointed or executes a deed of company arrangement;
  - (v) enters into a compromise or arrangement with its creditors; or
  - (vi) has a controller, managing controller, receiver or receiver and manager appointed in respect of any of its assets (including assets of the Fund, where the party is the Borrower).

**Interest Rate** means the rate specified in Item 2 of Schedule 1.

**Lender** means Neil and Karen.

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**Money Owing** means on any day the amount of any money owing or payable actually or contingently by the Borrower to the Lender under this document or otherwise, including but not limited to the Principal Sum, any interest, and all other costs, expenses and charges payable by the Borrower to the Lender under this document, any Collateral Security or under any other Transaction Document.

**Notice** means any notice, demand, certificate, consent, approval, waiver or communication given under this document.

**Payment Date** means each date specified in Item 3 of Schedule 1.

**Principal Sum** means so much of the Advance that remains to be paid by the Borrower to the Lender pursuant to this document.

**Regulated Fund** means a 'regulated superannuation fund' within the meaning of section 19 of the *Superannuation Industry (Supervision) Act 1993* (Cth) and a 'complying superannuation fund' within the mean of Part 5 of *Superannuation Industry (Supervision) Act 1993* (Cth).

**Repayment Date** means the date specified in Item 4 of Schedule 1.

**Security** means the security provided by the Borrower or the Custodian to the Lender in accordance with clause 8.1.

**Security Interest** means any:

- (a) mortgage, charge, pledge, lien or security interest;
- (b) retention of title arrangement;
- (c) right or power given as security for payment of money or performance of any obligation, including a right of recourse against property to satisfy a claim;
- (d) a right, interest or arrangement which has the effect of giving a person a preference over other creditors in recovering money owing; or
- (e) agreement or option to create any arrangement referred to in paragraphs (a) to (d).

**Security Trust** means the N & K Muller Super Property Trust, a bare trust, established between the Custodian and the Borrower for the purposes of sections 67A and 67B of the *Superannuation Industry (Supervision) Act 1993* (Cth).

**Settlement Date** means the date for settlement of the acquisition of the Authorised Investment as specified in Item 6 of Schedule 1.

**Superannuation Law** means any law of the Commonwealth of Australia which deals with any aspect of the superannuation or taxation in relation to superannuation, including the *Superannuation Industry (Supervision) Act 1993* (Cth) and the *Superannuation Industry (Supervision) Regulations 1994* (Cth).

**Tax** means:

- (a) any present or future tax (including GST), levy, impost, fee, charge, duty or withholding; and
- (b) any interest or penalty in respect of any thing in paragraph (a),

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imposed by a Government Authority.

**Term** means the period commencing on the Settlement Date and ending on the Repayment Date.

**Transaction Document** means each of:

- (c) this document;
- (d) N & K Muller Super Property Trust;
- (e) any Collateral Security; and
- (f) any other document entered into in connection with the Transaction Documents.

## 1.2 Rules for Interpreting this Document

This clause 1.2 specifies the rules for interpreting this document, except where the context makes it clear that a rule is not intended to apply.

- (a) The Background and headings are for convenience only and do not affect the interpretation of this document.
- (b) A reference to:
  - (i) legislation (including subordinate legislation) is to that legislation as amended, re enacted or replaced, and includes any subordinate legislation issued under it;
  - (ii) a document (including this document), or a provision of a document (including a provision of this document), is to that document or provision as amended or replaced;
  - (iii) a party to this document, or a party to any other document or agreement, includes that party's executors, administrators, permitted substitutes and permitted assigns;
  - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person;
  - (v) anything (including a right, obligation or concept) includes each part of it;
  - (vi) property includes real, personal and intangible property;
  - (vii) a body or agency that is a Defunct Body means the agency or body which succeeds to the Defunct Body's powers or functions, or performs most closely the functions of the Defunct Body;
  - (viii) AUD\$, A\$, \$A, dollar or \$ is to Australian currency; or
  - (ix) a clause, schedule or annexure is to a clause of, or schedule or annexure to, this document.
- (c) A singular word includes the plural, and vice versa.
- (d) A word which suggests one gender includes any other genders.

- 
- (e) If a word is defined, another part of speech or grammatical form of that word has a corresponding meaning.
  - (f) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
  - (g) An obligation on, warranty by, or right of:
    - (i) two or more persons; or
    - (ii) a party that comprises two or more persons,is the obligation, warranty or right (as the case may be) of those persons jointly and severally.
  - (h) Time is reckoned as follows:
    - (i) A reference to the date or time of day, is a reference to that date or that time of day in Queensland, Australia.
    - (ii) If a period expressed in days, beginning on a given day, act or event is provided or allowed for any purpose, the period is calculated by:
      - (A) excluding the day, or the day of the act or event; and
      - (B) including the day on which the purpose is to be fulfilled.
    - (iii) If a period expressed in weeks, months or years, beginning on a given day, act or event is provided or allowed for any purpose, the period is calculated from:
      - (A) the day, or the day of the act or event; until
      - (B) the corresponding day in the next appropriate week, calendar month or year.
    - (iv) If there is no corresponding day for the purposes of clause 1.2(h)(iii)(B), because of the differing number of days in calendar months, the corresponding day is taken to be the last day of the relevant calendar month.
    - (v) If something is to be done on a particular day, it must be done by 5.00pm on that day.
    - (vi) If something is to be done on a day which is not a Business Day then that thing must be done on the next Business Day.
  - (i) Terms defined in the GST Law have the same meaning in this document unless the context makes it clear that a different meaning is intended.

## **2. CONDITIONS PRECEDENT TO ADVANCE**

The Lender's obligation to provide the Advance is subject to:

- (a) the parties executing all Transaction Documents and any other documents required by the Lender; and

- 
- (b) the Lender first receiving, in registrable form, the Security.

### **3. ADVANCE**

#### **3.1 Advance on Settlement Date**

The Lender must make the Advance available to the Borrower at an agreed time on or before the Settlement Date if:

- (a) the conditions precedent set out in clause 2 are satisfied;
- (b) the Borrower has complied with clauses 3.2 and 3.3; and
- (c) the Lender is satisfied that no Event of Default has occurred and is continuing.

#### **3.2 Borrower's obligation before the Settlement Date**

At least two Business Days before the Settlement Date the Borrower must give the Lender notice of the amount the Borrower will draw down.

#### **3.3 Borrower's obligations on the Settlement Date**

On the Settlement Date the Borrower must provide to the Lender:

- (a) the Security required under clause 8.1;
- (b) an executed copy of the trust deed for the Security Trust; and
- (c) evidence to the Lender's satisfaction that the Custodian has taken title to the Authorised Investment free from all Encumbrances other than the Security.

#### **3.4 Amounts not drawn on the Settlement Date**

If at the Settlement Date the Borrower has not drawn the full amount of the Advance, then the amount not drawn is cancelled.

#### **3.5 Borrower's use of Advance**

The Borrower may use the Advance only as consideration for the acquisition of the Authorised Investment. The Borrower must not use the Advance for any other purpose including, for example:

- (a) as consideration for any separate purchase other than for the Authorised Investment; or
- (b) for improvements to the Authorised Investment.

### **4. INTEREST**

#### **4.1 Calculation of Interest**

Interest is calculated daily at the Interest Rate on the Principal Sum during the Term.

#### **4.2 Payment of Interest**

The Borrower must pay interest to the Lender in arrears on each Payment Date during the Term.

---

#### **4.3 Capitalisation of Interest**

The Lender may at any time elect by notice to the Borrower to capitalise interest, in which case:

- (a) the Borrower is not required to make payments under clause 4.2; and
- (b) interest will be added to the Principal Sum on each Payment Date.

#### **5. INTEREST ON OVERDUE AMOUNTS**

##### **5.1 Calculation of Interest on Overdue Amounts**

If any amount payable by the Borrower under this document (including interest) is not paid in full on the due date, interest will accrue daily on that overdue amount at the Interest Rate plus 3% from the date the overdue amount was due, until it is paid in full.

##### **5.2 Payment of Interest on Overdue Amounts**

Interest on overdue amounts is payable by the Borrower to the Lender:

- (a) on demand; or
- (b) if not demanded, on each Payment Date.

##### **5.3 Capitalisation of Interest on Overdue Amounts**

The Lender may at any time elect by notice to the Borrower to capitalise interest on overdue amounts, in which case:

- (a) the Borrower is not required to make payments under clause 5.2; and
- (b) interest on overdue amounts will be added to the Principal Sum on each Payment Date.

##### **5.4 Other Rights of Lender Not Affected**

The Lender's right to interest on overdue amounts under this clause 5 is:

- (a) without prejudice to any other rights the Lender may have in respect of an Event of Default under this document or a Collateral Security; and
- (b) not affected by:
  - (i) an Insolvency Event in respect of the Borrower; or
  - (ii) the obtaining of judgment by the Lender for any amount owing under this document.

#### **6. REPAYMENT**

##### **6.1 Payment of Money Owing**

The Borrower must pay to the Lender the Principal Sum and the balance of the Money Owing:

- (a) on the Repayment Date; or

- 
- (b) on the occurrence of an Event of Default,  
whichever is earlier.

## **6.2 Early Payment**

- (a) The Borrower may at any time during the Term and on at least one week's notice to the Lender of the Borrower's intention to pay, pay to the Lender part or all of the Money Owing.
- (b) If the Borrower pays all of the Money Owing to the Lender, the rights and obligations of the parties under this document will be at an end.

## **6.3 Payment by a Related Party**

For the purposes of this document, any amount may be paid to the Lender by an entity that is an Associate of the Borrower, and such amount shall be treated by the Lender as if it were paid by the Borrower and will be applied in accordance with the terms this document.

## **7. PAYMENTS**

### **7.1 Non-Business Day**

If any payment to be made under this document would otherwise fall due on a day which is not a Business Day, then the due date for payment is the preceding Business Day.

### **7.2 How payments made**

All payments to be made by the Borrower under this document must be made:

- (a) to or as directed by the Lender at the place or into the account from time to time notified by the Lender to the Borrower;
- (b) free of any set-off or counterclaim;
- (c) free of and without deduction for or on account of any present or future Taxes;
- (d) in immediately available funds;
- (e) in Australian currency; and
- (f) where no time for payment is specified, on demand by the Lender.

### **7.3 Indemnity for loss**

The Borrower indemnifies and must pay to the Lender on demand all losses, costs and expenses which the Lender may sustain or incur resulting from any payment or part payment of the Money Owing being made on a day which is not the due date for payment.

### **7.4 Application of Payments**

Monies paid by the Borrower to the Lender under this document may be applied in reduction of the Money Owing in any order the Lender chooses. For example, the Lender may apply a payment towards costs and interest prior to applying it towards the Principal Sum.

## **8. SECURITY**

### **8.1 Security the Borrower must provide**

On the Settlement Date the Borrower must procure from the Custodian a first ranking mortgage or charge over the Authorised Investment in favour of the Lender in a form acceptable to the Lender.

### **8.2 Requirements if the mortgage is over land**

The Borrower must arrange for the Lender to be provided with cheques payable to:

- (a) the relevant registry to pay any registration fees; and
- (b) the relevant revenue office to pay any duty,

as may be required to register the first ranking mortgage or charge over the Authorised Investment.

### **8.3 Lender's release of Security**

As soon as practicable after the Borrower repays the Money Owing the Lender will provide a release of the Security.

## **9. BORROWER'S REPRESENTATIONS AND WARRANTIES**

The Borrower represents and warrants to the Lender that:

- (a) the Fund is a Regulated Fund;
- (b) the Fund has a written investment strategy which accords in all respects with Superannuation Law;
- (c) the Borrower's investment in the Authorised Investment accords with the Fund's written investment strategy;
- (d) the Borrower has the power and authority to enter into this document;
- (e) the Borrower has the power and authority to purchase the Authorised Investment;
- (f) the Borrower has validly appointed the Custodian under the Security Trust to hold title to the Authorised Investment; and
- (g) this document constitutes a legally binding obligation of the Borrower, and is enforceable against the Borrower.

## **10. BORROWER'S DEFAULT**

### **10.1 Lender's rights in an Event of Default**

Subject to clause 10.3, if an Event of Default occurs the Lender may, without notice to the Borrower (unless the Lender is required by statute to give notice), enforce its rights under the Security.

---

## 10.2 Events of Default

Each of the following is an Event of Default (unless the Lender, in writing, waives its rights):

- (a) the Fund ceases to be a Regulated Fund;
- (b) the Borrower fails to pay on time any amount which is due and payable by it under this document;
- (c) the Borrower does not comply with any provision of this document it is required to comply with;
- (d) any representation or warranty the Borrower makes in this document is untrue or misleading (whether by omission or otherwise);
- (e) the Borrower is unable to pay its debts, including its debts relating to the Fund;
- (f) an Insolvency Event occurs in relation to the Borrower;
- (g) any other loan or debt of the Borrower, including in respect of the Fund, becomes repayable or payable before its due date other than solely at the option of the Borrower;
- (h) the Borrower creates any Encumbrance, or permits any Encumbrance to exist, or agrees to create or give an Encumbrance over any of its property, including property of the Fund;
- (i) any Government Authority compulsorily acquires any part of the Borrower's property, including property of the Fund;
- (j) the Borrower (whether or not as trustee of the Fund) sells or divests itself of all of, or a material part of, its property under a binding order from a Government Authority and the Borrower does not receive compensation for the acquisition, sale or disposal which is acceptable to, and on terms which are acceptable to, the Lender; or
- (k) an event of default occurs under a Collateral Security.

## 10.3 Non Recourse

- (a) The Lender's rights of recourse against the Borrower for recovery of the Money Owing where there is an Event of Default is limited to any rights the Lender may have relating to the Borrower's beneficial interest in the Authorised Investment, including without limitation its right to:
  - (i) receive the rents and profits of the Authorised Investment;
  - (ii) exercise its power of sale of the Authorised Investment; and
  - (iii) receive and recover the proceeds of any policy of insurance in respect of the Authorised Investment,

to the intent that the Borrower will have no residual personal liability for any of the Money Owing provided always that where necessary for the purposes of any demand to be made under this document or for the purposes of notice under

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section 84 of the *Property Law Act 1974* (Qld), the amount owing to the Lender shall be the Money Owing without regard to this limitation.

- (b) The limited recourse provision in clause 10.3(a) applies only for so long as section 67A and 67B *Superannuation Industry (Supervision) Act 1993* (Cth) (or any replacement or comparable law) restricts the Lender from recovering the full amount of the Money Owing.
- (c) To avoid any doubt, this clause 10.3 does not:
  - (i) limit the Borrower's obligation to make payments to the Lender of the Money Owing as required by this document; or
  - (ii) restrict or prevent the Lender from recovering the full amount of the Money Owing from any guarantors.

## **11. BORROWER INDEMNIFIES THE LENDER FOR COSTS**

The Borrower indemnifies the Lender against, and must pay the Lender on demand the amount of, all losses, liabilities, costs and expenses (including, without limitation, legal expenses on a full indemnity basis) and Taxes in connection with:

- (a) the negotiation, preparation, execution, stamping and registration of this document;
- (b) the enforcement or attempted enforcement or preservation or attempted preservation of any rights under this document; and
- (c) any amendment to, or consent, waiver or release under, this document.

## **12. GST**

### **12.1 GST Exclusive Amounts**

All amounts payable under or in connection with this document are exclusive of GST.

### **12.2 Payment of GST**

- (a) A recipient of a taxable supply under or in connection with this document must pay to the supplier, in addition to the GST exclusive consideration for the taxable supply, an amount equal to any GST paid or payable by the supplier in respect of the taxable supply (**GST Amount**).
- (b) The recipient must pay the GST Amount to the supplier when the GST exclusive consideration or part of it is provided, except that the recipient need not pay the GST Amount unless the recipient has received a tax invoice (or an adjustment note) for that taxable supply.

### **12.3 Reimbursements**

Where a supplier incurs a cost or expense for which it may claim payment, reimbursement or indemnity from another party under or in connection with this document, the amount to be paid or credited to the supplier is the cost or expense (reduced by the input tax credit that the supplier is entitled to claim in respect of that cost or expense) plus the amount in respect of GST payable by the recipient as calculated under clause 12.2.

## **13. NOTICES**

### **13.1 Service of Notice**

A Notice must be:

- (a) in writing, in English and signed by the party giving it, or by their agent; and
- (b) delivered or sent by prepaid post or fax to the party's address specified in the Details of Parties on page 1, or any other address notified by a party to the other party as its address for service.

### **13.2 Effective Service**

- (a) A Notice given in accordance with clause 13.1 takes effect when received, or at a later time specified in it.
- (b) A Notice is taken to be received at the time specified below:
  - (i) if hand delivered – when delivered;
  - (ii) if sent by prepaid post – on the second Business Day after the date of posting (or on the tenth Business Day after the date of posting if posted to, or from, a place outside Australia);
  - (iii) if sent by fax – when the sender's fax system generates a message confirming successful transmission of the entire document.
- (c) However, if the time at which a Notice is taken to be received is not on a Business Day, or is after 5.00pm on a Business Day, it is taken to be received at 9.00am on the next Business Day.

### **13.3 Ineffective Service**

A Notice is taken not to be received if:

- (a) in the case of service by post, the Notice is returned to sender because the postal service was unable to deliver it;
- (b) in the case of service by fax, the sender's fax system generates a message stating that transmission was unsuccessful, or the Notice is not received in full and legible form.

## **14. MISCELLANEOUS**

### **14.1 Assignment**

A party may only dispose of, deal with, declare a trust over or otherwise create an interest in, its rights under this document with the prior consent of each other party.

### **14.2 Discretion in Exercising Rights and Giving Consents**

A party may exercise a right or remedy or give or refuse its consent in any way it considers appropriate (including by imposing conditions), unless this document expressly states otherwise.

**14.3 No Warranty by Giving Consent**

By giving its approval or consent, a party does not make or give any warranty or representation as to any circumstance relating to the subject matter of the consent or approval.

**14.4 No Liability for Loss**

A party is not liable to another party for loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising a right or remedy under this document.

**14.5 Conflict of Interest**

A party's rights and remedies under this document may be exercised even if it involves a conflict of interest or a party has a personal interest in their exercise.

**14.6 Remedies Cumulative**

The rights and remedies provided in this document are in addition to other rights and remedies given by law independently of this document, except to the extent that those other rights and remedies are expressly excluded in this document.

**14.7 Exclusion of Contrary Legislation**

Any legislation that diminishes the obligation of a party, or adversely affects the exercise by a party of a right or remedy, under or relating to this document is excluded to the full extent permitted by law.

**14.8 Amendment**

This document can only be amended, supplemented, novated or replaced by another document signed by the parties.

**14.9 Waiver**

A right under this document can only be waived by notice signed by the party or parties waiving the right. A party does not waive its rights under this document because it grants an extension or forbearance to any other party. A waiver of a right on one or more occasions does not operate as a waiver of that right if that right arises again. The exercise of a right does not prevent any further exercise of that right or of any other right. If a party does not exercise a right or remedy fully or at a given time, the party may still exercise it later.

**14.10 No Merger**

None of the rights and obligations of a party under this document merge:

- (a) on completion of any transaction contemplated by this document;
- (b) with any Security Interest, Guarantee, judgement or other right or remedy that a party may hold at any time; or
- (c) as a consequence of anything done under this document,

and those rights and obligations at all times remain in full force and effect.

**14.11 Survival of Rights and Obligations**

The following survive termination or expiration of this document:

- (a) rights accrued to a party up to the date of termination or expiration of this document; and
- (b) indemnities and obligations of confidence given by a party under this document.

**14.12 No Payment Required to Claim Indemnity**

It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity under this document.

**14.13 Giving Effect to this Document**

Each party agrees, at its own expense, to do anything (including ensuring that its employees and agents do anything) that any other party reasonably requires (such as obtaining consents, signing and producing documents) as may be necessary or desirable to give full effect to the provisions of this document and the transactions contemplated by it.

**14.14 Entire Agreement**

This document embodies the entire agreement between the parties and supersedes all previous agreements, understandings, negotiations, warranties and representations on the subject matter of this document.

The parties acknowledge that they have not relied upon any representations or warranties in executing this document, except for those contained in this document.

**14.15 Construction**

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this document.

**14.16 Severability**

If the whole, or any part, of a provision of this document is void, unenforceable or illegal in a jurisdiction, it is severed for that jurisdiction. The remainder of this document has full force and effect, and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance materially alters the nature or intended effect of this document.

**14.17 Execution under Power of Attorney or Agency**

Each person who executes this document as:

- (a) attorney for a party, or
- (b) agent of a party,

warrants that he or she has authority to do so, and will produce written evidence of that authority to any party who requests it.

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**14.18 Time of the Essence**

Time is of the essence with respect to all provisions of this document that specify a time for performance.

**14.19 Governing Law**

This document is governed by the law in force in Queensland, Australia. Each party irrevocably submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Queensland, and any court that may hear appeals from any of those courts for any proceeding in connection with this document, and waives any right it may have to claim that those courts are an inconvenient forum.

**14.20 Counterparts**

This document may be executed in counterparts. A counterpart may be a copy of this document printed from a facsimile or email transmission. All counterparts together are taken to constitute one instrument.

**14.21 Power of attorney**

- (a) The Borrower irrevocably appoints the Lender (and if the Lender is a company, each director of the Lender) to be the Borrower's attorney so long as any Money Owing remains payable pursuant to this document or any other Transaction Document to do at the expense of the Borrower anything, including the execution of documents:
  - (i) which the Lender considers necessary or expedient to give effect to any right, power or remedy conferred on the Lender; or
  - (ii) which the Borrower is required to do or execute under this document or any other Transaction Document.
- (b) The Borrower will ratify anything the attorney does under clause 14.21(a).

**14.22 Formation of Contract by Electronic Communications**

- (a) This clause 14.22 specifies a procedure for entering into a contract, on the terms of this document, by fax or email.
- (b) The procedure specified in this clause 14.22 is not intended to be the only method by which the parties may enter into a contract.
- (c) Offer and acceptance of the terms contained in this document may be communicated by fax or email if:
  - (i) the offer includes a full and legible copy of this document showing the signature of the offeror; and
  - (ii) the acceptance includes a full and legible copy of this document showing the signature of the party accepting.

For the purposes of this clause, 'copy' includes an electronic file in portable document format containing a scanned image of the document.

- (d) A fax or email referred to in this clause 14.22 may be sent or received by a party's agent.

- (e) Acceptance by fax or email:
  - (i) constitutes consent by the accepting party to the contract being formed by electronic communication;
  - (ii) occurs at the time the acceptance is received by the offeror, as determined by the *Electronic Transactions (Queensland) Act 2001* (Qld).
- (f) If a party requests it, the parties will subsequently sign and circulate printed copies of this document, so that each party holds a printed copy containing the original ink signatures of all parties. This does not affect or delay the enforceability of the contract as formed by fax or email.
- (g) Nothing in this clause 14.22 affects the provisions of the *Electronic Transactions (Queensland) Act 2001* (Qld) regarding attribution of electronic communications.

### Execution

Executed as an agreement.

**SIGNED by NEIL ALEXANDER MULLER AS LENDER, in the presence of:**

*Neil Muller*  
Signature of witness

MELANIE MULLER  
Name of witness (BLOCK LETTERS)

NAM  
x *N. Muller*  
Signature of party

13/12/2013  
Date signed

**SIGNED by KAREN ANN MULLER AS LENDER, in the presence of:**

*K.A. Muller*  
Signature of witness

MELANIE MULLER  
Name of witness (BLOCK LETTERS)

KAM  
x *K.A. Muller*  
Signature of party

13/12/2013  
Date signed

**SIGNED by NEIL ALEXANDER MULLER as trustee for the N & K Muller Superannuation Fund as Borrower, in the presence of:**

*Neil Muller*  
Signature of witness

MELANIE MULLER  
Name of witness (BLOCK LETTERS)

NAM  
x *N. Muller*  
Signature of party

13/12/2013  
Date signed

**SIGNED by KAREN ANN MULLER as trustee for the N & K Muller Superannuation Fund as Borrower, in the presence of:**

*K.A. Muller*  
Signature of witness

MELANIE MULLER  
Name of witness (BLOCK LETTERS)

KAM  
x *K.A. Muller*  
Signature of party

13/12/2013  
Date signed