

Date:

2020

Guarantor Details

Name	
New Zealand company number	
Short form name	Guarantor
Notice details	
Telephone	
Email	
Attention	

Limitation	The liability of the Guarantor under or in connection with this document is unlimited.
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Borrower's Details

Full Name	
Short form name	Borrower
Notice details	
Telephone	
Email	

Signatures

Guarantor

Note: execute in accordance with the Companies Act 1993, and any requirements in the Company's constitution (if relevant).

<Guarantor name> by:

Signature of director/authorised person

Signature of witness

Name of director/authorised person

Name of witness

Occupation of witness

City/town of residence

Guarantor

<Guarantor name> by:

Signature of Guarantor

Signature of witness

Name of Guarantor

Name of witness

Occupation of witness

City/town of residence

Lender

Squirrel P2P Trustee Limited

Print Name

Guarantee and indemnity

1. Guarantee

The Guarantor, unconditionally and irrevocably, guarantees to the Lender:

- (a) the due and punctual payment and delivery by the Obligors of all indebtedness (present and future and of whatever nature) and other monetary obligations owed by the Obligors (whether alone or with any other person) to the Lender on any account whatever (**Guaranteed Indebtedness**); and
- (b) the due observance and punctual performance by the Obligors of all obligations of any nature (present and future, expressed or implied) of the Obligors to or for the benefit of the Lender, other than an obligation to pay the Guaranteed Indebtedness (**Guaranteed Obligations**).

2. Payment and performance

If any Obligor:

- (a) fails to pay all or any part of its Guaranteed Indebtedness when due, the Guarantor shall pay that Guaranteed Indebtedness to the Lender, whether or not demand for payment has been made on the Obligor or any other person; and
- (b) defaults in the due and punctual observance or performance of all or any part of the Guaranteed Obligations, the Guarantor indemnifies the Lender in respect of any Loss, cost or expense suffered by the Lender, directly or indirectly, as a result and shall pay to the Lender on demand the amount of such Loss, cost or expense.

3. Indemnity

- (a) If, for any reason whatsoever (whether or not within the Lender's knowledge), any of the Guaranteed Indebtedness is not recoverable from an Obligor by the Lender or any of the Guaranteed

Obligations are not enforceable by the Lender for any reason whatsoever, then the Guarantor, as a separate and additional liability indemnifies the Lender for any Loss, cost or expense suffered by the Lender as a direct or indirect result of any Guaranteed Indebtedness not being recoverable or any Guaranteed Obligations being unenforceable.

- (b) Amounts due under the indemnity in this clause 3 shall be paid to the Lender on demand.
- (c) The obligations under this clause 3 survive the termination of this Guarantee and payment of the Guaranteed Indebtedness and performance of the Guaranteed Obligations.

4. Liability not prejudiced

The liability of the Guarantor under this Guarantee will not be affected or diminished, nor will any other guarantee, indemnity or security provided by the Guarantor be released or discharged, by any act, indulgence, omission or matter whatsoever which, but for this clause, would have operated to release the Guarantor wholly or partly from its liability to the Lender.

5. Continuing guarantee

The Guarantor's obligations in this Guarantee:

- (a) are obligations as a principal debtor and not merely surety;
- (b) continue and remain in full force and effect until, in the Lender's opinion, the whole of the Guaranteed Indebtedness has been fully and irrevocably paid and satisfied, irrespective of any intermediate payment, settlement of account or any other matter, and all of the Guaranteed Obligations have been performed;
- (c) are in addition to and independent of, and not in substitution for, any other guarantee, security or right the Lender may have at any time; and

- (d) will not merge with or in any way be prejudiced or affected by, or prejudice or affect, any such guarantee, security or right.

6. Lender's discretion

The Lender may, at any time, enforce this Guarantee without first taking steps or proceedings against the Borrower or any other person, and may make any arrangement or compromise with the Borrower or any other person, without any notice to or consent of the Guarantor, notwithstanding that this may increase the Guaranteed Indebtedness or Guaranteed Obligations. The Lender is not required to marshal or exercise any security, guarantee or other right held by it at any time before enforcing this Guarantee against the Guarantor. No waiver by the Lender of its rights under this Guarantee will be effective unless it is in writing signed by the Lender.

7. No competition

Until such time as the Lender grants a release in writing of the Guarantor's obligations, the Guarantor may not exercise or enforce any right to, directly or indirectly:

- (a) be indemnified by the Borrower (whether by subrogation, contributions or otherwise);
- (b) prove in the liquidation of the Borrower, or take steps to recover (whether directly or by set-off, counterclaim or otherwise), or accept, money or other property in respect of any amount due to it (whether actually or contingently) from the Borrower;
- (c) claim the benefit or enforce any Security Interest or guarantee from the Borrower; or
- (d) exercise any other right it may have to receive the benefit of any distribution or payment,

except, in each case, with the Lender's prior written consent, and then only in such manner and on such terms as the Lender may require.

8. Hold on trust

If any money or other property is received or recovered by the Guarantor:

- (a) as a result of any exercise of any such right under clause 7; or
- (b) in the dissolution of the Borrower or any other person,

the Guarantor must immediately pay or transfer that money or property to the Lender (and, in the case of money, all interest accruing on it), and, pending that payment or transfer, will hold that money or property in trust for the Lender.

9. Waiver

The Guarantor waives in favour of the Lender all rights against the Borrower and any other person or its or their estate and assets so far as necessary to give effect to anything in this Guarantee.

10. Void payments

- (a) If any payment received or amount applied by the Lender in respect of any Guaranteed Indebtedness is avoided, whether by law or otherwise, then:
 - (i) that payment will be deemed not to have discharged or affected the liability of either the Borrower or the Guarantor in respect of which that payment or application was received or made; and
 - (ii) the Lender, the Borrower and the Guarantor will, to the maximum extent permitted by law, be deemed to be returned to the position in which each would have been, and will be entitled to exercise all the rights which each would have had, if that payment had not been received or that amount had not been applied.

This clause 10 survives any release or discharge of this Guarantee by the Lender.

General Provisions

11. General representations and warranties

The Guarantor represents and warrants to the Lender that:

- (a) **(status)** in the case of a company:
 - (i) it is a company duly incorporated and validly existing under the laws of New Zealand; and
 - (ii) it has the power to own its assets;
- (b) **(power and authority)** it has the power to enter into, perform, deliver and comply with and has taken all necessary action to authorise its entry into, delivery of and performance and compliance with the Finance Documents to which it is a party and the transactions contemplated by those Finance Documents;
- (c) **(Authorisations)**
 - (i) it has taken all necessary corporate and other relevant action (including the obtaining of consents and other requirements) required to be taken to authorise the entry into and performance of, and compliance with, its obligations under each Finance Document; and
 - (ii) all Authorisations required or desirable to enable it lawfully to enter into, and exercise its rights and comply with its obligations in the Finance Documents to which it is a party, and to make the Finance Documents to which it is a party admissible in evidence in its jurisdiction of incorporation and New Zealand, have been obtained,
- (d) **(binding obligations)** its obligations expressed to be assumed by it in the Finance Documents to which it is party are legal, valid and binding and enforceable obligations, in accordance with their respective terms;
- (e) **(no conflict)** the entry into and delivery, and the exercise of its rights, and performance of and compliance with its obligations, under the Finance Documents to which it is party and each transaction contemplated thereby, do not and will not:
 - (i) conflict with any law or regulation applicable to it;
 - (ii) conflict with any constitutive documents applicable to it;
 - (iii) conflict with any agreement or instrument binding on it or any of its assets;
 - (iv) exceed any limitation on, or constitute an abuse of, the powers of its directors or officers;
 - (v) result in the acceleration of any financial indebtedness owing by it or result in any financial indebtedness owing by it being capable of being accelerated; or
 - (vi) result in an event of default or termination

and such consents and Authorisations are in full force and effect;

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- event (however described) under any other agreement which it has entered into;
- Finance Documents in priority to the interests of the beneficiaries of the trust;
- (f) **(solvency)** no Insolvency Event exists in respect of it;
- (g) **(litigation)** no litigation, dispute or proceeding is current or pending or, to the best of its knowledge and belief after due enquiry, threatened in relation to it which is likely to be adversely determined and, if so determined, would, or would be likely to have a Material Adverse Effect.
- (ii) the assets of the trust are sufficient to satisfy this right of indemnity and all other obligations and liabilities in respect of which it has a right to be indemnified out of those assets; and
- (iii) this right of indemnity has not been and will not be excluded or limited by the provisions of its trust deed or any other document or by any breach of such trust or by any rights of set-off or counter claim or otherwise, and the relevant trustee will not release or otherwise prejudice such right of indemnity;
- If the Guarantor is a trust, each trustee of the trust represents and warrants to the Lender that:
- (h) **(existence)** the trust is duly constituted in accordance with all applicable laws;
- (i) **(Trust Deed)** the trust's trust deed is the only document constituting the trust and complies with all applicable laws and the copy of any trust deed provided to the Lender is a true, complete and up to date copy;
- (m) **(no conflict)** its execution and performance of the Finance Documents to which it is a party is in accordance with the terms of the trust and any applicable investment policy of the trust;
- (j) **(appointment)** it is a validly appointed trustee of the trust and it has not resigned as trustee of the trust, and no meeting has been called to remove it as a trustee of the trust;
- (n) **(power and authority)** it has full and valid power and authority under the trust to do all things required by the Finance Documents, and all necessary resolutions, consents, approvals and procedures have been obtained or duly satisfied to enter into each Finance Document to which it is a party and to carry out the transactions contemplated by those documents;
- (k) **(compliance with constituent document)** it has not breached and will not breach any of the terms and conditions of the trust's trust deed;
- (l) **(right of indemnity):**
- (i) it has the right to be indemnified out of, and a lien over, the assets of the trust for all liabilities incurred by it under the
- (o) **(proper administration and benefit)** it is entering into each Finance Document to which it is a party as part of the due and proper administration, and for

- the benefit and the proper purposes, of the trust and itself;
- (p) **(no resettlement)** no property of the trust has been re-settled or set aside or transferred to any other trust; and
- (q) **(no termination)** the trust has not been terminated and no beneficiary is presently entitled to any of the assets of the Trust.

12. Undertakings

The Guarantor will:

- (a) **(corporate existence)** in the case of a company, maintain its corporate existence and its registration in the place of its registration as at the date of the Finance Document and not relocate its principal place of business outside New Zealand;
- (b) **(cancellation)** not cause or permit any Finance Document entered into to be repudiated, rescinded, cancelled or terminated, and not abandon or settle, compromise or discontinue or become non-suited in respect of any right against any person under or in respect of any Finance Document without the Lender's prior written consent; and
- (c) **(comply with laws)** promptly comply with and observe all applicable laws and directives.

The Guarantor will not without the Lender's prior written consent:

- (d) **(constituent documents)** change its constituent documents in any way material (if it has them) or adopt a constitution (if it does not);
- (e) **(amalgamation)** amalgamate or make any proposal to amalgamate with any company; or

- (f) **(change in control)** in the case of a company, allow a change in control in relation to it, or any of its subsidiaries.

If the Guarantor is a trust, each trustee of the trust will:

- (g) **(breaches of Trust)** not do anything, or permit or omit anything, which breaches the Trust or which might allow the trust to be terminated or which might permit it to be removed as trustee of the trust or which, in the Lender's opinion, may otherwise prejudicially affect the Lender's recourse against the property of the trust;
- (h) **(resignation)** not resign or be removed as trustee of the trust or appoint or allow a new or additional trustee of the trust to be appointed;
- (i) **(amendment)** not amend or revoke any of the terms of the trust;
- (j) **(use or possession of property)** not permit a beneficiary of the trust to use or possess the property of the trust;
- (k) **(right of subrogation and indemnity)** ensure that:
- (i) it has the right to be indemnified out of the assets of the trust for all liabilities incurred by it in relation to each Finance Document;
- (ii) there is no restriction or limitation on or derogation from its right of subrogation or indemnity (whether or not arising under the terms of the trust); and
- (iii) its lien over any property of the trust at all times has priority over the

rights of the beneficiaries of the Trust;

- (l) **(re-settle, set aside or transfer)** not mix, re-settle, set aside or transfer any property of the Trust; and
- (m) **(Finance Documents)** not do anything or permit anything to be done in relation to the trust which could restrict or impair its ability to observe its obligations under the Finance Documents it is party.

13. Trustee limitation on liability

The liability of any professional trustee shall be limited to the assets of the trust, except in respect of any indebtedness which the Lender is unable to recover under any Finance Document or from the assets of the trust as a result of any wilful or negligent breach of trust by the trustee, alone or with others, any lack of capacity, power or authority of the trustee to enter into any Finance Document or to incur the indebtedness, or any wilful default or dishonesty of the trustee or if the trustee loses its right to be indemnified out of the assets of the trust for any reason.

14. Survival of indemnities

- (a) Each obligation and indemnity in this Guarantee is:
 - (i) unconditional and irrevocable; and
 - (ii) a continuing and separate obligation which will survive termination, release or discharge of any Finance Document and payment of all other Outstanding Amounts.
- (b) The Lender need not incur an expense or make a payment before enforcing an indemnity or reimbursement obligation in this Guarantee.

15. Set-off

To the extent permitted by law, the Guarantor does not have any right to set-off amounts owed by it under this Guarantee.

16. Partial invalidity

If at any time a provision of this Guarantee is illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that provision shall be ineffective in that jurisdiction to the extent of the illegality, invalidity or unenforceability. This does not affect the validity or enforceability of that provision in any other jurisdiction, nor the validity or enforceability of the remainder of the Guarantee in any jurisdiction.

17. Certificates

A certificate of the Lender as to any amount, fact or determination relevant to the rights or obligations of the Lender or a Guarantor under any Finance Document, which might reasonably be expected to be within the Lender's knowledge, is taken to be correct unless proved incorrect.

18. Assignment

- (a) **(by the Guarantor)** The Guarantor may not assign, transfer or otherwise deal with any of its rights or obligations under this Guarantee without the Lender's prior written consent.
- (b) **(by the Lender)** The Lender may:
 - (i) assign, transfer, novate or otherwise deal with its rights, interests and obligations under this Guarantee without the consent of, or notice to, the Borrower or the Guarantor; and
 - (ii) disclose to each proposed party to such assignment, transfer, novation or other dealing any information the Lender considers appropriate about the Borrower and the Guarantor, the Finance Documents, and any transaction in connection with any of them.

19. Counterparts

This Guarantee may each be executed in any number of counterparts. Each counterpart constitutes an original of the Guarantee, all of which together constitute one instrument. A party who has executed a counterpart of the Guarantee may exchange it with another party by faxing, or by emailing a pdf (portable document format) copy of, the executed counterpart to that other party, and if requested by that other party, will promptly deliver the original by hand or post. Failure to make that delivery will not affect the validity of the Guarantee. Furthermore, where a party executes the Guarantee by having it signed by more than one person, those persons may sign the same or different signature pages, either or both of which signature pages may be delivered by email or facsimile transmission.

20. Governing law

This Guarantee shall be governed by and construed in accordance with the laws of New Zealand.

Interpretation

In this document:

- (a) headings are for reference only and do not affect interpretation;
- (b) reference to a document or agreement includes that document or agreement as novated, altered, amended, supplemented, ratified or replaced or as acceded to by any party from time to time, except, in each case, to the extent prohibited by a Finance Document;
- (c) a party to any document includes that person's successors and permitted assigns;
- (d) if the Lender reasonably considers that an amount paid by an Obligor under a Finance Document is cable of being avoided or otherwise set aside on the liquidation of an Obligor or otherwise, then that amount shall not be considered to have been irrevocably paid for the purposes of the Finance Documents;
- (e) the singular includes the plural and vice versa, a gender includes other genders and different grammatical forms of defined expressions have corresponding meanings;
- (f) reference to law or a provision of law includes any consolidation, amendment, re-enactment or replacement and only refers to that law to the extent it is applicable and in effect at that time;
- (g) unless stated otherwise, anything required to be done on or by a day which is not a Business Day, must be done on or by the next Business Day;
- (h) where a word or expression is defined in this document, other parts of speech and grammatical terms of that word have corresponding meanings; and
- (i) no provision or expression is to be construed against a party on the basis that the party (or its advisers) was responsible for its drafting.

Definitions

Authorisation means any consent, authorisation, registration, filing, agreement, notarisation, certificate, permit, licence, approval, authority or exemption of, from or required by, a government agency or required by law. Where intervention or action of a government agency within a specified period would fully or partly prohibit or restrict something by law, **Authorisation** includes the expiry of that period without that intervention or action.

Business Day means a day of the week (other than Saturday or Sunday) in which banks in Auckland are ordinarily open for business.

Finance Document means any loan agreement entered into between the Borrower and the Lender, this Guarantee and any other guarantee provided to the Lender in respect of the Borrower, any mortgage or security agreement granted by the Borrower in favour of the Lender, any assignment security granted by the Borrower in favour of the Lender, any other security required by the Lender, and any document the Lender and the Borrower agree is a Finance Document.

Guarantee means the guarantee and indemnity contained in this document,

provided by the Guarantor to the Lender, in respect of the obligations of the Borrower.

Insolvency Event means, in relation to a person, any of the following:

- (a) **(inability to pay debts)** that person is or is presumed unable or admits inability to pay its debts as they fall due, suspends making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness;
- (b) **(distress or judgement)** a distress, attachment or other execution for a sum exceeding \$1,000 is levied or enforced on, or commenced against, any assets of that person and is not discharged or stayed within 14 Business Days, or a judgment for a sum exceeding \$1,000 is obtained against that person and is not satisfied, discharged or stayed within 14 Business Days;
- (c) **(legal proceedings)** any corporate action, legal proceedings or other procedure or step is taken without the Lender's prior written consent in relation to:
 - (i) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration, bankruptcy or reorganisation (whether by way of voluntary arrangement, scheme of arrangement or otherwise) of that person;
 - (ii) a composition, assignment or arrangement with any creditor of that person;
 - (iii) the appointment of a liquidator, receiver, administrator, administrative receiver, statutory manager, controller or managing controller, trustee or other similar officer in respect that person or any of its assets;

- (iv) enforcement of any Security Interests over any assets of that person; or
- (v) any equivalent procedure or step is taken under the laws of any jurisdiction, unless (except in the case of paragraph (iii) above) the legal proceedings are, or other procedure or step is:
 - (aa) being taken or carried out by a person other than that person; and
 - (bb) being challenged by that person; and
 - (cc) discharged within 14 Business Days.

Lender means Squirrel P2P Trustee Limited.

Loss means a loss, claim, action, damage, liability, cost, charge, expense, penalty, compensation, fine or outgoing suffered, paid or incurred and includes loss of margin and loss of profit.

Material Adverse Effect means something, which in the opinion of the Lender, has or is likely to have a material adverse effect on:

- (d) the financial condition, business, or operations of the Borrower, an Obligor or the Borrower and all the Obligors taken as a whole; or
- (e) the ability or willingness of the Borrower or an Obligor to perform or comply with its obligations under any Finance Document; or
- (f) the validity or enforceability of the whole or any part of a Finance Document or any rights or remedies of the Lender under a Finance Document,

and references to **Material Adverse Change** will be construed accordingly.

Obligor means the Borrower, the Guarantor, and any other party which has provided a guarantee to the Lender in respect of the obligations of the Borrower.

Outstanding Amount means, at any time, all amounts owed by the Borrower to the Lender pursuant to a Finance Document at that time.

Security Interest means:

- (a) a mortgage, pledge, charge, lien, assignment, hypothecation, encumbrance, deferred purchase, title retention, finance lease, contractual right of set-off, flawed asset arrangement, sale-and-repurchase and sale-and-leaseback arrangement, order and other arrangement of any kind, the economic effect of which is to secure a creditor; and
- (a) a “security interest” as defined in the *Personal Property Securities Act 1999*.