



SECURITY OVER DEPOSIT AGREEMENT

<Date>

PARTIES

<Name> (*Debtor*)

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

BACKGROUND

In consideration of HSBC agreeing, or from time to time agreeing, to provide financial accommodation to or at the request of the Debtor, the Debtor has agreed to enter into this document.

THE PARTIES' AGREEMENT

1 DEFINITIONS

1.1 Definitions

In this document:

Bankruptcy includes the commission of an act of bankruptcy as set out in sections 17 to 28 of the Insolvency Act 2006 or any analogous event.

Deposit means all sums from time to time deposited in the Deposit Account (including all interest from time to time credited to the Deposit Account).

Deposit Account means:

- (a) HSBC account «ACCOUNT_NUMBER» in the name of the Debtor opened with the [«BRANCH»] branch of HSBC;
- (b) each HSBC account to which the Deposit is transferred pursuant to, and in accordance with clause 2.4; and
- (c) each HSBC account in the name of the Debtor opened with HSBC (whether the branch is situated in New Zealand or elsewhere) and which is agreed in writing by the Debtor and HSBC to be a "Deposit Account",

and references to Deposit Account shall be to one or more of such accounts as the context requires.

PPSA means the Personal Property Securities Act 1999.

Secured Money means all amounts, of whatever nature, which the Debtor (whether alone or with any other person and in any capacity and for any reason) is now or at any other time actually, prospectively or contingently liable to pay, repay or deliver to HSBC (whether alone or with one or more other persons and in any capacity and for any reason).

Secured Property means all the present and future right, title and interest of the Debtor in, under and to the Deposit and the Deposit Account.

1.2 **PPSA**

In this document, unless the context requires otherwise, the following words and expressions (and grammatical variations of them) shall have the same meanings given to them under, or in the context of, the PPSA: “collateral”, “future advance”, “security interest” and “verification statement”.

2 **DEPOSIT**

2.1 **Deposit**

The Debtor [shall on the date of this document, deposit/has deposited] in the Deposit Account a sum of not less than «CURRENCY»«AMOUNT». All interest accrued on the deposit shall be credited to the Deposit Account.

2.2 **Repayment**

The Deposit shall only be repayable to the Debtor (i) to the extent of any balance then remaining after making all debits, applications and set-offs and exercising all other rights which HSBC is expressed to be entitled to make or exercise under this document; and (ii) in full when HSBC has executed a release of the security interest created by this document.

2.3 **Restrictions on Withdrawing Deposit or Dealing with Secured Property**

The Secured Property shall not (whether in whole or part) be capable of being withdrawn, assigned, transferred or otherwise disposed of or made subject to any security interest (in each case, whether in whole or in part) except as specifically provided in this document.

2.4 **Account in which Deposit is held**

The Debtor acknowledges that HSBC may wish to change the account in which the Deposit is initially held from an account with HSBC’s Auckland branch to an account with HSBC’s Hong Kong branch. For this purpose, the Debtor hereby irrevocably authorises and instructs HSBC and its offices to do all such acts and things and to execute and deliver all such documents as may in HSBC’s opinion be necessary or desirable to effect such change.

3 **SECURITY INTEREST**

3.1 **Security Interest**

- (a) The Debtor grants to HSBC a security interest in the Secured Property to secure to HSBC the payment of the Secured Money. Except to the extent agreed otherwise by HSBC in writing, the security interest granted in the Deposit has the same priority in relation to all Secured Money, including future advances.
- (b) In relation to all of the Debtor’s present and future rights in relation to the Deposit, the security interest provided for by this clause 3.1 shall take effect as a transfer and assignment of the Deposit to HSBC.

3.2 **Continuing Security**

(a) ***Continuing security interest***

This document, the security created under and by this document and the obligations of the Debtor shall continue in full force and effect, notwithstanding any intermediate payments, settlements of account, exercise of rights or other matter or circumstance, until HSBC has executed and delivered to the Debtor an unconditional release of this document.

(b) ***Avoidance of Payments***

If for any reason any payment made to HSBC in respect of the Secured Money is set aside or avoided then, notwithstanding any discharge or

release given to the Debtor in respect of this document or any other document, the rights and remedies of HSBC in respect of the Secured Property shall be reinstated as if no such payment had been made or discharge or release given. If that happens, the Debtor must do all things and sign all documents as may be necessary to reinstate HSBC to that position.

3.3 Personal Property Securities Act

(a) ***Change of Name***

The Debtor will give HSBC not less than 14 days' prior written notice of any proposed change in the Debtor's name (such notice to be given to an officer of HSBC responsible for the relationship with the Debtor).

(b) ***Verification Statement***

The Debtor waives its right to receive a verification statement in respect of any financing statement or financing change statement registered by HSBC in respect of the Secured Property.

(c) ***Other Provisions***

Without limiting any other provision of this document, the Debtor:

- (i) and HSBC agree to the extent permitted by law, that:
 - (1) the Debtor contracts out of the right to receive notice of sale of collateral under section 114(1)(a) of the PPSA;
 - (3)(2) the Debtor contracts out of the right to reinstate the security agreement under sections 133 and 134 of the PPSA; the Debtor and HSBC contract out of the Debtor's rights to (and the Debtor waives its rights to) (A) receive notice of HSBC's proposal to retain collateral under section 120(2) of the PPSA; (B) object to HSBC's proposal to retain any Secured Property under section 121 of the PPSA; and
- (ii) agrees that where HSBC has rights, powers or remedies under this document in addition to, or existing separately from, those in Part 9 of the PPSA, those rights will continue to apply and, in particular, will not be limited by section 109 of the PPSA.

3.4 Default

If (i) the Debtor fails to pay any Secured Money when due, or (ii) fails to comply with any of its obligations under a document relating to the Secured Money or (iii) the Debtor is unable to pay its debts or is deemed or presumed to be unable to pay its debts, or is deemed or presumed to be unable to pay its debts, or stops or suspends or threatens to stop or suspend payment of all or any class of its debts or any step is taken for the Bankruptcy of the Debtor or any of its assets or the Debtor dies or ceases to be of full legal capacity or the Secured Property is "at risk" (as defined in section 109 of the PPSA), (and whether or not such event is continuing), HSBC may at any time and at the cost of the Debtor (1) by notice to the Debtor declare any or all of the Secured Money immediately due and payable, and the Debtor must immediately pay that Secured Money; or (2) enforce the security interest created under and by this document (including by taking possession of the Secured Property).

4 SET OFF AND COMBINATION

- 4.1 The Debtor authorises HSBC to apply (without prior notice or demand) any credit balance in any currency to which the Debtor is beneficially entitled at any time, the Deposit, and any other sum held to the Debtor's order by HSBC through any of HSBC's offices in or towards satisfaction of any of the Secured Money then

due and unpaid. For this purpose HSBC is authorised to break any term deposit and to effect any necessary currency exchange.

- 4.2 Where the Debtor has two or more accounts with HSBC: (i) HSBC may at any time combine any two or more of those accounts without notice to the Debtor and whether or not it has allowed a set-off for a calculation of interest between any of those accounts, and (ii) HSBC may at any time combine any two or more of those accounts even where one or more of the combined accounts are in different currencies and may effect currency exchanges appropriate to implement that combination; and (iii) if HSBC combines two or more accounts, it may decline to pay cheques and it may otherwise act as if the combined accounts had always been one account.
- 4.3 To the extent permitted by law, the Debtor agrees that it does not have any right to set off any amounts the Secured Party owes the Debtor against the Secured Money, including amounts the Debtor owes under this document.
- 4.4 HSBC's rights under this clause 4 are without prejudice and in addition to the rights of HSBC under any other document and any rights to which it is at any time otherwise entitled (whether by law, contract or otherwise). Nothing in this clause 4 shall be effective to create a security interest.

5 **RELEASE**

If all Secured Money has been irrevocably and unconditionally repaid in full and that there is no material risk of any payment being set aside or avoided, and all facilities which might give rise to Secured Money have been terminated, HSBC will release the security interest created by this document on the request and at the expense of the Debtor.

6 **MISCELLANEOUS**

6.1 **Evidence of Indebtedness**

A certificate or written statement by HSBC as to the amount of the Deposit or the Secured Money can be relied upon by HSBC unless shown to be wrong.

6.2 **Costs**

The Debtor will pay, on demand by HSBC (on a full reimbursement basis), the taxes, duties, costs, charges and expenses incurred by HSBC in connection with the preparation, execution or registration of this document or the security interest created under or pursuant to this document, the enforcement or attempted enforcement of this document and the amendment, release or partial release of this document or waiver of any of the Debtor's provisions.

6.3 **Partial Invalidity**

The illegality, invalidity or unenforceability of any provision of this document under the law of any jurisdiction will not impair the legality, validity or enforceability of (i) the other remaining provisions or (ii) those provisions under the law of any other jurisdiction.

6.4 **Counterparts**

This Document may be signed in any number of counterparts all of which, when taken together, will constitute one and the same instrument. Once the parties have signed the counterparts, each counterpart shall be deemed to be as valid and binding on the party executing it as if it had been executed by all the parties.

7 GOVERNING LAW AND JURISDICTION

This document will be governed by and construed in accordance with New Zealand law, and the parties hereby submit to the non-exclusive jurisdiction of the courts of New Zealand.

EXECUTED AS A DEED

Executed as a Deed and Delivered by

«NAME»

in the presence of:

Name:

Occupation:

Address: