

GUARANTEE AND INDEMNITY

THIS DEED OF GUARANTEE AND INDEMNITY is given on the date set out in Item 1 of the Schedule

BY THE PERSONS named and described in Item 2 of the Schedule (the "**Guarantors**")

IN FAVOUR OF:

Access (as that entity is defined under the Credit Application Form (incorporating Terms and Conditions of Hire)) to which this Deed is attached "**Access**".

ON BEHALF OF THE COMPANY named and described in Item 3 of the Schedule (the "**Hirer**")

RECITALS

- A. Access, at the request of the Hirer and the Guarantor, has agreed to grant credit accommodation to the Hirer on the terms and conditions comprised in the Credit Application Form (incorporating Terms and Conditions of Hire) to which this Deed is attached (collectively called the "**Hire Agreement**").
- B. The Guarantors comprise the individuals set out under the Schedule.

OPERATIVE PART

1. DEFINITIONS

- 1.1. In this Deed, unless specified to the contrary, the following words and phrases either:
- 1.2. have the expressed meaning given to them; OR
- 1.3. have the meaning given to them in the Recital or clause set out opposite them:
 - "**Business Day**" means any day other than a Saturday, Sunday or a gazetted Western Australian Public Holiday;
 - "**Electronic Communication**" means a communication of information in the form of data, text or images of guided and/or unguided electromagnetic energy (including via email);
 - "**Hire Agreement**" – Recital A, and includes the elaborated definition appearing in the Terms and Conditions of Hire referred to in Recital A;
 - "*inter alia*" is the legal phrase, in Latin, meaning "*amongst other things*"; and
 - "*mutatis mutandis*" is the legal phrase, in Latin, meaning "*with the necessary changes being made*".

2. GUARANTEE AND INDEMNITY

- 2.1. The Guarantors, in consideration of Access at their request entering into the Hire Agreement which constitutes valuable consideration to the Guarantors:
 - 2.1.1. unconditionally and irrevocably guarantee to Access that the Hirer will perform all of its obligations under the Hire Agreement; and
 - 2.1.2. indemnify Access against all losses, costs, charges and expenses whatsoever which Access may incur by reason of any default by the Hirer under the Hire Agreement;with effect from the date of this Deed.
- 2.2. If the Hirer defaults in the payment of money under the Hire Agreement, the Guarantors must on demand immediately pay the outstanding amount to Access.
- 2.3. If the Hirer fails to perform or observe any of its obligations under the Hire Agreement (other than an obligation concerning the payment of money), the Guarantors must on demand immediately compensate Access for that failure.
- 2.4. The Guarantors hereby charges all of their respective estate, title and interest in all land and other property which the Guarantors may now have or at any time in the future acquire including (without limitation) the land and other property described (if any) in the schedule (together "**property**") with repayment of any moneys payable under the Hire Agreement and consent to Access registering a caveat over the property as further security for the performance of the Guarantors respective obligations under this Deed and the Hire Agreement.
- 2.5. The Guarantors acknowledge that:
 - 2.5.1. the guarantee and indemnity constituted by this Deed is a continuing one which will not be affected by part payment or part performance by the Hirer; and
 - 2.5.2. their liability to Access under this Deed will not be affected by:
 - (a) Access granting to the Hirer or the Guarantors any time or other indulgence;
 - (b) Access agreeing not to sue the Hirer or the Guarantors; and/or
 - (c) the failure of any of the Guarantors to sign this Deed.
- 2.6. If the Hirer goes into liquidation:
 - 2.6.1. Access may retain all money received from the Hirer's liquidated estate and not allow the Guarantors a reduction in their liability under this Deed (other than to the extent of the amount received) until such time as the Hirer's indebtedness to Access is paid in full;

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- 2.6.2. the Guarantors may not and must not seek to recover any money from the Hirer so as to reimburse them for payments made to Access under this Deed until Access have been paid and/or compensated in full;
 - 2.6.3. the Guarantors may not and must not prove a claim in the insolvency of the Hirer in competition with Access, whether in respect of an amount paid by the Guarantors under this Deed or otherwise for any amount which Access has demanded from them under this Deed;
 - 2.6.4. the Guarantors must pay to Access all money which Access may be obliged to refund to the Hirer's liquidator as preferential payments received from the Hirer; and
 - 2.6.5. the Guarantors must not raise against Access a defence, set-off or counter-claim available to themselves, the Hirer or any other Guarantor, or claim a set-off or make a counter-claim against Access, in reduction of the Guarantor's liability under this Deed.
- 2.7. If any of the obligations on the part of the Hirer under the Hire Agreement are unenforceable or invalid, then this and the five (5) previous clauses are to operate as a separate indemnity with the result that:
- 2.7.1. the Guarantors indemnify Access against all loss resulting from Access's inability to enforce performance of such obligations; and
 - 2.7.2. the Guarantors must on demand pay to Access the aggregate of the monetary quantification of all such losses arising out of such inability to enforce performance of such obligations.
- 2.8. The Guarantors (testified by their execution of this Deed) represent and warrant to Access that:
- 2.8.1. prior to their executing this Deed, each of them either:
 - (a) received competent and independent legal advice in connection with the full purport and effect of this Deed, or
 - (b) although having had the opportunity of doing so, he has not obtained independent legal advice in connection with the full purport and effect of this Deed for the very reason that he is fully cognizant of such purport and effect; and
 - 2.8.2. they have executed this Deed freely, voluntarily and without any duress on the part of Access.

3. NOTICE

- 3.1. Any demand, notice or document under this Deed may be made or given by Access, or its solicitor, and will be sufficiently served or delivered on the Guarantors:
- 3.1.1. if served or delivered personally;
 - 3.1.2. if posted by pre-paid post addressed to the Guarantors at their respective addresses appearing in this Deed;
 - 3.1.3. if sent by facsimile transmission to the party to be served or to that party's solicitor;
 - 3.1.4. if sent by Electronic Communication to the party to be served or to that party's solicitor; or
 - 3.1.5. if served or delivered in any other manner authorised by the Supreme Court Rules of the State for service of documents on parties or their solicitors.
- 3.2. Service or delivery by pre-paid post will be deemed to have been made or given at 12.00 noon on the Business Day following posting.
- 3.3. Service or delivery:
- 3.3.1. by facsimile transmission will be deemed to have been made or given at the moment the sender's facsimile machine confirms transmission to the recipient's machine, subject to the production of a transmission report to that effect, and
 - 3.3.2. by Electronic Communication will be deemed to have been made or given at the time of receipt under the *Electronic Transactions Act 1999* (Cth).

4. GENERAL CONDITIONS

4.1. Further Assurances

The Guarantors must sign such documents and do anything else which may be necessary or desirable to give full effect to this Deed.

4.2. Waiver

A waiver by Access of a default by the Guarantors under this Deed will not constitute a release of the Guarantors' obligation to observe and perform all of their obligations under this Deed in the future.

4.3. Counterparts

This Deed may be executed in two or more counterparts each of which will be deemed an original, but all of which will constitute one and the same document.

4.4. Jurisdiction

This Deed is to be governed by and construed in accordance with the law of Western Australia (the "State of Jurisdiction").

5. INTERPRETATION

- 5.1. In the interpretation of this Deed, unless specified to the contrary:
- 5.1.1. words importing the plural include the singular and *vice versa*;
 - 5.1.2. words importing any gender includes both genders;

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- 5.1.3. a reference to any matter or thing includes the whole and each part of it separately;
- 5.1.4. where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning;
- 5.1.5. the obligations imposed by this Deed in favour of Access includes his heirs, executors, administrators and assigns;
- 5.1.6. the obligations imposed by this Deed on or in favour of a party which is a company or other corporate body includes its successors and assigns; and
- 5.1.7. use of the word "**including**" is to be read and construed without limitation.
- 5.2. In the interpretation of this Deed, time will be of the essence. However, if something must be done on or by a specified day which is not a Business Day, it is to be done instead on or by the next Business Day.
- 5.3. This Deed is to be interpreted so that it complies with the law of the State of Jurisdiction, although if any provision does not comply, then that provision is to be read down so as to give it as much effect as possible. However, if it is not possible to give the provision concerned any effect at all, then it is to be severed from this Deed, in which case the remainder of this Deed will continue to have full force and effect.
- 5.4. Any obligation imposed by this Deed on two or more persons binds them jointly and each of them severally.
- 5.5. The legal doctrine of *contra proferentem* does not apply to this Deed, which means that a provision in this Deed must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this Deed and/or the inclusion of the provision concerned.
- 5.6. The clause headings are for ease of reference only and are not intended to affect the construction or interpretation of this Deed.

EXECUTED BY THE GUARANTORS AS A DEED in the following manner:

SIGNED by: _____
FIRST NAMED GUARANTOR Signature

in the presence of: _____
 Name of Witness (block letters) Signature

SIGNED by: _____
SECOND NAMED GUARANTOR Signature

in the presence of: _____
 Name of Witness (block letters) Signature

SIGNED by: _____
THIRD NAMED GUARANTOR Signature

in the presence of: _____
 Name of Witness (block letters) Signature

SCHEDULE

1. Date of this Deed: The _____ day of _____, 20_____.

2. The Guarantors:

First Named Guarantor Name: _____
 Address: _____

Second Named Guarantor Name: _____
 Address: _____

Third Named Guarantor Name: _____
 Address: _____

3. The Company/Hirer: _____

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