

APPLICATION FOR CREDIT

Including Terms and Conditions (Supply), Terms & Conditions (Purchase) and Guarantee & Indemnity,

GUARANTEE & INDEMNITY

Name of Guarantor:

of (address): ("Guarantor")

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of (address): ("Guarantor")

Hereby requests Subtrux Pty Ltd to provide credit or other financial accommodation to:

Name of Purchaser:

of (address): ("Purchaser")

in relation to the supply of goods or services or both goods and services by way of sale on credit to the Purchaser or to any person at the request of the Purchaser pursuant to a contract or various contracts between SUBTRUX and the Purchaser

IN CONSIDERATION of SUBTRUX agreeing to such requests the Guarantor HEREBY UNCONDITIONALLY AND IRREVOCABLY GUARANTEES to SUBTRUX on demand the due and punctual performance of all obligations and liabilities owed by the Purchaser pursuant to the Contracts and also the payment of any existing indebtedness between the Purchaser and SUBTRUX arising from any earlier Contracts between them (all of which obligations, liabilities and indebtedness and the costs of enforcement thereof are hereinafter called "Secured Moneys") and HEREBY UNDERTAKES that:

- (i) The Guarantor shall not be exonerated from liability to SUBTRUX in whole or in part nor shall SUBTRUX's rights, remedies or recourse against the Guarantor be in any way prejudiced or adversely affected by any one or more of the matters following:
- (i) the fact that the Contracts shall have been varied, renewed or replaced at any time or times after the date hereof;
 - (ii) the Bankruptcy of the Purchaser or the Guarantor (whether or not SUBTRUX assents thereto) or the death or dissolution of the Purchaser or the Guarantor or mental or physical disability of the Purchaser or Guarantor;
 - (iii) any waiver, time or other indulgence given by SUBTRUX to any compromise, composition, arrangement or agreement made or entered into by SUBTRUX with the Purchaser, the Guarantor or any other person;
 - (iv) the fact that the Secured Moneys may not be or may cease to be recoverable or that the Purchaser or any other person purported to be primarily liable to pay such moneys may be discharged from all or any of his obligations to make such payment for any reason other than that payment has been made and whether such discharge shall arise at law or by act of SUBTRUX or otherwise;
 - (v) any change in the membership of any firm which is the Purchaser or the Guarantor or in which the Purchaser of the Guarantor is a member of the merger of that firm with any other firm;
 - (vi) the assignment in whole or part of the Contracts by the Purchaser or SUBTRUX with or without the consent of the Guarantor;
 - (vii) the failure to give notice to or the lack of consent of the Guarantor before or after the happening of any of the acts or events mentioned in this clause; and
 - (viii) the termination, suspension or recommencement of the credit facility covered by the Purchaser's application or any other provision of credit or other financial accommodation by SUBTRUX to the Purchaser.
- (ii) No granting of credit, extension of further credit, or granting of time and no waiver, indulgence or neglect to sue on SUBTRUX's part (whether in respect of the Purchaser or any one or more of any other guarantor(s) or otherwise) and no failure by any named Guarantor to properly execute this guarantee and indemnity shall impair or limit the liability under this guarantee and indemnity of any Guarantor. Without affecting the Purchaser's obligations to SUBTRUX, each Guarantor shall be a principal debtor and liable to SUBTRUX accordingly.
- (iii) If any payment received or recovered by SUBTRUX is avoided by law such payment shall be deemed not to have discharged the liability of the Guarantor, and the Guarantor and SUBTRUX shall each be restored to the position in which they would have been had no such payment been made.
- (iv) This guarantee shall bind each of the signatories notwithstanding that one or more of the persons named as a Guarantor may never execute this guarantee and indemnity.
- (v) The term "Guarantor" whenever used in this guarantee and indemnity shall, if there is more than one person named as Guarantor, mean and refer to each of them individually and both of them together unless the context otherwise requires, and the obligations and agreements on the part of the Guarantor contained in this guarantee and indemnity shall bind them jointly and severally.
- (vi) If any of the Secured Moneys are irrecoverable (or moneys which would have been Secured Moneys, had they not been irrecoverable) by SUBTRUX from the Purchaser or from the Guarantor on the footing of the Guarantee, the Guarantor unconditionally and irrevocably, and as a separate and principal obligation, indemnifies SUBTRUX against any claim, action, damage, loss, liability, cost, charge, expense, outgoing or payment suffered, paid or incurred by SUBTRUX in relation to the non-payment of the Secured Moneys and must pay to SUBTRUX an amount equal to the Secured Moneys.
- (vii) The Guarantor agrees to hold harmless and indemnifies SUBTRUX against any claim, action, damage, loss, liability, costs, charge expense outgoing or payment suffered, paid or incurred by SUBTRUX in relation to:
- (i) the failure of the Purchaser to perform its obligations under the Contracts or the failure of the Guarantor to cause the Purchaser to perform its obligations under the Contracts;
 - (ii) The recovery of moneys owing to SUBTRUX by the Purchaser including the enforcement of this Guarantee, and including, but not limited to, SUBTRUX's nominee's costs of collection and legal costs calculated on an indemnity basis; or
 - (iii) Moneys paid by SUBTRUX with the Purchaser's consent in settlement of a dispute that arises or results from a dispute between SUBTRUX, the Purchaser, and a third party or any combination thereof, over the supply of goods and/or services by SUBTRUX to the Purchaser.
- (viii) This Guarantee and Indemnity is a continuing obligation of the Guarantor and shall be irrevocable and accordingly shall remain in full force and effect until the whole of the Secured Moneys has been paid or satisfied and thereafter as required for the purposes of clause xii.
- (ix) This Guarantee and Indemnity is a principal obligation and shall not be treated as ancillary to any other obligation howsoever created, to the intent that it may be enforced against the Guarantor without SUBTRUX first having taken any proceedings against the Purchaser for recovery of the Secured Moneys.
- (x) Subject to clause xii, the Guarantor shall not make any claim against the Purchaser for any property of the Purchaser by way of indemnity, subrogation or otherwise on account of any money received by SUBTRUX in reduction of the Secured Moneys, whether received from the Guarantor or any other person, until the whole of the Secured Moneys has been paid or satisfied.
- (xi) In the event of the Bankruptcy of the Purchaser, the Guarantor shall not prove for any moneys due to or contingently due to the Guarantor from the Purchaser and shall hold in trust for SUBTRUX all dividends received as a result of the Purchaser's Bankruptcy to the extent of any Secured Moneys outstanding to SUBTRUX.
- (xii) In the event of any payment in favour of SUBTRUX being void, voidable or unenforceable in whole or in part as between SUBTRUX and the Guarantor under any statutory provision of enactment (Whether relating to Bankruptcy or any other matter whatsoever) any such payment shall be deemed not to have been made and any release, settlement, discharge or arrangement which may have occurred by reason of or may have been given or made on the faith of any such payment shall be deemed not to have been made to the extent that SUBTRUX shall be entitled at any time after such payment was found to be void, voidable, or unenforceable to exercise all or any of the rights it would have been entitled to exercise if such payment had not been made. The provisions of this clause shall survive the termination of the Contract, this Guarantee and any other discharge of the Guarantor's liabilities hereunder.
- (xiii) The Guarantor agrees to make payments of the Secured Moneys under this Guarantee in full without set-off or counterclaim, and without any deduction in respect of any taxes unless required by law.
- (xiv) For the purpose of securing payment to SUBTRUX of all moneys due and owing, the Guarantor:
- (i) Hereby charges all of its, his or her beneficial interest in real and personal property (including all property acquired after the date hereof) in favour of SUBTRUX whether or not a demand has been made on the Guarantor;
 - (ii) Agrees to deliver to SUBTRUX within seven (7) days of a written demand a Memorandum of Mortgage in registrable form stating that the moneys due and owing are payable on demand and incorporating the covenants contained in Memorandum No. AA2712 recorded at the Land Titles Office of Victoria as amended to comply with and reflect any appropriate laws in the jurisdiction(s) where the Guarantor has any beneficial interest in real and personal property and amended appropriately to comply with any formal requirements of registration; and

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(iii) Authorises and consents to SUBTRUX taking all actions necessary to give effect to this security including the lodgement of a Caveat upon Title of the Guarantor's Real Property. The Guarantor hereby irrevocably appoints SUBTRUX and any person nominated by SUBTRUX severally the attorney of the Guarantor with power to execute, sign, seal and deliver (which delivery may be subject to such terms and conditions as the attorney thinks fit) such mortgage to other document to give effect to this security.

(xv) The Guarantor warrants as at the date of this Guarantee:

- (i) The execution, delivery and performance by it of this Guarantee complies with its constitution or other constituent documents and does not constitute a breach of any law or obligation, or cause or result in a default under any deed by which it is bound and that would prevent it from entering into and performing its obligations under this Guarantee;
- (ii) All necessary authorisations for the execution, delivery and performance by it of this Guarantee in accordance with its terms have been obtained or will be obtained as required before the completion of the relevant transactions under this Guarantee;
- (iii) It has full power and capacity to own its own assets and to enter into and perform its obligations under this Guarantee;
- (iv) It is validly incorporated, organised and subsisting in accordance with the laws of its place of incorporation;
- (v) It enters into and performs this Guarantee on its own account and not as trustee for or nominee of any other person;
- (vi) This Guarantee constitutes a legal, valid and binding obligation on it, enforceable in accordance with its terms; and
- (vii) That it has been advised to obtain independent legal advice before executing this Guarantee and it has had a reasonable amount of time to do so.

(xvi) The representations and warranties herein survive the execution of this Guarantee.

(xvii) The Guarantor acknowledges that SUBTRUX may rely on the representations and warranties given under this Guarantee.

(xviii) In this Guarantee unless the context otherwise requires:

- (i) 'Bankruptcy' in relation to the affairs of any person includes any bankruptcy, assignment for the benefit of or composition or arrangement with creditors, liquidation, official management, administration by a receiver or a receiver and manager and any administration of the assets or affairs of that person otherwise than personally by him or (if such person be a body corporate) by its directors or other governing body in the ordinary course of its business;
- (ii) 'SUBTRUX' includes the successors and assigns of SUBTRUX;
- (iii) 'Purchaser' includes the Purchaser's legal personal representatives and successors and (where there is more than one Purchaser) every Purchaser and any one or more of them in their separate liabilities to SUBTRUX as well as to their joint and several liabilities. Where any Purchaser is a firm the expression 'the Purchaser' also includes the successors to that firm whether comprising the same or different members;
- (iv) "Guarantor" includes, if there is more than one person named as Guarantor then, each of them individually and both of them together, and the obligations and agreements on the part of the Guarantor contained in this Guarantee bind them jointly and severally;
- (v) Covenants and agreements on the part of more than one Guarantor shall bind and extend to all of them jointly and each of them severally;
- (vi) Words and importing the singular include the plural and vice versa.

(xix) The Guarantor acknowledges that it has received a copy of SUBTRUX's Terms and Conditions of Supply found at its website, www.subtrux.com, (which contain releases, indemnities and guarantees in favour of SUBTRUX) prior to it signing this Guarantee, and the Guarantor hereby warrants that it has read and fully understands the nature and effect of SUBTRUX's Terms and Conditions of Supply.

(xx) This deed shall be governed by and construed in accordance with the law of Victoria and each of the parties hereby submits to the jurisdiction of the Victorian Courts and Tribunals.

(xxi) The Guarantor agrees that SUBTRUX may seek and obtain from credit reporting agencies, credit reports containing personal information and consumer credit related information about the Guarantor to assess whether to accept the Guarantor as a guarantor for the credit applied, or provided to, the Purchaser named above. The Guarantor irrevocably grant permission to SUBTRUX before, during or after the provision of credit to the Purchaser to give and receive information about the Guarantor as permitted by law including the Privacy Act 1988 to and from any credit reporting agency, credit provider, bank or financial institution, risk insurer, debt collector or other corporation, association or person including SUBTRUX's contractors and service providers. Such information may concern any or all of the Guarantor's consumer credit, commercial credit and trading arrangements and may consist of personal information and credit reports and other credit and trading information concerning the Guarantor and the Guarantor's business. Such information may be used or disclosed for purposes permitted by law including:

- (i) Assessing or reviewing at any time the Guarantor as guarantor for the credit applied for, or provided to, the Purchaser;
- (ii) Assessing risk for insurance purposes;
- (iii) Collecting any overdue payments by the Purchaser or by the Guarantor;
- (iv) Providing or updating commercial or consumer credit references; and
- (v) For purposes relating to this guarantee or any security in respect of the Purchaser's application or, if approved, the provision of credit.

DATED this day of Year

SIGNED SEALED AND DELIVERED by the aforesaid Guarantor(s)

Guarantor X.....
 Name of Guarantor Signature of Guarantor

In the presence of: X.....
 Name of Witness Signature of Witness

Guarantor X.....
 Name of Guarantor Signature of Guarantor

In the presence of: X.....
 Name of Witness Signature of Witness