

## Deed of Guarantee and Indemnity

Dated:

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### Part A: The Parties

|   |                        |   |
|---|------------------------|---|
| <b>Lender</b><br><b>CHINA CONSTRUCTION BANK (NEW ZEALAND) LIMITED</b> | <b>Address:</b>        | Level 16 Vero Centre 48 Shortland Street<br>Auckland 1010 |
|   | <b>Postal Address:</b> | PO Box 305<br>Shortland Street<br>Auckland 1140           |
|   | <b>Email:</b>          | Xiaoman.cui@nz.ccb.com                                    |
|   | <b>Facsimile:</b>      | +64 9 374 4275  |
|   | <b>Attention:</b>      | Xiaoman Cui   |
| <b>Guarantor</b>  | <b>Name:</b>           |   |
|   | <b>Address:</b>        |   |
|   | <b>Email:</b>          |   |
|   | <b>Telephone:</b>      |   |
| <b>Borrower</b>   | <b>Name:</b>           |   |
|   | <b>Address:</b>        |   |
|   | <b>Email:</b>          |   |
|   | <b>Telephone:</b>      |   |

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### WARNING

On signing *this deed*, the Guarantor will have entered into binding legal obligations to guarantee indebtedness of the Borrower to the Lender.

No Guarantor should sign *this deed* assuming that the Guarantor will never be called upon to make any payments to the Lender under it. The Lender having undertaken its own assessment of the Borrower's financial position has asked each Guarantor to provide the guarantee because it assumes otherwise.

For this reason the Lender strongly recommends that each Guarantor:

- read and understand this agreement before signing;
- obtain legal advice from a lawyer who does not also act for the Lender or the Borrower; and
- consider obtaining financial advice about the financial condition of the Borrower.

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## Part B: Background to this Guarantee

The Lender has, at the request of the Guarantor, agreed to make financial accommodation available to the Borrower on the condition (amongst other things) that the Guarantor enters into *this deed* and, if the details of any *security* are set out in the *schedule to this deed*, the *security* that is to be given by the Guarantor as security for the Guarantor's obligations under *this deed*.

The terms and conditions that apply to the guarantee and indemnity are set out in the following documents:

*this deed*, which comprises Parts A to G; and

- each *security* (if any) set out in the *schedule to this deed*.

Some words and expressions have special meanings whenever they are used through *this deed*. These words are defined in clause 14 of Part G. You can identify a defined word or expression because it will be in *italics*.

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## Part C. Guarantee and indemnity

### 1. Guarantee

The Guarantor unconditionally and irrevocably guarantees to the Lender the due payment by the Borrower of the *guaranteed indebtedness* and the due performance of and compliance by the Borrower with the *guaranteed obligations*.

### 2. Payment

The Guarantor undertakes that if, for any reason, the Borrower does not pay when due (whether by acceleration or otherwise) any *guaranteed indebtedness*, the Guarantor will pay the relevant amount immediately on demand by the Lender.

### 3. Indemnity and unenforceability of obligations

As a separate and continuing undertaking, the Guarantor unconditionally and irrevocably undertakes to the Lender that, should the *guaranteed indebtedness* not be recoverable from the Guarantor under *this deed* or another *relevant document* for any reason the Guarantor will, as a sole and independent obligation, pay to the Lender on demand the amount which the Lender would otherwise have been able to recover (on a full indemnity basis).

In this clause, the expressions "*guaranteed indebtedness*" and "*guaranteed obligations*" include any indebtedness or obligation which would have been included in those expressions but for anything referred to in this clause.

Without limiting the provisions of the last paragraphs and by way of example only, the reasons that may give rise to the *guaranteed indebtedness* not being recoverable include:

- a provision of *this deed* or another *relevant document* or an obligation (or purported obligation) of the Borrower to pay *guaranteed indebtedness* or to perform or comply with a *guaranteed obligation* being or becoming void, voidable, unenforceable or otherwise invalid, whether or not that reason is or was known to the Lender; or
- a defect in or lack of powers of the Borrower or the irregular exercise of those powers; or
- a defect in or lack of authority by a person purporting to act on behalf of the Borrower or a Guarantor; or
- a legal or other limitation (whether under the Limitation Act 2010 or otherwise), disability or incapacity of the Borrower or a Guarantor; or
- a dissolution, amalgamation, change in status, constitution or control, reconstruction or reorganisation of the Borrower (or the commencement of steps to effect the same), or
- the death, bankruptcy or insolvency of the Borrower or a Guarantor.

### 4. Suspense account

All moneys from time to time received by the Lender in respect of the *guaranteed indebtedness* from or on account of the Guarantor may be placed in a suspense account with a view to preserving the rights of the Lender to prove for the whole of the *guaranteed indebtedness* in the event of any proceeding in, or analogous to, dissolution, amalgamation, change in status, constitution or control, reconstruction or reorganisation, death, bankruptcy or insolvency of a *relevant party*.

## 5. Crystallisation prior to bankruptcy

If a Guarantor commits an act of bankruptcy, the Guarantor is to pay to the Lender immediately an amount equal to the Guarantor's maximum contingent liability under *this deed* at that time. That amount will be a debt due from the Guarantor to the Lender.

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## Part D: Nature of guarantee and indemnity obligations

### 6. Liability as sole principal Borrower

As between the Guarantor and the Lender (but without affecting the obligations of the Borrower) the Guarantor is liable under *this deed* as a sole and principal Borrower and not solely as a surety.

### 7. No discharge

The Guarantor is not to be discharged, nor are the Guarantor's obligations to be affected, by anything which, but for this clause, would or might have discharged the Guarantor or affected its obligations, including:

- (a) time, indulgence, waiver or consent whenever given to a *relevant party* or another person; or
- (b) an amendment to a *relevant document* or to another security interest, guarantee, indemnity or other agreement (whether or not that amendment might increase the liability of the Guarantor under *this deed* or otherwise); or
- (c) the making of, or failure to make, a demand on a *relevant party* or another person for payment; or
- (d) the failure to obtain, or the failure of a person to execute or otherwise be bound by, a *relevant document* or another security interest, guarantee, indemnity or other agreement; or
- (e) the enforcement of, or failure to enforce, a *relevant document* or another security interest, guarantee, indemnity or other agreement; or
- (f) the release of, or the release of a *relevant party* from, a *relevant document* or a security interest, guarantee, indemnity or other agreement; or
- (g) the dissolution, amalgamation, change in status, constitution or control, reconstruction or reorganisation, death, bankruptcy or insolvency of a *relevant party* or another person (or the commencement of steps to effect the same); or
- (h) the illegality, invalidity, unenforceability of, or defect in, a provision of a *relevant document* or a *relevant party's* obligations under any of them for any reason whatsoever, and whether or not known to the Lender; or
- (i) any other matter or thing whatsoever.

The Lender is to be under no liability to the Guarantor in respect of any of these matters, even if the Guarantor's rights in subrogation or otherwise may be prejudiced as a result.

### 8. Continuing guarantee

The Guarantor's obligations under *this deed*:

- (a) are by way of continuing security, notwithstanding intermediate payments, settlement of accounts or payments or any other matter or thing whatsoever;
- (b) are in addition to, are not to be merged in and are without prejudice to, any security interest, guarantee, indemnity or other agreement, whenever in existence, in favour of any person, whether from the Guarantor or otherwise; and
- (c) are to remain in full force and effect until the execution by the Lender of an unconditional discharge of the obligations of the Guarantor under *this deed*.

### 9. Unconditional discharge of guarantee

If, in the opinion of the Lender:

- (a) the Borrower has paid all the *guaranteed indebtedness* and performed and complied with all the *guaranteed obligations*;
- (b) the Lender is under no obligation to make available any further credit, advance or facility in respect of any *guaranteed indebtedness*;
- (c) the Guarantor had discharged all its obligations under *this deed*; and
- (d) there is no reasonable possibility that any *guaranteed indebtedness* received or recovered by the Lender from the Guarantor or any other person will or may have to be refunded or repaid under any applicable law (including, without limitation, any law relating to preferences or insolvency),

the Lender will, at the request and cost of the Guarantor, execute a discharge of the obligations of the Guarantor under *this deed*. All agreements which are necessary in connection with this discharge shall be in whatever form and substance the Guarantor may reasonably require.

However, that discharge and any composition or arrangement which the Guarantor may effect with the Lender, will be deemed to be made subject to the condition that it will be void if any payment or security interest which the Lender may previously have received or may later receive from the Guarantor or another person in respect of *guaranteed indebtedness* or *guaranteed obligations* is set aside under applicable law or proves to have been, for whatever reason, invalid.

In that case:

- (a) that payment or security interest will be deemed not to have discharged or affected the obligation of the Guarantor in respect of which that payment or security interest was made, given or received; and
- (b) the Lender and the Guarantor will be deemed to be restored to the position in which each would have been, and will be entitled to exercise all the rights which each would have had, if that payment or security interest had not been made or given.

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## Part E: Signature of Guarantors

By signing *this deed* in the space provided below each Guarantor:

- 1. agrees to provide the guarantee and indemnity set out in *this deed*; and
- 2. agrees that the terms and conditions contained in the attached Guarantee Terms and Conditions apply to this guarantee and indemnity;
- 3. warrants and undertakes to the Lender as set out in the attached Guarantee Terms and Conditions ; and
- 4. if a Guarantor is an owner of the property to be mortgaged to the Lender, agrees to give a mortgage *security* over the Property(s) set out in the *schedule* to secure the obligations of the Guarantors under *this deed*.

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**Executed and delivered as a deed**

**Guarantors**

**Signed by** the Guarantor

**GuarantorFullnameLiability** \_\_\_\_\_

In the presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Full Name

\_\_\_\_\_  
occupation

\_\_\_\_\_  
Address

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## Part F: Schedule

### **Guaranteed indebtedness**

(all obligations)

All moneys which are now or at any time in the future owing to the Lender by the Borrower including, by way of example and not limitation:

- moneys owing under the *loan agreement* Specified below;
- moneys owing under all *securities* given by the Borrower to the Lender as security for the Borrower's obligations; and
- all loans, credits, advances or other financial services or facilities made or provided to the Borrower or to any one or more of them at any time by the Lender.

\* (delete if not applicable)

\* Limited in the case of the following Guarantors as follows:

\* Name:

\* Limited to a maximum of:

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GuarantorFullName

\$ 0.00

% of the total *guaranteed indebtedness* at any time

% of the total *guaranteed indebtedness* at any time

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### **Loan agreement**

A *loan agreement* with the *disclosure date* of << date>> between the Lender and the Borrower relating to a Total Loan Amount of \$0.00

### **Security**

The obligations of the Guarantors under *this deed* are to be secured to the Lender by the mortgages and other securities set out in below.

### **Mortgages**

A registered first mortgage is to be or has been taken over the following property(ies):

**Address of Property:**

SecuritydetailsFulladdresscomma

**Mortgagor(s):**

SecuritydetailsMortgagors

**Certificate of Title number:**

SecuritydetailsTitle

**Priority Sum:**

<<Priority sum> together with interest – including a specified principal amount of \$0.00 (being the initial advances secured by the mortgage)

**Property insurance required:**

Minimum of Full Replacement Cover

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## Part G: Guarantee Terms and Conditions

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## 1. No competition with Lender

The Guarantor will not, without the written consent of the Lender:

- (a) take, accept or hold a security interest from the Borrower or, in relation to *guaranteed indebtedness*, from another person; or
- (b) take steps to recover (whether directly or by set-off, counterclaim or otherwise) or accept money or other property, or exercise or enforce rights in respect of, indebtedness of the Borrower to the Guarantor or, in relation to *guaranteed indebtedness*, indebtedness of another person to the Guarantor; or
- (c) claim, prove or accept payment in composition by, or a dissolution of, death or bankruptcy of, the Borrower or, in relation to *guaranteed indebtedness*, another person,

and until such time as the *guaranteed indebtedness* has been fully paid and the *guaranteed obligations* have been fully satisfied the Guarantor waives all rights of subrogation and contribution to which the Guarantor would otherwise be entitled by reason of performance of the Guarantor's obligations under *this deed*.

If, notwithstanding this clause, the Guarantor holds or receives any such security interest, money or property, the Guarantor is to pay or transfer it to the Lender immediately and, pending that payment or transfer, will hold it on trust for the Lender.

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## 2. Representations and warranties

Each Guarantor represents and warrants that:

### (a) Capacity

the Guarantor has the capacity to enter into, exercise the rights and perform and comply with the Guarantor's obligations under, the *relevant documents*;

### (b) Authorisations and consents

everything required to be done (including the obtaining of any necessary consents and, if required, the passing of all necessary resolutions) to:

- (i) enable the Guarantor lawfully to enter into, exercise the Guarantor's rights and perform and comply with the obligations under, the *relevant documents*;
- (ii) ensure that those obligations are legal, valid, binding and enforceable; and
- (iii) make the *relevant documents* admissible in evidence in the courts of New Zealand,

has been duly done;

### (c) Non-contravention

the Guarantor's entry into, and the exercise of rights and performance of and compliance with the Guarantor's obligations under, the *relevant documents* do not and will not:

- (i) contravene any law to which the Guarantor is subject; or
- (ii) contravene any agreement to which the Guarantor is a party or which is binding on any of the Guarantor's assets; or
- (iii) result in the creation of, or oblige the Guarantor (absolutely or contingently) to create or permit to exist, any security interest over or affecting the Guarantor's assets except as created or permitted by a *security*.

### (d) Obligations binding

the Guarantor's obligations under the *relevant documents* are legal, valid, binding and enforceable in accordance with their respective terms;

### (e) No default

the Guarantor is not in default under:

- (i) any agreement relating to indebtedness in respect of money borrowed and raised by any means (including acceptances, deposits, financial leases, debt factoring with recourse and sale and repurchase agreements) and for the deferred purchase price of assets and services; or
- (ii) any guarantee; or
- (iii) any other agreement, to an extent or in a manner which, has or could have a material adverse effect on the Guarantor;

### (f) Solvency

the Guarantor is solvent and able to pay all indebtedness as it falls due and, if a Guarantor is a company, it satisfies the Solvency Test (as defined in section 4 of the Companies Act 1993);

### (g) No security interest

except as disclosed to and accepted in writing by the Lender, no security interest exists over or affects, nor is there any agreement to give or permit to exist any security interest over or affecting, any of the Guarantor's assets;

### (h) No material adverse change

there has been no material adverse change in respect of the Guarantor since the last date as at which any financial statement or report on the Guarantor's financial position was given to the Lender (if any);

(i) **Litigation**

no litigation, arbitration or administrative proceeding is current or pending or, to the Guarantor's knowledge, threatened:

- (i) to restrain the Guarantor's entry into, or the exercise of rights or the performance of or compliance with or enforcement of obligations under, a *relevant document*; or
- (ii) which has or could have a material adverse effect on the Guarantor's or on the Lender's ability to exercise or enforce its rights under any *relevant document*;

(j) **Information**

all information provided by the Guarantor to the Lender in connection with the *relevant documents* was true and accurate as at the date when that information was provided and remains so at the date of *this deed* and there are no facts or circumstances which have not been disclosed to the Lender which would make that information untrue, inaccurate or misleading;

(k) **Relevant documents**

each of the representations and warranties in the *relevant documents* is true, accurate and complied with;

(l) **Security**

each *security* is effective security with the priority contemplated by that *security* for the satisfaction of the indebtedness of the Guarantor under the *relevant documents*;

(m) **Representations and warranties continuing**

each of the representations and warranties in this clause will be deemed to be repeated continuously so long as *this deed* remains in effect as if by reference to the facts and circumstances then existing, except that each reference to financial statements is to be construed as a reference to the latest available financial statements of the relevant person; and

(n) **Reliance on representations and warranties**

the Guarantor acknowledges that any financial accommodation provided by the Lender to the Borrower will be provided in reliance upon the representations and warranties in this clause.

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**3. General undertakings**

The Guarantor undertakes to the Lender that the Guarantor will:

(a) **Maintain consents**

maintain in full effect all consents required to enable the Guarantor to perform or comply with the Guarantor's obligations under the *relevant documents*;

(b) **Compliance with laws**

duly and promptly comply with all laws, directives and consents the non-compliance with which might give rise to a security interest or have a material adverse effect on the or may adversely affect the ability of the Lender to exercise or enforce its rights under a *relevant document*;

(c) **Pay taxes**

duly and promptly file all tax returns as required by law, and pay and discharge all taxes, assessments and governmental charges on the Guarantor or the Guarantor's assets prior to the date upon which penalties become payable, except only to the extent that those taxes, assessments or governmental charges are being contested in good faith by appropriate proceedings and adequate reserves are set aside for their payment;

(d) **Perform obligations**

perform and comply with the Guarantor's obligations, under each *relevant document* to which the Guarantor is a party;

(e) **Further assurance**

promptly at the Guarantor's own cost, execute and deliver to the Lender all transfers, assignments and other agreements and do all acts and things in respect of a *relevant document* as the Lender may deem necessary or desirable to secure to it the full benefit of its rights under a *relevant document*;

(f) **Information to be true**

ensure that all factual information provided by the Guarantor to the Lender in connection with the *relevant documents* after the date of *this deed* is true and accurate as at the date that information is provided and will not omit to state any fact or circumstance which would make that information untrue, inaccurate or misleading and that all projections and forecasts are made with all due care after diligent consideration.

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**4. Negative undertakings**

The Guarantor undertakes to the Lender that the Guarantor will not:

(a) **security interest**

create or permit to exist any security interest over or affecting the Guarantor's assets except any created or permitted by a *security*; or

(b) **Guarantee**

give a guarantee; or

(c) **Make loans**



except in the ordinary course of business and then only on proper commercial terms, lend money to another person; or

(d) **Change of business**

make or threaten to make a substantial change in the nature or scope of the Guarantor's business as presently conducted; or

(e) **Disposals**

either by a single transaction or series of transactions, whether related or not and whether voluntary or involuntary, dispose of all or a substantial part of the Guarantor's assets; or

(f) **Provide services**

provide services to or accept services from a person other than for proper value and on reasonable commercial terms.

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**5. Accounts and certificates**

(a) **Accounts**

The entries made in the accounts maintained by the Lender are to be conclusive evidence of the existence and amounts of the obligations of the Guarantor recorded in them.

(b) **Certificates conclusive**

A certificate by the Lender of an exchange rate or amount payable under *this deed* is to be conclusive evidence for all purposes including for any proceedings.

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**6. No obligation to marshal**

The Lender is not required to marshal, enforce or apply under, or appropriate, recover or exercise:

- (a) any security interest, guarantee or other entitlement held at any time by it; or
- (b) any moneys or assets which it at any time holds or is entitled to receive,

before *this deed* is enforced.

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**7. Moratorium legislation**

All legislation (including, without limitation, the Corporations (Investigation and Management) Act 1989) which directly or indirectly:

- (a) lessens or otherwise varies or affects in favour of the Guarantor an obligation under *this deed* or a *relevant document*; or
- (b) delays or otherwise prevents or prejudicially affects the exercise of any right by the Lender,

is to the fullest extent permitted by law, deemed to be negated and excluded in its application to *this deed* or any *relevant document*.

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**8. Assignment**

(a) **Benefit and burden of this deed**

*This deed* is binding upon and enures for the benefit of the parties and their respective successors and, in the case of the Lender, its assignees or transferees and, in the case of the Guarantor, the Guarantor's permitted assignees or transferees.

(b) **The Lender**

The Lender may assign, transfer or otherwise deal with all or part of its rights or obligations under a *relevant document* in any way we consider appropriate without the consent of any *relevant party*. Each assignee or transferee is to have the same rights against the Guarantor under *this deed* (or a proportion of those rights if it is the assignee or transferee of part only) as if named in *this deed* as the Lender.

(c) **Disclosure of information**

The Lender may disclose any information or documents we consider desirable to help it exercise its right to assign or transfer. The Lender may disclose information or documents at any time to a person to whom we assign or transfer our rights and obligations under *this deed*.

(d) **The Guarantor**

The Guarantor may not assign or transfer all or part of the Guarantor's rights or obligations under a *relevant document* without the consent of the Lender.

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**9. Notices**

(a) **Addresses and references**

Each notice or other communication under *this deed* is to be made in writing by facsimile, personal delivery or by post to the addressee at the facsimile number or address, and marked for the attention of the person (if any), from time to time designated for the purpose by the addressee to the other party. The initial facsimile number, address and relevant person of the Guarantor is set out under the Guarantor's name at the start of *this deed*.

(b) **Deemed delivery**

No communication shall be effective until received. Communication to the Guarantor, however, will be deemed to be received:

- (a) in the case of a letter, on the third business day after posting; and
- (b) in the case of a facsimile, on the business day on which it is despatched or, if despatched after 5.00 p.m. (in the place of receipt) on a business day or on a non-business day, on the next business day after the date of despatch.

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## 10. Expenses and stamp duty

### (a) Initial expenses

The Guarantor will pay on demand each cost and expense (including all legal expenses on a solicitor and own client basis and taxes) sustained or incurred by the Lender in connection with:

- (a) the preparation, negotiation, entry into and registration of *this deed*; and
- (b) each amendment to, or waiver in respect of *this deed*,

in all cases on a full indemnity basis.

### (b) Enforcement expenses

The Guarantor will pay each cost and expense (including all legal expenses on a solicitor and own client basis and taxes) sustained or incurred by the Lender as a result of the exercise of, or in protecting or enforcing or otherwise in connection with, its rights under a *relevant document* or another transaction required or contemplated by a *relevant document*, in all cases on a full indemnity basis.

### (c) Stamp duty and taxes

The Guarantor will promptly pay any stamp or similar duty or tax or registration fee payable in connection with:

- (a) the entry into, performance, registration, enforcement or admissibility in evidence of *this deed*; and
- (b) an amendment to, or waiver in respect of *this deed*,

in all cases on a full indemnity basis, and will indemnify and hold the Lender harmless against any liability with respect to, or resulting from, any failure to pay, when due, any duty, tax or fee.

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## 11. Remedies and waivers

### (a) Exercise of rights and waivers

Time is of the essence of *this deed*. No failure to exercise, and no delay in exercising, a right of the Lender under a *relevant document* will operate as a waiver of that right, nor will a single or partial exercise of a right preclude another or further exercise of that right or the exercise of another right. No waiver by the Lender of its rights under a *relevant document* will be effective unless it is in writing signed by the Lender.

### (b) Remedies cumulative

The rights of the Lender under the *relevant documents* are cumulative and not exclusive of any rights provided by law.

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## 12. Miscellaneous

### (a) Setting off money

Except to the extent a Guarantor may have a right of set-off granted by law which the Lender cannot exclude by agreement, the Guarantor must pay the *guaranteed indebtedness* in full without setting off amounts the Guarantor believes the Lender owes the Guarantor under any *relevant document* and without counterclaim.

The Lender may (without prior notice or demand) set off any obligation due from the Guarantor under any *relevant document* against any obligation owed by the Guarantor to the Lender (whether or not matured).

### (b) Amendments

No amendment to *this deed* will be effective unless it is in writing signed by all the parties.

### (c) Partial invalidity

The illegality, invalidity or unenforceability of a provision of *this deed* under any law is not to affect the legality, validity or enforceability of that provision under another law or the legality, validity or enforceability of another provision.

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## 13. Deed binding and delivered

For the purpose of section 9 of the Property Law Act 2007, *this deed*:

- (a) is intended to be immediately and unconditionally binding on each party to be bound by it when that party executes *this deed*; and
- (b) without limiting any other mode of delivery, will be delivered by each party to be bound by it immediately upon the earlier of:
  - (i) physical delivery of an original form of *this deed* executed by that party; or
  - (ii) transmission of a copy (whether by facsimile or email) of *this deed* executed by that party,

to any person on whom *this deed* confers a benefit or interest, or that person's solicitor or agent.

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## 14. Governing law and jurisdiction

### (a) Governing law

*This deed* is to be governed by and construed in accordance with New Zealand law.

*This deed* is written and is to be interpreted by reference to the English language. Any translation of *this deed* into any other language, whether by

the lender or by any other person is provided for assistance only and if there is any conflict between the terms of a translation and the terms of *this deed* in the English language, the terms of *this deed* in the English language will prevail.

(b) **Jurisdiction**

**In New Zealand:** Each of the parties irrevocably and unconditionally agrees that the courts of New Zealand shall have jurisdiction to hear and determine each suit, action or proceeding (“proceedings”), and to settle disputes, which may arise out of or in connection with *this deed* and for those purposes irrevocably submits to the jurisdiction of those courts.

**other jurisdictions:** This submission to jurisdiction does not (and is not to be construed to) limit the rights of the Lender to take proceedings against the Guarantor in another court of competent jurisdiction nor shall the taking of proceedings in one or more jurisdictions preclude the taking of proceedings in another jurisdiction, whether concurrently or not.

**Service in New Zealand:** The Guarantor agrees that the process by which any suit, action or proceeding in New Zealand is begun may be served on it by being delivered to the Borrower without prejudice to any other lawful means of service.

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**15. Definitions:**

In *this deed*, unless the context otherwise requires:

**guaranteed indebtedness** means all indebtedness of the Borrower to the Lender as set out in the *schedule*;

**guaranteed obligations** means all obligations (whether present or future but other than obligations to pay money) of the Borrower to the Lender;

**relevant documents** means *this deed*, each *security* and any other agreement, present or future, evidencing or securing the *guaranteed indebtedness* or the *guaranteed obligations*, or required or contemplated by *this deed*, each *security* or that other agreement;

**relevant party** means the Guarantor, the Borrower and each of the parties to the *relevant documents* (other than the Lender);

**schedule** means the schedule contained at Part F of *this deed*; and

**security** means the agreements set out in the *schedule* and each other agreement at any time executed, delivered or intended to guarantee or secure the Guarantor’s obligations under *this deed*, whether or not it guarantees or secures other obligations as well.

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**16. Construction of certain references**

In *this deed*, unless the context otherwise requires, any reference to:

an **agreement** also includes a contract, deed, licence, franchise, undertaking and other document (in each case whether oral or written) and includes that document as modified, supplemented, novated or substituted from time to time;

**assets** also includes the whole or any part of the relevant person’s business, undertaking, property, revenues and choses in action, in each case, present or future and whether owned jointly with another person or not;

a **business day** means a day (other than a Saturday, Sunday or national statutory holiday) on which registered banks are open for general banking business in Wellington;

a **consent** also includes an approval, authorisation, exemption, filing, licence, order, permit, recording and registration (and references to obtaining consents are to be construed accordingly);

one person being **controlled** by another means that that other person (whether directly or indirectly and whether by the ownership of share capital, the possession of voting power, contract or otherwise):

- has the power to appoint and/or remove the majority of the members of the governing body of that person; or
- otherwise controls or has the power to control the affairs and policies of that person; or
- is in a position to derive the whole or a substantial part of the benefit of the existence or activities of that person;

a **disposal** of an asset includes a sale, gift, transfer and any other kind of disposal of, and the grant of an option in respect of, a right or interest, legal or equitable, in that asset other than the creation of a security interest (including the payment of money and any distribution by way of dividend) and an agreement for any of these (and references to dispose are to be construed accordingly);

the **dissolution** of a person also includes the winding-up or liquidation of that person and an equivalent or analogous procedure under the law of any jurisdiction in which that person is incorporated, domiciled, resident, carries on business or has assets;

a **guarantee** also includes:

- an obligation of a person to pay, purchase, provide funds (whether by the advance of money, the purchase or subscription of shares or other securities, the purchase of assets or services or otherwise) or provide a security interest for the payment or performance of, or to indemnify against the consequences of default in the payment or performance of, or otherwise

to be responsible for, indebtedness or obligations of another person; and

- an obligation of a person to redeem or purchase share capital of another person incurred in connection with the purchase of that share capital by another person or the granting of any security interest in relation to that share capital;

**indebtedness** includes an obligation (whether present or future, actual or contingent, secured or unsecured, joint or several, as principal, surety or otherwise) relating to the payment of money;

something having a **material adverse effect** on a person is a reference to it having a material adverse effect:

- on that person's financial condition or operations; or
- on its ability or willingness to perform and comply with its obligations under any *relevant document*,

and references to material adverse change are to be construed accordingly;

a **person** includes an individual, body corporate, an association of persons (whether corporate or not), a trust and a state or agency of a state (in each case, whether or not having separate legal personality);

**rights** includes authorities, discretions, remedies and powers;

a **security interest** includes a mortgage, pledge, charge, lien, hypothecation, equity and encumbrance and a deferred purchase, title retention, financial lease, sale-and-repurchase and sale-and-leaseback arrangement and preferential arrangement of any kind, the practical effect of which is to secure a creditor;

**tax(es)** includes a present and future tax, levy, impost, duty, rate charge, fee, deduction or withholding of any nature regardless of where or by whom imposed, levied, collected, withheld or assessed and includes interest, penalties, fines, costs, charges or expenses or other amounts relating to or arising in connection with taxes;

a gender includes each other gender;

the singular includes the plural and vice versa;

any legislation includes a modification and re-enactment of, legislation enacted in substitution for and a regulation, order-in-council and other instrument from time to time issued or made under that legislation; and

a party to *this deed* or another agreement includes its successors and, in the case of the Lender, its assignees and transferees and, in the case of the Guarantor, the Guarantor's permitted assignees and transferees.

Headings and the table of contents shall be ignored in construing *this deed*.