

## **Appendix D — Guarantee**

### **GUARANTEE AND INDEMNITY**

**In Consideration of the Credit Provider granting the Applicant (as named in the Application for Credit being Appendix A and which forms a part of this document) trade credit, I/WE the guarantor named in Appendix A GUARANTEE payment to the Credit provider of all monies and performance of all obligations including any past, present and future indebtedness or obligation by the Applicant or any of us arising from any past, present or future dealing with the Credit Provider.**

1. We covenant and agree that:
  - (a) we has read and understood the Terms and Conditions of Credit contained in Appendix C;
  - (b) we understand the obligations imposed upon the Applicant by the Terms and Conditions of Credit contained in Appendix C (**Applicant's Obligations**).
  
2. We, in full knowledge and understanding of the Applicant's Obligations, unconditionally and irrevocably:
  - (c) guarantee to the Credit Provider the due and punctual performance of the Applicant's Obligations;
  - (d) indemnify the Credit Provider against all losses damages, costs and expenses, including but not limited to legal costs on an indemnity basis, which the Credit Provider may now or in the future incur, as a result of or in connection with:
    - (i) the enforcement by the Credit Provider of the Applicant's Obligations;
    - (ii) the recovery of monies owed by the Applicant to the Credit provider, howsoever arising;
    - (iii) the insolvency, receivership, administration (voluntary or otherwise), or bankruptcy of the Applicant; and
    - (iv) The Applicant's non-payment of any invoice or other sum of money owed to the Credit Provider.
  - (e) Covenant and agree to comply with all obligations imposed upon it by this Guarantee (**Guarantor's Obligations**);
  - (f) consents to the registration of any number of mortgages and/or caveats by the Credit Provider over the Guarantor's Real Estate, for the purpose of protecting the charge created by this Guarantee;
  - (g) covenants and agrees that the Credit provider may enforce its rights against us without first having to resort to the Applicant or any other form of security; and
  - (h) covenant and agree that the Guarantor's Obligations remain unaffected, despite:
    - (i) any event of insolvency;
    - (ii) any grant of time, concession or indulgence upon the Applicant;
    - (iii) any enforcement by the Credit Provider of the Applicant's Obligations; and
    - (iv) Any partial performance of the Applicant's Obligations.
  - (i) covenant and agree that we have obtained un-qualified and independent legal advice prior to signing this Guarantee.
  
3. **WE HEREBY FURTHER AGREE & ACKNOWLEDGE:**
  - (a) That this is a continuing guarantee and,
  - (b) To indemnify the Credit Provider against all loss or damage arising from any past, present or future dealing with the Applicant or any of us,
  - (c) That our liability under this guarantee is joint and several and will not be affected, waived or discharged by the reason of anytime or indulgences granted by the Credit Provider or any grant to any of the guarantors of a release whether in whole or in part from any obligation contained in or implied by this guarantee and indemnity and
  - (d) That our liability under this guarantee shall not be affected, waived or discharged by the Applicant entering into a Deed of Company Arrangement (DOCA) or by the Credit Provider voting in favor of or against, or abstaining from voting, in relation to any proposal by the Applicant to enter a DOCA and,
  - (e) That this guarantee becomes binding on such of us that sign this guarantee irrespective of whether or not all intended signatories execute this guarantee and
  - (f) That the Credit Provider is entitled to recover against a Guarantor without having first taken steps to recover against the Applicant or any other Guarantor and,
  - (g) That this guarantee may not be unilaterally revoked by me or any of us and remains in force until such time as I/we receive written confirmation from the Credit Provider that we are released from our obligations and liabilities under this guarantee.
  - (h) That any payment which is subsequently avoided by any law relating to insolvency shall be deemed not to have been paid and,
  - (i) That I/we indemnify the Credit Provider against losses or costs that it may suffer as a result of disgorging monies to a liquidator of the Applicant and,
  - (j) That I/we sign in both our personal capacity and as Trustee of every Trust of which I/we are Trustee and/or a beneficiary and

- (k) That I/we consent to the Credit Provider effecting a registration on the PPSA register (in any manner the Credit Provider deems appropriate) in relation to any security interest arising under or in connection with or contemplated by these terms and,
  - (l) That I/we waive my/our right to receive notice of a verification statement in relation to any registration on the register and,
  - (m) That I/we must promptly do any act or thing that the Credit Provider requires to ensure that the Credit Provider's interest is a perfected security interest and has priority over all of the other security interests and,
  - (n) That I/we will not register a financing change statement in respect of the security interest without the Credit Provider's prior written consent and,
  - (o) That the Credit Provider may, at its absolute discretion, apply any amounts received from me/us toward amounts owing to the Credit Provider in such order as the Credit Provider may determine and,
  - (p) That if Chapter 4 of the PPSA would otherwise apply to the enforcement of a security interest arising in connection with these terms, I/we agree that the following provisions of the PPSA will not apply to the enforcement of these terms: section 95 (notice of removal of accession), to the extent that it requires the Credit Provider to give a notice to the Applicant; section 96 (when a person with an interest in the whole may retain an accession); subsection 121(4) (enforcement of liquid assets – notice to grantor); section 125 (obligation to dispose of or retain collateral); section 130 (notice of disposal), to the extent that it requires the Credit Provider to give a notice to the Applicant; paragraph 132(3)(d) (contents of statement of account after disposal); subsection 132(4) (statement of account if no disposal); subsection 134(1) (retention of collateral); section 135 (notice of retention); section 142 (redemption of collateral); and, section 143 (reinstatement of security agreement) and,
  - (q) That notices or documents required or permitted to be given to the Credit Provider for the purposes of the PPSA must be given in accordance with the PPSA and
  - (r) That the Credit Provider will not disclose information of the kind mentioned in subsection 275(1) of the PPSA except in circumstances required by paragraphs 275(7)(b)-(e) and,
  - (s) I/We must, upon demand, reimburse the Credit Provider for all costs and/or expenses incurred or payable by the Credit Provider in relation to registering or maintaining any financing statement or any other document in respect of any security interest or releasing in part or in whole the Credit Provider's security interest and,
  - (t) In these terms the following words have the respective meanings given to them in the PPSA: commingled, financing statement, financing change statement, perfected, proceeds, register, registration, security interest and verification statement.
4. **WE HEREBY CHARGE** in favour of the Credit Provider all our estate and interest in any land and in any and all other assets, whether tangible or intangible of any kind, in which we now have any legal or beneficial interest or in which I/we later acquire any such interest, with payment of all monies owed by us under this guarantee. We shall, upon demand, execute such documents in registrable form, or do such other things as the Credit Provider requires to give further or better effect to the security granted by us to the Credit Provider and we consent to the lodging by the Credit Provider of a caveat or caveats which note its interest in or over any such land or other caveatable property. In the event that we should neglect or fail to deliver the requested instrument of security or consent, we hereby appoint the Credit Provider to be our lawful attorney for the purpose of executing and registering such instruments.
5. **WE FURTHER AGREE** that this agreement shall be governed by and construed in accordance with the laws of the state of Victoria and, where applicable, the Commonwealth of Australia, and we submit to the non-exclusive jurisdiction of the courts of Victoria.
6. **WE ACKNOWLEDGE AND GIVE CONSENT** that the Credit Provider may make enquiries as to the credit and financial situation of any of us and further consent to the use of any information obtained as a result of those enquiries, including information disclosed in the Credit Application, as the Credit Provider reasonably sees fit from time to time, and for the duration of this agreement, including but not limited to;
- (a) passing the information on to a credit reporting agency
  - (b) passing the information on to a debt collector
  - (c) obtaining further personal information relating to any of us from another body for any use reasonably connected with provision of credit or the collection of debt subject to the provisions of the Privacy Act 1988.
7. **GENERAL:**
- (a) "I" and "we" and "us" means each of the Guarantors jointly and severally.
  - (b) "PPSA" and "Goods" have the meaning ascribed to them in the Application for Credit Account being Appendix A which forms a part of this document.
  - (c) The invalidity or unenforceability of any provision of this Guarantee and Indemnity shall not affect the validity or enforceability of the remaining provisions.
  - (d) Clerical errors are subject to correction and do not bind the Credit Provider.

- (e) Service of any document or notice required to be given by any party to this Guarantee (including service of any complaint in the Magistrates Court of Victoria) may be given or served, as the case may be by fax or email to the fax or email of such party appearing in Appendix A or by post by Priority mail addressed to the party at its address set out in Appendix A and when given by post shall be deemed to be so served at the expiration of three business days from the date of the posting of such document or notice.

## The Guarantors Sign

Executed as a deed.

Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

Signed by Guarantor 1

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Signature

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Print Full Name

Guide

This panel must be:

Before me

1. Signed by the Guarantor

And

Signature of Witness

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2. Signed by an independent

Print Name of  
Witness

-----

witness

Address of Witness

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Signed by Guarantor 2

-----

Signature

-----

Print Full Name

Guide

This panel must be:

Before me

1. Signed by the Guarantor

And

Signature of Witness

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2. Signed by an independent

Name of Witness

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witness

Address of Witness

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