



DEED OF GUARANTEE

THIS Deed of Guarantee is executed on the day of, in favour of **UDC FINANCE LIMITED** a duly incorporated company having its principal place of business at 107 Carlton Gore Road, Newmarket, Auckland ("UDC")

BY the following persons ("the Guarantors"):

| Name | Occupation / Business | Address/Registered Office |
|------|-----------------------|---------------------------|
| | | |
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WHEREAS:

- The Guarantors have requested UDC to make available, or to continue, Financial Services (and in particular the Guaranteed Facilities) to the Customer;
- UDC has agreed to do so, if the Guarantors execute this Guarantee.

THIS Deed of Guarantee witnesses that the Guarantors:

- guarantee the repayment to UDC of all of the Guaranteed Amounts now or in the future payable to UDC by the Customer, and in particular amounts payable under the Guaranteed Facilities, each described in Part I; and
- do so on the terms and conditions set out in Part II.

| PART I | |
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| CUSTOMER (full name(s)) | |
| ADDRESS / REGISTERED OFFICE of CUSTOMER | |
| GUARANTEED FACILITIES | and all other Financial Services now or in future provided to the Customer by UDC. |

Limit on Guarantor's Liability:

| PART II |
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- INTERPRETATION**

"Customer" refers to the person or company so described in Part I of this Guarantee, and includes any receiver, liquidator, statutory manager or comparable officer or successor of the Customer including any successor resulting from any amalgamation involving the customer.

"Financial Services" refers to all services now or in future provided by UDC in the Guaranteed Facilities, and includes all types of credit contract or financial transaction which UDC may be prepared to enter into in the course of its business, including in particular loans, hire purchase agreements, leases of any kind, discounting transactions of any kind, buy-back obligations in favour of UDC, and guarantees or bonds given by or to UDC.

"Guarantee" means this Deed of Guarantee and, where the context requires, also includes the indemnities given UDC by the Guarantors in this Deed.

"Guaranteed Amounts" means all amounts that are payable to UDC, now or in future, by the Customer in respect of either the Guaranteed Facilities or any other Financial Services provided to the Customer by UDC, interest on those amounts at the rates payable by the Customer under the relevant Guaranteed Facilities, and includes any other amounts in respect of which the Customer is, or may become, liable to UDC in any manner, including under Guarantees given UDC by the Customer, and amounts payable by the Customer which have been assigned to UDC by another person.

"Guaranteed Facilities" refers to the facilities so described in Part I of this Guarantee, and also includes all other facilities or arrangements pursuant to which UDC may now or in future provide Financial Services to the Customer.

"on demand" means immediately after UDC has given notice in writing to a Guarantor, requiring the payment or action specified in that notice.

"payable" and **"owing"** have their ordinary meaning, but also include amounts which would be payable or owing, were not for illegality, unenforceability, incapacity, the operation of the Credit Contracts and Consumer Finance Act 2003, the Limitation Act 1950, or any other matter which might otherwise prevent the amounts in question being payable or owing at the relevant time.

"UDC" includes UDC's successors and assigns, and includes any company resulting from any amalgamation to which UDC is a party, whether or not UDC is the amalgamated company which results from the amalgamation.

"UDC's Securities" refers to any mortgage, charge, debenture, guarantee, hire purchase agreement, lease agreement or other rights in the nature of security by which UDC may be secured for any part of the Guaranteed Amounts.

- 1.1. **Guarantee not Commit UDC:** Nothing in this Guarantee is to be interpreted so as to require UDC to provide any particular Financial Services to the Customer.
- 1.2. **Joint and Several:** If this Guarantee is executed by more than one Guarantor, the liability of the Guarantors, and all of the obligations undertaken by the Guarantors, are to be interpreted, and be enforceable, jointly and severally.
- 1.3. **Plural and Singular:** Plural words used in this Guarantee also include the singular, and vice-versa.
- 1.4. **Genders:** Use of the neuter also includes the masculine and feminine genders, if appropriate.
- 1.5. **Headings:** Headings are used only as a visual aid, and do not affect the meaning of clauses.
- 1.6. **NZ Currency:** All amounts payable under this Guarantee must be paid in New Zealand currency, unless UDC agrees otherwise.
- 1.7. **NZ Law:** This Guarantee is governed by, and is to be interpreted in accordance with, the laws of New Zealand, even if it is executed in another country, and each Guarantor irrevocably submits to the non-exclusive jurisdiction of the courts of New Zealand in respect of all matters relating to this Guarantee.
2. **GUARANTEE**
- 2.1. **Guarantee:** The Guarantors each unconditionally guarantee to UDC the due repayment of all Guaranteed Amounts from time to time payable to UDC by the Customer, and the performance by the Customer of all of the Customer's obligations under the Guaranteed Facilities and UDC's Securities.
- 2.2. **Payment on demand:** If any of the following things occurs:
- the Customer does not pay UDC any of the Guaranteed Amounts when due;
 - the Customer does not perform any of its obligations under any of the Guaranteed Facilities or any of UDC's Securities;
 - an event occurs which entitles UDC to enforce any of UDC's Securities, or to accelerate payment of any of the Guaranteed Amounts
- then the Guarantors agree to pay the amounts in question, and to perform the obligation in question, as required by UDC, and to do so on demand.
- 2.3. **Extent of Guarantors' liability:** The liability of each Guarantor under this Guarantee is unlimited unless a limit on the Guarantors' liabilities is shown in Part I, in which case the liability of each Guarantor shall be limited to a liability to pay to UDC, in aggregate, amounts which total the limit shown in Part I of this Guarantee.
- 2.4. **Guarantors' obligations absolute and unconditional:** The Guarantors' obligations under this Guarantee are not subject to any condition precedent, and are intended to be absolute and enforceable against the Guarantors as principal debtors in all circumstances. Further, the Guarantors' liabilities, and UDC's rights, under this Guarantee will not be released, diminished or otherwise affected by anything which might otherwise release, diminish, or affect either the liability of the Guarantors or UDC's rights, or which might otherwise provide a defence to any Guarantor, whenever occurring, including the following:
- the Customer or any Guarantor being granted time, credit or any concession of any kind by UDC, by any other person, or by operation of law; or
 - the Customer lacking, or ceasing to have, full legal capacity, or failing validly to execute any of the documents relating to the Guaranteed Facilities or UDC's Securities; or
 - any extension, novation, variation, release, cancellation or other act or omission by UDC in relation to any of the Guaranteed Facilities or any of UDC's Securities; or
 - the manner of enforcement, or any non-enforcement, of any of UDC's Securities by UDC; or
 - UDC taking any other guarantee or security in respect of the Guaranteed Amounts, or releasing either any such other security or guarantee, or releasing any one or more of the Guarantors from all or some of their obligations under this Guarantee; or
 - any liquidation, dissolution, amalgamation or insolvency of either the Customer or any Guarantor, or any moratorium or similar arrangement having effect in respect of either the Customer or any Guarantor; or
 - any of UDC's Securities or the Guaranteed Facilities being fully or partly void, voidable, unenforceable or otherwise defective in any way; or
 - any of the Guaranteed Amounts being payable, or any Financial Services being provided to the Customer, without the knowledge or approval of any Guarantor; or
 - UDC not notifying any of the Guarantors of any non-performance by the Customer of any of its obligations under the Guaranteed Facilities or UDC's Securities; or
 - any other act, omission or matter of any kind whatsoever which, were it not for this clause, might otherwise operate either to release any of the Guarantors from their obligations under this Guarantee, or to diminish those obligations.
- 2.5. **Continuing Guarantee:** This Guarantee is to be a continuing guarantee, able to be relied on and enforced by UDC at all times, notwithstanding:
- repayment of any of the Guaranteed Amounts to UDC by either the Customer or any other person; or
 - the Customer not being indebted, actually or contingently, to UDC at any time, or being in credit with UDC
- and is to remain in full force and effect at all times until UDC agrees in writing to release any of the Guarantors from their obligations. However, any such release will not prevent UDC from subsequently recovering from the Guarantors any payment received by UDC from any person prior to the release and which is subsequently avoided or otherwise becomes repayable by UDC.
- 2.6. **No competition:** If either the Customer or any of the Guarantors is placed in liquidation (or, if an individual, becomes bankrupt) the Guarantors will not:
- take any action to recover any amounts owing to them by the Customer (including doing so indirectly, such as by set-off or counterclaim); or
 - claim or prove in the liquidation or bankruptcy of the Customer;
- unless UDC agrees, or requires them to do so. If, contrary to this clause, any of the Guarantors does any of those things, then they shall hold any amounts or benefits received as a consequence in trust for UDC, and will pay the relevant amount of any receipt or benefit to UDC on demand.
- 2.7. **No subrogation:** The Guarantors will not be entitled to claim subrogation to UDC's Securities, or to UDC's rights under the Guaranteed Facilities, until UDC has received all of the Guaranteed Amounts and is no longer owed, actually or contingently, any amount by the Customer.
- 2.8. **Suspense account etc:** UDC may at its discretion either pay to a suspense account, or appropriate amongst the Guaranteed Amounts as it thinks fit, any amount that UDC receives either from the Customer, from enforcement of UDC's Securities or from any of the Guarantors, until the Guaranteed Amounts have been repaid to UDC in full.

- 2.9. **Waiver of rights:** The Guarantors each waive in favour of UDC any rights they may have, either against the Customer, UDC or any other person (including rights by way of contribution, subrogation and marshalling) to the extent necessary to give full effect to the provisions of this Guarantee.
- 2.10. **Securities given to, or by, the Guarantors:** The Guarantors will not take any security from the Customer for any amounts that may become payable by them under this Guarantee unless UDC agrees, and if any Guarantor does so, or holds any security from the Customer which might adversely affect UDC's ability fully to recover the Guaranteed Amounts from the Customer or to enforce any of UDC's Securities, the relevant Guarantors will hold any such securities in trust for UDC, unless UDC agrees otherwise. The Guarantors also acknowledge that any securities given by any of them to UDC will secure their obligations under this Guarantee, unless UDC agrees otherwise.
3. **INDEMNITY**
- 3.1. **Guarantors will indemnify UDC:** The Guarantors agree that if for any reason any amounts payable by the Customer under the Guaranteed Facilities are not recoverable by UDC from the Customer or the Guarantors, or any obligations of the Customer under the Guaranteed Facilities are not enforceable by UDC for any reason whatsoever, whether as a matter of law or as a matter of fact, the Guarantors will indemnify UDC against any resulting loss or cost and will pay the amount of any such loss or cost to UDC as a principal debtor upon demand.
- 3.2. **Indemnity will survive termination:** The Guarantors agree that the obligations of the Guarantors under clause 3.1 survive the termination of the Guaranteed Facilities and payment of all amounts payable by the Customer to UDC in connection with the relevant Guaranteed Facilities.
- 3.3. **Indemnify on demand:** The Guarantors agree jointly and severally and as principal debtors to pay to UDC on demand such amounts as are necessary to fully indemnify UDC against any loss that is:
- (a) of the kinds referred to in clause 3.1; or
 - (b) a result of UDC having made any Financial Services available to the Customer.
- 3.4. **Indemnity absolute and unconditional:** All of the provisions of clauses 2.1 to 2.10 of this Guarantee, and in particular clause 2.4, apply to the above indemnities given UDC, as if they had been set out in full in this clause.
4. **PAYMENTS**
- 4.1. **Place for payment:** The Guarantors will pay the Guaranteed Amounts to UDC by making payment to UDC at 107 Carlton Gore Road, Newmarket, Auckland, or to such other place as UDC may require, on demand.
- 4.2. **Cleared funds required:** All payments made by the Guarantors under this Guarantee must be made in cleared funds, and must be paid free and clear of any deductions, set-off, counterclaim or condition of any kind.
- 4.3. **Gross-up:** If any of the Guarantors is required by law to make any deduction from any amount payable to UDC under this Guarantee, or if UDC is required by law to make any deduction from any such payment (other than by reason of income tax on the overall net income of UDC), then the Guarantor to whom the relevant payment relates will also pay to UDC such further amounts as are necessary to ensure that UDC receives, following any such deductions, an amount equivalent to that which would have been payable to UDC if no such deduction had been required by law. Where UDC receives a tax or other benefit as a result of any deduction required by law, UDC may waive the operation of this clause in part or in full, so as to reflect that benefit but taking into account any timing disadvantages to UDC.
- 4.4. **Set-off by Guarantors:** The Guarantors will not set-off or attempt to set-off any claim made by them against UDC against amounts payable to UDC under this Guarantee, other than a liquidated claim the validity and amount of which is accepted by UDC.
- 4.5. **Set-off etc by UDC:** The Guarantors each authorise UDC to apply any amounts held by UDC in the name of, or for the benefit of, any of the Guarantors in satisfaction of their liability under this Guarantee, or to hold any such amount as security for the Guarantors' obligations under this Guarantee. For that purpose, each of the Guarantors agrees that:
- (a) UDC is authorised to break any term deposit and to apply any such amount either to a suspense account or to such of the Guaranteed Facilities as UDC thinks fit;
 - (b) UDC shall not be liable for any costs or losses the Guarantors may claim to suffer as a result of UDC doing so;
 - (c) no amounts held by UDC to the order of any of the Guarantors will be repayable until UDC has received repayment of the Guaranteed Amounts in full, unless UDC agrees otherwise;
 - (d) any of the Guarantors' rights in respect of any funds deposited by any of them with UDC will be held in trust for UDC.
- 4.6. **Default interest:** Each of the Guarantors acknowledges that UDC may charge the Guarantors interest at the default rate that is payable to UDC by the Customer under the documents relating to the relevant Guaranteed Facilities.
5. **REPRESENTATIONS AND WARRANTIES BY GUARANTORS**
- 5.1. **Regular execution etc:** Each of the Guarantors warrants to UDC that this Guarantee has been validly executed by them and by each of the other Guarantors, and that execution of this Guarantee by each Guarantor is duly authorised and not in breach of any laws or agreements to which any of the Guarantors is subject.
- 5.2. **Solvency:** Each of the Guarantors that is a company, and each of the Guarantors that is either a director of or shareholder in any of the Guarantors that is a company, warrants to UDC that that company Guarantor satisfies the solvency test defined by section 4 of the Companies Act 1993, at the time it executes this Guarantee.
- 5.3. **Ability to pay debts:** Each of the Guarantors that is a company, and each of the Guarantors that is either a director of or shareholder in any such Guarantor, warrants to UDC that that company Guarantor is able to pay its debts for the purposes of sections 292 and 297 of the Companies Act 1993, and that they are able fully to perform their obligations under this Guarantee at the time it is executed by them.
- 5.4. **Provision of accounts etc:** The Guarantors each agree to provide to UDC on demand such information as to their financial position and ability to perform this Guarantee as UDC may require including, in the case of Guarantors that are subject to the Financial Reporting Act 1993, to provide UDC with copies of the most recent accounts required by that Act, completed in accordance with the requirements of that Act.
6. **OTHER MATTERS**
- 6.1. **Certificates by UDC:** Any Certificate as to any amount payable by either the Customer or any Guarantor under this Guarantee which is signed by UDC's Managing Director, any General Manager, Manager or Branch Manager of UDC, or by any Attorney, solicitor to or other delegate of UDC, will be sufficient proof that the amount in question is payable, in the absence of manifest error.
- 6.2. **Manner of making demand:** Any demand made by UDC under this Guarantee may be made on the Guarantor for whom it is intended either by post or delivery to the address of the Guarantor shown in Part 1 or to the Guarantor's then registered office or last known place of business or residence known to UDC, or to any postal address or facsimile number from which any communication received by UDC has been most recently received from the relevant Guarantors, or in any other way permitted by law.

- 6.3. Deemed receipt:** Any demand made by UDC will be deemed validly to have been received by the Guarantor for whom it is intended, when:
- (a) if posted, two days have passed since the date on which UDC posted the demand;
 - (b) if sent by fax and UDC has received a transmission report indicating that the facsimile transmission was received in full, immediately UDC has received that report;
 - (c) if delivered to, and left at, the registered office, address for service (where the Companies Act 1993 applies) or last known place of business or residence of the Guarantor known to UDC at that time, immediately it is so delivered
- unless, in the case of either (a) or (b) above, the Guarantor in question proves it was not received until a later time.
- 6.4. Costs and duties:** Any costs incurred by UDC in preparing, enforcing or taking any other action in respect of the Guaranteed Facilities, UDC's Securities or this Guarantee, or any taxes or duties that become payable as a result of any of those things, shall be payable to UDC by the Guarantors, on demand. Where those costs include legal fees, they shall be payable by the Guarantors on a solicitor-client basis.
- 6.5. Severability:** If any of the provisions of this Guarantee are, or become, illegal or unenforceable for any reason whatsoever, then those provisions shall to the greatest extent permitted by law be considered severable, so that the remaining provisions of this Guarantee shall continue to be fully enforceable in accordance with their terms, but modified as necessary so as to leave UDC in as near a position as possible to the position it would have been in had no provisions of this Guarantee been contrary to law or unenforceable.
- 6.6. No waivers etc:** No failure or delay by UDC in exercising any of its rights under any of the Guaranteed Facilities, UDC's Securities, or this Guarantee will operate as a waiver of any of UDC's rights under any of those documents or otherwise, nor will the exercise of any of UDC's rights on one occasion prevent any further exercise of the same right, and UDC's rights under this Guarantee are in addition to, and not exclusive of, any other rights that UDC may have at law.
- 6.7. Incomplete execution:** This Guarantee will be enforceable against those Guarantors that execute it, even if any other party named above as a Guarantor does not execute it.
- 6.8. Assignability:** UDC may assign its rights, or some of them, under this Guarantee. If UDC does so, the Guarantors each authorise UDC in terms of the Privacy Act 1993 to provide any assignee with any relevant information relating to the Guarantors that is held by UDC at the time.
- 6.9. Privacy Act:** From time to time UDC may collect and securely hold information about each Guarantor. UDC will make every effort to keep personal details about each Guarantor up to date. Each Guarantor may access and correct this information under the Privacy Act 1993.
- UDC may use this information to:
- (a) consider your guarantee and the Customer's application for facilities, products or services;
 - (b) administer, manage and monitor any facilities, products or services provided to the Customer and each Guarantor;
 - (c) obtain information about the Guarantors' driver licences from Driver Check, a secure internet site set up by the NZ Transport Agency, such as licence classes and endorsements held, any licence conditions, and licence status;
 - (d) conduct market research, data processing and statistical analysis; and
 - (e) unless a Guarantor disagrees, provide each Guarantor with information about other facilities, products or services including selected third party products or services.
- UDC may disclose information about each Guarantor to its related companies (as defined by the Companies Act 1993), agents or contractors for the above purposes.
- UDC may disclose information about each Guarantor to credit reference agencies for the purpose of obtaining credit reports. Those credit reference agencies may retain that information and provide it to their customers who use their credit reporting services.
- If a Guarantor defaults in any obligations to UDC then UDC may disclose information about each Guarantor, as the case may be, to credit reference or debt recovery agencies and it may be retained by them. Those agencies may provide that information to their customers who use their credit reporting services.
- UDC may obtain information and make such enquiries about each Guarantor as UDC considers is warranted from any source including from its related companies and credit reference agencies for the above purposes.
- 6.10. Anti Money Laundering:** UDC may disclose information relating to the Guarantor or this Agreement to any authority, agency (including any government agency), the police or any financial institution in order to ascertain whether any government requirement applies to a transaction or if UDC reasonably believes that the disclosure will assist in the investigation, detection and/or prevention of fraud or other criminal offences, such as money laundering, and neither UDC or any related company to UDC will incur any liability to the Guarantor as a result of such disclosure of information. The Guarantor:
- (a) undertakes to provide to UDC all information UDC reasonably requires to comply with any government requirement relating to anti-money laundering or terrorist financing which UDC or any related company to UDC is subject to; and
 - (b) agrees that UDC may delay or block any transaction or refuse to pay any money in order to comply with any government requirement to which UDC or any related company to UDC is subject, and neither UDC or any related company to UDC will incur any liability to the Guarantor as a result of any such delay, block or refusal.

7. INDEPENDENT ADVICE

EACH OF THE GUARANTORS ACKNOWLEDGES THAT IT HAS EITHER HAD LEGAL ADVICE PRIOR TO EXECUTING THIS GUARANTEE FROM A SOLICITOR THAT IS INDEPENDENT OF UDC, THE CUSTOMER AND OF ANY OTHER GUARANTOR OR, WHERE OR TO THE EXTENT THAT HAS NOT OCCURRED, THEN NOT DOING SO IS CONTRARY TO UDC'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 THAT THE LACK OF SUCH INDEPENDENT ADVICE MIGHT OTHERWISE HAVE GIVEN IT.

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| SIGNED BY GUARANTORS | |
| | Witnessed by: |
| <hr/> Signature of Individual Guarantor | <hr/> Signature of Witness <hr/> Name of Signatory <hr/> Address <hr/> Occupation |

SAMPLE