

DEED of GUARANTEE

**Guarantor(s)' full names – as set out in or above the disclosure statement**

**Name of Guarantor: XXXXX**

**Name of Lender: Blue Star Finance Limited** (“the lender”)

You the guarantor have asked the lender to lend money to the borrower. The money to be lent is the initial unpaid balance referred to in the disclosure section of the attached loan agreement (“the loan agreement”) and any other money the lender lends to the borrower under the loan agreement. You wish the lender to lend to the borrower upon the terms contained in the loan agreement. Now in exchange for the lender lending to the borrower the initial unpaid balance and any subsequent advances you agree with the lender as follows:

**1 Meaning.** In this guarantee words and expressions have the same meaning as they have in the loan agreement. However: “Anyone else “means another borrower under the loan agreement and another guarantor of the borrower’s obligations under the loan agreement or one or more of them. “Disclosure statement” means the disclosure statement in the loan agreement. “Default” means that the guarantor you fail to do something you must do or that you do something you must not do. “Guaranteed money” means the unpaid balance under the loan agreement. “Due and payable” means “must be paid now”.

**2 Words of example or inclusion are not words of limitation or exclusion.** In this agreement we sometimes give an example of how a rule or statement may apply or an example of a possible meaning of a word. Our giving of that example does not mean that the rule or statement or word has to be interpreted or explained in the same manner as is the example. If we say a word includes a meaning, that word may have other meanings as well.

**3 Guarantee.** In exchange for the lender agreeing to make the loan, you guarantee that the borrower will:

- a. pay all amounts due under the loan agreement when they are due and payable and
- b. do everything the borrower must do
- c. refrain from doing what the borrower must not do

**4 If the borrower does not pay then you must do so.** If the borrower does not pay any amount when it is due and payable the lender may demand some or all of that amount from you and you must pay it immediately. If you do not pay the amount demanded the lender may sue you for the money or may enforce any security interest which you have given to the lender. For example, if you have given a security interest in a motor vehicle the lender may repossess the motor vehicle and sell it to help to pay the debt. If you have given a mortgage over a house, the lender may sell the house.

**5 You are deemed to be principal debtor.** You are also liable under this guarantee as if you are the principal debtor and the rules that operate between the lender and borrower as set out in the loan agreement apply to you as if you were the borrower. In addition to your obligations as the guarantor, you agree to do what the borrower must do as if you were the borrower. The lender may demand the guaranteed money from you when it is due and payable even if it does not demand that money from the borrower. You are not excused from paying any amount or from doing anything even if something happens which otherwise might release you from your obligation as a guarantor or might limit that obligation. For example your obligation is not changed and you must still pay if:

- a. the lender does not enforce, or delays enforcement of, any right or power against you or anyone else

- b. the lender releases or partly releases anyone else from obligations under the loan agreement or a guarantee (including this guarantee) or releases or discharges any security interest granted by anyone else.
- c. anyone else becomes bankrupt or becomes subject to any arrangement under the Insolvency Act 2006 whereby they do not have to pay some or all of the guaranteed sum
- d. the lender does not obtain a security interest over property from anyone else or anything occurs which makes any security interest from anyone else less effective or ineffective
- e. the lender varies or changes any security interest
- f. The lender allows anyone else more time to pay or gives a waiver or a concession to anyone else
- g. anyone else does not sign the loan agreement or any guarantee or is not liable under either of them for any reason

**6 Your liability is joint and several with any other guarantor.** You must personally

- a. pay the guaranteed amount to the lender upon demand and
  - b. do everything this guarantee requires and
  - c. not do anything that this guarantee forbids
- even if another guarantor signs this guarantee or signs another guarantee of the borrower's obligations. The lender does not have to claim or demand from anyone else but the lender may do so. It may claim against you on your own or against all guarantors and borrowers. You are liable on your own and also jointly liable with any other guarantor under this guarantee. The lender does not have to sell collateral before it requires you to pay.

**7 Rights of Subrogation Indemnity and Contribution limited.** If you pay the lender any money under this guarantee you must not claim any part of that money

- a. from a borrower or
  - b. from a borrower's estate if he is dead or
  - c. From the Official Assignee if he is bankrupt
  - d. from another guarantor
  - e. from another guarantor's estate if he is dead or
  - f. from the Official Assignee if the other guarantor is bankrupt or from the liquidator if the other guarantor is a company in liquidation.
- until the lender has received payment of the guaranteed money in full and all the borrower's obligations under the loan agreement have been performed. The lender must be paid in full before you may claim back from a borrower or another guarantor any money you have paid to the lender.

**8 This guarantee may be enforced by an assignee.** The lender may give or assign its rights under the loan agreement and this guarantee to somebody else ("assignee"). If the lender does so, this guarantee (including the power of attorney) will apply to the assignee as if the assignee were the lender. The assignee may enforce this guarantee against you.

**9 You must pay the lender without deduction or withholding.**

- a. You must make all payments without any deduction or withholding for any purpose whether by way of set-off counter-claim or otherwise and in such manner as we require.
- b. That means if you believe we owe you a debt of money or if you have any sort of claim against us, you must not take off
  - (i) any part of that debt or
  - (ii) any of the amount you claim we owe you
 from your payment of any instalment or other amount under this agreement.

**10 You must pay the lender if an earlier payment is set aside.** If the borrower or another guarantor pays any amount due to the lender and the lender has to pay it back or refund it, then you must pay to the lender that paid back or refunded money. For example, the lender might have to repay money if the borrower goes bankrupt after making a payment or if the borrower uses someone

else's money to pay the lender. The lender may recover the repaid money from you. You must pay the lender even if you believe that the lender should have tried to avoid paying the money back or disputed payment in some way.

**11 You grant security interest in collateral.** If you own any collateral (see paragraph 46 **"Meaning"**) then this paragraph 11 also applies to you.

- a. You grant to the lender a security interest over that collateral. That means your goods (such as a motor car) and other property shown as collateral are security for payment of the guaranteed sum.
- b. The security interest is to secure payment to the lender of the guaranteed money and also to secure your performance of all other terms of this guarantee. For example if you default in paying the guaranteed sum when the lender demands it, the lender may seize certain collateral (for example, repossess your goods) and sell it to pay the guaranteed sum. See paragraph 13 of this guarantee.
- c. If you default the lender may also apply to the Court for an order that any or all of your collateral be repossessed and sold
- d. The collateral may be all your present and after acquired personal property (excluding a limited number of consumer goods).
- e. You promise to the lender that nobody else has the right to repossess and sell the collateral and nobody else owns it unless you have told the lender.
- f. In addition to paragraph 5 of this guarantee the provisions of the loan agreement relating to or in connection with security over collateral shall apply to the security interest granted by the guarantor.

**12 Agreement to mortgage land.** If you own any land described in the **"WHAT COULD HAPPEN IF YOU FAIL TO MEET YOUR COMMITMENTS" Real Property** section of the disclosure statement this paragraph 12 applies to you

- a. You must sign in favour of the lender and at the cost of the borrowers a registerable mortgage over that land.
- b. **If you default the lender may sell your land.** The mortgage of the land is to secure payment to the lender of the guaranteed money and also to secure the performance of all other terms of this agreement and of any associated loan agreement. If you do not pay the guaranteed sum when the lender demands it or you fail to do other things you must do under this guarantee, the lender may sell the land to pay the guaranteed sum.
- c. The mortgage shall be in an all obligations form published by the Auckland District Law Society Incorporated so as to incorporate memorandum number 2015/4326 or, at the lender's option, any form to the same or similar effect required by the lender. The terms of that memorandum shall be incorporated into this guarantee. That means that the mortgage we use is one which is commonly used by lawyers in New Zealand and the obligations are standard so that it is a security for all of your obligations to the lender.
- d. The priority figure for the purposes of section 92(1) of the Property Law Act 2007 shall be (a) twice the total amount of payments shown in the PAYMENTS section of the disclosure statement plus interest or (b) twice the total advances plus \$50,000 plus interest whichever is the greater. If you grant a mortgage to someone else after the lender registers its mortgage, the lender's mortgage will have priority over that later mortgage up to the larger amount of (a) and (b).
- e. You charge your land as set out in this paragraph 12

**13 The Lender may repossess personal property on default.** If you default under this guarantee:

- a. Subject to any requirement to give you notice, the lender may repossess your collateral excluding consumer goods which are not identified by item and kind unless those consumer goods are replacements for specifically identified consumer goods, or are accessions to specifically identified consumer goods which you have attached to the security interest. When it has that right:

- (i) The lender's agents (employees and contractors) may enter any premises to look for and repossess collateral. The agents may break into a building or enclosure where the lender may reasonably believe collateral may be even if you are not present.
- (ii) The lender may move or use your goods to gain access to or remove collateral;
- (iii) If your property is damaged when the lender repossesses or tries to repossess goods, the lender does not have to pay you compensation.
- (iv) If the property of someone else is damaged when the lender repossesses or tries to repossess goods, the lender does not have to pay you compensation and if the lender must pay that person, it may recover that compensation from you. For example if you hide collateral goods in a building and lender breaks down a door to find them and to repossess them you must pay the cost of any repair of the door, even if the door belongs to someone else.
- (v) The lender may sell the collateral by auction or by private sale or otherwise. Subject to any law, the lender may buy in, give credit and allow payment over time as if the lender were the owner and nobody else had any rights.
- (vi) You must do everything necessary to help with the sale and that includes signing any documents needed or desirable.
  - b. On sale by the lender:
    - (i) Any buyer of the collateral need show only the receipt of the lender or its agent to prove he has paid the sale price and
    - (ii) The buyer need not investigate or question the propriety or regularity of the sale to the buyer and the buyer is not to be affected by any notice express or constructive that such sale is improper or irregular. This means that the buyer is not affected if he learns anything about the sale process or the lender's right to sell.
    - (iii) If the collateral is not consumer goods, the lender is not obliged to account for the proceeds of sale of the collateral and until it has received the proceeds.

**14 You give the lender your power of attorney.** So that the lender more effectively to obtain the benefits under this guarantee, you irrevocably appoint the lender and any one manager or director of the lender severally to be the your attorney so that:

- a. The attorney may do anything which you agree to do and
- b. The attorney may do anything and to sign any document which the attorney thinks helpful to ensure the lender is paid the guaranteed money and otherwise to protect the interests of the lender under this guarantee. For example, the attorney may sign any document on your behalf so as to:
  - (i) grant and register a mortgage under the Land Transfer Act 1952, if you have agreed to mortgage land or
  - (ii) transfer ownership of or take or transfer possession of negotiable instruments, of chattel paper, of negotiable documents of title and of investment securities and the attorney may request and obtain from any share registry, custodial service, securities depository or clearing house any shareholder number (including a common shareholder number) Faster Identification Number or other number allocated to you and necessary for dealing with company shares and (by way of example) may sign any request to cancel FIN numbers as security for a loan.
- c. The attorney may operate and draw on any bank account.
- d. This power of attorney shall continue in effect until the guaranteed money has been paid to the lender in full and continues after judgement. That means the lender may continue to sign on your behalf until all the guaranteed money is paid even if the lender has judgment against you.
- e. You ratify anything done by an attorney under this power. In advance you confirm everything that the attorney does.
- f. You further indemnify any person acting in reliance upon the power. If somebody makes a claim against an attorney over something the attorney does as your attorney, you must compensate the attorney for the amount of that claim.

**15 You must compensate the lender if it receives from someone else which it has to repay.** If

- a. Somebody other than you pays any amount due under this guarantee and

- b. That other person becomes bankrupt or goes into liquidation and
- c. The Official Assignee ("OA") cancels the payment as an insolvent transaction under Section 194 of the Insolvency Act 2006 or the liquidator sets aside the payment as an insolvent transaction under Section 292 of the Companies Act 1993 or the transaction is otherwise set aside as a voidable preference, then

We may repay that sum to the OA or to the liquidator and upon demand you must pay us that sum plus interest from the date we pay the OA or the liquidator. You must pay us even if you believe we should have tried to avoid paying the money back or disputed payment in some way. This means that, for example,

- d. if another guarantor pays us or
- e. if you arrange a friend to make payments to us on your behalf and the other guarantor becomes bankrupt or your friend goes bankrupt, the OA may claim back from us the payment the guarantor or your friend has made going back for up to 2 years before the bankruptcy. If that happens, we will be able to recover the total amount of those payments from you. We do not have to argue with the OA about whether or not we should repay the money. Similar rules will apply if a company pays on your behalf and the company then goes into liquidation.

**16 Some parts of the PPSA do not apply and you waive your right to a verification statement.**

You waive your right to receive a verification statement following registration of any security interest. Further, if any of the collateral is not consumer goods, none of sections 133 or 134 of the PPSA will apply to any dealings with that collateral and you waive any rights with respect to that collateral under sections 116, 120(2), 121, 125, 127, 129 and 131 of the PPSA. This means that:

- a. when we register our security interest against collateral, we do not need to provide you with a copy of the statement that the Personal Property Securities Registry then sends us about the registration.
- b. Also for any collateral that is not consumer goods
  - (i) we do not need to account to you after sale
  - (ii) we need not give you notice if we propose to retain collateral in settlement of the your obligations
  - (iii) you may not object to our retaining collateral in any event
  - (iv) you have no rights to compensation if we damage goods while removing an accession
  - (v) we do not have to give you notice of our intention to remove an accession
  - (vi) you may not apply to a court to postpone the removal of an accession or to determine any amount payable to us
  - (vii) you may not reinstate the security agreement before we sell the collateral.

**17 You must pay the lender's guarantor's costs of enforcement and attempted enforcement.**

If you default under this guarantee (for example if you fail to pay the guaranteed sum on demand) you must pay the lender all its actual costs of trying to recover any money or otherwise enforcing this guarantee. Costs the lender may recover are listed in the default fees set out in the disclosure statement.

**18 Powers and rights you give the lender are irrevocable** In this guarantee and in the loan agreement you

- a. give the lender a number of powers and rights and
- b. undertake obligations and
- c. agree to certain rules of procedure and
- d. give consents and authorities.

You may not change your mind and withdraw or cancel the lender's rights and powers nor cancel any obligation nor change procedures nor withdraw consents and authorities until the guaranteed sum has been paid in full and the lender has released you from the guarantee in writing.

**19 How the lender gives you documents and communicates with you** If we wish to serve any document or notice on you – if we wish to give anything to you in writing –

- a. that document or notice will be sufficiently served or given if
  - (i) it is delivered to you; or
  - (ii) it is left at your usual or last known place of residence, business or work or at an address specified for that purpose in this agreement; or
  - (iii) it is posted in a letter addressed to you by name at that place of residence or business or address; or
  - (iv) it is sent by way of an electronic communication (such as email, fax, Facebook, Skype) although we cannot give you a repossession warning notice or a post-repossession notice in this manner.
  - (v) For any disclosure in relation to this guarantee and the loan agreement we send it to you by email or provide a link to our website.
- b. If you are out of New Zealand, the notice or other document may be served on or given to your agent in New Zealand if you appoint one.
- c. If you are deceased, the notice or other document may be served on or given to your personal representatives – the people in charge of your estate when you die.
- d. If the notice or other document is sent to you —
  - (i) by post, it is to be treated as having been received on the fourth working day after the day on which the letter is posted (and in proving the delivery it is sufficient to prove that the letter was properly addressed and posted):
  - (ii) by electronic communication, it is to be treated as having been received on the second working day after the day on which the notice or document is sent.
- e. Despite anything in this paragraph 19 the court may in any case make an order directing the manner in which any notice or other document is to be served or given, or make an order dispensing with the service or giving of the notice or document. For the purposes of any court order for substituted service, you agree that notices and documents may be served on you at the last address that the lender has for you as notified by you.
- f. In addition, a document or notice will be sufficiently served or given if such document or notice is
  - (i) handed to any person in apparent occupation of any address of any of you shown in this agreement or of the property shown in this agreement as being the land to be mortgaged or
  - (ii) attached to an external door at such address.
- g. Further, if your address is a flat or apartment or room in a building and if the lender or its agents are unable to obtain access to such flat, apartment or room by virtue of the security system of the building or for some other reason, then a document or notice will be sufficiently served if it is posted at an outside letterbox corresponding to such flat, apartment or room.
- h. If there is no such letterbox, a document or notice will be sufficiently served if it is clearly addressed to you and affixed to what appears to be the principal external entry to the building for the purposes of obtaining access to the address provided by you or if such document is given to any building manager or receptionist for the building and directed to be given to you
- i. Further,
  - (i) if you have provided an email address or a facsimile number or a mobile phone number in any loan application form, or anywhere in this agreement, and
  - (ii) if you are in default and have a public address, including an internet social media address or an address at any other internet communication system (for example, Facebook or Skype), that address or number shall be an information system specified by you for the purpose of service and general communication.

The guarantor acknowledges receipt of a copy of the loan agreement including the disclosure statement and of this guarantee.

Date of Signature:-.....

GUARANTOR'S Initials.....

