



Rabobank

Deed of Guarantee and Indemnity

May 2016

WARNING: By executing this Deed (each) Guarantor becomes personally liable for all debts owing by the Borrower to the Bank. This liability is unlimited in amount (unless an amount is specified in Part 1B (in which case the liability of the Guarantor is limited as set out in clause 3.12)) and includes any interest and costs incurred by the Bank in recovering such debt.

You must obtain legal advice before signing this document.

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Deed of Guarantee and Indemnity

THIS DEED of Guarantee and Indemnity is dated and is given by:

Name of Guarantor

Name of Guarantor

Name of Guarantor

Name of Guarantor

Name of Guarantor

Name of Guarantor

(each a "Guarantor")

(if Guarantors are guaranteeing as trustees or partners specify the name of the trust/partnership below)

in favour of **RABOBANK NEW ZEALAND LIMITED** (company number 2874) (the "Bank")

Background:

1. The Guarantor has requested the Bank to make available, or to continue, the Facility (as set out in the Contract) to the Borrower;;
2. The Bank has agreed to do so, if the Guarantor in consideration:
 - (a) executes this Deed; and
 - (b) gives the Security (if any) as security for the Guarantor's obligations under this Deed.

Part 1A

Name of the Borrower

Name of Borrower

Name of Borrower

Name of Borrower

Name of Borrower

Name of Borrower

Name of Borrower

(if Borrowers are borrowing as trustees or partners specify the name of the trust/partnership below)

Part 1B

Limit (if any) on Guarantor's liability (clause 3.12):

Part 2

1. Interpretation

1.1 **Definitions:** In this Deed, unless the context otherwise requires:

"Agency" means a credit reporting agency;

"Bank" includes the Bank's successors and assigns (whether such successors and assigns arise due to any amalgamation of the Bank with another company or otherwise);

"Borrower" means the person described as such in Part 1A of this Deed and includes any receiver, liquidator, administrator or successor of the Borrower (whether such successor arises due to an amalgamation of the Borrower with another company, or otherwise);

"Business Day" means a day on which banks are generally open for business in New Zealand;

"Contract" has the same meaning as in the Standard Loan Terms;

"Debtor" means the person described as such in Part 1A of this Deed and any additional person(s) agreed by the Bank and the Guarantor from time to time to be a Debtor for the purposes of this Deed, and in each case includes any receiver, liquidator, manager, inspector, administrator and comparable officer or successor of the Debtor (whether such successor arises due to an amalgamation of the Debtor with another company, or otherwise);

"Event of Default" has the same meaning as in the Contract;

"Facility" has the same meaning as in the Standard Loan Terms;

"Guaranteed Indebtedness" means all indebtedness (whether principal, interest, fees, charges, tax or otherwise) of the Borrower to the Bank under the Contract or otherwise, and includes all money which is now or may from time to time be owing to the Bank by either the Borrower solely (and if more than one person is named as Borrower, then severally by each person so named) or the Borrower together with any other person or persons and including by way of example and not limitation, all money owing in respect of:

- (a) loans, credits or advances made or given to the Borrower, and includes all debit balances (whether authorised or not) on the Borrower's accounts with the Bank and any charges incurred on those accounts;
- (b) any bill of exchange, promissory note, draft, order or other negotiable instrument drawn, accepted, endorsed, paid, discounted or held by the Bank at the request of the Borrower notwithstanding that such bill of exchange, promissory note, draft, order or other negotiable instrument may not have arrived at maturity;
- (c) any letter of credit or other facility for payment or receipt of money by or on behalf of the Borrower;
- (d) goods or services supplied by the Bank to or at the request of the Borrower;
- (e) payment made by the Bank for or at the request of the Borrower for goods or services acquired by the Borrower or any other person;
- (f) the financing, shipment or confirming of goods or equipment on behalf of or at the request of the Borrower;
- (g) the Bank:
 - (i) entering into any lease, hire purchase or conditional purchase agreement or other similar agreement in respect of any real or personal property as lessor or vendor with the Borrower or any other person at the request of the Borrower; or
 - (ii) acquiring such property for such purpose; or

(iii) at the request of the Borrower, taking an assignment (whether absolute or by way of security) of any such lease, hire purchase, conditional purchase or other agreement and of any property relating to the agreement(s);

- (h) the Bank taking an assignment (whether absolute or by way of mortgage) of any debt or other obligation;
- (i) any indebtedness arising out of any guarantee, indemnity, bond or other obligation given or undertaken by the Bank to the Borrower or given or undertaken by the Bank for or at the request of the Borrower;
- (j) all interest, commission, costs and charges payable by the Borrower to the Bank or incurred by the Bank in relation to the Contract or any indebtedness secured by this Deed including all those incurred by the Bank in the exercise or attempted exercise of the Bank's rights, powers and remedies pursuant to this Deed;
- (k) any judgment in the Bank's favour against the Borrower;
- (l) any costs; and
- (m) any other indebtedness whatsoever of the Borrower to the Bank even if:
 - (i) the money may be expressed to be secured by any other security held by the Bank; or
 - (ii) any agreement or arrangement between the Borrower and the Bank does not state that the money is secured by this Deed (in which case such money will be deemed to be secured by this Deed);

"Guaranteed Obligations" means all obligations (other than obligations to pay money) of the Borrower to the Bank under the Contract;

"Personal Information" means, in relation to a Guarantor, "personal information" of the Guarantor as defined in the Privacy Act 1993;

"PPSA" means the Personal Property Securities Act 1999;

"Security" means any security given by the Guarantor in favour of the Bank; and

"Standard Loan Terms" means the Standard Loan Terms in use by the Bank at the time of execution of this Deed, setting out the general terms and conditions applying to the Facility.

1.2 **Construction of certain references:** In this Deed, unless the context otherwise requires, any reference to:

- (a) an **"agreement"** also includes a contract, deed, licence, franchise or undertaking (in each case whether oral or written);
- (b) **"costs"** include all costs, losses (including indirect, economic and consequential losses), fees, expenses, claims, actions, suits, judgments, damages, interest, penalties, obligations or liabilities, whether actual or estimated by the Bank;
- (c) a **"directive"** includes any order, regulation, request, requirement or notification (oral or written), which is generally complied with as a matter of practice by persons to whom it is addressed;
- (d) the **"dissolution"** of a person also includes the bankruptcy, winding up or liquidation of that person (and includes, in the case of a limited partnership, a terminating event under the Limited Partnerships Act 2008 or under the limited partnership agreement) and any equivalent or analogous procedure under the law of any jurisdiction in which that person is incorporated, domiciled, resident, carries on business or has assets;
- (e) a **"guarantee"** also includes any other obligation (whatever called) of any person to pay, purchase, provide funds (whether by the advance of money, the purchase for subscription of shares or other securities, the purchase of assets or services, or otherwise) for the payment of, or indemnify against the consequences of default in

the payment of, or otherwise be responsible for, any indebtedness or other obligations of any other person;

- (f) **"indebtedness"** includes any obligation (whether present or future, actual or contingent, secured or unsecured, as principal, surety or otherwise, and whether incurred alone, severally, jointly or jointly and severally) for the payment or repayment of money;
- (g) **"person"** includes any individual, company, limited partnership, association of persons (whether corporate or not), trust, and any state or agency of a state (in each case whether or not having separate legal personality);
- (h) **"security interest"** includes any "security interest" (as defined in section 17 of the PPSA), mortgage, pledge, lien, hypothecation, charge (whether fixed or floating), encumbrance, finance lease, title retention, "flawed asset" arrangement, right of set-off, deferred purchase, title retention, leasing, sale-and-repurchase or sale-and-leaseback arrangement or any other arrangement (however described) which in effect is, or has the commercial effect of, a security;
- (i) **"tax"** includes any present or future tax, levy, impost, duty, charge, fee, deduction or withholding of any nature (and whatever called), including any interest, penalties, fines and charges in respect of tax, imposed, levied, collected, withheld or assessed by or in New Zealand or any other applicable jurisdiction;
- (j) **"on demand"** means immediately after the Bank has given notice in writing requiring the payment or action specified in that notice;
- (k) any gender includes all other genders;
- (l) the singular includes the plural and vice versa;
- (m) any legislation includes any modification or re-enactment of it, any legislation enacted in substitution for it and any regulation, order-in-council and other instrument from time to time issued or made pursuant to legislation;
- (n) any document or agreement includes such document or agreement as modified, supplemented, novated or substituted from time to time;
- (o) a party to this Deed or any other document or agreement includes the successors and permitted assigns of such party;
- (p) headings and the table of contents must be ignored in construing this Deed;
- (q) the word 'including' and other similar words do not imply any limitation; and
- (r) derivatives of any defined word or term will have a corresponding meaning.

2. Guarantee and Indemnity

2.1 **Guarantee:** The Guarantor unconditionally and irrevocably guarantees to the Bank the due and punctual payment by the Borrower of the Guaranteed Indebtedness as and when it becomes due and payable under the Contract (whether on the normal due date, on acceleration or otherwise) and the due and punctual observance and performance of, and the due compliance by the Borrower with, the Guaranteed Obligations.

2.2 **Indemnity in Event of Default:** If:

- (a) the Borrower does not pay the Bank any of the Guaranteed Indebtedness when due; or
- (b) the Borrower does not perform any of the Guaranteed Obligations; or
- (c) any other Event of Default occurs which entitles the Bank to enforce any Security, or to accelerate payment of all or part of the Guaranteed Indebtedness,

then the Guarantor must pay the amount of the Guaranteed

Indebtedness, and perform the Guaranteed Obligations, on demand by the Bank.

2.3 **Further Indemnity:** If, for any reason, the Bank is not able to recover any of the Guaranteed Indebtedness from the Guarantor under this Deed, or the Bank is required to repay any of the Guaranteed Indebtedness it recovers, or any of the Guaranteed Obligations are unenforceable or not duly observed, performed or complied with under clause 2.1, then the Guarantor must indemnify the Bank for any costs which the Bank may suffer as a consequence. For this purpose "costs" includes non-receipt by the Bank of amounts which might have been recoverable by the Bank from either the Borrower or any Guarantor were it not for the event indemnified against.

2.4 **Knowledge of Events:** The indemnities in clause 2.2 and 2.3 apply even if the Bank is not able to fully claim under clause 2.1, and is therefore making a claim under clause 2.2 or 2.3, as a result of matters that are, or ought arguably to have been, known to the Bank at or after the time of execution of this Deed.

2.5 **Separate Indemnity:** The indemnities contained in this clause 2 are separate and additional obligations that are independent of the guarantee in clause 2.1 and that the Bank may enforce against the Guarantor separately from that guarantee.

3. Nature of Guarantee Obligations

3.1 **Liability as sole principal debtor:** As between the Guarantor and the Bank (but without affecting the obligations of the Borrower) the Guarantor is liable under this Deed as a sole and principal debtor and not merely as a surety.

3.2 **Unconditional and irrevocable:** Each of the Guarantor's obligations under this Deed is unconditional and irrevocable.

3.3 **Liability not affected:** The Guarantor is not discharged, and the obligations of the Guarantor are not affected, and nor will any security interest provided by the Guarantor be released or discharged, by anything which, but for this clause, would have discharged the Guarantor, affected the obligations of the Guarantor, or released or discharged such security interest (in each case, in whole or in part, and whether or not known to, or done or omitted to be done by, the Guarantor or the Bank or any other person) including:

- (a) any time, indulgence, waiver, accommodation, consent or other concession at any time given to the Borrower or any other person;
- (b) any amendment, replacement, waiver, release or discharge of, or addition to, the Contract, or any other agreement, guarantee, security interest or property, or of any rights of the Bank against the Guarantor or any other person ("**change in circumstance**"), or any failure to notify the Guarantor or such person of such change in circumstance;
- (c) the making or failure to make any demand on the Borrower or any other person for payment;
- (d) the enforcement, delay in enforcing or failure to enforce the Contract or any other security interest, guarantee, indemnity or other agreement;
- (e) the release of part of the Contract including any Security, or the liability of the Borrower, Guarantor or any other person under the Contract or any agreement ceasing;
- (f) the dissolution, amalgamation, reconstruction or re-organisation of the Guarantor, Borrower, Bank or any other person, or the appointment of any receiver, manager, administrator, liquidator, inspector or other similar person in respect of any person or over any of its assets;
- (g) the illegality, invalidity, unenforceability of, or any defect in, any provision of the Contract or any document comprising the Contract or any of the Borrower's obligations under any of them for any reason whatsoever and whether or not known to the Bank;

- (h) the Borrower lacking, or ceasing to have, full legal capacity or failing validly to execute any document comprising the Contract, or any other person providing or joining in providing, or failing to enter into or give, any other agreement, guarantee or security interest;
 - (i) any of the Guaranteed Indebtedness being paid to, or any Facility being provided to, the Borrower without the knowledge or approval of any Guarantor;
 - (j) the Bank not notifying any Guarantor of any non-performance by the Borrower of any of its obligations under the Contract;
 - (k) the Guarantor's death (in which case the Guarantor's estate is liable for Guarantor's obligations under this Deed) or any limitation, disability or incapacity affecting the Borrower, Guarantor or any other person, or any change in constitution, composition, status or control of any person; or
 - (l) any other thing whatever, other than a release of the Guarantor's obligations under and in accordance with this Deed.
- 3.4 Continuing Guarantee and Indemnity:** The Guarantor's obligations under this Deed:
- (a) are by way of continuing security, notwithstanding any intermediate payments, settlement of accounts or payments or any other matters or things whatsoever;
 - (b) are in addition to (and without prejudice to), independent of, and not in substitution for, any security, guarantee, indemnity or other agreement at any time existing in favour of any person, whether from the Guarantor or otherwise, and the Bank may exercise any of its rights, powers and remedies under this Deed and any such guarantee, security interest or agreement separately or concurrently; and
 - (c) remain in full force and effect until all the Guaranteed Indebtedness is paid and all the Guaranteed Obligations are satisfied and an absolute discharge of the obligations of the Guarantor under this Deed has been executed by the Bank. However, any such discharge, and any composition or arrangement which the Guarantor may have with the Bank, is deemed to be made subject to the condition that it will be void if any payment or security interest which the Bank may previously have received or may thereafter receive from the Guarantor or any other person in respect of the Guaranteed Indebtedness is set aside under any applicable law or proves to have been, for any reason, invalid.
- 3.5 No Marshalling:** The Bank is not required to marshal, enforce, apply under or exercise any guarantee, security interest or other right held by it at any time or recover or appropriate any moneys or property which it holds or is entitled to receive at any time, before this Deed is enforced.
- 3.6 Release of co-Guarantors:** The Bank, without notice and without prejudicing or otherwise affecting the rights of the Bank against the Guarantor, may:
- (a) release or discharge any other Guarantor from any liability under this Deed; and
 - (b) compound with, accept compositions from, or make any other arrangements (including the release of any Security), with the Guarantor or any other Guarantor.
- 3.7 Proceed against one or more:** The Bank may in its absolute discretion proceed against the Guarantor or any one of any other Guarantors (under this Deed, or any other security, guarantee, indemnity or other agreement) in relation to the Borrower's obligations under the Contract.
- 3.8 Bank's discretion:** The Bank may at any time:
- (a) decide whether or not, and if so in what manner, to enforce this Deed or any other document or right, including without first taking action against the Borrower, Guarantor or any other person or enforcing any other security interest, guarantee or other right;
 - (b) grant, refuse to grant, withdraw or restrict any finance to the Borrower, Guarantor or any other person;
 - (c) make an arrangement or compromise with the Borrower, Guarantor or any other person;
 - (d) release or discharge any Guarantor from this Deed without affecting the obligations of any other Guarantor or releasing or discharging any other Guarantor; or
 - (e) require the Guarantor to provide to it any information, including any accounts and other financial information as the Bank may require.
- The Bank is not required to give notice of, or reasons for, any such decision, or seek the consent of the Borrower, Guarantor or any other person. The Bank will incur no liability to the Guarantor for any such decision.
- 3.9 Multiple Guarantors:** If more than one person enters into this Deed as Guarantor:
- (a) each reference to "the Guarantor" will be a reference to each of them separately and to all of them together (other than a reference to "the Guarantor" in clause 15, which will be a reference to each Guarantor separately);
 - (b) each Guarantor is liable for all of the Guaranteed Indebtedness, and to pay any amount pursuant to any indemnity, jointly and severally; and
 - (c) this Deed will bind each Guarantor from the date that the Guarantor signs this Deed, even if one or more other Guarantors have not signed this Deed or if this Deed cannot be enforced against one or more of the other Guarantors.
- 3.10 Multiple Borrowers:** If two or more persons are named in this Deed as the Borrower:
- (a) each reference to "the Borrower" will be a reference to each of them separately and to all of them together; and
 - (b) a reference to Guaranteed Indebtedness includes the Guaranteed Indebtedness of each Borrower separately, any of them, and all of them together.
- 3.11 Securities secure all obligations:** To avoid doubt, all Securities, whether provided before, at the time of, or after this Deed, secure the Guaranteed Indebtedness and Guaranteed Obligations.
- 3.12 Guarantor's liability:**
- (a) Subject to paragraphs (b) and (c) below, the Guarantor's liability is personal and unlimited.
 - (b) If an amount is specified in part 1B, the liability of the Guarantor (or, where there is more than one Guarantor, the aggregate liability of the Guarantors) is limited to that amount.
 - (c) The personal liability of a limited liability trustee is limited in accordance with clause 16.
- 3.13 Accounts:** The Bank may continue any existing account or, at any time, open a new account with the Borrower or any Guarantor, and the liability of the Guarantor under this Deed shall not be reduced or affected in any way by any subsequent transactions, receipts or payments into or out of any such account.
- 3.14 Retention:** The Bank is not obliged to execute any discharge of the obligations of any Guarantor under this Deed until it is satisfied that:
- (a) all Guaranteed Indebtedness has been paid (and all Guaranteed Obligations have been performed);
 - (b) the Bank is not required to advance any further amount under the Contract and each Facility has expired or otherwise been terminated; and
 - (c) no payment made, or to be made, to the Bank may be avoided or recovered from the Bank.
- Any discharge that is given by the Bank will be subject to clause 3.4(c).

4. Payments

- 4.1 **Payment on demand:** Subject to any other agreement in writing, the Guarantor must pay to the Bank the Guaranteed Indebtedness and any amounts payable under any indemnity as and when due for payment (whether on the normal due date, on acceleration or otherwise), on demand.
- 4.2 **Payments by Guarantor:** Each payment under or pursuant to this Deed is to be made in the currency in which the Guaranteed Indebtedness is expressed to be payable, in cleared funds during normal banking hours on the due date and to the bank account which the Bank specifies from time to time.
- 4.3 **Payments to be free and clear:** All payments by the Guarantor to the Bank under this Deed must be made:
- free and clear of any restriction or condition; and
 - free and clear of and (except to the extent required by law) without any deduction or withholding, on account of tax or on any other account and whether by way of set-off or otherwise.
- 4.4 **Grossing-up of payments:** If:
- the Guarantor or the Bank (or any person on their respective behalf) is required by law to make any deduction or withholding on account of tax or on any other account from any amount paid or payable by the Guarantor under this Deed; or
 - the Bank (or any person on its behalf) is required by law to make any payment on, or calculated by reference to, any amount received or receivable under this Deed,
- then the amount in respect of which such deduction, withholding or payment is required to be made must be increased to the extent necessary to ensure that, after the making of such deduction, withholding or payment, the Bank receives and retains (free from any liability in respect of any such deduction, withholding or payment) a net sum equal to the sum which it would have received and so retained had no such deduction, withholding or payment been made.
- 4.5 **Punctual payment:** The Guarantor will pay any amount referred to in clause 4.4(a) to the relevant taxation or other authority before the date on which penalties apply.
- 4.6 **Notice of legal requirements:** The Guarantor must immediately notify the Bank of any requirement for any deduction, withholding or payment referred to in clause 4.4 to be made, and of any change in any such requirement.
- 4.7 **Tax receipts:** The Guarantor must, promptly after making any deduction, withholding or payment referred to in clause 4.4, deliver to the Bank a receipt or other documentation satisfactory to the Bank evidencing the same.
- 4.8 **Default interest:** If the Guarantor does not pay to the Bank an amount when due, the Guarantor will pay interest on that overdue amount at the highest rate applicable to any Guaranteed Indebtedness. That interest will be:
- charged from the date when the relevant amount was due until the date it is received in full by the Bank (both before and after judgment);
 - due on the last day of each interest period by which the Bank determines that the interest is calculated; and
 - if not paid, added to the amount due (so it will accrue interest as well).
- 4.9 **Payments in gross and suspense account:** Any payment received at any time by the Bank in respect of the Guaranteed Indebtedness from or on account of the Guarantor will be regarded as a payment in gross and the Bank may place such payment in a suspense account to preserve the liability of any other person and the Bank's right to prove for the whole of the Guaranteed Indebtedness in the death, dissolution,

amalgamation, change in constitution, status, shareholding or control of any other person.

- 4.10 **Application of payments:** The Bank may use any payment it receives from or on account of the Borrower or any other guarantor to reduce the Borrower's debt to the Bank in whatever manner and order the Bank decides, including so that the amount the Bank may recover from the Guarantor under this Deed is not affected.

5. No Competition with Bank

- 5.1 **Restrictions:** The Guarantor must not, without the written consent of the Bank:
- take, accept or hold any security interest from the Borrower or any other guarantor or any person who has given any security interest to the Bank to secure the payment of any Guaranteed Indebtedness (each an "Interested Party");
 - claim or exercise any right (whether by way of subrogation, contribution, counter-indemnity or otherwise and whether in relation to this Deed or any other guarantee given by the Guarantor to any person), require marshalling, or claim the benefit of any guarantee or security interest now or in the future held by the Bank for the payment of any Guaranteed Indebtedness or any person other than the Bank in connection with the obligations of, and any other amounts payable by the Borrower to, and for the account of that other person;
 - take any steps to recover (whether directly or by subrogation, contribution, set-off, counterclaim or otherwise), or accept, any money or other property, or exercise or enforce any rights in respect of any indebtedness to it from any Interested Party; or
 - claim, prove or accept any payment in any composition by, or any dissolution of, any Interested Party.
- 5.2 **Guarantor to Account:** If, notwithstanding clauses 5.1(a) to (d), the Guarantor holds or receives any such security interest, money or property or claims or exercises any right or claims, or proves or accepts any payment contrary to those clauses, the Guarantor must immediately pay or transfer the same, or all amounts received by the Guarantor in relation to any such claim, proof or exercise, and all interest on such amounts, to the Bank and, pending such payment or transfer, must hold the same, or the benefit of that proof or exercise (and all interest) on trust for the Bank.
- 5.3 **Prior Ranking Security Holder:** At the Bank's request, the Guarantor will promptly complete and deliver to any person which has or had a security interest in any assets of the Borrower that ranks or ranked in priority ahead of the Bank (copying Bank) a notice in the form required by the Bank in respect of the restrictions imposed on the Guarantor under this clause 5.

6. Representations and Warranties

- 6.1 **Regular execution etc:** Each Guarantor represents and warrants to the Bank that this Deed has been validly executed by the Guarantor, and that execution of this Deed by each Guarantor and performance of its obligations and exercise of its rights under this Deed, is duly authorised and not in breach of any laws or agreements to which the Guarantor is subject or (if applicable) its constitution, rules, trust deed, partnership agreement, limited partnership agreement or other constitutive documents.
- 6.2 **No bankruptcy:** Each Guarantor which is a natural person represents and warrants to the Bank that he/she has never been adjudged bankrupt (unless the full details of this have been previously disclosed to, and accepted by, the Bank).
- 6.3 **Solvency:** Each Guarantor that is a company, and each Guarantor that is either a director of or shareholder in any Guarantor that

is a company, represents and warrants to the Bank that that company Guarantor is able to pay its debts when they become due in the ordinary course of business and the value of its assets is greater than its liabilities (including contingent liabilities).

- 6.4 **Correctness of information:** The Guarantor represents and warrants that all information provided to the Bank from time to time:
- (a) is and will be true, complete and accurate in all material respects; and
 - (b) in the case of financial information, has been prepared in accordance with generally accepted accounting practice as defined in section 3 of the Financial Reporting Act 1993 and gives a true and fair view of its financial condition and operations at the relevant time and for the relevant period,
- and it is not aware of any material information that has not been disclosed which may, if disclosed, materially adversely affect the decision of a person considering whether to lend money to it or any borrower, or to allow such money to remain outstanding, or to accept and rely on any security from it, or to give or continue to make finance or other services available to it or the Borrower.
- 6.5 **Best interests/major transaction:** The Guarantor represents and warrants to the Bank that its entry into this Deed and the assumption of its other obligations under this Deed:
- (a) are in its best interests and for its benefit or, in compliance with section 131(2) of the Companies Act 1993, in the best interests and for the benefit of its holding company; and
 - (b) unless the Guarantor has notified the Bank to the contrary in writing on or before delivery of this Deed, do not constitute a major transaction within the meaning of section 129 of the Companies Act 1993.
- 6.6 **Reliance on warranties:** The Guarantor acknowledges that the Bank has been induced to agree to provide and/or continue the Facility to the Borrower in reliance upon the warranties and representations of the Guarantor under this Deed.
- 6.7 **Continuing warranties:** The warranties and representations of the Guarantor under this Deed are deemed to be repeated on every day during the currency of this Deed until this Deed is released by the Bank by reference to the circumstances then existing.

7. Undertakings

- 7.1 **Provision of accounts etc:** The Guarantor must provide to the Bank on demand such information as to the Guarantor's financial position and ability to perform its obligations under this Deed as the Bank may require including, in the case of a Guarantor that is subject to the Financial Reporting Act 1993, copies of the most recent accounts required by that Act, completed in accordance with the requirements of that Act.
- 7.2 **Other information:** The Guarantor will on demand deliver to the Bank:
- (a) details of any event which, if it had been current, pending or, to its knowledge, threatened at the date of this Deed, could then have rendered any warranty in this Deed incorrect; and
 - (b) such other information relating to the business, affairs, financial condition, operations or assets of the Guarantor as the Bank may, from time to time, request.
- 7.3 **Further assurance:** The Guarantor will, on demand and at the Guarantor's own cost, execute and deliver to the Bank all such transfers, assignments and other documents and do all such acts and things in respect of the Contract as the Bank may deem necessary or desirable to secure to it the full benefit of its rights under this Deed and the Contract.
- 7.4 **Compliance with laws:** The Guarantor will promptly comply with all laws and directives, non-compliance with which might

in any way adversely affect the rights or security interest of the Bank under the Contract, or this Deed, or the Guarantor's or Borrower's ability to comply with its obligations under the Contract or this Deed.

- 7.5 **Compliance with consents:** The Guarantor will maintain and comply with all consents (including those required under the Building Act 2004 and Resource Management Act 1991) which, if not maintained or complied with, might adversely affect the Bank's rights under the Contract or this Deed or the Guarantor's ability to comply with its obligations under this Deed.
- 7.6 **Ranking:** The Guarantor will ensure that its payment obligations under this Deed rank at all times at least equally with all of its other debt except debt preferred by law or secured by a security interest expressly permitted by the Contract or to which the Bank has given its prior written consent.

8. Set off

- 8.1 **Set off:** The Guarantor authorises the Bank (without prior notice) to apply any credit balance to which it is at any time beneficially entitled on any account of the Guarantor at any of the Bank's offices in or towards satisfaction of any indebtedness then due to the Bank from the Guarantor under this Deed. For that purpose, the Bank is authorised to use all or any part of any such credit balance to buy such other currencies as may be necessary to effect such application and the Bank may:
- (a) set off against the credit balance the maximum amount which may become due to the Bank;
 - (b) stop withdrawal or payment of the credit balance if an amount is contingently due to the Bank or an amount due is not quantified; and
 - (c) use any credit balance to buy other currencies and break any term deposit.
- 8.2 **Debit balance:** The Bank may debit any bank account of the Guarantor with any amount due to the Bank at that time. The Bank may exercise this right even if the account is already in debit, and even if the amount debited takes the debit balance over any approved limit, in which case the Bank may charge interest and fees on the new debit balance.
- 8.3 **No obligation or security interest:** The Bank is not obliged to exercise any of its rights under this clause 8, which are without prejudice and in addition to any right of set-off, combination of account, lien or other right to which it is at any time otherwise entitled (whether by operation of law, contract or otherwise). The rights under this clause 8 do not create a security interest for the purposes of the PPSA in that credit balance.

9. Accounts and Certificates

- 9.1 **Loan accounts:** The entries made in the accounts maintained by the Bank are prima facie evidence of the existence and amounts of the obligation of the Guarantor recorded in them.
- 9.2 **Certificates conclusive:** A certificate by the Bank as to any amount, rate or fact is conclusive evidence of that amount, rate or fact unless there is manifest error.

10. Receiver, Liquidator or Statutory Manager

- 10.1 The Guaranteed Indebtedness is immediately payable without demand being required if any receiver, liquidator, administrator, inspector or manager is appointed to the Borrower or the Guarantor. This clause applies:
- (a) notwithstanding the provisions of any relevant law, contract, agreement or other matter; and
 - (b) without prejudice to any provision of this Deed as a separate and independent agreement between the Guarantor and the Bank.

11. Assignment

- 11.1 **Benefit and burden of this Deed:** This Deed is binding upon and enures for the benefit of the parties and their respective successors and any assignee or transferee.
- 11.2 **Bank:** The Bank may assign, transfer or otherwise deal with all or any part of its rights or obligations under this Deed without the consent of the Guarantor. Each assignee has the same rights against the Guarantor (or a proportion of those rights if it is the assignee of part only) as if named in this Deed as the Bank. The Guarantor irrevocably undertakes to the Bank to do all such acts and to execute all such agreements as the Bank may reasonably require to effect or perfect any such assignment or transfer and irrevocably authorises the Bank to do all such acts and to execute all such agreements on its behalf and/or in its name.
- 11.3 **Guarantor:** The Guarantor may not assign, transfer or otherwise deal with all or any part of its rights or obligations under this Deed without the prior written consent of the Bank.

12. Notices

- 12.1 Any communication (including any demand) made by the Bank under this Deed may be made on the Guarantor for whom it is intended either by post, facsimile or delivery to the address of the Guarantor shown in the front page of this Deed or to the Guarantor's current registered office or last known place of business or residence known to the Bank or to any postal address or facsimile number from which any communication received by the Bank has been most recently received from the relevant Guarantor, or in any other way permitted by law.
- 12.2 Any communication made by a Guarantor to the Bank under this Deed may be made either by post, facsimile or delivery to the address of the Bank shown on the last page of this Deed or to the Bank's current registered office or address for service.
- 12.3 Any communication made by a party will be deemed validly to have been received by the recipient for whom it is intended, when:
- if posted, two Business Days have passed since the date on which the party posted the communication;
 - if sent by facsimile and the party has received a transmission report indicating that the facsimile transmission was received in full, immediately after the party has received that report; or
 - if delivered to, and left at, the registered office or address for service (where the Companies Act 1993 applies) of the recipient, or last known place of business or residence of the Guarantor known to the Bank at that time, immediately once it is so delivered.

13. Costs

- 13.1 The Guarantor will pay to the Bank, or as it may direct, all costs and expenses (including legal costs on a full indemnity solicitor/client basis) incurred by the Bank, the Bank's solicitors and any officer of the Bank acting as permitted under a Security and arising from:
- the preparation, negotiation, registration, variation, discharge or release of this Deed, and any associated investigation, enquiries and searches;
 - the exercise or attempted exercise of any power conferred on the Bank (or any receiver or attorney) under this Deed;
 - all stamp duty, registration costs and other taxes that apply to this Deed or any payment required under this Deed;
 - any application for the Bank's approval in connection with this Deed and the issue or refusal of consent or approval; and
 - any request to provide any information or to produce any

documents, files and vouchers.

14. General

- 14.1 **Time of essence:** Time is of the essence with regard to the performance of the Guarantor's obligations under this Deed.
- 14.2 **Exercise of rights and waivers:** Neither failure to exercise, nor any delay in exercising, any right or remedy of the Bank under the Contract (including this Deed) operates as a waiver of the Bank's rights under any document comprising the Contract nor does any single or partial exercise of any such right or remedy or the exercise of any other right or remedy. No waiver by the Bank of its rights or remedies under this Deed is effective unless it is in writing signed by the Bank.
- 14.3 **Remedies cumulative:** The rights and remedies of the Bank under this Deed are cumulative upon and not exclusive of any rights or remedies provided by law.
- 14.4 **Amendments:** No amendment to this Deed is effective unless it is in writing signed by all the parties.
- 14.5 **Consents:** Any consent under any provision of this Deed must be in writing and may be given subject to any conditions thought fit by the person giving it.
- 14.6 **Governing Law:** This Deed is governed by, and is to be construed in accordance with, New Zealand laws. The Guarantor agrees that any legal action or proceeding arising out of or in connection with this Deed may be brought in the courts of New Zealand and irrevocably submits to the non-exclusive jurisdiction of such courts.
- 14.7 **Exclusion of statute:**
- So far as is lawful, the provisions of all statutes and regulations at any time operating directly or indirectly to:
 - lessen, modify, or affect the Guarantor's obligations in favour of the Bank; or
 - stay, postpone, or otherwise prevent or prejudicially affect the exercise of all or any of the Bank's rights, powers, and remedies conferred by this Deed;are negated and excluded from and will not apply to this Deed.
 - All powers, rights, and remedies conferred on the Bank by law, in equity, or by any statute are in addition to those contained in this Deed and will not curtail, diminish, or qualify any of them.
- 14.8 **Partial invalidity**
- The illegality, invalidity or unenforceability of any provision of this Deed does not affect the legality, validity or enforceability of any other provision or any other document forming part of the Contract.
 - This Deed is operative and binding on each Guarantor that executes it even if any other party named above as a Guarantor does not execute it. The onus of procuring the execution by the appropriate persons of this Deed, and any other guarantee in respect of the Guaranteed Indebtedness, is on the Guarantor and not on the Bank and the Bank may act upon this Deed accordingly.
- 14.9 **Survival of covenants:** The payment and indemnity obligations of the Guarantor will survive the termination of this Deed and payment of the Guaranteed Indebtedness.
- 14.10 **Bank's property:** This Deed will remain the Bank's property even if all Guaranteed Indebtedness has been paid and all Guaranteed Obligations have been performed.
- 14.11 **Contracts (Privity) Act:** The Guarantor acknowledges that, in terms of the Contracts (Privity) Act 1982, this Deed is made for the benefit of, and is intended to be enforceable by, the Bank.
- 14.12 **Partnership liability:** Where the Borrower or Guarantor consists of partners in a partnership:

- (a) each partner acknowledges that:
 - (i) the Contract will continue to bind the Borrower or Guarantor and its partners despite any changes which may take place in the partners (including by death, incapacity, retirement or admission of any partner) or the fact that the partnership no longer carries on business; and
 - (ii) as well as its joint liability as a partner, it is individually liable for all obligations of the Borrower or Guarantor so that the Bank may have recourse to its personal assets on the same basis as any other personal creditor; and
- (b) each other Guarantor acknowledges that the Contract will continue to bind the Borrower or Guarantor in respect of a partnership despite any changes which may take place in the partners (including by death, incapacity, retirement or admission of any partner) or the fact that the partnership no longer carries on business.

credit reporting services, the Agency may give Personal Information of the Guarantor to those customers;

- (iv) the Bank may continue to use the Agency's credit reporting services, including the Agency's monitoring services, to receive updates if there are any changes in any of the information that the Agency holds about the Guarantor; and
- (v) if the Guarantor defaults in its obligations under this Deed, the Bank may give information of the default to the Agency and the Agency may give information about that default to other customers of the Agency; and

- (b) authorises the Bank to:
 - (i) collect and supply Personal Information of the Guarantor to the Agency as the Bank deems appropriate;
 - (ii) request and collect information about the Guarantor from the Agency as required or desirable for the purposes of or in connection with this Deed or any other application the Borrower or the Guarantor may make for any of the Bank's products or services, at any time and from time to time during the term of this Deed; and
 - (iii) contact the Guarantor in respect of promotions of the Bank's products or services (and any other products or services promoted by the Bank from time to time); and
- (c) authorises the Agency to give Personal Information about the Guarantor to the Bank.

15. Authorisations in Respect of Information

15.1 Each Guarantor authorises the Bank to:

- (a) collect information (including Personal Information) about the Guarantor from any source;
- (b) use any information (including Personal Information) about the Guarantor for any purpose within the usual business functions and activities of the Bank and for any other purpose reasonably required by the Bank in connection with this Deed, including for the purpose of:
 - (i) identifying the Guarantor;
 - (ii) assessing whether the Guarantor or Borrower qualifies for a particular product or service;
 - (iii) contacting the Guarantor as required in respect of the product(s) or service(s) it provides to the Guarantor or Borrower;
 - (iv) contacting the Guarantor in relation to other products and services that may be of interest to the Guarantor, and
- (c) pass on that information (including Personal Information) to:
 - (i) any person who provides credit or legal support in relation to the Guarantor's obligations to the Bank;
 - (ii) any potential assignee, transferee or other person with whom the Bank may wish to contract in relation to the Guarantor;
 - (iii) any third parties (such as credit agencies, mailing houses, cheque and electronic transaction processors and information technology service providers) who need to be involved in order to supply, maintain and/ or improve the Bank's products or services provided to the Guarantor or Borrower; or
 - (iv) any other person to whom such disclosure is, in the reasonable opinion of the Bank, necessary or desirable.

15.2 Without limiting clause 15.1, each Guarantor that is a natural person:

- (a) agrees and acknowledges that:
 - (i) the Guarantor has provided, and may continue to provide, certain information to the Bank to enable the Bank to:
 - (1) use the credit reporting service of an Agency for the purpose of receiving a report on the Guarantor's credit history;
 - (2) provide services and products to the Guarantor and the Borrower; and
 - (ii) the Agency will collect Personal Information of the Guarantor supplied to it by the Bank on its systems and use it to provide its credit reporting service;
 - (iii) when other customers of the Agency use the Agency's

15.3 The Bank will comply with all privacy laws and rules of banker's confidentiality that apply to the Bank.

15.4 The Bank will not disclose Personal Information about a Guarantor unless such disclosure:

- (a) is directly connected with the products or services provided to the Guarantor or the Borrower by (or requested by the Guarantor or Borrower from) the Bank;
- (b) is required or authorised by law;
- (c) will prevent or lessen a serious and imminent threat to somebody's health; or
- (d) is with the Guarantor's prior consent.

15.5 In accordance with the Privacy Act 1993, the Guarantor may access his or her Personal Information by contacting the Bank at the address specified in clause 12. If the information held by the Bank is incorrect, the Guarantor may require that it be corrected or deleted. If the Guarantor requests that the Bank deletes Personal Information, the Bank may withdraw any or all products or services which the Bank provides to the Guarantor and/or the Borrower. To protect the Guarantor's privacy and the privacy of others, the Bank may have to verify the Guarantor's identity before it gives the Guarantor access to information about the Guarantor or changes it.

15.6 If the Guarantor is a company, the Guarantor will procure each of its directors to give the same authority as set out in clauses 15.1 and 15.2 in relation to themselves.

16. Trustees

16.1 Independent Trustee Limitation of Liability: If:

- (a) a Guarantor enters into this Deed as trustee of a trust; and
- (b) that Guarantor has no right to or interest in any of the assets of the trust except in their capacity as trustee of the trust, then, except as set out in clause 16.2, the liabilities and obligations of that Guarantor in relation to this Deed are not unlimited personal liabilities and obligations, but are liabilities and obligations to pay the liabilities and meet the obligations out of the trust's assets which are for the time being held by the trustees of the trust.

16.2 Exception to Limitation of Liability: To the extent that the assets of the trust have been reduced as a result of:

- (a) a representation, warranty or undertaking set out in clauses 16.5 or 16.6 being incorrect; or
- (b) the dishonesty or wilful default of that Guarantor, and are thereby not available to meet the obligations and liabilities of that Guarantor

then, to that extent, that Guarantor's liabilities and obligations will be unlimited personal liabilities and obligations.

16.3 Personal Liability: The liability of any trustee that is not a limited liability trustee is personal and not limited to trust assets or otherwise affected by virtue of the Guarantor being, or entering into this Deed as, a trustee.

16.4 Non-Trustee Capacity: Nothing in this Deed shall limit the liability of any limited liability trustee that has also entered into this Deed in a capacity other than as trustee of a trust in respect of obligations under this Deed entered into in that other capacity.

16.5 Representations and Warranties: Each Guarantor that is a trustee of a trust represents and warrants to the Bank that:

- (a) the persons named in this Deed as trustees of the trust are all the trustees of that trust, each of whom (so far as it is aware in respect of any trustees other than itself) has been validly appointed and has the power and authority to hold on trust the assets of that trust and to carry on the business of that trust;
- (b) it has the power under the trust deed, and is authorised, to enter into this Deed and transactions under it;
- (c) it has the right to be fully indemnified out of the trust assets in priority to the interests of the beneficiaries in respect of all obligations incurred by it under this Deed and the Bank is entitled to be subrogated to that right (in each case without restriction, limitation, set-off or counterclaim) in respect of its obligations under this Deed;
- (d) at the date the obligations are incurred the trust assets are sufficient to fully satisfy all obligations in respect of which it has a right of indemnity (including its obligations under this Deed);
- (e) no distributions or event for vesting of trust assets have been made or occurred without the prior written approval of the Bank;
- (f) no action has been taken or proposed to terminate, windup or liquidate the trust, that it has not notified to Bank immediately upon becoming aware of it;
- (g) it is not in default under or in breach of the trust deed;
- (h) so far as it is aware, none of the trust assets have been mixed with other property; and
- (i) except to the extent the Guarantor's liability is limited under clause 16.1, the Guarantor's liability under this Deed is personal and not limited to trust assets or otherwise affected by virtue of that Guarantor being, or having entered into this Deed as, a trustee.

16.6 Trustee Undertakings: Each Guarantor that is a trustee of a trust:

- (a) will, at the request of the Bank and without limiting any of the Bank's other rights under any document or at law generally, exercise its right of indemnity against the trust assets or any beneficiary of the trust for the benefit of the Bank;
- (b) will not permit any restriction, limitation, set-off, counterclaim or other defence to or against:
 - (i) its rights of indemnity out of the trust assets;
 - (ii) any right of indemnity that may arise in its favour from a beneficiary of the trust; or
 - (iii) the Bank's right of subrogation to either indemnity;
 and
- (c) will not repay any debt owing to any settlor or beneficiary of the trust.

16.7 Liable until Released: Each trustee that is party to this Deed will

remain liable under this Deed after it ceases to be a trustee until released in writing by the Bank. The Bank will release a trustee from its liabilities under this Deed when the Bank is satisfied that section 45(2) of the Trustee Act 1956 has been complied with and that all new and remaining trustees are liable under this Deed.

17. Counterparts

17.1 This Deed may be executed in any number of counterparts (including facsimile or scanned PDF counterparts), all of which when taken together shall constitute one and the same instrument, and any of the parties hereto may execute this Deed by signing any such counterpart.

18. Delivery

18.1 Without limiting any other mode of delivery, this Deed will be delivered to the Bank by a Guarantor on the earlier of:

- (a) physical delivery of an original of this Deed, executed by the Guarantor, into the custody of the Bank or its solicitors; or
- (b) transmission by the Guarantor, its solicitors or any other person authorised in writing by the Guarantor of a facsimile, photocopied or scanned copy of an original of this Deed, executed by the Guarantor, to the Bank or its solicitors.

18.2 If the Deed is delivered in accordance with clause 18.1(b), the Guarantor shall (in addition) promptly deliver an original of this Deed, executed by the Guarantor, into the custody of the Bank or its solicitors.

19. Guarantor Acknowledgements

19.1 Each Guarantor acknowledges that:

- (a) it is fully aware of the nature, consequences and effect of this Guarantee and Indemnity and the nature and extent of its obligations under this Guarantee and Indemnity, and fully understands the financial risks involved;
- (b) it was not influenced by any person to sign this Guarantee and Indemnity, and it fully understands that it had a choice whether or not to sign this Guarantee and Indemnity;
- (c) it has either had legal advice prior to executing this Guarantee and Indemnity or, where, or to the extent that, it has not received such advice, it acknowledges that not doing so is contrary to the Bank's recommendation and results solely from the Guarantor's own choice, freely made, and in that case the Guarantor in question irrevocably waives any rights, defence or counterclaim that the lack of such legal advice might otherwise have given it;
- (d) its liability under this Deed is joint and several;
- (e) unless an amount is specified in Part 1B (in which case the liability of the Guarantor(s) is limited as set out in clause 14.12), and subject to clause 16, the Guarantor's liability in relation to the Guaranteed Indebtedness and Guaranteed Obligations is unlimited in amount;
- (f) the Bank may also claim from the Guarantor interest on the Guaranteed Indebtedness and any costs incurred in the recovery process;
- (g) in signing this Deed, it did not rely on any statement, document or promise made by the Bank or on the Bank's behalf;
- (h) except as required by law, the Bank is not under any duty to disclose any information about the Borrower to the Guarantor;
- (i) its liability under this Deed is not subject to any condition being satisfied; and
- (j) the Bank has relied on the acknowledgments above in agreeing to accept this Deed.

EXECUTION

Signed as a deed by the Guarantors

Execution instructions:

1. Where the Guarantor is one or more individuals then the signature of each individual must be witnessed.
2. Where the Guarantor is a company then execution should be by two directors or, if there is only one director, then that director's signature must be witnessed.
3. Where the Guarantor is described as a trust then this deed must be signed in accordance with the trust deed or governing document.
4. Where the Guarantor is described as a partnership then this deed must be signed in accordance with the partnership deed, and if there is no partnership deed in place then by all partners.
5. Where the Guarantor is an incorporated society then its common seal must be affixed by its authorised officers in accordance with its rules.

Individual – personally SIGNED by

Guarantor's signature

Guarantor's name

Signature of witness

Print name of witness

Occupation of witness

Address of witness

Guarantor's signature

Guarantor's name

Signature of witness

Print name of witness

Occupation of witness

Address of witness

Guarantor's signature

Guarantor's name

Signature of witness

Print name of witness

Occupation of witness

Address of witness

Guarantor's signature

Guarantor's name

Signature of witness

Print name of witness

Occupation of witness

Address of witness

Guarantor's signature

Guarantor's name

Signature of witness

Print name of witness

Occupation of witness

Address of witness

Company – two directors or sole director

Signed for and on behalf of (name of Guarantor company)

Signature of director of Guarantor company

Name of director

Signature of director of Guarantor company

Name of director

Signature of witness

Print name of witness

Occupation of witness

Address of witness

Signed for and on behalf of (name of Guarantor company)

Signature of director of Guarantor company

Name of director

Signature of director of Guarantor company

Name of director

Signature of witness

Print name of witness

Occupation of witness

Address of witness

Signed for and on behalf of (name of Guarantor company)

Signature of director of Guarantor company

Name of director

Signature of director of Guarantor company

Name of director

Signature of witness

Print name of witness

Occupation of witness

Address of witness

Rabobank New Zealand Limited

Level 23
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