

**THIS DEED IS EXECUTED ON the****By:****GUARANTOR Name:**

Address:

**GUARANTOR Name:**

Address:

**GUARANTOR Name:**

Address:

**GUARANTOR Name:**

Address:

("Guarantor")

**In favour of:****FULTON HOGAN LIMITED**

Address:

("Fulton Hogan")

**In respect of the obligations and liabilities of:****CUSTOMER Name:**

Address:

("Customer")

**THE GUARANTOR AGREES AND DECLARES AS FOLLOWS:****1. Guarantee**

- 1.1. In consideration of Fulton Hogan agreeing, at the request of the Guarantor, to provide or continue to provide credit and/or goods from time to time to or for the Customer, the Guarantor unconditionally and irrevocably guarantees to Fulton Hogan the due and punctual payment of:
  - (a) all moneys due and payable or from time to time to become due and payable to Fulton Hogan under or in connection with the provision of credit and/or goods;
  - (b) all other moneys which the Customer either alone or jointly with any other person now or from time to time is or becomes actually or contingently liable to pay to Fulton Hogan under this Guarantee and any other agreement, security or negotiable or other instrument or as a result of any matter or thing; and
  - (c) to avoid doubt, any GST that may be due and payable or from time to time become due and payable by Fulton Hogan under or in connection with the provision of credit and/or goods (the "**Guaranteed Moneys**").
- 1.2. If the Customer defaults in the due and punctual payment of the Guaranteed Moneys or in any part of them the Guarantor shall pay those moneys on demand as directed by Fulton Hogan.
- 1.3. Any demand to be made upon the Guarantor or the Customer shall be deemed to be duly made if in writing and signed for or on behalf of Fulton Hogan by any secretary, director, manager, attorney, credit manager, authorised officer or solicitor of Fulton Hogan from time to time.

- 1.4. This Guarantee is a continuing security for the whole of the Guaranteed Moneys and all other money payable under this Guarantee until the Guaranteed Moneys and all other moneys payable under this Guarantee have been paid in full. The Guarantor's obligations will remain in full force and effect until the execution by Fulton Hogan of an unconditional discharge of the obligations of the Guarantor under this Guarantee.

## **2. Guarantor's Obligations**

### **2.1. The Guarantor's obligations:**

- (a) are principal obligations; and
- (b) may be enforced against the Guarantor without Fulton Hogan being required to exhaust any remedy it may have against the Customer or to enforce any security it may hold with respect to the Guaranteed Moneys.

### **2.2. The liability of the Guarantor is absolute and unconditional and is not affected by anything which, but for this provision might operate to acquit it from any of its obligations including, without limitation, any one or more of the following (whether occurring with or without the consent of any person):**

- (a) the grant to the Customer, the Guarantor or any other person at any time, waiver or other indulgence or concession or any whole or partial discharge or release of the Customer, the Guarantor or any other person;
- (b) any arrangement that may take place between Fulton Hogan and the Customer, the Guarantor or any other person;
- (c) the bankruptcy, winding up, liquidation, becoming an insolvent under administration (in terms of the Companies Act 1993), the appointment of an administrator to or the death of, the Customer, the Guarantor or any other person;
- (d) the variation, replacement, extinguishment, loss, release, discharge, abandonment or transfer either in whole or in part of any agreement or document relating to the Guaranteed Moneys including any other guarantee or security now or in the future held by Fulton Hogan from any person;
- (e) the failure by Fulton Hogan to give notice to the Guarantor of any default by the Customer or any other person;
- (f) any legal limitation, disability, incapacity or other circumstance related to the Customer, the Guarantor or any other person;
- (g) any laches, acquiescence, delay, acts, omissions or mistakes on the part of, or suffered by Fulton Hogan or any other person, in relation to this Guarantee or any other guarantee, security, agreement, or negotiable instrument; or
- (h) any other matter or thing whatsoever.

## **3. Preference**

### **3.1. If, after Fulton Hogan applies any amount against any of the Guaranteed Moneys, it forms the view that it is obliged to make a payment in respect of the amount so applied by it to any person under any law relating to bankruptcy, winding up or the protection of creditors:**

- (a) Fulton Hogan's rights are to be reinstated and will be the same in respect of that amount, or in the relevant part of it, as if the application, or the payment or transaction giving rise to it, had not been made; and

- (b) the Guarantor shall immediately do anything (including the signing of the documents) required by Fulton Hogan to restore any security or guarantee to which it was entitled immediately before that application or the payment or transaction giving rise to it.

#### **4. Suspension of Guarantor's Rights**

- 4.1. Until the Guaranteed Moneys and other moneys payable under this Guarantee have been irrevocably paid and discharged in full, the Guarantor may not:
  - (a) share in any security or guarantee held or money received by Fulton Hogan in respect of the Guaranteed Moneys or stand in the place of Fulton Hogan in respect of any such security or guarantee or right to receive money;
  - (b) take any steps to enforce a right or claim against the Customer in respect of any money paid by the Guarantor to Fulton Hogan under this Guarantee; or
  - (c) have or exercise any rights as surety in competition with Fulton Hogan.
- 4.2. If the Customer is wound up or bankrupted, the Guarantor irrevocably authorises Fulton Hogan to:
  - (a) prove for all moneys which the Guarantor has paid under the Guarantee; and
  - (b) retain and carry to a suspense account and appropriate at Fulton Hogan's discretion any moneys received in respect of the Guaranteed Moneys, until the Guaranteed Moneys have been irrevocably paid and discharged in full.

#### **5. Indemnity**

- 5.1. On account of the consideration contained in clause 1.1, the Guarantor, as a separate undertaking, unconditionally indemnifies Fulton Hogan against any loss which Fulton Hogan may suffer as a result of the Guaranteed Moneys, in whole or in part, not being recoverable from the Customer or are not enforceable by Fulton Hogan for any reason whatsoever, whether as a matter of law or as a matter of fact.
- 5.2. The Guarantor as a principal debtor shall pay to Fulton Hogan on demand a sum equal to any loss in respect of which it indemnifies Fulton Hogan under this clause, including any of the Guaranteed Moneys (or any of the monies which, if recoverable would have formed part of the Guaranteed Moneys) which are not or may not be recoverable.

#### **6. Interest and Expenses**

- 6.1. The Guarantor shall, on demand pay:
  - (a) interest on any of the Guaranteed Moneys which are due and payable by it and unpaid (including interest payable under this clause). Interest will accrue daily from the due date for payment up to the date of actual payment, before and (as a separate and independent obligation) after judgment, at the rate payable by the Customer to Fulton Hogan under the terms and conditions relating to the provision of credit and/or goods; and
  - (b) all costs and expenses (including taxes and legal expenses on a solicitor/client basis) sustained or incurred by the Fulton Hogan as a result of the exercise of, or in protecting or enforcing or otherwise in connection with its rights under this Guarantee.

#### **7. Waiver**

- 7.1. No failure or delay by Fulton Hogan to exercise any power, right or remedy under this Guarantee operates as a waiver, nor does any single or partial exercise of any power, right or remedy preclude any other or further exercise of that power, right or remedy. Fulton Hogan's rights and remedies under this Guarantee are in addition to any rights and remedies arising at law.

**8. Claim in Administration**

- 8.1. Until this Guarantee is released by Fulton Hogan, the Guarantor will not without Fulton Hogan's consent, prove in any administration of the Customer in competition with Fulton Hogan.

**9. Application of Moneys Received**

- 9.1. If Fulton Hogan receives or recovers money in respect of debts of the Customer or anyone else, Fulton Hogan may use it to pay off whichever part of those debts it chooses and does not have to apply it for the Guarantor's benefit.

**10. Joint and Several Liability**

- 10.1. If two or more persons are the Guarantor:
- (a) references to the Guarantor are references to them separately and as well refer to any two or any more of them together;
  - (b) the promises by them in this Guarantee bind all of them together as well as bind each of them separately;
  - (c) the fact that one person is released from its promise does not mean that any other person is also released.

**11. Charging Clause**

- 11.1. To further secure the Guaranteed Moneys the Guarantor hereby charges with payment of the Guaranteed Moneys all the right, title, estate and interest which it now has or may hereafter during the currency of the Guarantee acquire in any freehold or leasehold property.
- 11.2. The Guarantor further agrees that if demand is made by Fulton Hogan the Guarantor will immediately execute a mortgage in registrable form or other instrument of security, as required by Fulton Hogan, and if it fails to do so within a reasonable time of being so requested, the Guarantor irrevocably and by way of security appoints any secretary, director, manager or attorney engaged by Fulton Hogan to be its true and lawful attorney to execute and register such instruments.

**12. Time of the Essence**

- 12.1. Time shall be deemed to be of the essence in relation to any matter or thing required to be done by the Guarantor including but without limitation the payment of any money or the performance of any obligation under this Guarantee.

**13. Notices**

- 13.1. A notice, consent, approval or other communication (each a "Notice") under this Guarantee shall be in writing, signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and:
- (a) delivered; or
  - (b) sent by pre-paid mail, to that person's address.
- 13.2. A notice given to a person in accordance with this clause is treated as having been given and received on the day of actual delivery.
- 13.3. For the purpose of this clause, a person (the "sender") may take the address of another person (the "recipient") to be:
- (a) the address given in this Guarantee; or

- (b) where the recipient notifies the sender of another address, the last address so notified to it.

#### **14. Credit Information and Privacy**

14.1. The Guarantor consents to and authorises Fulton Hogan, in its absolute discretion, to:

- (a) request a credit report containing information about the Guarantor's consumer or commercial credit arrangements from a credit reporting agency in connection with this Guarantee;
- (b) request and obtain from the Guarantor, information and documentary evidence concerning the Guarantor's personal financial position and the particulars of all assets, of whatever nature and wherever located, owned by the Guarantor legally, beneficially or jointly with another person;
- (c) disclose a credit report or any personal information derived from the credit report, and any information about the Guarantor's personal or commercial credit arrangements to any agent of Fulton Hogan assisting in processing the Customer's application and any other provider of credit to the Customer in a credit report from a credit reporting agency; and
- d) notify and exchange information with other credit providers and any collection agent of Fulton Hogan.

14.2. By signing this Guarantee, the Guarantor authorises Fulton Hogan to collect, maintain, use and disclose the Guarantor's personal information in the manner set out in Fulton Hogan's privacy statement and policy as varied from time to time. The Guarantor acknowledges having accessed a copy of the current statement and policy from Fulton Hogan's website (<http://www.fultonhogan.com>).

#### **15. Trustee Provisions**

15.1. Where the Guarantor is a trustee, the Guarantor shall be liable on the account and in addition the assets of the trust shall be available to meet payment of any monies due and owing to Fulton Hogan.

#### **16. Expenses**

16.1. The Guarantor must pay to Fulton Hogan all costs, charges, fees and expenses (including, without limitation, all stamp duty and legal fees) incurred by Fulton Hogan in connection with any entry into this Guarantee, the exercise or attempted exercise of any power, right or remedy under this Guarantee, and the failure of the Guarantor to comply with any obligations under this Guarantee.

#### **17. No Assignment**

17.1. The Guarantor may not assign, transfer or otherwise deal with all or any part of its rights or obligations under this Deed without the prior written consent of Fulton Hogan.

#### **18. Acknowledgment**

18.1. The Guarantor acknowledges that the Guarantor:

- (a) has entered into this Guarantee voluntarily;
- (b) has read and understood the nature and consequences of entering into this Guarantee;
- (c) has not signed this Guarantee on the basis of any representation of any of Fulton Hogan, its employees, agents or representatives or under the duress of any person;

- (d) is entitled to seek independent legal advice before signing this Guarantee; and
- (e) consents to Fulton Hogan assigning any rights against the Guarantor to any third party.

**19. Severance**

19.1. Each clause and sub-clause of this Guarantee is separate and independent. If any clause or sub-clause is found to be invalid or ineffective, the other clauses or sub-clauses or parts will not be adversely affected.

**EXECUTED AS A DEED** by each Guarantor in the presence of the witnesses named below.

Guarantor's Name:

Signature:

Witness' Name:

Signature:

Witness Address:

Guarantor's Name:

Signature:

Witness' Name:

Signature:

Witness Address:

Guarantor's Name:

Signature:

Witness' Name:

Signature:

Witness Address:

Guarantor's Name:

Signature:

Witness' Name:

Signature:

Witness Address: