

# Deed of Guarantee, Undertaking and Indemnity

## Parties

[Insert Director/Shareholder's name]

of [INSERT DIRECTOR/SHAREHOLDER'S ADDRESS] (being a director of [INSERT COMPANY]) ("the Guarantor")

and

Thornett Nominees Pty Ltd ABN 45 088 635 492

of 77 North Lake Road, Myaree, Western Australia (the "Company")

## Background

- A. [INSERT CUSTOMER NAME] ABN [ ] is a company incorporated under the laws of Australia having its principal place of office at [ ] ("Customer").
- B. The Company has contracted with the Customer pursuant to an Authorisation and Acknowledgment of Trading Conditions dated the day of 20 ("Authority") to provide services ("Services") to the Customer in accordance with the Company's standard terms and trading conditions ("Trading Conditions").
- C. The Company has agreed to provide commercial credit ("Credit") to the Customer pursuant to a Customer Credit Application dated the day of 20 ("Customer Credit Application").
- D. The Guarantor is a director/shareholder of the Customer.
- E. In support of the Customer, the Guarantor has agreed to enter into this Deed on the following terms.

## Agreed terms

1. For the purposes of this Deed, "Service Agreement" means:
  - (a) the Trading Conditions of the Company;
  - (b) the Authority;
  - (c) any Customer Credit Application with the Company; and
  - (d) any fee quotation estimate or agreement,as amended from time to time, regardless of whether the Customer or the Guarantor is given notice of any amendment.
2. In consideration of the Company providing the Credit and Services to the Customer, the Guarantor for itself and each of its successors and assigns hereby irrevocably and unconditionally:
  - (a) guarantees the due and proper performance and observance by the Customer of all of the Customer's obligations under the Service Agreement and any

future agreements which includes, without limitation, each and all sum of money, interest and damages (including liquidated damages) which the Customer may be or hereafter may become liable to pay to the Company under the Service Agreement or any future agreements or in respect of any transaction contemplated by the Service Agreement or future agreements with the Company ("**Guarantee**"); and

- (b) undertakes and agrees that in the event of any breach by the Customer of the provisions of the Service Agreement or any future agreements, and to the extent requested by the Company, to perform the obligations of the Customer under the Service Agreement or any future agreements with the Company upon the same terms and conditions ("**Undertaking**"); and
- (c) to the extent that the Guarantee may be void or unenforceable for any reason, the Guarantor for itself and each of its successors and assigns agrees to indemnify the Company and keep the Company indemnified against all expenses, losses, damages and costs (on a lawyer and own client basis and whether incurred by or awarded against the indemnified party) sustained by the Company as a result of any failure by the Customer to duly and punctually observe and perform its obligations, express or implied, in or pursuant to the Service Agreement or any future agreements with the Company ("**Indemnity**").

3. The Guarantor acknowledges and agrees:

- (a) that each of the obligations of the Guarantor under **subclauses 2(a), 2(b) and 2(c)** are separate and independent obligations and neither of them depends for their operation, enforceability or effectiveness on the existence or validity of the other obligations;
- (b) that the Guarantee, Undertaking and Indemnity provided under **subclauses 2(a), 2(b) and 2(c)** shall be a continuing Guarantee, Undertaking and Indemnity for the purpose of securing the whole of the Customers obligations to the Company in spite of any partial payments or performance thereof;
- (c) that the Guarantee, Undertaking and Indemnity are separate and distinct continuing obligations that will remain in full force and effect and cannot be terminated or cancelled (other than by notice in writing from the Company) until the Customer has observed and performed all of its obligations under the Service Agreement and/or any future agreements with the Company (as varied from time to time); and
- (d) that the Guarantee, Undertaking and Indemnity is independent of, and in addition to any other guarantees or security held, or to be held by the Company.

4. For the purpose of this Deed, where there is an inconsistency between the terms and conditions of the Service Agreement, the relevant documents shall be construed in the following order of priority:

- (a) any Customer Credit Application with the Company;
- (b) the Trading Conditions;
- (c) the Authority;
- (d) any fee quotation estimate or agreement.

5. The Guarantor shall observe and perform its obligations under **clause 2** immediately upon demand.
6. This Deed shall not be affected in any way or waived by reason of any variation to the conditions of the Service Agreement or waiver by or on behalf of the Company of any breach, failure or default whatsoever on the part of the Customer or by the insolvency of the Customer or the administration in equity or otherwise of the estate or assets in whole or in part of the Customer or the entering into any scheme of arrangement or composition with creditors by the Customer or the appointment of a liquidator, administrator, official manager, receiver or receiver and manager to the Customer.
7. Any notice by the Company to the Guarantor under this Deed shall be deemed to have been duly given or served if it is in writing signed by an Authorised Officer and is either delivered by hand or posted in a letter addressed to the Guarantor at his or her above address. For the purposes of this Deed, "**Authorised Officer**" means any officer of the Company whose title or office held includes the word "Manager" or "Chief Executive" or any person for the time being having such title or occupying or acting in any such office.
8. The Guarantor represents and warrants to the Company as follows:
  - (a) there are no actions or proceedings pending, or to the knowledge of the Guarantor threatened or affecting the Guarantor or the Customer before any court or administrative office or agency which might result in any material adverse change in the business or financial position or property of the Guarantor or the Customer which might substantially affect the ability of the Guarantor or the Customer to comply with their obligations under this Deed;
  - (b) neither the Guarantor nor the Customer is in default in any material respect under any applicable statute, decree, rule, agreement or regulation of any governmental authority having jurisdiction over the Guarantor or the Customer or under any agreement pursuant to which the Guarantor or the Customer is liable (whether as principal, obligor, guarantor or otherwise) to pay or repay moneys which the Guarantor or the Customer has borrowed or for which the Guarantor or the Customer is liable in any manner whatsoever; and
  - (c) the financial information relating to the Guarantor (if any) or the Customer furnished by the Guarantor or the Customer represents a true and fair view of the financial position of the Guarantor or the Customer and that there has been no material adverse change in such financial position since the date of this financial information was furnished by the Guarantor or the Customer.
9. In the event of the Customer's liquidation, the Guarantor undertakes not to prove in the liquidation in competition with the Company or to seek in any way to deprive the Company of or to hold the Company accountable to the Guarantor for any dividends the Company may receive or be entitled to in any such liquidation, and the Guarantor authorises the Company to prove in the said liquidation for all moneys, interest and damages (including liquidated damages) due to the Company or remaining unpaid, and no money or dividend received by the Company is to be treated as received in respect of the Guarantee or otherwise in relation to the Guarantor until the Company has received from all sources 100 cents in the dollar in respect of such moneys, interest and damages (including liquidated damages) payable by the Customer in connection with the Service Agreement.
10. The Guarantor agrees that the Company may seek from a credit reporting agency, a credit report containing personal information about the Guarantor to assess whether to

accept the Guarantor as a guarantor for credit applied for, or provided to, the Customer for the purpose of the Customer Credit Application.

11. All payments made by the Guarantor under this Deed shall be made in Australian dollars without any deduction or withholding whatsoever at the address of the Company set out in this Deed or such other address most recently notified from time to time by the Company to the Guarantor.
12. There is no need for the Company to suffer or incur any losses, costs, damages, liabilities, judgments, penalties or expenses before requiring payment from the Guarantor.
13. This Deed shall be subject to and construed in accordance with the laws of **[INSERT STATE OR TERRITORY OF THE HEAD OFFICE]** and the Guarantor agrees that this Deed is subject to the exclusive jurisdiction of the courts of **[INSERT STATE OR TERRITORY OF THE HEAD OFFICE]** which court may entertain any action in respect of or arising out of this Deed.
14. In the event of any provision under this Deed being illegal for any reason, such provision shall be severed here without affecting the remaining provisions.

**Executed as a deed on**

**2012**

**SIGNED SEALED AND DELIVERED** by  
[Name Of Guarantor] in the presence of:

Signature: .....

**Guarantor**

Signature: .....

Name: .....

PLEASE PRINT

**Witness**

Signature: .....

Name: .....

PLEASE PRINT

**Witness**