



## Guarantee & Indemnity

**Dated:** <<Date>>

**Given by:** <<Full name(s) of all guarantors>> (Guarantor)

of <<address>> <<fax number>>

**Given to:** The Hongkong and Shanghai Banking Corporation Limited, incorporated in the Hong Kong SAR, acting through its New Zealand branch (HSBC)

Of Level 9, HSBC House, One Queen Street, Auckland 1, PO Box 5947, Wellesley Street, Auckland, New Zealand, Fax (09) 368 8910, [www.hsbc.co.nz](http://www.hsbc.co.nz), incorporated in Hong Kong SAR with limited liability

**To secure monies and obligations owed (now and in the future) by:**

<<Full name(s) of person(s) whose debts are being guaranteed>> (Borrower)

### Total amount payable

<< Specify nature of guarantee. The Guarantor will usually guarantee and indemnify HSBC for all money owing by the Borrower. However, HSBC may agree to limit the Guarantor's liability and if this is the case, we will set out the limit here. >>

### Trust details

**Trust name:** << Name of trust >>

**Trust deed dated:** << Date of trust deed >>

**Independent trustee(s):** << Name of independent trustee(s) >>

### Security

The obligations provided for in this document are secured by a valid and registrable all obligations first ranking mortgage on ADLS standard mortgage form over property situated at <<address>> legally comprised in Certificate of Title << CT number >> (and any other security from time to time given for those obligations).

### IMPORTANT NOTICE

This document is an important document under which you will become liable to HSBC as well as, or instead of, the Borrower or any other guarantors. Before you sign it, you should read it carefully and obtain legal advice.

---

# Contents

	page
<b>1. How to read this document</b>	<b>4</b>
(a) Headings	4
(b) Definitions	4
(c) References	5
<b>2. The guarantee and indemnity you give HSBC</b>	<b>5</b>
(a) You guarantee that you or the Borrower will pay the Guaranteed Money	5
(b) You will ensure that HSBC does not suffer any loss if HSBC cannot recover the Guaranteed Money	5
(c) Why you are giving the Guarantee	6
<b>3. What you must pay HSBC if it calls the Guarantee</b>	<b>6</b>
(a) You must pay the Guaranteed Money	6
(b) You must also pay new interest that is not being paid by the Borrower	6
(c) How what you owe may be established	7
<b>4. For how much you are liable</b>	<b>7</b>
(a) If page 1 limits the amount payable, your liability is capped	7
(b) If page 1 does not limit the amount payable, your liability is unlimited	7
<b>5. How and when you must make payments to HSBC</b>	<b>7</b>
(a) All demanded payments are due immediately	7
(b) All payments must be full, clear, and unconditional	8
(c) All payments must be in the currency in which they are owed	8
(d) You cannot set off or counterclaim any amounts	8
(e) If the law requires you to make a deduction from a payment to HSBC, you must do so, but you must pay HSBC a top-up amount	8
<b>6. When your liability under the Guarantee ends</b>	<b>8</b>
(a) When HSBC must release you from the Guarantee	8
(b) When HSBC can agree to release you from the Guarantee	9
(c) You cannot get out of, or stop, your liability under the Guarantee in another way	9
(d) If you are released from the Guarantee, you will still have certain obligations under this document	9
<b>7. What things do not prevent or reduce your liability under the Guarantee</b>	<b>9</b>
(a) Your liability is unconditional and irrevocable	9
(b) Your liability does not end as soon as all Guaranteed Money is paid off	9
(c) There are no defences	10
(d) Your liability may revive	10
<b>8. You cannot compete against HSBC for payment or recovery</b>	<b>11</b>
(a) You cannot take security or receive payments from the Borrower or another guarantor	11
(b) If you pay HSBC, its rights as creditor do not transfer to you before the Guaranteed Money has been paid in full	11
(c) HSBC can claim amounts the Borrower owes you if the Borrower is bankrupted or placed in liquidation	12
<b>9. HSBC's powers</b>	<b>12</b>
(a) Enter into or vary arrangements	12
(b) Increase credit to Borrower	12
(c) Enforce guarantees and other security as HSBC sees fit	13
(d) Use money in your account	13
(e) Apply payments made by Borrower as HSBC sees fit	13
(f) Transfer HSBC's rights against you to somebody else	13
<b>10. Foreign currency obligations</b>	<b>13</b>
(a) Foreign currency indemnity	13
<b>11. Costs for which you are responsible</b>	<b>14</b>
(a) You must pay all costs in connection with this document and any security for it	14
(b) You must pay all HSBC's enforcement costs	14
<b>12. What you acknowledge</b>	<b>14</b>
(a) Your free, informed decision	14
(b) Security	14
<b>13. Additional terms that apply if you sign this document as a trustee</b>	<b>15</b>
(a) Trustee's warranties, undertakings, and liability	15
<b>14. More than one Guarantor</b>	<b>15</b>
(a) If more than one Guarantor signs this document, HSBC can recover the Guaranteed Money from the group from you alone	15
(b) If HSBC makes a demand on any Guarantor, that is a demand on all of you	15
<b>15. Communications between you and HSBC</b>	<b>15</b>
(a) A notice must be given in writing	15
(b) Where a notice must be sent	16
(c) When a notice is treated as received	16
<b>16. Execution of this document</b>	<b>16</b>
(a) This document can be executed in different parts	16

---

(b)	When you will be treated as having delivered this document	16
<b>17.</b>	<b>Changes to this document or to how it is applied</b>	<b>17</b>
(a)	This document can only be varied in writing signed by HSBC and you	17
(b)	Any waiver has to be in writing signed by HSBC, otherwise it is not effective	17
(c)	Any unenforceable provision will be disregarded – the rest of the document remains effective	17
<b>18.</b>	<b>Cross-border provisions</b>	<b>17</b>
(a)	New Zealand law governs this document	17
(b)	The New Zealand courts have jurisdiction	17
<b>Signatures</b>		<b>18</b>

SAMPLE

---

## 1. How to read this document

### (a) Headings

The headings in this document are there only to make it easier to locate a relevant term. They are not part of the terms of this document. They do not change the meaning or effect of the terms of this document.

### (b) Definitions

In this document, the following words have the following meanings:

**Borrower** means the person named as Borrower on page 1. If more than one person is named as Borrower, it applies to each such person individually and to all of them as a group (for example, references to money owed by "the Borrower" will include money owed by one of them, any number of them, or all of them)

**Business Day** means a day on which registered banks are generally open for business in New Zealand

**Exchange Rate** means, as at any time and in relation to any amount, the exchange rate HSBC generally uses at that time to convert a similar amount from one relevant currency into the other relevant currency (you can find out what the exchange rate is by contacting HSBC)

**Guarantee** means the guarantee and the indemnity provided for in this document

**Guaranteed Money** means all money that the Borrower at any time owes HSBC for any reason. It includes:

- (i) money owed in any currency; and
- (ii) money owed to HSBC by the Borrower alone, as well as money owed to HSBC by the Borrower together with one or more other persons; and
- (iii) money owed as principal, interest, or otherwise (for example, fees and charges); and
- (iv) money that is owed now or in the future (and whether or not currently contemplated); and
- (v) money that is actually or contingently owed (money is "contingently" owed if the Borrower has an obligation to pay HSBC only if something happens or is discovered, but it is not yet certain that that thing will happen or be discovered); and
- (vi) money the Borrower owes HSBC in the Borrower's personal capacity, as well as money the Borrower owes HSBC in any other capacity (for example, as trustee, partner, or guarantor of somebody else's debts); and
- (vii) money that is secured or unsecured

**Guaranteed Obligations** means all obligations of the Borrower to HSBC (other than obligations to pay money) under any existing or future contracts or arrangements between the Borrower and HSBC

---

**HSBC** means The Hongkong and Shanghai Banking Corporation Limited (and includes any person to whom all or any of HSBC's rights under this document may be transferred)

**Interest Rate** in relation to the Guaranteed Money (or any part of it) at any time means:

- (i) the rate at which the Borrower must pay interest in respect of the Guaranteed Money (or the relevant part of it) under the underlying contract or arrangement between HSBC and the Borrower at that time; or
- (ii) if there is no such rate, HSBC's interest rate for similar contracts or arrangements with similar Borrowers at that time

**Maximum Amount** is a concept that applies if page 1 states that the amount to be paid under this document is limited to a specified amount. In that case, **Maximum Amount** means the maximum amount for which you are liable under clause 4(a)

**you** means the person (or if more than one, each person) named as Guarantor on page 1.

**(c) References**

Any reference to any document is a reference to that document as varied, replaced, or otherwise amended from time to time. The singular includes the plural, and the plural includes the singular.

## **2. The guarantee and indemnity you give HSBC**

**(a) You guarantee that you or the Borrower will pay the Guaranteed Money**

You guarantee to HSBC that the Borrower will:

- (i) pay the Guaranteed Money as and when it is due; and
- (ii) perform all the Guaranteed Obligations as and when they must be performed.

You agree as follows:

- (A) If the Borrower does not pay any Guaranteed Money to HSBC when it is due, you must pay it to HSBC if HSBC demands it from you.
- (B) HSBC can demand payment from the Borrower, or take any other step to recover payment from the Borrower, before or at the same time as demanding payment from you. However, HSBC does not have to do so in order for you to be liable to pay the Guaranteed Money. HSBC can treat you as the principal debtor of the Guaranteed Money.

**(b) You will ensure that HSBC does not suffer any loss if HSBC cannot recover the Guaranteed Money**

You must on demand compensate HSBC in full if HSBC suffers or incurs any loss, cost, claim, or liability as a consequence of HSBC not receiving payment of any part of the Guaranteed Money or any of the Guaranteed Obligations not being performed for any reason. "For any reason" includes HSBC not being legally

---

entitled to payment from the Borrower for any reason, for example due to the Borrower lacking capacity to contract or due to the arrangement between HSBC and the Borrower being or becoming illegal, void, voidable, or unenforceable for any reason (even if HSBC knew or should have been aware of this).

Your obligation under this clause 2(b) is:

- (i) a separate obligation from your other obligations under this document; and
- (ii) a primary obligation, meaning that your liability is not dependent on the Borrower having any legal obligation to pay the Guaranteed Money or to perform the Guaranteed Obligations.

**(c) Why you are giving the Guarantee**

You give the Guarantee in exchange for HSBC, at your request:

- (i) providing, or continuing to provide, credit or other banking services to (or as requested by) the Borrower; or
- (ii) not taking immediate enforcement action in respect of the Borrower's existing obligations to HSBC.

### **3. What you must pay HSBC if it calls the Guarantee**

**(a) You must pay the Guaranteed Money**

If the Borrower does not pay any Guaranteed Money to HSBC when it is due, you must pay the Guaranteed Money to HSBC on demand.

**(b) You must also pay new interest that is not being paid by the Borrower**

In addition, you must pay HSBC interest on the Guaranteed Money that HSBC demands from you. You must pay this interest:

- (i) from the date when HSBC demands the Guaranteed Money from you; and
- (ii) until the date on which you pay HSBC in full for the Guaranteed Money demanded from you; and
- (iii) on the daily outstanding balance of the Guaranteed Money demanded; and
- (iv) at the Interest Rate (for example, if a loan is overdue and the loan agreement requires the Borrower to pay interest at a specified default rate, then the interest you must pay under this clause 3(b) will be the same as the Borrower's default interest rate under its loan agreement).

You must pay this interest, calculated at the Interest Rate, even if HSBC has obtained a court judgment against you.

However, if the Borrower has paid any interest (in accordance with the Borrower's underlying contract or arrangement with HSBC) on the Guaranteed Money demanded from you after the demand was made on you, then the interest paid by

---

the Borrower will be deducted from the interest you owe HSBC under this clause 3(b).

**(c) How what you owe may be established**

A written statement by HSBC as to:

- (i) what the amount of any money owing to HSBC is (for example, what the amount of the Guaranteed Money when HSBC signs the statement); or
- (ii) what the Interest Rate is as at any time,

can be relied on, unless the statement is shown to be wrong.

## 4. For how much you are liable

**(a) If page 1 limits the amount payable, your liability is capped**

If page 1 states that the amount to be paid under this document is limited to a specified amount, then your liability to HSBC under this document is limited to:

- (i) the amount specified on page 1 (or if you and HSBC later agree in writing to a different amount, then the amount so agreed); plus
- (ii) interest you owe HSBC under clause 3(b) if you do not pay the amount demanded under the Guarantee immediately; plus
- (iii) all costs you owe HSBC under the following clauses:
  - (A) clause 11(a) (which relates to the costs HSBC incurs in connection with this document and any security for it); and
  - (B) clause 11(b) (which relates to the costs HSBC incurs in connection with enforcing this document and any security for it).

The sum of these amounts is the Maximum Amount that HSBC is entitled to receive from you under this document.

**(b) If page 1 does not limit the amount payable, your liability is unlimited**

If page 1 does not state that the amount to be paid under this document is limited to a specified amount, then there is no limit on your liability to HSBC under the Guarantee.

## 5. How and when you must make payments to HSBC

**(a) All demanded payments are due immediately**

If this document states that a payment is due "on demand", it is due immediately HSBC demands it from you.

It is your responsibility to ensure that you at all times have sufficient funds ready to pay any amount demanded by HSBC immediately on demand.

---

**(b) All payments must be full, clear, and unconditional**

You must pay all money which you are required to pay to HSBC under this document in full, in one lump sum, and in cleared funds.

All payments must be unconditional. You may not make any payments subject to any restrictions.

**(c) All payments must be in the currency in which they are owed**

You must pay the Guaranteed Money in the currency in which it is owed. For example, if the Borrower has an Australian dollar account with HSBC you must pay HSBC in Australian dollars for the amount owed by the Borrower.

**(d) You cannot set off or counterclaim any amounts**

You cannot deduct or withhold any amounts from any payments you owe HSBC. For example, you cannot withhold all or part of any payment on the grounds that HSBC also owes you money or that you have a claim against HSBC.

**(e) If the law requires you to make a deduction from a payment to HSBC, you must do so, but you must pay HSBC a top-up amount**

If you are required by law to deduct or withhold an amount from a payment you owe HSBC (for example, withholding tax), then:

- (i) you must make the deduction or withholding (despite what clause 5(d) provides), but you must not deduct or withhold more than the minimum the law requires; and
- (ii) you must:
  - (A) pay the deduction or withholding to the relevant revenue authority before or on its due date; and
  - (B) within 30 days of making the deduction or withholding, send HSBC a receipt for it issued by the revenue authority; and
- (iii) you must pay HSBC an additional amount, so that the total amount HSBC actually receives from you is the same as it would have received had you not been required to make the deduction or withholding.

## **6. When your liability under the Guarantee ends**

**(a) When HSBC must release you from the Guarantee**

You are entitled to be released and discharged from the Guarantee if:

- (i) either:
    - (A) you have paid HSBC the Maximum Amount (but only if page 1 limits the amount to be paid under this document); or
    - (B) HSBC has been paid or has recovered all the Guaranteed Money,
- and, in either case:



- 
- (ii) HSBC is satisfied that there is no likelihood that it may be required to pay any of that money back to the Borrower, to you, or to any other person for any reason (for example, under any bankruptcy or insolvency laws). HSBC must act reasonably in making this assessment.

If these requirements have been met, HSBC must give you a discharge if you request it.

**(b) When HSBC can agree to release you from the Guarantee**

You can ask HSBC to release and discharge you from the Guarantee at any time, and HSBC can agree to do so. However, HSBC has no obligation to agree to your request unless the requirements in clause 6(a) have been met.

**(c) You cannot get out of, or stop, your liability under the Guarantee in another way**

Once you have signed this document, the only way you can get out of your liability under the Guarantee is if HSBC releases and discharges you under clause 6(a) or clause 6(b).

You cannot get out of it in any other way. The Guarantee will cover money that becomes owing by the Borrower even if you try to withdraw your Guarantee.

**(d) If you are released from the Guarantee, you will still have certain obligations under this document**

Even if HSBC releases and discharges the Guarantee, you will still be bound by the follow clauses of this document:

- (i) clause 7(d) (which provides that your liability can revive in certain cases); and
- (ii) all of clause 8 (which provides that you cannot compete against HSBC for payment until HSBC has received or recovered all of the Guaranteed Money).

## **7. What things do not prevent or reduce your liability under the Guarantee**

**(a) Your liability is unconditional and irrevocable**

Your liability under the Guarantee is not subject to any conditions. You cannot revoke the Guarantee.

**(b) Your liability does not end as soon as all Guaranteed Money is paid off**

The Guarantee is a continuing guarantee and indemnity. This means that if the Borrower pays HSBC all of the Guaranteed Money owing at a particular date, the Guarantee will not automatically come to an end on that date. Instead, the Guarantee will remain in force so that it will secure any money for which the Borrower (whether alone or with anybody else) becomes liable to HSBC for any reason at a later date.

---

**(c) There are no defences**

Your liability under the Guarantee will not be avoided, released, or restricted by any fact, circumstance, or event (except if HSBC releases and discharges you, as provided for in clause 6(a) or clause 6(b)).

For example, you are fully liable under the Guarantee (and will remain so) even if:

- (i) the Borrower's debts or other obligations to HSBC are varied in any way (for example, the amount the Borrower borrowed under a loan is increased, the interest rate on the loan is raised, or the date on which the loan falls due is changed); or
- (ii) the Borrower incurs new debts or other obligations to HSBC (even if this means that the Guaranteed Money exceeds what it is at the date of this document, or exceeds what you thought it would be); or
- (iii) the Borrower dies, is declared bankrupt, or is placed in receivership, statutory management, or liquidation; or
- (iv) another person that was meant to co-sign this document as a Guarantor does not sign it; or
- (v) HSBC has or takes any other security for the Guaranteed Money, or does not take any other intended security, or any security HSBC takes is invalid or ineffective, or HSBC varies or discharges any security it holds; or
- (vi) HSBC does not demand payment from any other person, does not take any enforcement action against any other person, or does not protect or enforce any other security; or
- (vii) HSBC enters into an arrangement with the Borrower, any other guarantor (including any person who co-signed this document as a Guarantor), or any other person (for example, HSBC gives the Borrower a grace period); or
- (viii) HSBC releases the Borrower, any other guarantor (including any person who co-signed this document as a Guarantor), or any other person from any liability, or waives or varies its liability.

**(d) Your liability may revive**

If:

- (i) HSBC is required for any reason (for example, under any laws relating to bankruptcy, insolvency, or liquidation) to pay back any money it has received on account of the Guaranteed Money from the Borrower, from you, or from any other person; or
- (ii) HSBC has agreed or is obliged to pay back any such money under any settlement or compromise it has entered into where somebody has claimed the money,

then:

- (iii) HSBC can enforce the Guarantee as if that money had not been paid to it; and

- 
- (iv) if HSBC has discharged the Guarantee, the Guarantee will automatically revive. HSBC can enforce the Guarantee as if it had not been discharged.

## 8. You cannot compete against HSBC for payment or recovery

### (a) You cannot take security or receive payments from the Borrower or another guarantor

Until the Guaranteed Money has been paid in full, you need HSBC's specific consent before you may:

- (i) take or enforce any security over any property of the Borrower or of any other guarantor of the Guaranteed Money (whether as Guarantor under this document, or otherwise); or
- (ii) demand, claim, or receive any payment from the Borrower, another guarantor, or any of their estates, including for:
  - (A) any claim against the Borrower to reimburse you for having paid what it owed; and
  - (B) any claim against another person who has guaranteed the Guaranteed Money (whether as Guarantor under this document, or otherwise) to reimburse you on the grounds that they should contribute their proportion of the payment; or
- (iii) prove in the bankruptcy or liquidation of the Borrower or another guarantor for any payment owed to you.

If you do not obtain HSBC's consent, you will hold the payments you receive or recover and the unauthorised security on trust for HSBC. You must on demand pay or transfer it to HSBC.

### (b) If you pay HSBC, its rights as creditor do not transfer to you before the Guaranteed Money has been paid in full

All amounts you pay HSBC on account of the Guaranteed Money will be payments towards the Guaranteed Money as whole, rather than towards any particular debt or other payment obligation that forms part of the Guaranteed Money. This means that you will not be treated as having paid off any particular debt or other payment obligation until the Guaranteed Money has been paid in full.

As a result, you will not take over HSBC's rights as creditor in respect of any particular debt or other payment obligation, or HSBC's security for it. If the Borrower is declared bankrupt or is placed in liquidation, HSBC can claim and prove for the total outstanding balance of the Guaranteed Money. You cannot claim or prove for any of it in HSBC's place.

---

**(c) HSBC can claim amounts the Borrower owes you if the Borrower is bankrupted or placed in liquidation**

If the Borrower is declared bankrupt or is placed in liquidation, you authorise HSBC to prove for:

- (i) all money that you paid HSBC under the Guarantee and for which the Borrower has not reimbursed you; and
- (ii) any other amounts that the Borrower owes you,

and to deal as follows with any amount HSBC receives as a result of this:

- (iii) applying it towards the Guaranteed Money; or
- (iv) if HSBC prefers, keeping it aside in a separate account until the Guaranteed Money has been paid in full.

You waive, in favour of HSBC, any rights you have against the Borrower, any guarantor, any other person, or any estate to the extent necessary to give HSBC the full benefit of this clause 8(c).

If page 1 limits the amount payable under this document, HSBC cannot use this clause 8(c) to recover more from you and from the Borrower that (in combination) exceeds the Maximum Amount.

## 9. HSBC's powers

**(a) Enter into or vary arrangements**

HSBC can:

- (i) vary any of its existing contracts or arrangements with the Borrower, any other Guarantor, any other guarantor of the Borrower's payment or other obligation, and any other person and any security provider; and
- (ii) enter into any new contracts or arrangements with any of them; and
- (iii) enter into any settlements or compromises with any of them,

without needing your consent, and without having to notify you (unless HSBC is legally required to notify you).

If this happens, you will remain liable under the Guarantee.

**(b) Increase credit to Borrower**

Without limiting clause 9(a), HSBC can:

- (i) increase the amount of any credit it currently provides to the Borrower; and
- (ii) give any new form of credit to the Borrower,

without needing your consent, and without having to notify you (unless HSBC is legally required to notify you).

---

You will be liable under the Guarantee for the additional or new credit given the Creditor. There is no limit on how much additional or new credit HSBC can give the Creditor.

**(c) Enforce guarantees and other security as HSBC sees fit**

HSBC can choose to enforce or not enforce the Guarantee or any other guarantee or security it holds, without needing your consent to do so and without having to notify you.

No matter what HSBC decides to do in this regard, you will remain liable under the Guarantee.

**(d) Use money in your account**

If you have any money in an account with HSBC, HSBC can at any time use all or any of it to pay the Guaranteed Money or any part of it which is then due and unpaid.

If your account is in one currency and the Guaranteed Money is owed in a different currency (**required currency**), HSBC can use all or any of the money in your account to buy the required currency. HSBC can then use the required currency it bought in this way to pay the Guaranteed Money or any part of it in the required currency.

HSBC must notify you if it uses any money in your account in any such way.

**(e) Apply payments made by Borrower as HSBC sees fit**

If HSBC receives any money from or for the Borrower, HSBC has no obligation to you to apply it in a way that will benefit you. For example, HSBC can apply that money to pay off or reduce a lower interest debt rather than a higher interest debt, even if this means that the Guaranteed Money for which you are liable will be more than it would otherwise have been.

**(f) Transfer HSBC's rights against you to somebody else**

HSBC can transfer its rights under this document (or any of them) to any person.

## 10. Foreign currency obligations

**(a) Foreign currency indemnity**

This clause 10(a) applies if, for any reason, the Guaranteed Money is paid in a currency (**other currency**) which is different from the currency in which the Guaranteed Money is expressed to be owed (**required currency**). In such a case, if:

- (i) HSBC converts the amount it receives into the required currency (using the Exchange Rate that applies when HSBC receives the relevant amount); and
- (ii) the converted amount is not enough to pay all of the Guaranteed Money in respect of which HSBC received the payment,

you must pay HSBC the shortfall on demand.

A written statement by HSBC as to what the Exchange Rate was or is at any time can be relied on, unless the statement is shown to be wrong.

---

Your obligation under this clause 10(a) is:

- (iii) a separate obligation from your other obligations under this document; and
- (iv) not dependent on the Borrower having any legal obligation to pay the Guaranteed Money, whether in the required currency or at all.

## 11. Costs for which you are responsible

### (a) You must pay all costs in connection with this document and any security for it

You must pay HSBC in full for all costs HSBC reasonably incurs in connection with negotiating, preparing, and executing this document and any security for your obligations under it. This includes all legal costs that HSBC's lawyers charge it in this connection. You must pay these costs on demand.

You are also responsible for all stamp duties (if any) and any other government duties, taxes, and charges levied on this document, on any security for it, and on any payments and receipts under this document or under any security for it. If HSBC pays any of these amounts, you must reimburse HSBC in full on demand.

### (b) You must pay all HSBC's enforcement costs

You must on demand pay HSBC in full for all costs it reasonably incurs in connection with enforcing this document or any security for it (including in deciding whether to enforce it, taking preliminary steps before enforcing it such as giving any statutory notices, and taking steps to enforce it). This includes all legal costs that HSBC's lawyers charge it in this connection.

## 12. What you acknowledge

### (a) Your free, informed decision

You acknowledge that, before you signed this document:

- (i) you were advised to obtain advice from an independent lawyer, and you either consulted an independent lawyer about this document or had the opportunity to do so; and
- (ii) you were free to negotiate any term of this document (including by changing or deleting it), you either negotiated the terms or had the opportunity to do so, and there was no material inequality of bargaining power between you and HSBC.

### (b) Security

You acknowledge that your obligations under this document are secured by:

- (i) if page 1 specifies any security, then by that security; and
- (ii) any other security you at any time grant HSBC.

---

## 13. Additional terms that apply if you sign this document as a trustee

### (a) Trustee's warranties, undertakings, and liability

If page 1 states that you sign this document as the trustee of a trust, then you certify that:

- (i) you are a trustee of the trust described on page 1 (trust), appointed on the terms and conditions set out in the trust deed described on page 1; and
- (ii) that you have not resigned nor received notice of your removal as a trustee of the trust.

If you are named on page 1 as an independent trustee, then your liability under this document is limited to the extent that the assets of the trust (or assets that would be the assets of the trust but for the wilful default or dishonesty of the trustees of the trust) are available to meet your liability under this document.

## 14. More than one Guarantor

### (a) If more than one Guarantor signs this document, HSBC can recover the Guaranteed Money from the group or from you alone

If more than one person is named as Guarantor on page 1, then you are jointly and severally liable under the Guarantee. This means that HSBC can require:

- (i) all of you (or any number of you) to pay the Guaranteed Money together; or
- (ii) any one of you to pay all of the Guaranteed Money in full.

### (b) If HSBC makes a demand on any Guarantor, that is a demand on all of you

If more than one person is named as a Guarantor on page 1, a demand HSBC makes on any one of you must be treated as a demand made on all of you (unless HSBC states in the demand that it applies only to the Guarantors named in that demand).

Each of you authorises each other Guarantor to receive any such demand on your behalf.

## 15. Communications between you and HSBC

### (a) A notice must be given in writing

Any notice, demand, or other communication (together, **notices**) you give HSBC or that HSBC gives you under or in connection with this document must be:

- (i) in writing; and
- (ii) delivered in person, or mailed or faxed to the person to whom it is given at the address or fax number specified below,

otherwise it is not effective.

---

**(b) Where a notice must be sent**

A notice to HSBC must be delivered at, or mailed or faxed to, its address or fax number stated on page 1 of this document (Attention: Operations Manager, Mortgage Services).

A notice to you must be delivered at, or mailed or faxed to, your address or fax number stated on page 1 of this document.

However, if HSBC or you have given each other at least five Business Days' written notice specifying a new address or fax number for notices to HSBC or to you (as the case may be), the notice must be delivered at or sent to the new address or fax number.

**(c) When a notice is treated as received**

If HSBC gives you a notice, you will be considered to have received it at the following time (even if you deny receiving it at that time, or ever):

- (i) if it is delivered in person – on the date when it is delivered; and
- (ii) if it is sent by post – three Business Days after it is mailed; and
- (iii) if it is faxed – when the report produced by the sending fax machine says it was sent.

## **16. Execution of this document**

**(a) This document can be executed in different parts**

If more than one person is named as Guarantor on page 1, you do not all have to sign the same copy of this document and deliver it to HSBC. Each of you can sign and deliver a separate copy of it (and will be bound as soon as you have done so).

**(b) When you will be treated as having delivered this document**

You will be treated as having delivered this document (or the copy you signed) to HSBC as soon as you or somebody acting on your behalf (for example, your lawyer):

- (i) physically delivers it to HSBC or HSBC's lawyers; or
- (ii) emails or faxes it to HSBC or HSBC's lawyers, or transmits it to HSBC or HSBC's lawyers by any other electronic means.

If you deliver this document (or the copy you signed) to HSBC by more than one method (for example, if you email it to HSBC and then courier the original across), the time of delivery will be when it was first delivered.

If the law says that anything else amounts to delivery to HSBC, you will also be treated as having delivered this document (or the copy you signed) if that thing happens.



---

## 17. Changes to this document or to how it is applied

**(a) This document can only be varied in writing signed by HSBC and you**

To make any change to this document, the change must be in writing and signed by you as well as by HSBC, otherwise the change will not be effective.

**(b) Any waiver has to be in writing signed by HSBC, otherwise it is not effective**

Any waiver by HSBC of your obligations under this document must be in writing signed by HSBC, otherwise the waiver will not be effective.

Therefore, if HSBC:

- (i) does not exercise any of its rights under this document; or
- (ii) does not exercise it fully; or
- (iii) delays in exercising it,

that does not mean that HSBC has waived that right. HSBC can still exercise that right (or exercise it fully or promptly) at any time.

**(c) Any unenforceable provision will be disregarded – the rest of the document remains effective**

If any provision of this document is or becomes illegal, invalid, or unenforceable for any reason, that provision will be treated as if it is not in this document. The rest of the document will continue to apply as if that provision had never been included.

## 18. Cross-border provisions

**(a) New Zealand law governs this document**

This document is governed by New Zealand law. New Zealand law determines what this document means and what your obligations under it are.

This applies even if you are not a New Zealander, the document is not executed in New Zealand, the Guaranteed Money is not owed in New Zealand currency, or there is any other non-New Zealand factor.

**(b) The New Zealand courts have jurisdiction**

The courts of New Zealand can hear and give judgment on any claim or dispute under or in connection with this document. (However, the claim or dispute can also be heard and determined by other courts that have jurisdiction.)

---

## Signatures

The Guarantor acknowledges receiving, prior to signing this document, a copy of this document, the loan agreement(s) dated on or about the date of this document between the Borrower and HSBC and the mortgages and other securities (if any) given as security for the Borrower's obligations under the loan agreement(s), in accordance with the disclosure requirements of the Credit Contracts and Consumer Finance Act 2003.

Executed and delivered as a deed

Signed by <<full name of guarantor>>:

Witness:\*

\_\_\_\_\_  
Signature of <<full name of guarantor>>

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Full name of witness

\_\_\_\_\_  
Occupation of witness

\_\_\_\_\_  
Address of witness

*\*The witness must not be a party to this deed.*