

Date

This deed is given by

(guarantor)

In favour of

TSB Bank Limited

In respect of

All obligations and indebtedness of

(**guaranteed party**) owed to us (whether present or future, actual or contingent, and whether jointly or severally with any other person) (the **guaranteed obligations**).

Limitation of guarantee

Limitation of guarantee for

Unlimited amount / Limited to a maximum amount of \$ _____ (delete what is not applicable)
plus any other amounts referred to in clause 2.

In this **deed**, "we", "us" and "our" means **TSB Bank Limited**. "You" and "your" means the **guarantor**.

The **general terms** apply to this **deed**.

Terms

1. Guarantee and indemnity

- 1.1 **Guarantee and indemnity:** You have asked us to give, or to continue to give, financial accommodation to the **guaranteed party** or not to take immediate action to enforce the **guaranteed party's** obligations to us. In exchange for us doing either or both of these things:
 - a. You unconditionally and irrevocably guarantee to us the payment and performance of the **guaranteed obligations** when due, and you promise to pay and perform all or any part of the **guaranteed obligations** that the **guaranteed party** does not pay or perform when due for any reason; and
 - b. As an independent and primary obligation, you unconditionally and irrevocably undertake to pay us immediately on demand (on a full indemnity basis) all or any part of the **guaranteed obligations** that are or have become unenforceable or otherwise not recoverable from the **guaranteed party** for any reason.
- 1.2 **Principal debtor:** You are liable under this **deed** as a sole and principal debtor and not as a surety.
- 1.3 **Continuing guarantee:** The guarantee given in this **deed** is a continuing guarantee and you will not be released from the obligations set out in this **deed** until we agree in writing that such obligations have been released.
- 1.4 **Independent guarantee:** The guarantee given in this **deed** is independent of any other guarantee or security provided to us by you or any other person, and this **deed** is in addition to and not in substitution for any remedies provided by law or any other **document**.
- 1.5 **Immediate recourse:** You have no right to require us to proceed against or enforce any other rights or security or claim payment from the **guaranteed party** or any other person before claiming from you under this **deed**. If you do not pay or perform any **guaranteed obligations** when due, we may sue you, enforce any security you have given to us for your obligations, and/or exercise any other right given to us by law or under any **document**.

2. Nature of obligations

- 2.1 **Guarantor's liability:** Your liability and/or obligations under this **deed** are not affected by:
 - a. Any further advance or other financial accommodation made by us to the **guaranteed party** or any other person;
 - b. Us fully or partly discharging or releasing any security provided by the **guaranteed party** or anyone else;
 - c. Us agreeing to the variation of the terms of any **document** we have entered into with the **guaranteed party**;
 - d. Us agreeing to the variation of the terms or to the termination of the guarantee of any other **guarantor** of the **guaranteed obligations**;
 - e. The occurrence of an **event of insolvency** in respect of the **guaranteed party** or any other **guarantor**;
 - f. Any waiver given by us to the **guaranteed party** or any other **guarantor**;
 - g. Any decision by us to enforce the guarantee set out in this **deed** against one **guarantor** without taking any steps to exercise any rights we may have against the **guaranteed party** or any other **guarantor**;
 - h. Any of our rights against you or any other **guarantor** being unenforceable for any reason; or
 - i. Anything we do, or fail to do in connection with the exercise of our rights under any **document**.
- 2.2 **No subrogation:** You waive all rights of subrogation and any other right to exercise or benefit from our rights as against you, the **guaranteed party** or any other **guarantor**. You must not sue or make any claim for payment from the **guaranteed party** or any other **guarantor** without our prior written consent.
- 2.3 **Marshalling:** You waive all rights under the doctrine of marshalling, and any other right to exercise or benefit from our rights under any **document** which secures any amounts owing to us.
- 2.4 **No security:** You must not take or hold any security from the **guaranteed party** or any other person for your obligations under this **deed** without our prior written consent. If you do take or hold a security in this way, you agree not to enforce or make any claim under that security and you have no right to it ahead of us. You agree to transfer any such security to us as soon as we ask you to and, until then, to hold it on trust for us.

3. Limitation of guarantee

- 3.1 **Limitation of guarantee:** Although this **deed** relates to all of the **guaranteed obligations**, if a **maximum amount** is specified on the front page of this **deed** in respect of a **guarantor**, then the amount recoverable by us from that **guarantor** in respect of the **guaranteed obligations** is limited to:
 - a. The **maximum amount** in respect of all unpaid principal amounts included in the **guaranteed obligations**; plus
 - b. Interest and capitalised interest on that amount (calculated in accordance with the facility agreement to which the relevant **guaranteed obligations** relate, until the **maximum amount** is paid in full); plus
 - c. Any fees, charges, costs, expenses, duties or taxes that we incur in connection with the exercise of our rights under this **deed** and the recovery by us of all amounts due in respect of the **guaranteed obligations**. (other than to the extent any fees, charges, costs, expenses, duties or taxes arise from our fraud, negligence or wilful misconduct or that of any of our officers, employees, contractors or agents).

4. Representations and warranties

4.1 **Guarantor:** You represent and warrant to us that:

- a. **Authorisations:** you are able to enter into and perform all of your obligations under each **document**;
- b. **Binding obligations:** there is nothing specific to you, your circumstances or your execution of the **documents** that would prevent your obligations under each **document** being valid, binding and enforceable, subject to the application of laws affecting creditors' rights generally;
- c. **Information:** all information that you have provided to us is correct and you have not omitted to tell us anything that would otherwise make that information untrue or misleading in a way that may give rise to a **material risk**;
- d. **No litigation:** other than as disclosed to us, no litigation or any other type of claim is before any court, arbitrator, tribunal or governmental agency which might result in a material adverse change to your business or your financial position; and
- e. **No event of insolvency:** no **event of insolvency** has occurred in relation to you or (in the case of a company) any of your subsidiaries.

4.2 **Continuous repetition:** Each of the representations and warranties in this clause will be deemed to be repeated continuously so long as this **deed** remains in effect by reference to the facts and circumstances then existing.

4.3 **Reliance:** We have relied on, and accepted this **deed** on the basis of, the representations and warranties made in this **deed**.

5. Undertakings

5.1 **General undertakings:** Subject to clause 5.2, you undertake to us that you will:

- a. **Compliance with laws:** duly and promptly comply with all applicable laws and constituting documents, the non-compliance with which could have a material adverse effect on your commercial or financial position, your ability to meet your obligations under a **document**, or our ability to exercise our rights under a **document**;
- b. **Notify event of default:** notify us of a potential **event of default** immediately upon becoming aware of it (however such event is described) under any facility agreement to which the **guaranteed obligations** relate or any other **document**;
- c. **Consents:** obtain, maintain and comply with all consents which are required in relation to your business and to enable you to perform your obligations under a **document**;
- d. **Records:** keep and maintain proper records and books of accounts;
- e. **Insurance:** keep in place insurance in respect of all of your assets and liabilities of an insurable nature in accordance with prudent commercial practice and with reputable insurers;
- f. **Financial information:** provide us no later than three months from the end of each of your financial years a balance sheet and profit and loss account audited (if requested by us) for that financial year;
- g. **Information:** provide us with any information relating to you, your business affairs or your financial condition that we may reasonably request within a reasonable timeframe agreed between us in relation to each request;
- h. **Regulatory compliance:** provide us with any information that we may reasonably request at any time for the purposes of our regulatory compliance obligations;
- i. **Proceedings:** promptly deliver to us written details of any current, pending or threatened litigation, arbitration, dispute or other proceeding or claim against you that may give rise to a **material risk**;
- j. **Taxes:** file all necessary tax returns and pay all taxes payable by you before the date on which penalties become payable;
- k. **Corporate status:** in the case of a company, keep your company registered under the Companies Act 1993 and not amalgamate or merge with any other entity, or cancel, redeem or reduce your capital; and
- l. **Change of business:** not alter your business in any way that may give rise to a **material risk**.

5.2 **Remediable undertakings:** If you breach any of the following undertakings:

- a. clause 4.1(c) (Information);
- b. clause 5.1(c) (Consents);
- c. clause 5.1(d) (Records);
- d. clause 5.1(e) (Insurance);
- e. clause 5.1(f) (Financial information),

we will, after taking into account all relevant circumstances, allow you a reasonable time to remedy the breach. If you remedy the breach within such period we will treat it as if no **event of default** arises in respect of that breach.

6. Release and reinstatement

6.1 **Release:** We do not have to provide a release of this **deed** to you unless:

- a. All amounts received by us under this **deed** are cleared and immediately available to us;
- b. All **guaranteed obligations** have been paid to us and performed and we do not have an obligation to provide further financial accommodation which would give rise to further **guaranteed obligations**; and
- c. We are satisfied that there is no reasonable possibility of any amount paid to us in respect of a **guaranteed obligation** being voidable or required to be refunded by us under any law.

6.2 **Release in writing:** No release by us of our rights under this **deed** will be effective unless given by us in writing.

6.3 **Reinstatement:** If any amount paid to us in respect of a **guaranteed obligation** is voided or required to be refunded by us under any law, then to the maximum extent permitted by law (and including where we have released any person from their obligations under this **deed**):

- a. That amount will be deemed to have not been received by us and any indebtedness repaid by such amount will be reinstated; and
- b. Each party will be deemed to be returned to the position in which it would have been, and we will be entitled to exercise any rights that we would have had, as if such amount had not been paid to us.

7. Payments generally

7.1 **Payments free and clear:** Each payment under any **document** must be unconditional, free and clear of any restriction, and without any deduction, set-off or withholding (unless required by law) and in New Zealand dollars.

7.2 **Gross-up:** If you are required by law to make any deduction or withholding on account of tax, or we are required by law to make any payment on account of tax (other than tax on our overall net income) on any amount payable in connection with a **document**, you must pay an additional net amount equal to the amount that we would have received had no such deduction, withholding or payment been required.

7.3 **Time of payments:** All amounts payable under any **document** are due by 4:30pm on the relevant due date.

7.4 **Application of payments:** Unless otherwise specified in a **document** or required by law, all amounts received or recovered by us under a **document** may be applied between principal, interest and other amounts in the manner and order determined by us (at our absolute discretion). For example, if the **guaranteed party** owes us two amounts of money and you have guaranteed only one of them, we may use money we receive from the **guaranteed party** towards paying the other one first.

8. Set-off

8.1 **Set-off:** We can use any funds (in any currency) deposited or invested with us by you in satisfaction (whether in part or in full) of any overdue amount owed to us. For this purpose we may break any term deposit prior to its maturity.

8.2 **Contingent liabilities:** If, at any time following an event of default or other termination event (however described) under any facility agreement to which the **guaranteed obligations** relate or any other **document** and while that event is continuing, an amount is contingently owing to us or an amount owing to us is not quantified, we may retain and withhold repayment of any funds (in any currency) deposited or invested with us by you, and the payment of interest or other moneys, pending that amount becoming due and/or being quantified.

8.3 **No notice required:** We may exercise our rights under this clause without prior notice or demand.

9. Amendments

9.1 **Agreed amendments:** Except as otherwise specified in any **document**, no amendment to this **deed** will be effective unless it is in writing and agreed between you and us.

9.2 **Amendments to other arrangements:** We can enter into new arrangements with the **guaranteed party** or any other **guarantor** or can change or replace the existing arrangements at any time without your consent. Subject to any applicable **maximum amount**, any such amendment may increase your **guaranteed obligations**.

9.3 **Waivers:** No waiver by us of our rights under any **document** will be effective unless given by us in writing.

10. Notices

10.1 **Notices:** Any notice or demand under or in connection with a **document** may be given by us or by our agent:

- a. By delivering it to you personally;
- b. By posting it by registered post or sending it by courier addressed to you at the main place of business or home address last known to us or any other address we reasonably believe to be appropriate; or
- c. By sending it to you in electronic form in accordance with clause 10.2.

In the case of a party to a **document** that is not an individual, a notice or demand may be given by us to a director (if a company) or any other person we reasonably believe to be an authorised person of that party, in accordance with paragraphs (a) to (c) above.

A notice or demand given by us will be deemed to be served:

- d. If delivered personally, on the same day that it is delivered;
- e. If posted by registered post or sent by courier, when the notice or demand would normally have been delivered (and confirmation of delivery by New Zealand Post or the courier firm will be evidence of service); or
- f. If given in electronic form by means of an electronic communication, at the time the electronic communication enters the designated information system (as defined in the Contract and Commercial Law Act 2017) or (if earlier) when it comes to the addressee's attention.

The methods of service set out in this clause do not limit any other lawful method of service of a notice or demand or any other lawful means of communication. In some circumstances, we may communicate by displaying a notice on our website, in our branches or using an appropriate form of media (which may include online media).

10.2 **Electronic communications:** Where you have given us an electronic message address, you consent to receiving documents, notices and communications (including, but not limited to, information required by law) in electronic form, by means of an electronic communication, and signed by means of an electronic signature. For the purposes of each **document**, the conditions relating to sending and receiving information in electronic form are those in the Contract and Commercial Law Act 2017 (and any other applicable law from time to time).

11. Trusts

11.1 **Representations:** If you enter into a **document** as a trustee of a trust you represent to us that:

- a. Your entering into the **document** and the incurring of obligations under such **document**, is authorised by the trust documents and/or by law;
- b. There is nothing specific to you, your circumstances or your execution of the **documents** that would prevent your obligations under one or more of the **documents** being valid, binding and enforceable, subject to the application of laws affecting creditors' rights generally; and
- c. Your entry into the **document** is for proper purpose and for the benefit of the trust.

11.2 **Undertakings:** If you enter into a **document** as a trustee of a trust, you undertake that none of the following will occur without our prior written consent:

- a. Any change to the trustees or trust documents; or
- b. Any vesting or final distribution of the assets or capital of the trust or dissolution or terminating event of any kind in relation to the trust.

11.3 **Our recourse:** In enforcing any obligations under a **document** against a trustee, we may have full recourse to the assets of the relevant trust and will be subrogated to each trustee's right to be indemnified from those assets or by any other person. Except in the case of an independent trustee, each trustee is personally liable and we may recover any **guaranteed obligations** from the trustee's personal assets as well as the trust assets.

11.4 **Independent trustee:** Where a person is specified in this **deed** as an independent trustee, we will not be entitled to recover any **guaranteed obligations** from the trustee's personal assets. However, this limitation of personal liability will not apply where the independent trustee has made a statement in a certificate, or any other statement, which was misleading or untrue or has otherwise acted dishonestly and such statement or action gives rise to a **material risk**.

12. Partnerships

12.1 **Representations:** If you enter into a **document** as a partner of a partnership you represent to us that:

- a. Your entering into the **document** and the incurring of obligations under such **document**, is authorised by the partnership documents and/or by law;
- b. There is nothing specific to you, your circumstances or your execution of the documents that would prevent your obligations under one or more of the **documents** being valid, binding and enforceable, subject to the application of laws affecting creditors' rights generally; and
- c. All the assets of the partnership are legally owned by the partners of the partnership.

12.2 **Undertakings:** If you enter into a **document** as a partner of a partnership, you undertake that none of the following will occur without our prior written consent:

- a. Any changes to the partners or partnership documents; or
- b. Any distribution of assets of the partnership; and
- c. Any dissolution or terminating event of any kind in relation to the partnership.

12.3 **Our recourse:** In enforcing any obligations under a **document** against a partnership, we may have full recourse to the assets of the relevant partnership and will be subrogated to each partner's right to be indemnified from those assets or by any other person. Each partner is personally liable and we may recover any **guaranteed obligations** from the partner's personal assets as well as the partnership assets.

13. Limited partnerships

- 13.1 **Representations:** If you enter into a **document** as a general partner of a limited partnership you represent to us that:
- Your entering into the **document** and the incurring of obligations under such **document**, is authorised by the partnership documents and/or by law;
 - There is nothing specific to you, your circumstances or your execution of the documents that would prevent your obligations under one or more of the **documents** being valid, binding and enforceable, subject to the application of laws affecting creditors' rights generally; and
 - All the assets of the partnership are legally owned by the partners of the limited partnership.
- 13.2 **Undertakings:** If you enter into a **document** as a general partner of a limited partnership, you undertake that none of the following will occur without our prior written consent:
- Any changes to the general partners or partnership documents; or
 - Any distribution of assets of the limited partnership;
 - The de-registration of the limited partnership under the Limited Partnerships Act 2008; and
 - Any dissolution or terminating event of any kind in relation to the limited partnership.
- 13.3 **Our recourse:** In enforcing any obligations under a **document** against a limited partnership, we may have full recourse to the assets of the relevant limited partnership and will be subrogated to each general partner's right to be indemnified from those assets or by any other person. Each general partner is personally liable and we may recover any **guaranteed obligations** from the general partner's personal assets as well as the partnership assets.

14. General

- 14.1 **Acting on instructions:** Unless otherwise agreed, we may act on an instruction given on behalf of a party to a **document** by any person we reasonably believe to be an authorised person of that party (acting alone). Despite this, we may (acting reasonably) decline to act on any instructions where we believe that we have good reason to do so (for instance, in the case of a dispute or contradictory instructions).
- 14.2 **Assignment:** We can assign or transfer any and all of our rights or obligations under any **document** without your consent. You may not assign or transfer any rights or obligations under any **document** without our prior written consent.
- 14.3 **Waiver:** If we do not exercise or if we delay the exercising of any of our rights under any **document**, that does not operate as a waiver and will not prevent us from exercising those rights at some other time.
- 14.4 **Privity:** We may enforce our rights under a **document** even if we are not party to the **document** for the purposes of the Contract and Commercial Law Act 2017.
- 14.5 **Partial invalidity:** The illegality, invalidity or unenforceability of a provision in any **document** will not affect the legality, validity or enforceability of another provision.
- 14.6 **Counterparts:** Any **document** may be executed in any number of counterparts, all of which when taken together shall constitute one and the same **document**.
- 14.7 **Governing law:** This **deed** is governed by and to be construed in accordance with New Zealand law.
- 14.8 **Delivery:** For the purposes of section 9 of the Property Law Act 2007, and without limiting any other mode of delivery, this **deed** will be delivered by each party immediately on the earlier of:
- physical delivery of an original of this **deed** (or a counterpart of it), executed by that party, into the custody of the other party or the other party's solicitors; and
 - transmission by that party or its solicitors (or any other person authorised in writing by that party) of a fax, photocopied or scanned copy of an original of this **deed** (or a counterpart of it), executed by that party to the other party or the other party's solicitors;

15. Definitions and interpretation

- 15.1 **Definitions:** In this **deed**, terms that are bold are defined in the **general terms** or have the following meanings, unless the context requires otherwise:

deed	means this guarantee and indemnity
document	means this deed , the general terms , any security document and any other document entered into in connection with this deed

event of insolvency	means, in relation to a person or entity, that person or entity <ul style="list-style-type: none"> a. Is insolvent or unable to pay its debts as they fall due; b. Is bankrupt, in receivership, liquidation, under statutory management or voluntary administration, or is wound up; c. Suspends, stops or threatens to suspend or stop payment of a material part of its indebtedness; d. Commences negotiations or takes any proceedings with a view to the general deferral, readjustment or rescheduling of its indebtedness or a material part of its indebtedness; e. Makes, or proposes to make, any assignment, arrangement or composition for the benefit of its creditors generally or a moratorium is agreed or declared in respect of or affecting all or any material part of its indebtedness; or f. Anything analogous or having a substantially similar effect occurs.
general terms	means the business facility general terms, as they may be updated or replaced from time to time
guaranteed obligations	means the guaranteed obligations as specified on the front page to this deed
guaranteed party	means the guaranteed party as specified in this deed
guarantor	means the guarantor as specified in this deed
maximum amount	is the amount set out on the front page to this deed (if applicable)
security document	means each security document, guarantee or other agreement (whether present or future) which guarantees or secures all or part of the obligations under this deed

15.2 Interpretation: In this **deed**, unless the context requires otherwise:

- a. If more than one person is named as the **guaranteed party**, each reference to the **guaranteed party** is a reference to each **guaranteed party** separately and to all **guaranteed parties** together;
- b. If more than one person is named as the **guarantor**, each reference to the **guarantor** is a reference to each **guarantor** separately and to all **guarantors** together, and each **guarantor** has joint and several liability under this **deed**;
- c. The headings to clauses shall be ignored in construing this **deed**;
- d. The word 'including' and other similar words do not imply any limitation;
- e. A reference to any legislation is a reference to future versions of it (including re-enactments and replacements) and includes regulations, orders-in-council and other instruments from time to time issued or made under, that legislation;
- f. A reference to a law is a reference to any law, regulation, rule, official directive, order, request, guideline or consent of any governmental body or regulatory authority;
- g. A reference to a document includes that document as amended, supplemented, novated or replaced from time to time;
- h. A reference to a party to any **document**, if an individual, includes that person's executors and administrators and, in the case of a body corporate or any other person, includes its successors and permitted assignees and transferees, and in our case our transferees and assignees; and
- i. An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.

Acknowledgement and execution

By signing this **deed**, the **guarantor** acknowledges they:

- Received a copy of the **documents** for each facility to which the **guaranteed obligations** relate prior to signing
- Understand and agree to the obligations undertaken under this **deed**; and
- Had the opportunity, and were advised, to take independent advice as to the obligations undertaken under this **deed** (and having either declined or obtained such independent advice).

Signed by the guarantor

Signed for

Signature Date

Signed by the guarantor

Signed for

Signature Date

Signed by the guarantor

Signed for

Signature Date

Signed by the guarantor

Signed for

Signature Date

Signed by the guarantor

Signed for

Signature Date

Witnessed

Name

Occupation

Address

Signature Date