

GENERAL TERMS AND CONDITIONS FOR GUARANTEES

These Guarantee Terms form part of the Loan Agreement entered into by the Guarantor.

1. Guarantee

- 1.1 **Guarantee of obligations:** The Guarantor hereby unconditionally and irrevocably guarantees to the Lender the due and punctual payment by the Borrower of all the Moneys Hereby Secured and the due performance and observance by the Borrower of all the Borrower's obligations and liabilities pursuant to or in connection with any agreements, undertakings and obligations entered into by the Guarantor relating to the Moneys Hereby Secured including without limitation all obligations of the Borrower to the Lender pursuant to or in connection with the Loan Agreement.
- 1.2 **Guarantee enforceable on default:** The guarantee given in these Guarantee Terms may be enforced at any time on written demand being made by the Lender on the Guarantor after the Borrower or any of them have defaulted in performance or observance of any of the obligations on their part contained in any agreement, undertaking or other instrument entered into by the Guarantor relating to the Moneys Hereby Secured or at any time after the occurrence of an Event of Default.
- 1.3 **Time for Payment:** On any demand for payment being made by the Lender on the Guarantor, the Guarantor shall, no later than 2.00pm on the next business day following the date on which written notice of demand is given to the Guarantor, pay to the Lender at the place specified in the notice of demand the Moneys Hereby Secured despite that at the time the Lender may not have made demand, commenced proceedings, realised securities or otherwise have taken steps against the Borrower or any other party to recover the Moneys Hereby Secured or to enforce the obligation of the Borrower to comply with any of the provisions of the Loan Agreement. If any moneys are paid later than 2.00pm on any day, such moneys shall for the purpose of calculating Default Interest be deemed to have been paid on the next occurring business day.
- 1.4 **Default Interest:** If the Guarantor fails to pay any moneys by 2.00pm on the due date the Guarantor shall pay to the Lender interest on the amount due but unpaid at the Default Rate from and after the due date up to and including the date on which all moneys, including Default Interest, are paid. Unpaid Default Interest shall be capitalised at the end of each calendar month and shall thereafter constitute part of the principal moneys owing and bear Default Interest under these Guarantee Terms until paid.
- 1.5 **Certificate Conclusive:** Any certificate setting out the amount of the Moneys Hereby Secured signed by a director, the secretary, solicitor or any officer of the Lender shall, save for manifest error, be conclusive as between the Guarantor and the Lender as to the amount owing by the Guarantor to the Lender under these Guarantee Terms and the Guarantor shall pay the money stated in any certificate as being due despite any dispute existing as to whether or how much money is payable to the Lender by the Guarantor.

2. Nature of Guarantee

- 2.1 **Guarantee separate:** The guarantee and indemnity given in these Guarantee Terms shall be binding upon the Guarantor immediately upon execution of the Loan Agreement by the Guarantor despite any antecedent or contemporaneous promise, representation, condition or statement made by any person to the Guarantor to the contrary.
- 2.2 **Fiduciary obligations excluded:** The Guarantor acknowledges that the Lender was not prior to the execution of the Loan Agreement and will not in the future be under any duty, fiduciary or otherwise, to disclose any information to the Guarantor relating to or touching upon the Loan Agreement or the liabilities contingent or otherwise of the Guarantor under these Guarantee Terms. The Guarantor hereby releases the Lender from any duty the Lender may owe or may have owed the Guarantor in respect of such non-disclosure.
- 2.3 **Waivers:** The Guarantor expressly waives and releases any right (whether at law or in equity) to be released exonerated or discharged whether in whole or in part from its liability to the Lender under these Guarantee Terms and without limiting the generality of the foregoing the liability of the Guarantor under these Guarantee Terms shall not be abrogated, prejudiced or affected by any of the following:
- the granting or giving of time, credit or any indulgence or other concession by the Lender to the Borrower or the Guarantor or any other guarantor or other person whatever;
 - failure to present demand or give notice in respect of any negotiable instrument;
 - any compromise release abandonment assignment waiver variation alteration relinquishment novation or renewal of the Loan Agreement or any agreements securities documents of title assets or rights of the Lender against the Borrower or the Guarantor or any other guarantor or other person whatever and in particular without limiting the generality of the foregoing the Lender may at any time amend, alter or increase the obligations of the Borrower under the Loan Agreement or amend or alter any contract or other arrangements in force between the Lender and the Borrower;
 - anything done or omitted or neglected to be done by the Lender in exercise of the authorities, powers and discretions vested in the Lender under the Loan Agreement, by these Guarantee Terms or by any security or by law;
 - any other dealing matter or thing whatever which but for this provision might operate to abrogate prejudice or affect the guarantee given in these Guarantee Terms;
 - the liability of any other guarantor of the Lender ceasing from any cause whatever (including release or discharge by the Borrower) and the Lender may without any notice to the Guarantor discharge any one or more of the guarantors from liability under these Guarantee Terms without releasing any remaining Guarantor or in any way affecting their liability under these Guarantee Terms;
 - any other person joining in this or giving any similar guarantee or failing to join in this guarantee;
 - the liquidation, receivership, statutory management or bankruptcy of the Borrower or any other guarantor of the Borrower;
 - any other guarantor being incompetent to give any other guarantee or collateral security or failing to become legally bound in whole or in part under these Guarantee Terms;
 - any variation (whether material or not) or partial release of the guarantee and indemnity given in these Guarantee Terms or any variation (whether material or not) or release of any other guarantee or entry into a composition with the Borrower of any guarantor and indemnity given in relation to the Moneys Hereby Secured and the Lender shall be entitled to grant releases and discharges as it thinks fit without prejudice to or in any way limiting or lessening the liability of the Guarantor;
 - any security from time to time held or taken in respect of the indebtedness of the Borrower or the Guarantor or any guarantor or any other person whatever to the Lender being void or informal or being released, partially released, discharged, partially discharged or varied in any way;
 - failure of the Borrower or any guarantor or other person whatever to provide any security or satisfy any condition which has been stipulated by the Lender or that one or more persons named in the Loan Agreement as Guarantor may never execute the Loan Agreement, it being the intention of the parties to the Loan Agreement that the guarantee given in these Guarantee Terms shall be binding on every person executing the Loan Agreement as 'Guarantor' and be operative according to its tenor immediately upon that person executing the Loan Agreement as 'Guarantor';
 - any claim that the Lender has not fully realised all securities in a manner so as to maximise the realisable value of those securities or has otherwise acted to the prejudice of the Guarantor, and in particular the Guarantor shall have no claim or set off whatsoever against the Lender and this guarantee shall not be discharged or prejudicially

- affected by reason of any loss by the Lender of any collateral or other security or by the Lender failing or neglecting to recover any of the Moneys Hereby Secured by the realisation of any collateral security or by reason of any other mistake omission act neglect default or delay (whether negligent or otherwise) on the part of the Lender;
- (n) the death of any co guarantor and it is agreed that the Guarantor shall continue to be liable in respect of advances made and liabilities incurred after as well as before such death; or
- (o) if novation or assignment or nomination occurs under or in respect of the Loan Agreement.
- 2.4 **Continuing guarantee:** The guarantee given in these Guarantee Terms is to be a continuing guarantee and accordingly shall be irrevocable and shall remain in full force and effect until the whole of the Moneys Hereby Secured have been paid or satisfied, and without limiting the generality of the foregoing the guarantee given in these Guarantee Terms shall not be discharged avoided or in any way prejudicially affected by the payment at any time hereafter of any of the Moneys Hereby Secured and the guarantee given in these Guarantee Terms shall be enforceable against the Guarantor despite that any negotiable or other instrument shall be still outstanding.
- 2.5 **Compromises:** The Lender may as regards the Guarantor or any other guarantor determine from time to time not to enforce the guarantee of the Guarantor or any other guarantor and may from time to time make any arrangement, compromise or discharge of the Borrower or the Guarantor or any other guarantor in relation to the whole or any part of the Moneys Hereby Secured including any absolute or partial release of the Moneys Hereby Secured.
- 2.6 **Payments in gross:** All moneys from time to time received by the Lender in reduction of the Borrower's indebtedness from or on account of the Borrower or the Guarantor or any other guarantor, or from any other person, or from the realisation of any security, and capable of being applied by the Lender in reduction of the Borrower's indebtedness in relation to the Moneys Hereby Secured shall be regarded as payments in gross without any right on the part of the Guarantor to stand in the place of the Lender in respect of, or to claim the benefit of, any moneys so received as against the Borrower or any other guarantor, until the whole of the Moneys Hereby Secured have been paid or satisfied, so that in the event of the Guarantor or any other guarantor going into liquidation or being adjudicated bankrupt the Lender shall be entitled to prove for the total indebtedness of the Borrower in relation to the Moneys Hereby Secured.
- 2.7 **No proving in competition:** In the event of the liquidation or bankruptcy of the Borrower or any other guarantor the Guarantor will not (unless the Lender shall in its sole discretion agree to waive such right) prove in such liquidation or bankruptcy in competition with the Lender and the Guarantor authorises the Lender to prove for all moneys which the Guarantor has paid under these Guarantee Terms, or are otherwise owing to it and have not been repaid to it by the Borrower or the Guarantor or any other guarantor and to retain and carry to a suspense account and appropriate at the discretion of the Lender any amount received until the Lender shall have received 100 cents in the dollar in respect of the Moneys Hereby Secured and the Guarantor shall not be entitled to claim the benefit of any securities now or after the date of the Loan Agreement held by the Lender for the payment of all or any part of the Moneys Hereby Secured by the guarantee given in these Guarantee Terms and the Guarantor hereby waives in favour of the Lender all rights whatever the Guarantor and any other guarantor or other person may become entitled to against the Lender. Any security now or after the date of the Loan Agreement granted by the Borrower to the Guarantor in respect of the liability of the Guarantor under these Guarantee Terms shall be held in trust for the Lender as security for the Guarantor's liability to the Lender under these Guarantee Terms and upon request by the Lender, the Guarantor shall forthwith deposit any such security with the Lender.
- 2.8 **Liability as principal obligor:** Although as between the Borrower and the Guarantor the liability of the Guarantor to the Lender may be that of surety only, nevertheless as between the Guarantor and the Lender the liability of the Guarantor shall be deemed to be the liability of a principal obligor and such liability shall not be affected or diminished, nor shall any security collateral to these Guarantee Terms be released or discharged by any of the matters hereinbefore mentioned, or by any other act, omission, matter or thing whatever by which the Guarantor as a surety only would have been so released.
- 2.9 **Independent obligation:** The guarantee given in these Guarantee Terms is in addition to, and not in substitution for, any other security or right which the Lender may now or after the date of the Loan Agreement have in respect of the Moneys Hereby Secured and may be enforced against the Guarantor or any other guarantor without first having recourse to any such securities or rights and without taking any steps or proceedings against the Borrower or the Guarantor or any other guarantor and may be so enforced notwithstanding that any other security may be in whole or in part unenforceable by reason or any rule of law or equity and despite any acts, omissions or delays on the part of the Lender.
- 2.10 **Borrower's defences not available:** The Guarantor shall not be entitled to raise any defences which might be raised by the Borrower as against the Lender.
- 2.11 **No marshalling:** The Lender shall not be under any obligation to marshal in favour of the Guarantor any security held by the Lender or any other funds or assets that the Lender may be entitled to receive or have a claim on.
- 2.12 **Insolvency not to affect guarantee:** If any claim is made that all or any part of any payment, transaction, conveyance or transfer affecting or relating in any way to the Moneys Hereby Secured, or the guarantee or indemnity given in these Guarantee Terms, is void or voidable under any law relating to bankruptcy liquidation or protection of creditors and that claim is upheld, conceded or compromised then the Lender shall forthwith become entitled against the Guarantor to all such rights in respect of the Moneys Hereby Secured as it would have been entitled if all or that part of such payment, transaction, conveyance or transfer had not taken place. The Guarantor shall upon that claim being upheld conceded or compromised forthwith take all such steps and sign all such documents as may be necessary or convenient to restore to the Lender any securities held by it from the Guarantor immediately prior to such payment, transaction, conveyance or transfer and the Lender shall be entitled to recover from the Guarantor all costs and expenses (including legal costs and expenses as between solicitor and own client) incurred by the Lender in or in connection with any negotiation or proceedings relating to any such claim as aforesaid.
- 2.13 **Void payments:** Any payment made to the Lender by the Borrower or any guarantor and later avoided by the application of any statutory provision shall be deemed not to have discharged the liability of the Guarantor under these Guarantee Terms and in that case the parties shall be restored to the rights which they would have had if the void payment had never been made.
- 2.14 **Assignment of obligations of the Borrower:** If the Borrower assigns or novates its rights and obligations under the Loan Agreement then it shall not release the guarantee and indemnity given in these Guarantee Terms and the Guarantor acknowledges that it shall be responsible not only for the obligations of the Borrower under the Loan Agreement but also for the obligations of all future assignees.

3. Indemnity

- 3.1 The Guarantor agrees that despite any other provision of the Loan Agreement or these Guarantee Terms, in the event that any of the Moneys Hereby Secured may not be recoverable in whole or in part by the Lender from the Guarantor as surety on the guarantee given in these Guarantee Terms, whether:
- (a) by reason of any legal limitation, disability or incapacity of, or affecting, the Borrower; or
- (b) by reason of the Loan Agreement or any part of the Loan Agreement being void, voidable or unenforceable or the Borrower ceasing to be legally liable to pay any of such moneys by reason of any provision or enactment relating to insolvency liquidation or otherwise; or
- (c) by reason of any enactment regulation or judgment or order of any Court postponing or reducing or otherwise affecting payment of any principal, interest or other moneys; or
- (d) by reason of any other fact, circumstance or law whatsoever, and whether or not any transaction relating to those moneys is void from inception or has subsequently been avoided, or any of the matters or facts relating to those moneys has been or ought to have been within the knowledge of the Lender then all those moneys shall nevertheless be recoverable from the Guarantor as a principal

debtor in respect thereof and the Guarantor as a separate and additional liability under these Guarantee Terms hereby indemnifies the Lender in respect of those moneys and agrees to pay to the Lender on demand a sum equal to the Moneys Hereby Secured.

3.2 The provisions of clause 1 of these Guarantee Terms shall with all necessary modifications apply to the indemnity granted under clause 3 of these Guarantee Terms. 4.

4. Miscellaneous

4.1 **Payments to be free and clear:** All amounts payable by the Guarantor under these Guarantee Terms shall be paid:

- (a) without set off, counterclaim and free and clear of any restriction, condition or qualification;
- (b) free and clear of and (except to the extent required by law) without any deduction or withholding on account of any tax; and
- (c) without any deduction or withholding on account of any other amount, whether by way of set off, counterclaim or otherwise.

4.2 **Gross up:** If:

- (a) the Guarantor is required by any New Zealand tax law to make any deduction or withholding from any amount paid or payable by it under these Guarantee Terms; or
- (b) the Lender is required by New Zealand law to make any payment on account of tax or otherwise on or in relation to any amount received or receivable by it under these Guarantee Terms;
then:
- (c) the Guarantor shall ensure that any such deduction or withholding does not exceed the legal minimum and shall pay any such tax or other amount required to be deducted or withheld to the relevant taxation or other authority before the date on which penalties attached thereto; and
- (d) the amount payable by the Guarantor in respect of which such deduction, withholding or payment is required to be made shall be increased to the extent necessary to ensure that, after the making of such deduction, withholding or payment, the Lender receives and retains (free from any liability in respect of any such deduction, withholding or payment) a net amount equal to the amount which it would have received and so retained had no such deduction, withholding or payment been made; and
- (e) the Guarantor shall deliver to the Lender, within 30 days after each deduction or withholding is required by law to be made, a receipt issued by the applicable taxation or other authority evidencing that such deduction or withholding has been made; and
- (f) if the Lender receives the benefit of a New Zealand tax credit, refund or allowance resulting from a payment that includes an increased amount paid by the Guarantor under the preceding provisions of this clause then, promptly after the Lender shall become aware that it has received the same and that it relates to the relevant amount so paid by the Guarantor, the Lender shall provide to the Guarantor the benefit of all or any part of any tax credit, refund or allowance that the Lender may obtain as a result of the Guarantor having made any withholding, deduction or payment so that the Lender is in no more and no less favourable position than it would have been in had no deduction or withholding been made in respect of which an increased amount was required to be paid under this clause. The Lender shall be under no obligation to disclose any information relating to the assessment or computation of its tax liabilities or benefits, and nothing in this clause shall interfere with its right to arrange its tax affairs in whatever manner it deems fit.

4.3 **Costs:** The Guarantor shall immediately on demand reimburse the Lender for all reasonable costs, charges and expenses (including legal fees and disbursements computed on a solicitor and own client basis) incurred by the Lender in connection with the preparation and execution of the Loan Agreement. The Guarantor shall from time to time immediately on demand reimburse the Lender for all reasonable costs, charges and expenses (including legal fees and disbursements computed on a solicitor and own client basis) incurred by the Lender in connection with the enforcement or attempted enforcement of the Lender's rights or remedies under these Guarantee Terms.

4.4 **Guarantee binding on each party separately:** These Guarantee Terms shall be operative and be binding on each party who enters into the Loan Agreement as 'Guarantor' from the time and notwithstanding that any person hereinbefore named as a party or any other person who may have agreed or promised to be a guarantor in respect of all or any of the Moneys Hereby Secured shall refuse or fail to sign the Loan Agreement or any other guarantee in respect of the Moneys Hereby Secured.

5. Governing law

5.1 These Guarantee Terms are governed by, and are to be construed in accordance with, New Zealand law.

5.2 **Interpretation:** Terms defined in the Loan Agreement have the same meaning where used in these Guarantee Terms and, unless the context otherwise requires: **Default Interest** means default interest payable in accordance with clause 1.4 of these Guarantee Terms;

Default Rate means the **Default Interest Rate** as defined in the Loan Agreement;

Event of Default means any event specified in the General Terms to constitute such an event;

Loan Agreement means the Business Loan Agreement entered into between each Borrower, each Guarantor and the Lender from time to time, and incorporating these Guarantee Terms and each Facility Schedule, together with all other loan and facility agreements between the Lender and the Borrower from time to time as varied, amended and replaced from time to time;

Moneys Hereby Secured means all moneys of whatever nature that the Borrower may from time to time owe to the Lender including without limitation:

- (a) all moneys payable by the Borrower to the Lender in connection with the Loan Agreement;
- (b) all moneys past present and future which are directly or contingently owing from the Borrower to the Lender on any account whatsoever and whether such liabilities (whether matured or not or certain or contingent) shall have been incurred by the Borrower before or on or after the date of the Loan Agreement and whether alone or jointly with any other person and whether as principal or surety and all costs, charges, commissions and expenses charged by the Lender on any account in respect of any business of any kind whatsoever done by the Lender for and on behalf of the Borrower or incurred by the Lender in enforcing or obtaining payment of the Moneys Hereby Secured;
- (c) all moneys owing under any loan contract, advances, payments or other financial assistance of whatsoever kind to or for the accommodation of the Borrower or in respect of negotiable instruments drawn accepted or endorsed by or on behalf of the Borrower and discounted or paid or held by the Lender although the same may not have matured, or bonds, indemnities, recourse agreements, letters of credit, block or other discounting agreements;
- (d) all moneys owing to the Lender pursuant to or in connection with a guarantee or an indemnity granted by the Borrower to the Lender, whether jointly with any other person or otherwise;
- (e) all moneys owing in respect of any trade finance, letter of credit or foreign currency or derivative transactions; and
- (f) all moneys which the Lender expends pursuant to any guarantee or indemnity given by it of the obligations of the Borrower.

5.3 **Construction:** In these Guarantee Terms, unless the context otherwise requires:

an **agreement** includes a contract, deed, licence, undertaking and other document or legally enforceable arrangement (in each case, whether or not in writing, present and future), and includes that document as amended, assigned, novated or substituted from time to time;

a **business day** means a day (other than a Saturday or Sunday) on which registered banks are open for general banking business in Auckland;

a **consent** includes an approval, authorisation, exemption, filing, licence, order, permit, recording or registration;

costs incurred by a person include all commissions, charges, losses, expenses (including legal fees on a solicitor and own client basis) and taxes incurred by that person; a **guarantee** includes an indemnity, letter of credit, letter of comfort, suretyship and other agreement, the economic effect of which is to provide security, or otherwise assume responsibility, for the indebtedness or obligations of another person;

indebtedness includes any 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;

the **liquidation** of a person includes the dissolution, administration, winding-up and bankruptcy of that person and any analogous procedure under the law of any jurisdiction in which that person is incorporated, domiciled, carries on business or has property;

loss includes loss of profit and loss of margin;

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

property includes the whole and any part of the relevant person's business, assets (including leased assets), undertaking, revenues and rights (in each case, present and future), and reference to any property includes any legal or equitable interest in it;

rights includes authorities, consents, discretions, remedies, powers and causes of action;

tax(es) includes any tax, levy, impost, stamp or other duty and any other charge, deduction or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay, or any delay in paying, any of the same);

writing includes a facsimile transmission, an email communication and any means of reproducing words in a tangible and permanently visible form;

a reference to a **party, clause, schedule or annexure** is a reference to a party to, clause of, schedule to or annexure to, these Guarantee Terms;

the word "**including**", when introducing an example, does not limit the meaning of the words to which the example relates;

a gender includes each other gender;

the singular includes the plural and vice versa;

where a word or phrase is defined, its other grammatical forms have a corresponding meaning;

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 the Loan Agreement or another agreement includes its successors and its permitted assignees and transferees.

- 5.4 **Joint and several liability:** The liability of, and obligations on, the Guarantor under the Loan Agreement are joint and several. References in these Guarantee Terms to: "Guarantor" are to each Guarantor individually, and to all Guarantors together.