

**APPENDIX 2**

**Amended and Restated Guarantee and Indemnity**

**(please note this is not the full Amendment and Restatement Deed  
- this can be provided on request)**

# Guarantee and Indemnity

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## **PARTIES**

The Local Authorities Listed in Schedule 1

### **Initial Guarantors**

TEL Security Trustee (LGFA) Limited

### **Security Trustee**

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**DEED** dated 7 December 2011 (as amended and restated by the deed to which this deed is attached as an appendix)

## **PARTIES**

The Local Authorities Listed in Schedule 1  
("Initial Guarantors")

TEL Security Trustee (LGFA) Limited  
("Security Trustee")

## **INTRODUCTION**

- A. In consideration for the Guaranteed Creditors agreeing to make financial accommodation and/or other services available to the Principal Debtor from time to time at the request of each Initial Guarantor (as evidenced by an Initial Guarantor's entry into this deed), the Initial Guarantors have agreed to enter into this deed at the request of the Principal Debtor.
- B. The Security Trustee has agreed to enter into this deed as security trustee for the Guaranteed Creditors. The Security Trustee holds the benefit of this deed on trust for the Guaranteed Creditors under the terms of the Security Trust Deed.

## **COVENANTS**

### **1. INTERPRETATION**

1.1 **Definitions in the Multi-issuer Deed:** Words and expressions defined in the Multi-issuer Deed (including in the Conditions to the Multi-issuer Deed) and used in this deed shall, unless the context otherwise requires, have the meanings given to them in the Multi-issuer Deed.

1.2 **Definitions:** In addition, in this deed, unless the context otherwise requires:

"**Additional Guarantor**" means a person which has become an Additional Guarantor in accordance with clause 12.4.

"**Additional Relevant Proportion**" has the meaning given to it in clause 3.4(c).

"**Annual Rates Income**" has the meaning given in the Multi-issuer Deed, as if references therein to "Issuer" were to "Guarantor".

"**Beneficiary**" has the meaning given to it in the Security Trust Deed.

"**Defaulting Guarantor**" has the meaning given to it in clause 3.4(c).

"**Demand**" means a demand for payment on a Guarantor in the relevant form, or substantially in the relevant form, set out in schedule 3, signed by on or behalf of the Security Trustee.

"**Demand Confirmation**" has the meaning given to it in clause 3.5(e).

"**Disclosure Information**" has the meaning given to it in clause 16.12(a)(i).

"**Full Release**" means a letter from the Security Trustee to a Guarantor in the form, or substantially in the form, of part 2 of schedule 6.

"**Full Release Request**" means a letter from a Guarantor to the Security Trustee in the form, or substantially in the form, of part 1 of schedule 6.

"**Further Principal Debt Release**" means a letter from the Security Trustee to a Guarantor in the form, or substantially in the form, of part 2 of schedule 5.

"**Further Principal Debt Release Date**" has the meaning given to it in clause 15.1(g).

"**Further Principal Debt Release Request**" means a letter from a Guarantor to the Security Trustee in the form, or substantially in the form, of part 1 of schedule 5.

"**Further Relevant Amount**" has the meaning given to it in clause 3.4(e).

"**Guarantor Accession Deed**" means a deed in the form, or substantially in the form, of schedule 4.

"**Guaranteed Creditor**" means each creditor of the Principal Debtor that is a Beneficiary under or pursuant to the terms of the Security Trust Deed.

"**Guaranteed Money**" means, subject to clauses 15.1(f) and 15.1(g), when used with reference to a Guarantor, all amounts which that Guarantor (whether alone, or jointly, or jointly and severally with any other person) is, or may at any time become, liable (whether actually or contingently) to pay to the Security Trustee under this deed (for the benefit of any Guaranteed Creditor) and, when used without reference to a particular Guarantor, means the Guaranteed Money of the Guarantors collectively, and a reference to Guaranteed Money includes any part of it.

"**Guarantor**" means an Initial Guarantor or an Additional Guarantor, unless it has ceased to be a Guarantor pursuant to clause 15.2 or clause 15.3.

"**Indemnified Guarantor**" has the meaning given to it in clause 3.5(b).

"**LGFA Finance Document**" has the meaning given to it in the Security Trust Deed.

"**Local Authority**" means a Local Authority as defined in the Act.

"**Multi-issuer Deed**" means the deed dated 7 December 2011 between the Principal Debtor and various Local Authorities entitled "Multi-issuer Deed".

"**Non-Defaulting Guarantor**" has the meaning given to it in clause 3.4(c).

"**Partially Released Guarantor**" has the meaning given to it in clause 3.4(e).

"**Principal Debt**" means all amounts of any nature which the Principal Debtor (whether alone, or jointly, or jointly and severally with any other person) is, or may at any time become, liable (whether actually or contingently) to pay or deliver to one or more Guaranteed Creditors (whether alone, or jointly, or jointly and severally with any other person) under, pursuant to,

or arising out of a LGFA Finance Document, and a reference to Principal Debt includes any part of it.

"**Principal Debtor**" means New Zealand Local Government Funding Agency Limited, a company incorporated in New Zealand.

"**Relevant Amount**" has the meaning given to it in clause 3.4(b).

"**Relevant Financial Year**" has the meaning given to it in clause 3.4(b).

"**Relevant Proportion**" has the meaning given to it in clause 3.4(b).

"**Sale Notice**" has the meaning given in the Shareholders' Agreement.

"**Security Trust Deed**" means the deed dated 7 December 2011 between the Security Trustee and the Principal Debtor entitled "Security Trust Deed".

"**Shortfall Amount**" has the meaning given to it in clause 3.4(c).

"**Transaction Documents**" means:

- (a) the "Transaction Documents" as defined in the Multi-issuer Deed; and
- (b) the LGFA Finance Documents,

and any document or agreement entered into by the Principal Debtor or any Guarantor (amongst others) for the purpose of amending, supplementing or novating any of the above.

"**Verified Statements**" has the meaning given to it in clause 16.12(a)(ii).

1.3 **References:** Except to the extent that the context otherwise requires, any reference in this deed to:

the "**dissolution**" of a person includes the bankruptcy of that person or, where that person is a company, its liquidation, administration, deed of company arrangement, creditors' compromise, scheme of arrangement or removal from the register, and also includes any equivalent or analogous procedure under the law of any relevant jurisdiction.

"**government**" includes central or local government, and "**governmental agency**" includes any government or any governmental, semi-governmental or judicial entity or authority, or legislative body, or any person or body charged with the administration of any law. It also includes any self-regulatory organisation established under statute or any stock exchange.

"**law**" includes common or customary law and any constitution, decree, judgment, legislation, order, ordinance, regulation, statute or other legislative measure, in each case of any jurisdiction whatever and "**lawful**" shall be construed accordingly.

"**person**" includes an individual, firm, company, corporation, unincorporated body of persons, organisation or trust, and any governmental agency or authority, in each case whether or not having separate legal personality.

"**security**" includes a guarantee or indemnity, a security interest (as construed and defined in the Personal Property Securities Act 1999), mortgage, lien, pledge, any interest in land of a security nature, any other security arrangement creating in effect security for the payment of a

monetary obligation or the observance of any other obligation, and any other arrangement having like economic effect over any property, assets or revenues.

"**tax**" includes any present or future tax, levy, impost, duty, rate, charge, fee, deduction or withholding of any nature and whatever called, imposed or levied by any government, governmental agency or authority, together with any interest, penalty, charge, fee or other amount imposed or made on, or in relation to, any of the foregoing.

**1.4 Miscellaneous:** Unless the context otherwise requires:

- (a) Headings are inserted for convenience only and do not affect interpretation of this deed.
- (b) References to a person include that person's successors, permitted assigns, executors and administrators (as applicable).
- (c) Unless the context otherwise requires the singular includes the plural and vice versa and words denoting individuals include other persons and vice versa.
- (d) References to any legislation or to any provision of any legislation are deemed to be references to that legislation or provision as from time to time amended, re-enacted or substituted and, unless the context otherwise requires, shall also include any statutory instruments issued under any such legislation or provision.
- (e) References to any document (however described) shall include references to such document as modified, novated, supplemented, varied or replaced from time to time.
- (f) Except where inconsistent with the context, the expression "**at any time**" also means from time to time.
- (g) A reference to "**including**", "**for example**" or "**such as**", when introducing an example, does not limit the meaning of the words to which the example relates to that example or examples of a similar kind.
- (h) Unless otherwise stated, reference to a clause, schedule or part of a schedule is a reference to a clause of, or schedule to, or part of a schedule to, this deed.

**1.5 Capacity of the Security Trustee:**

- (a) The parties acknowledge that the Security Trustee holds the benefit of this deed on trust for the Guaranteed Creditors. Notwithstanding any other provision of any LGFA Finance Document, any liability incurred by the Security Trustee pursuant to this deed can be enforced against the Security Trustee only to the extent to which it can be satisfied out of the assets subject to the Security Trust Deed. This limitation of the Security Trustee's liability applies notwithstanding any other provision of this deed (other than paragraph (c)) and extends to:
  - (i) all liabilities and obligations of the Security Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction relating to any LGFA Finance Document; and

- (ii) every delegate, attorney, agent or other similar person appointed by the Security Trustee.
- (b) Subject to paragraph (a), the Beneficiaries may not sue the Security Trustee personally or seek the appointment of a liquidator, administrator, receiver or similar person to the Security Trustee or prove in any liquidation, administration or arrangement of or affecting the Security Trustee.
- (c) Paragraphs (a) and (b) will not apply to any liability of the Security Trustee arising out of the fraud, gross negligence, wilful default or wilful breach of trust of or by the Security Trustee.
- (d) In addition to the rights and trusts conferred on the Security Trustee by any LGFA Finance Document, the Security Trustee shall have all the rights, privileges and immunities which gratuitous trustees have or may have in New Zealand, even though it is entitled to remuneration.

## 2. GUARANTEE AND INDEMNITY

- 2.1 **Guarantee:** Each Guarantor guarantees to the Security Trustee, for the benefit of the Guaranteed Creditors, the due payment or delivery by the Principal Debtor of the Principal Debt.
- 2.2 **Continuing guarantee:** In relation to each Guarantor the guarantee in this deed is a continuing guarantee and shall operate irrespective of any intervening payment, settlement of account or other matter or thing whatever, until the relevant Guarantor has received a Full Release from the Security Trustee pursuant to clause 15.2 or a written release from the Security Trustee pursuant to clause 15.3.
- 2.3 **Indemnity:** Each Guarantor indemnifies the Security Trustee, for the benefit of the Guaranteed Creditors, against:
  - (a) all claims, liabilities, damages, losses and payments; and
  - (b) all costs, charges and expenses (including legal expenses on a full indemnity basis and goods and services and similar taxes thereon),

suffered, incurred or sustained by any of the Guaranteed Creditors at any time as a direct or indirect consequence of any Principal Debt not being recoverable from a Guarantor under the guarantee given in clause 2.1, including as a result of the obligation to pay the Principal Debt becoming void, voidable or unenforceable.

## 3. OBLIGATIONS OF THE GUARANTORS

- 3.1 **Payment:** If the Principal Debtor does not pay any Principal Debt to any Guaranteed Creditor on its due date, each Guarantor shall upon demand being made in accordance with clause 3.4 pay to the Security Trustee (for the benefit of the Guaranteed Creditors) that Principal Debt in accordance with clause 3.4 (whether or not demand for payment has been made on the Principal Debtor or any other person).
- 3.2 **Payments to be free and clear:** The Guaranteed Money shall be paid:



- (a) free and clear of any restriction or condition;
- (b) free and clear of and (except to the extent required by law) without any deduction or withholding on account of any tax; and
- (c) without any deduction or withholding on account of any other amount, whether by way of set-off, counterclaim or otherwise.

3.3 **Cleared funds:** Any Guaranteed Money received by the Security Trustee shall not satisfy a Guarantor's obligation to pay such amount until it is cleared and immediately available to the Security Trustee.

3.4 **Demands:**

- (a) The Security Trustee shall not make any demand for payment on a Guarantor under this deed except in accordance with this clause 3.4.
- (b) Subject to paragraph (e), if the Security Trustee wishes to make demand for payment of an amount (a "**Relevant Amount**") under this deed, it shall deliver a Demand to each Guarantor requiring the Guarantor to pay the proportion of the Relevant Amount (or, if sub-paragraph (e)(ii) applies, the proportion of that part of the Relevant Amount that is not a Further Relevant Amount) that the Guarantor's Annual Rates Income for the most recent financial year in respect of which all Guarantors have completed and adopted annual reports in accordance with sections 98 and 99 of the Act before the date of the Demand (the "**Relevant Financial Year**") bears to the aggregate Annual Rates Income of all Guarantors for the Relevant Financial Year (for each Guarantor, its "**Relevant Proportion**").
- (c) Subject to paragraph (e), if one or more Guarantors (each a "**Defaulting Guarantor**") fails to pay in full its Relevant Proportion of a Relevant Amount within two Business Days after receipt of a Demand under paragraph (b) (the aggregate of all amounts unpaid by the Defaulting Guarantors by the end of that period being the "**Shortfall Amount**"), the Security Trustee may deliver a further Demand to each Guarantor other than the Defaulting Guarantors (each a "**Non-Defaulting Guarantor**") requiring that Non-Defaulting Guarantor to pay the proportion of the Shortfall Amount that its Annual Rates Income for the Relevant Financial Year bears to the aggregate Annual Rates Income of all Non-Defaulting Guarantors for the Relevant Financial Year (for each Non-Defaulting Guarantor, its "**Additional Relevant Proportion**").
- (d) Subject to paragraph (e), if one or more Non-Defaulting Guarantors fails to pay in full its Additional Relevant Proportion of a Shortfall Amount within two Business Days after receipt of a Demand under paragraph (c) (including pursuant to the operation of this paragraph (d)), the Security Trustee may deliver a further Demand to each other Non-Defaulting Guarantor, and the provisions of paragraph (c) (and, in the event of a further subsequent default, this paragraph (d)) shall apply to the relevant shortfall amount (as if it were a "Shortfall Amount") and such other Non-Defaulting Guarantors (such that the "Additional Relevant Proportion" is determined having regard only to the Annual Rates Income of such Non-Defaulting Guarantors, and no other Guarantors). For the avoidance of doubt, the parties agree that paragraph (c) and this paragraph (d) shall, in respect of each Relevant Amount, continue to apply until the Relevant Amount has been paid in full to the Security Trustee.

- (e) If, by reason of having received a Further Principal Debt Release, one or more Guarantors (each a "**Partially Released Guarantor**") is not liable under this deed (by reason of the operation of clause 15.1(f) or 15.1(g)) in respect of:
- (i) all of a Relevant Amount, paragraphs (b), (c) and (d) shall apply in relation to that Relevant Amount only in respect of the Guarantors other than the Partially Released Guarantors;
  - (ii) part of a Relevant Amount (a "**Further Relevant Amount**"), the Security Trustee must deliver a separate Demand in respect of the Further Relevant Amount to each of the Guarantors other than the Partially Released Guarantors, and the provisions of paragraphs (b), (c) and (d) shall apply in relation to the Further Relevant Amount (as if it were a "Relevant Amount") only in respect of those Guarantors.

### 3.5 Proportionate sharing of liabilities:

- (a) It is the intention of the Guarantors that each Relevant Amount, and each Further Relevant Amount, shall be borne by the Guarantors, or the relevant Guarantors, as applicable, in accordance with their respective Relevant Proportions.
- (b) If one or more Guarantors or relevant Guarantors contributes more in payment of a Relevant Amount or a Further Relevant Amount, as applicable, pursuant to the operation of clause 3.4 than its Relevant Proportion of that Relevant Amount or Further Relevant Amount, as applicable (each such Guarantor being an "**Indemnified Guarantor**"), each Guarantor or relevant Guarantor, as applicable, other than the Indemnified Guarantors shall indemnify each Indemnified Guarantor upon demand in respect of each such excess amount.
- (c) In making payment in respect of excess amounts under the indemnity in paragraph (b), account shall be taken of any amounts which an Indemnified Guarantor has actually received or recovered by reason of having exercised (whether through the Security Trustee or otherwise) any right (including of subrogation) against the Principal Debtor, in respect of the Relevant Amount or the Further Relevant Amount.
- (d) Subject to paragraph (c), each Guarantor or relevant Guarantor will be required to make indemnity payments under this clause 3.5 until all such Guarantors have contributed (whether to the Security Trustee or to Indemnified Guarantors) their Relevant Proportion of the Relevant Amount or the Further Relevant Amount, as applicable, as contemplated by paragraph (a).
- (e) Where the Security Trustee has, following receipt of a written request from an Indemnified Guarantor, confirmed (in writing) ("**Demand Confirmation**") that:
- (i) no Demand is outstanding; and
  - (ii) the Security Trustee has not (as at the date of such Demand Confirmation) received any request under the Security Trust Deed to make a Demand,

an Indemnified Guarantor may exercise against the relevant Guarantors its right to be indemnified under this clause 3.5, provided however that, such Indemnified

Guarantor must immediately cease seeking any such indemnity when a Demand is made.

- 3.6 **No competition:** No Guarantor shall (unless requested to do so by the Security Trustee):
- (a) take, accept or continue to hold any security from the Principal Debtor or any other person who has given any security to the Security Trustee or any other Guaranteed Creditor for any Principal Debt;
  - (b) subject to clause 3.5(e), exercise any right or take the benefit of subrogation, contribution or indemnity, or require marshalling, or claim the benefit of any security now or in the future held by the Security Trustee or any other Guaranteed Creditor for the payment of any Principal Debt;
  - (c) take steps to recover (whether directly or by set-off, counterclaim or otherwise), or accept, money or other property, or exercise, enforce or receive the benefit of any rights (including by way of set-off), in respect of any amount due (whether actually or contingently) from the Principal Debtor to that Guarantor; or
  - (d) claim or prove in the dissolution of the Principal Debtor or any other person in competition with the Security Trustee or any other Guaranteed Creditor.
- 3.7 **Guarantor to account:** If, notwithstanding, and in breach of, clause 3.5 or clause 3.6, a Guarantor:

- (a) takes, accepts or continues to hold any such security, money or other property from the Principal Debtor, or from any person who has given any security to the Security Trustee or any other Guaranteed Creditor for any Principal Debt or receives the benefit of a set-off; or
- (b) proves in that Guarantor's own name in the dissolution of the Principal Debtor, or of any other person who has given any security to the Security Trustee or any other Guaranteed Creditor for any Principal Debt (whether or not the Security Trustee or, as applicable, that other Guaranteed Creditor has required that Guarantor to do so, or has consented to that Guarantor doing so), for all or any part of any amount due (whether actually or contingently) from the Principal Debtor or such other person to a Guarantor,

that Guarantor shall immediately pay or transfer to the Security Trustee all such security, money, other property or the benefit of set-off, or all amounts received by that Guarantor in relation to any such proof, and all interest accruing thereon, until the Principal Debt is discharged in full and, until that payment or transfer is made, shall hold such security, money or other property, or the benefit of that proof or set-off, and all interest thereon, on trust for the Security Trustee in an amount not exceeding the Principal Debt then outstanding.

#### 4. NATURE AND EXTENT OF OBLIGATIONS

- 4.1 **Unconditional and irrevocable:** Each obligation of a Guarantor under this deed is, subject to clause 3.4, unconditional and irrevocable and enforceable notwithstanding that any instrument (negotiable or otherwise) relating to all or any part of the Principal Debt may still be outstanding at the date of enforcement.

- 4.2 **Liable as principal:** Each Guarantor's liability under this deed shall be as a principal debtor and not merely as a surety.
- 4.3 **Other securities:** This deed is in addition to and not in substitution for, is collateral to, and shall not prejudicially affect or be prejudicially affected by, any other security or right which the Security Trustee or any other Guaranteed Creditor may have in respect of any Principal Debt. Any security given by a Guarantor to the Security Trustee (whether given before or after the date of this deed) shall constitute security for the Guaranteed Money.
- 4.4 **Initial Documentation:** Each Initial Guarantor shall, on the date of this deed, deliver the following documents (each of which must be in form and substance satisfactory to the Security Trustee) to the Security Trustee:
- (a) a duly executed first ranking Security Stock Certificate in favour of the Security Trustee in respect of that Guarantor's obligations under this deed;
  - (b) a certificate of compliance for the purposes of section 118 of the Act in relation to the Guarantor's obligations under this deed and the Security Stock Certificate described in paragraph (a);
  - (c) a legal opinion addressed to the Security Trustee from legal counsel acceptable to the Security Trustee in relation to that Guarantor's entry into this deed and the issuance of the first ranking Security Stock Certificate described in paragraph (a);
  - (d) evidence that all necessary regulatory and statutory authorisations, consents, approvals and licences in relation to its entry into this deed and the issuance of the first ranking Security Stock Certificate described in paragraph (a) have been obtained and are current and satisfactory; and
  - (e) notification of the Annual Rates Income in the Financial Statements of the Guarantor in the most recent financial year for which all Initial Guarantors have prepared and adopted an annual report in accordance with sections 98 and 99 of the Act.

## 5. RIGHTS OF THE SECURITY TRUSTEE

- 5.1 **Discretions:** The Security Trustee may at any time:
- (a) determine whether or not to enforce this deed or any other security or right;
  - (b) enforce this deed without first taking steps or proceedings against the Principal Debtor or any other person;
  - (c) make any arrangement or compromise with the Principal Debtor or any other person which the Security Trustee thinks fit; and
  - (d) retain, carry to an interest bearing suspense account, and appropriate at the Security Trustee's discretion, any amount received by the Security Trustee under this deed until the Principal Debt has been paid and satisfied in full.
- 5.2 **No prejudice:** The Security Trustee's rights under this deed are without prejudice, and in addition, to any other right to which the Security Trustee is at any time entitled (whether under

this deed or by law, contract or otherwise), and subject to clause 3.4, may be exercised by the Security Trustee without prior notice to the relevant Guarantor, the Principal Debtor or any other person.

## 6. GROSS-UP

- 6.1 If a Guarantor is required by law to make any deduction or withholding from any amount paid or payable by that Guarantor under this deed then:
- (a) the relevant Guarantor shall ensure that any such deduction or withholding does not exceed the legal minimum and shall pay the amount required to be so deducted, withheld, or paid to the relevant authority before the date on which penalties attach thereto;
  - (b) the amount payable by the relevant Guarantor in respect of which that deduction or withholding is required to be made shall, if the Principal Debtor would have been required to pay an increased amount had the Principal Debtor been required to make the relevant deduction or withholding, be increased to the extent necessary to ensure that after that deduction or withholding is made the Security Trustee receives and retains (free from any liability in respect of any such deduction or withholding) a net amount equal to the amount which the Security Trustee would have received and so retained had no such deduction or withholding been made; and
  - (c) the relevant Guarantor shall promptly deliver to the Security Trustee a receipt issued by the applicable authority evidencing that such deduction or withholding has been made.

## 7. CURRENCY INDEMNITY

- 7.1 **Currency of payment:** Any amount which a Guarantor is required to pay under this deed in respect of the Principal Debt shall be paid in the currency in which the Principal Debtor is obliged to pay the corresponding amount.
- 7.2 **Extent of satisfaction of each Guarantor's obligation:** If any Guaranteed Money is received by the Security Trustee in a currency ("**first currency**") other than the currency ("**second currency**") in which it is payable (whether as a result of obtaining or enforcing an order or judgment, the dissolution of any person or otherwise), the amount received shall only satisfy the relevant Guarantor's obligation to pay such amount to the extent of the amount in the second currency which the Security Trustee is able, in accordance with reasonable practice, to purchase with the amount received in the first currency on the date of that receipt (or, if it is not practicable to make that purchase on that date, on the first date upon which it is practicable to do so).
- 7.3 **Indemnity:** Each Guarantor indemnifies the Security Trustee against:
- (a) any loss sustained by the Security Trustee as a result of the amount purchased by the Security Trustee in the second currency pursuant to clause 7.2 being less than the amount due; and
  - (b) all costs and expenses incurred by the Security Trustee in purchasing the second currency.

## 8. DEFAULT INTEREST

- 8.1 **Default interest payable:** If a Guarantor fails to pay any Guaranteed Money when due ("**overdue amount**"), that Guarantor shall pay interest ("**default interest**") on that overdue amount from its due date until it is paid in full (both before and after any judgment) at the rate per annum determined by the Security Trustee to be equal to the aggregate of 5% per annum and the cost to the relevant Guaranteed Creditor of funding the overdue amount, as advised by the relevant Guaranteed Creditor to the Security Trustee and by the Security Trustee to the relevant Guarantor.
- 8.2 **Calculation of default interest:** Default interest shall be calculated and payable by reference to successive periods of a duration selected by the Security Trustee from time to time (or in the absence of such selection, a period of one month), each of which (other than the first, which shall begin on and include the due date) shall begin on the last day of the previous period, and shall be payable on the last day of each period in respect of which it is calculated and on the date of payment of each overdue amount. Any default interest which is not paid when due shall be added to the overdue amount in respect of which it is payable and shall itself bear interest in accordance with this clause 8.
- 8.3 **Credit to be given:** In calculating the amount of any default interest under this clause 8, credit shall be given, to the extent necessary to avoid any double counting, for any interest payable by the Principal Debtor in the nature of default interest which is included in the Principal Debt.

## 9. REPRESENTATIONS AND ACKNOWLEDGEMENTS

- 9.1 **Representations:** Each Guarantor represents and warrants to the Security Trustee in relation to itself that:
- (a) **Status:** it is either a territorial authority or regional council named as a local authority in Schedule 2 to the Act;
  - (b) **Power:** it has the power generally to enter into, exercise its rights and perform and comply with its obligations under this deed and the other Transaction Documents to which it is a party;
  - (c) **Authorisations:** it has taken all necessary action required on its part to authorise the entry into, execution and delivery of this deed and the other Transaction Documents to which it is a party and the performance of all obligations expressed to be binding on it;
  - (d) **Obligations legally binding:** its obligations under this deed and the other Transaction Documents to which it is a party constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to laws affecting creditors' rights generally and (as to enforceability) to equitable principles of general application);
  - (e) **No conflict:** neither the entry by it into, nor the performance by it of, this deed and the other Transaction Documents to which it is a party will:

- (i) conflict with or result in a breach of, any agreement, document, arrangement, obligation or duty to which it is a party or by which it or any of its assets may be bound; or
  - (ii) violate or contravene any law to which it is subject;
- (f) **Protected transaction:** for the purposes of section 117 of the Act, the entry by the Guarantor into, and the performance by the Guarantor of, this deed and the other Transaction Documents to which it is a party:
- (i) is in compliance with the Act;
  - (ii) is not contrary to any provision of the Act;
  - (iii) is within the capacity, rights and powers of the Guarantor; and
  - (iv) is for a purpose authorised by either the Act or another Act,

provided that the Security Trustee acknowledges that section 117 of the Act does not apply to any CCO Guarantee given by the Guarantor in respect of a CCO Issuer; and

- (g) **Ranking of obligations:** its obligations under this deed are secured by the Debenture Trust Deed and rank, and will at all times rank, rateably and at least equally in right and priority of payment with all other first ranking secured money under the Debenture Trust Deed.

9.2 **Repetition:** Each Guarantor shall be deemed to repeat the representations and warranties in clause 9.1 on the first day of each month during the term of this deed by reference to the facts and circumstances then existing, until that Guarantor is released in full from its obligations under this deed.

9.3 **Acknowledgements:** Each Guarantor acknowledges:

- (a) for the benefit of the Security Trustee and each other Guaranteed Creditor, in entering into this deed, that it did not rely on any statement, representation, warranty or information of any nature provided to it by or on behalf of any person (including the Security Trustee, any other Guaranteed Creditor, the Principal Debtor or any other Guarantor);
- (b) that the Security Trustee is not under any duty to disclose information to a Guarantor, or to do or execute anything, relating to the affairs of the Principal Debtor with the Security Trustee; and
- (c) that the Security Trustee may disclose any information which the Security Trustee may have concerning a Guarantor to a potential assignee or any other person with whom the Security Trustee may wish to enter into contractual relations in connection with any Principal Debt.

## 10. ATTORNEY

10.1 Each Guarantor irrevocably appoints the Security Trustee and every officer of the Security Trustee, individually, to be the attorney of that Guarantor ("**Attorney**") (with full power to

delegate the Attorney's powers to any person for any period and to revoke any such delegation) to, on behalf of that Guarantor, do anything which, in the Attorney's opinion, is desirable to protect the Security Trustee's or any other Guaranteed Creditor's interests under this deed, and each Guarantor hereby ratifies anything done by the Attorney or any delegate in accordance with this clause.

## 11. LIABILITY NOT PREJUDICED

11.1 **Liability not prejudiced:** Neither the liability of any Guarantor, nor any of the rights of the Security Trustee, under this deed shall be affected or discharged by anything which, but for this clause 11.1, might operate to affect or discharge the liability of, or otherwise provide a defence to, that Guarantor (whether or not known to that Guarantor, the Security Trustee or any other person), including:

- (a) any limitation or incapacity of, or affecting, the Principal Debtor, the Security Trustee or any other Guaranteed Creditor;
- (b) the granting of any time, credit, indulgence or other concession, to the Principal Debtor or any other person by the Security Trustee or any other Guaranteed Creditor;
- (c) any amendment to, or variation of, this deed or any other document, or the Principal Debtor or a Guarantor not receiving notice of any such amendment or variation;
- (d) any other person joining in this deed or giving any other security, or failing or being incompetent to join in this deed or give any other security, or failing to become legally bound to the Security Trustee as intended under any such security;
- (e) the liability of the Principal Debtor or any other person to a Guaranteed Creditor in respect of any of the Principal Debt ceasing from any cause whatever (including release or discharge by a Guaranteed Creditor or the Security Trustee), or any other person failing to become legally bound to a Guaranteed Creditor or the Security Trustee as intended or to perform any of their respective obligations to a Guaranteed Creditor or the Security Trustee;
- (f) failure by the Principal Debtor or any other person to provide any security which has been requested by the Security Trustee or any other person;
- (g) any security held or taken in respect of, or any transaction relating to, any Principal Debt being void, voidable, unenforceable, defective or informal, or being released, partially released, discharged, partially discharged or varied in any way;
- (h) any compounding, compromise, release, abandonment, waiver, variation, relinquishment or renewal, of any agreements, securities, documents of title or assets, or any of the rights of the Guaranteed Creditors or the Security Trustee against the Principal Debtor or any other person;
- (i) the enforcement of, or failure to enforce, any rights of the Security Trustee or any other Guaranteed Creditors under this deed or any other document, or under any law;



- (j) the dissolution of the Principal Debtor or any other person, or the appointment of any receiver, receiver and manager, statutory manager, voluntary administrator, or similar person, or the establishment of any compromise, deed of company arrangement or other arrangement, in respect of the Principal Debtor or any other person;
- (k) the amalgamation, change in constitution, status or control, or reconstruction or reorganisation, of the Principal Debtor, the Security Trustee, any other Guaranteed Creditor or any other person;
- (l) any failure by the Security Trustee or any other Guaranteed Creditor to present, demand, or give notice in respect of, any negotiable instrument;
- (m) the making or granting by a Guaranteed Creditor (whether alone or together with any other person) to, or at the request of, the Principal Debtor (whether alone or together with any other person) of further advances or accommodation or the withdrawal or restriction by a Guaranteed Creditor of any advances or accommodation, or a Guarantor not receiving notice of any such making, granting, withdrawal or restriction;
- (n) any variation to the terms of, or replacement or rearrangement of, any advance made, or accommodation granted, by a Guaranteed Creditor (whether alone or together with any other person) to, or at the request of, the Principal Debtor (whether alone or together with any other person), or a Guarantor not receiving notice of any such variation, replacement or rearrangement;
- (o) the powers of any person purporting to act on behalf of the Principal Debtor in relation to the incurring of any Principal Debt proving to be defective in any respect;
- (p) anything done, or omitted or neglected to be done, by the Security Trustee or any other Guaranteed Creditor, whether in exercise of the rights, powers and remedies vested in the Security Trustee or any other Guaranteed Creditor by this deed or any other document, or otherwise;
- (q) the Principal Debtor or a Guarantor not receiving notice of any Local Authority becoming an Additional Guarantor or of any release under this deed (including, the Principal Debtor or a Guarantor not receiving a copy of any Further Principal Debt Release or Full Release in accordance with clause 15.1 or 15.2); or
- (r) any other matter or thing whatsoever, other than a release of this deed under clause 15.3 (or, as applicable, a Guarantor ceasing to be a Guarantor in accordance with clause 15.2).

## 12. CHANGES TO THE PARTIES

12.1 **Deed binding:** This deed is binding on, and is for the benefit of, the parties and their respective successors, permitted assigns and transferees.

12.2 **Guarantor may not assign:** No Guarantor may assign or transfer any of its rights or obligations under this deed without the prior written consent of the Security Trustee.

12.3 **Security Trustee may assign:** The Security Trustee may assign and transfer its rights and obligations under this deed to any successor security trustee appointed in accordance with the Security Trust Deed without the consent of any Guarantor. Any such successor security trustee is to have the same rights against the Guarantors under this deed as if named in this deed as the Security Trustee.

12.4 **Additional Guarantors:**

- (a) A Local Authority:
- (i) who is to become a holder of ordinary shares in the Principal Debtor;
  - (ii) who is to become an Issuer under the Multi-issuer Deed; or
  - (iii) who is an existing Issuer under the Multi-issuer Deed and is required to accede to this deed as an Additional Guarantor,
- may become an Additional Guarantor if:
- (iv) the Local Authority has delivered to the Security Trustee a duly completed and executed Guarantor Accession Deed; and
  - (v) the Security Trustee has received all of the documents and other evidence listed in schedule 2 in relation to that Local Authority, each in form and substance satisfactory to the Security Trustee.
- (b) The Security Trustee shall notify the relevant Local Authority and the Principal Debtor (who shall notify each other Guarantor) promptly upon being satisfied that it has received (in form and substance satisfactory to it) all the documents and other evidence listed in schedule 2.

13. **NOTICES**

13.1 **Writing:** Each notice or other communication to be given or made by a party under this deed shall:

- (a) **Writing:** be given or made in writing by facsimile, email or letter and be signed by the sender or an authorised officer of the sender;
- (b) **Address:** be given or made to that party at the address, email address or facsimile number, and marked for the attention of the person (if any), from time to time designated by that party to the other for the purposes of this deed;
- (c) **Deemed delivery:** not be effective until received by that party, and any such notice or communication shall be deemed to be received by that party:
  - (i) (if given or made by letter) when left at the address of that party or five Business Days after being put in the post, postage prepaid, and addressed to that party at that address;
  - (ii) (if given or made by facsimile) upon production of a transmission report by the machine from which the facsimile was sent which indicates that

the facsimile was sent in its entirety to the facsimile number of the recipient; or

- (iii) (if given or made by email) when dispatched in tangible, readable form by the sender to the email address advised by the recipient from time to time,

provided that any notice or communication received or deemed received after 5 pm on a working day in the place to which it is sent, or on a day which is not a working day in that place, will be deemed not to have been received until the next working day in that place.

13.2 **Initial address and numbers:** The initial address, facsimile number and contact person (if any) designated by:

- (a) each Initial Guarantor, are set out next to the name of that Initial Guarantor in Schedule 1; and
- (b) the Security Trustee, are set out under its execution block in this deed.

## 14. COSTS

14.1 **Costs:** The Guarantors shall pay to the Security Trustee upon Demand all of the Security Trustee's costs, losses and liabilities on a full indemnity basis (including legal expenses on a full indemnity basis and goods and services and similar taxes thereon) incurred or sustained by the Security Trustee in connection with:

- (a) the negotiation, preparation, signing, administration and release of this deed;
- (b) the exercise, enforcement or preservation, or attempted or contemplated exercise, enforcement or preservation, of any right under this deed, or in suing for or recovering any Guaranteed Money; and
- (c) the consideration and/or granting of any waiver or consent under, or the consideration and/or giving of any variation or release of, this deed.

14.2 **Stamp duty and taxes:** The Guarantors shall pay all stamp, documentary, transaction, registration and other like duties and taxes (including fines, interest and penalties), if any, which may be payable or determined to be payable in connection with the signing, delivery, registration, performance, exercise of any right under, or enforcement or variation of, this deed, and each Guarantor shall indemnify the Security Trustee upon Demand against all liabilities with respect to, or resulting from, any delay or omission to pay any such duties or taxes.

## 15. RELEASE AND REINSTATEMENT

15.1 **Release of a Guarantor in respect of further Principal Debt:**

- (a) A Guarantor may request to be released from all liability under this deed for or in relation to further Principal Debt to be incurred by the Principal Debtor, by delivering to the Security Trustee a duly completed Further Principal Debt Release Request.

- (b) A Guarantor may not deliver a Further Principal Debt Release Request unless:
- (i) that Guarantor:
    - (aa) is not a holder of ordinary shares in the Principal Debtor; or
    - (bb) has given a valid Sale Notice in accordance with the Shareholders' Agreement in respect of all of its ordinary shares in the Principal Debtor, and was in accordance with clause 10.6 of the Shareholders' Agreement permitted to transfer such shares within the period referred to in that clause, but despite its commercially reasonable endeavours to do so, was unable to effect such a transfer in that period; and
  - (ii) all amounts which may be or become payable by that Guarantor and, where the Guarantor is a CCO Shareholder, the relevant CCO Issuer(s) to the Principal Debtor under or in connection with the Multi-issuer Deed and the Securities issued by it and the relevant CCO Issuer(s) (if any) have been irrevocably paid in full.
- (c) Where a Guarantor has delivered a Further Principal Debt Release Request in accordance with this clause 15, provided that all amounts which may be or become payable by that Guarantor and, where the Guarantor is a CCO Shareholder, the relevant CCO Issuer(s) to the Principal Debtor under or in connection with any financial indebtedness of the Guarantor or relevant CCO Issuer(s) owed to the Subscriber have been irrevocably paid in full, any arrangements for the provision of debt funding to the Guarantor and (if applicable) relevant CCO Issuer(s) by the Subscriber are immediately and irrevocably cancelled.
- (d) The Guarantor shall provide evidence of the satisfaction of the conditions in sub-paragraphs (b)(i) and (b)(ii) by delivering to the Security Trustee:
- (i) in relation to the condition in sub-paragraph (b)(i) either:
    - (aa) a certified copy of the share register of the Principal Debtor showing that the Guarantor is not a holder of ordinary shares in the Principal Debtor; or
    - (bb) written confirmation signed by a director of the Principal Debtor that the condition at sub-paragraph (b)(i)(bb) has been met,

(and the Principal Debtor agrees to provide the documents described above upon receiving reasonable notice from the Guarantor and provided the condition in sub-paragraph (b)(i) has been satisfied); and
  - (ii) in relation to the condition in sub-paragraph (b)(ii), written confirmation signed by a director of the Principal Debtor that the condition has been met.
- (e) The Security Trustee must accept a duly completed Further Principal Debt Release Request if it is satisfied (acting reasonably) that the conditions set out in sub-paragraphs (d)(i) and (d)(ii) have been met.

- (f) The Security Trustee shall notify the relevant Guarantor of its acceptance of the Further Principal Debt Release Request by delivering a Further Principal Debt Release to the relevant Guarantor and a copy to the Principal Debtor (who shall notify each other Guarantor).
- (g) From the date of the Further Principal Debt Release (for a Guarantor, the "**Further Principal Debt Release Date**"), the relevant Guarantor:
  - (i) shall be released from all liability under this deed in respect of all Principal Debt for which the Principal Debtor becomes actually or contingently liable after the Further Principal Debt Release Date; and
  - (ii) shall continue to be liable under this deed in respect of all Principal Debt for which the Principal Debtor is actually or contingently liable as at the Further Principal Debt Release Date (including, for the avoidance of doubt, any amounts actually or contingently payable under any swap transactions entered into by the Principal Debtor on or prior to the Further Principal Debt Release Date),

and the "Guaranteed Money" of that Guarantor shall be construed accordingly.
- (h) Notwithstanding any provision of this deed to the contrary, a Guarantor that has received a Further Principal Debt Release under this clause 15.1 shall have no liability under clauses 2.1, 2.3, 3.1, 7.3 and 14 for any amounts whatsoever relating to or otherwise in respect of Principal Debt for which the Principal Debtor becomes actually or contingently liable after the Further Principal Debt Release Date relating to that Guarantor (and the "Guaranteed Money" of that Guarantor shall be construed accordingly).

**15.2 Full release of a Guarantor:**

- (a) Where the Security Trustee has delivered a Further Principal Debt Release to a Guarantor, that Guarantor may, at any time after the date of the Further Principal Debt Release, request to be released from all liability under this deed by delivering to the Security Trustee a duly completed Full Release Request attaching written confirmation from the Principal Debtor (signed by a director of the Principal Debtor) that all Principal Debt for which that Guarantor was liable under this deed has been irrevocably paid in full.
- (b) The Security Trustee shall accept a duly completed Full Release Request complying with the requirements of paragraph (a) by delivering a Full Release to that Guarantor and a copy to the Principal Debtor (who shall notify each other Guarantor) as soon as is reasonably practicable following receipt of the Full Release Request.
- (c) On and from the date of the Full Release, the relevant Guarantor shall be released from all liability under this deed.

**15.3 Release of other Guarantors:** Subject to clauses 15.1 and 15.2, the Security Trustee shall not be obliged to sign or deliver a release of this deed unless the Security Trustee is satisfied that:

- (a) the Security Trustee has received all the Guaranteed Money; and

- (b) no payment received, or to be received, by the Security Trustee may be avoided, or required to be repaid by the Security Trustee, whether under any law relating to insolvency or otherwise.

15.4 **Reinstatement:** If any payment received or recovered by the Security Trustee, or any other person on behalf of the Security Trustee, is or may be avoided, whether by law or otherwise, then:

- (a) such payment shall be deemed not to have affected or discharged the liability of a Guarantor under this deed or any other security given by a Guarantor in favour of the Security Trustee, and the Security Trustee and each Guarantor shall be restored to the position in which each would have been if such payment had not been received or recovered; and
- (b) the Security Trustee shall be entitled to exercise all its rights under this deed which it would have been entitled to exercise if such payment had not been received or recovered,

notwithstanding that the Security Trustee may have signed a release pursuant to this clause 15.

## 16. MISCELLANEOUS

16.1 **Partial invalidity:** If at any time any provision of this deed is or becomes illegal, invalid or unenforceable in any respect under the law of any relevant jurisdiction, that illegality, invalidity or unenforceability shall not affect the enforceability of the remaining provisions of this deed, nor shall the legality, validity or enforceability of any provision under the law of any other jurisdiction be in any way affected or impaired thereby.

16.2 **No implied waivers:** Time shall be of the essence in respect of performance by a Guarantor of its obligations under this deed, but no failure on the part of the Security Trustee or any other Guaranteed Creditor to exercise, and no delay on its part in exercising, any right, power or remedy under this deed or any other document relating to any Principal Debt shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

16.3 **Remedies cumulative:** The rights, powers and remedies provided in this deed are in addition to, and not exclusive of, any rights, powers or remedies provided by law.

16.4 **Consents:** The Security Trustee may give or withhold any approval or consent under this deed in its absolute discretion, and either conditionally or unconditionally.

16.5 **Enforcement:** It shall not be necessary for the Security Trustee to incur any expense or make any payment before enforcing any of the Security Trustee's rights in respect of any obligation of any Guarantor under this deed.

16.6 **Payments on Demand:**

- (a) For the avoidance of doubt, all amounts payable to the Security Trustee under this deed (including all costs and all amounts payable under any indemnity) shall be payable by the relevant Guarantor upon Demand being made on that Guarantor in

accordance with the terms of clause 3.4, and form part of the Guaranteed Money of that Guarantor.

- (b) Each Demand shall be in writing, may be made by facsimile, email or letter, signed by the Security Trustee or an authorised officer of the Security Trustee and must be received in legible form by the relevant Guarantor at the address, email address or facsimile number, and marked for the attention of the person (if any), from time to time designated by that Guarantor to the Security Trustee for the purposes of this deed.
- 16.7 **Separate obligations:** Each of the obligations of the Guarantors under the indemnity given in clause 2.3, and under clauses 3.7, 6, 7, 8 and 14, constitute continuing obligations, separate and independent from each of the Guarantors' other obligations under this deed and shall survive payment of the Principal Debt and termination or release of this deed, provided that, the obligations of the Guarantors under clauses 2.3 and 14 are each subject to clauses 3.4 and 3.5.
- 16.8 **Certificates:** A certificate of the Security Trustee as to any amount or fact which might reasonably be expected to be within the Security Trustee's knowledge shall be prima facie evidence of such amount or fact.
- 16.9 **Annual Rates Income:**
- (a) Each Guarantor shall deliver to the Security Trustee each annual report completed and adopted by it in accordance with sections 98 and 99 of the Act no later than five months after the end of each of its financial years.
- (b) Each Guarantor shall, upon request (in writing) from the Security Trustee, provide the Security Trustee with any such completed and adopted annual report sooner than the five month period referred to in this clause if the Security Trustee advises that it is required for the purposes of clause 3.4.
- (c) Each Guarantor shall include its Annual Rates Income for the relevant financial year in the audited financial statements (or notes thereto) included in each annual report referred to in this clause 16.9, as a separate identifiable amount.
- (d) In the event of any dispute or uncertainty as to the Annual Rates Income of a Guarantor, the Security Trustee shall determine the amount of that Annual Rates Income, and provided the Security Trustee acts in good faith, that determination shall be binding on all the parties.
- 16.10 **Obligations of Guarantors:** This deed binds each of the Guarantors which has executed it (or which has become party to this deed by executing a Guarantor Accession Deed) even though one or more of the named Guarantors may never execute this deed.
- 16.11 **Disclosure by Security Trustee:** Each Guarantor consents to and authorises the Security Trustee to provide any Guaranteed Creditor with information concerning its affairs, financial condition or business which comes into the possession of the Security Trustee from time to time.
- 16.12 **Offer documents:** Each Guarantor undertakes that:
- (a) it will promptly:

- (i) and in any event within 15 Business Days following receipt of a request from the Principal Debtor, provide the Principal Debtor with all information in relation to itself which the Principal Debtor reasonably requests for the purposes of preparing an offering document. The information provided by the Guarantor under this sub-paragraph (a)(i) and paragraph (b) being, "**Disclosure Information**"; and
  - (ii) and in any event within 10 Business Days following receipt of a draft offering document from the Principal Debtor, (acting reasonably and in writing) approve, or provide suggested amendments to, statements in the draft offering document relating to the Guarantor, as identified in writing by the Principal Debtor when providing the draft offering document to the Guarantor ("**Verified Statements**"). Nothing in this clause 16.12 entitles the Guarantor to suggest amendments to any statement in a draft offering document other than those which relate to itself; and
- (b) if it becomes aware of any event having occurred as a result of which any Verified Statement or Disclosure Information would:
- (i) be false or misleading, or likely to mislead;
  - (ii) not be true and accurate in all material respects; or
  - (iii) omit any fact in relation to the Guarantor the omission of which would make misleading in any material respect any Verified Statement or Disclosure Information,

it will promptly notify the Principal Debtor and provide the Principal Debtor with any information required by the Principal Debtor in order to amend or supplement the Offering Document within 10 Business Days of receipt of a request from the Principal Debtor. The provisions of sub-paragraph (a)(ii) shall apply to any draft amendment or supplement to any Offering Document as if such document was a "draft offering document", provided that the timeframe in sub-paragraph (a)(ii) shall be deemed to be 5 Business Days.

16.13 **Contract and Commercial Law Act:** For the purposes of the Contract and Commercial Law Act 2017 the provisions of clause 16.12 are intended to confer a benefit upon the Principal Debtor and to be enforceable by the Principal Debtor directly.

## 17. COUNTERPARTS

17.1 **Counterparts:** This deed may be signed in any number of counterparts, all of which will together constitute one and the same instrument, and any of the parties may execute this deed by signing any such counterpart.

## 18. GOVERNING LAW AND JURISDICTION

18.1 **Governing law:** This deed shall be governed by, and construed in accordance with, the laws of New Zealand, and the parties hereby submit to the non-exclusive jurisdiction of the courts of New Zealand.



**19. NO CROWN GUARANTEE**

- 19.1 The parties acknowledge that the obligations and liabilities of the Principal Debtor under this deed are not guaranteed by the Crown.