

RESERVE BANK INFORMATION

& TRANSFER SYSTEM



RITS

DATED

[NAME OF ESA HOLDER]

(“Member”)

and

RESERVE BANK OF AUSTRALIA

(“Participating Bank”)

**RESERVE BANK INFORMATION AND TRANSFER SYSTEM
PARTICIPATING BANK FACILITIES AGREEMENT**

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SCHEDULE 1- Facility Particulars

PARTICIPATING BANK FACILITIES AGREEMENT

THIS AGREEMENT is made on

BETWEEN: *[NAME OF ESA HOLDER]* of [Address] (ABN) ("Member")

AND: **RESERVE BANK OF AUSTRALIA** a body corporate established by the Reserve Bank Act 1959 (Cwlth) of 65 Martin Place, Sydney, New South Wales, 2000 ("Participating Bank")

1. INTERPRETATION

1.1 The following words have these meanings in this agreement unless the contrary intention appears.

"Authorised Signatory" means a person named in the Member's current List of Authorised Signatories.

"Membership Agreement" means the agreement entitled "Reserve Bank Information and Transfer System Membership Agreement" amongst the Reserve Bank, the Participating Bank and the Member dated

"Regulations" means the Regulations from time to time existing and published by the Reserve Bank of Australia entitled "Reserve Bank Information and Transfer System Regulations" including the Conditions of Operation.

1.2 Words and expressions which have a defined meaning in or for the purposes of the Regulations shall have the same meaning when used in this agreement.

1.3 In this agreement unless the contrary intention appears:

- (a) a reference to this agreement or another instrument includes any variation or replacement of any of them; and
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them; and
- (c) the singular includes the plural and vice versa; and
- (d) the word "person" includes a firm, a body corporate, an unincorporated association or an authority; and
- (e) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and assigns; and
- (f) an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and severally; and

- (g) an agreement, representation or warranty on the part of two or more persons binds them jointly and severally; and
 - (h) a reference to any thing is a reference to the whole and each part of it and a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually.
- 1.4 Headings are inserted for convenience and do not affect the interpretation of this agreement.
- 2. THE FACILITIES**
- 2.1 The Participating Bank agrees to act as the Participating Bank for the Member for the purposes of the System and the Regulations, and in particular:
- (a) the Participating Bank agrees, on the terms of this agreement and the Regulations, to make payments pursuant to Payment Obligations; and
 - (b) the Member's Exchange Settlement Cash Account will be used for the Settlement of Transactions in accordance with clause 2.2; and
 - (c) the Participating Bank agrees to perform all functions as may from time to time be required of Participating Banks by the Regulations; and
 - (d) the Participating Bank agrees to observe all the requirements of the Regulations.

- 2.2 The Member agrees that to the extent that the Exchange Settlement Cash Account is used for the purposes of the System, that account shall be used solely for the Settlement of Transactions.
- 2.3 The Member agrees that at no time may the balance in its Exchange Settlement Cash Account or its Exchange Settlement Account be less than zero.
- 2.4 The Exchange Settlement Account shall be the RITS Nominated Account for the purposes of Regulations 18.2 and 18.4.

3. CONDITIONS PRECEDENT

The Participating Bank is not obliged to observe its obligations under clause 2 until the Participating Bank has received such approvals, opinions or documents which it has reasonably requested, in form and substance satisfactory to the Participating Bank.

4. SETTLEMENT OF BALANCES

- 4.1 The balance in the Member's Exchange Settlement Cash Account arising from the Settlement of Transactions in the System in Exchange Settlement Funds on a Settlement Day is to be dealt with by the Participating Bank on the same Settlement Day by crediting or debiting (as the case may be) the Member's Exchange Settlement Account at the Participating Bank to reflect the closing balance of the Member's Exchange Settlement Cash Account.
- 4.2 The conditions attaching to the conduct by the Member of an Exchange Settlement Account are separately notified to the Member by the Participating Bank.

5. OTHER FACILITIES

If the Participating Bank is required at any time by the Regulations to provide facilities or perform functions other than those required by the Regulations as at the date of this agreement or in this agreement as originally executed, the terms upon which any such facility will be provided or any such function performed must be agreed between the Participating Bank and the Member. If the Participating Bank and the Member are unable to reach agreement within a reasonable period the Participating Bank must:

- (a) cease to act as the participating bank for the Member; and
- (b) immediately begin to take the steps necessary to terminate its role as the Member's Participating Bank.

6. COSTS, CHARGES, EXPENSES AND INDEMNITIES

The Member agrees to pay or reimburse the Participating Bank on demand for:

- (a) the costs, charges and expenses of the Participating Bank in connection with the negotiation, preparation, execution, stamping, registration and completion of this agreement; and
- (b) the costs, charges and expenses of the Participating Bank in connection with any consent, approval, exercise or non-exercise of rights (including, without limitation, in connection with the contemplated or actual enforcement or preservation of any rights under any this agreement), waiver, variation, release or discharge in connection with this agreement.

7. WARRANTIES AND UNDERTAKINGS

- 7.1 The Member has represented and warrants that:
 - (a) it has in full force and effect the authorisations necessary to enter into this agreement and the Membership Agreement, and to perform its

obligations under this agreement, the Membership Agreement and the Regulations; and

- (b) its obligations under this agreement, the Regulations and the Membership Agreement, are valid and binding and are enforceable against it in accordance with their terms.

7.2 These warranties are taken to be also made every three months after the date of this agreement.

7.3 The Member must:

- (a) promptly give to the Participating Bank any information and supporting evidence that the Participating Bank requests from time to time; and
- (b) obtain and renew on time each authorisation necessary to enter into this agreement and the Membership Agreement, and to perform its obligations under this agreement, the Membership Agreement and the Regulations.

8. NOTICES

8.1 A notice, approval, consent or other communication in connection with this agreement:

- (a) if given by a Member may be given by an Authorised Signatory of the Member; and
- (b) must be in writing; and
- (c) must be left at the address of the addressee or sent by prepaid ordinary post to the address of the addressee or sent by facsimile to the facsimile number of the addressee which is specified in item 1 of schedule 1 or if the addressee notifies another address or facsimile number then to that address or facsimile number.

8.2 Unless a later time is specified in it a notice, approval, consent or other communication takes effect from the time it is received.

8.3 A letter or facsimile is taken to be received:

- (a) in the case of a posted letter, on the third day after posting; and
- (b) in the case of a facsimile, on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient notified for the purpose of this clause.

9. TERMINATION

- 9.1 The Participating Bank may terminate this agreement immediately if an Insolvency Event occurs in respect of the Member or if the Member is suspended from the System.
- 9.2 The Member and the Participating Bank each acknowledge that whilst the System is an “approved RTGS System” within the meaning of the Payment Systems & Netting Act 1998 (Commonwealth) the Member and the Participating Bank each have a separate obligation to advise the Reserve Bank (as system administrator) as soon as practicable upon becoming aware of the external administration of the Member. Both parties acknowledge that failure to do so may constitute a criminal offence.

10. MISCELLANEOUS

Exercise of rights

- 10.1 The Participating Bank may exercise a right, power or remedy at its discretion, and separately or concurrently with another right, power or remedy. A single or partial exercise of a right, power or remedy by the Participating Bank does not prevent a further exercise of that or an exercise of any other right, power or remedy. Failure by the Participating Bank to exercise or delay in exercising a right, power or remedy does not prevent its exercise.

Waiver and variation

- 10.2 A provision of or a right created under this agreement may not be waived or varied except in writing signed by the party or parties to be bound.

Further Assurances

- 10.3 At the Participating Bank’s request the Member must, at its own expense:
 - (a) execute and cause its successors to execute documents and do everything else necessary or appropriate to bind the Member and its successors under this agreement; and
 - (b) use its best endeavours to cause relevant third parties to do likewise to bind every person intended to be bound under this agreement.

Disclaimer

- 10.4 The Participating Bank is not liable for any loss arising from a cause for which it is not liable under the Regulations.

11. GOVERNING LAW, JURISDICTION AND SERVICE OF PROCESS

- 11.1 This agreement is governed by the law in force in New South Wales.

- 11.2 Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales and courts of appeal from them. Each party waives any right it has to object to an action being brought in those courts including, without limitation, by claiming that the action has been brought in an inconvenient forum or that those courts do not have jurisdiction.
- 11.3 Without preventing any other mode of service, any document in an action (including, without limitation, any writ of summons or other originating process or any third or other party notice) may be served on any party by being delivered to or left for that party at its address for service of notices under clause 8.

SAMPLE

EXECUTED as an agreement.

Member

SIGNED by)

as attorney for)

[NAME OF ESA HOLDER] under Power of)

Attorney dated in the)

presence of:)

.....)

Signature of witness)

.....)

Name of witness (block letters))

.....)

Address of witness)

.....)

Occupation of witness)

Signature of Attorney

) By executing this agreement the

) Attorney states that the Attorney has

) received no notice of revocation of the

) Power of Attorney

OR

SIGNED by **[NAME OF ESA HOLDER]** in accordance with s127(1) of the Corporations
Act 2001 (Cth)

.....)
Signature of Director

.....)
Signature of Director/Secretary

.....)
Print Name

.....)
Print Name

Participating Bank

EXECUTED by **RESERVE BANK OF**)
AUSTRALIA by being signed by its Attorney)
under Power)
)
the Secretary of the Bank in the presence of:)
)
)
)
)
Signature of witness)
)
)
)
)
)
Name of witness (block letters)) pursuant to Power of Attorney dated
) 13 April, 1960 Registered No.63591
)
)
)
)
)
Address of witness) declare that I am the Secretary for the
) time being of the Reserve Bank of
) Australia and that I have no notice of
) revocation of the said Power of
) Attorney.
)
Occupation of witness)

SCHEDULE 1
FACILITY PARTICULARS

Item 1

(Clause 8)

Address for Service:

Member:

Address:

Facsimile No:

Participating Bank: Reserve Bank of Australia

Address: 65 Martin Place
SYDNEY NSW 2000

Facsimile No: (02) 9551 8063