

Guarantee and Indemnity Deed

Deed of Guarantee and Indemnity

Dated:.....

Parties

Borrower: Legal nameNZBN

Guarantor: Name

Address

Date of birth

Email

Guarantor: Name

Address

Date of birth

Email

Lender: As stated in this Guarantee and Indemnity Deed clause 1.5, the Loan Agreement and the Loan Deed.

Introduction

The Lender has, at the request of the Guarantor, agreed to make financial accommodation, which may include Loan Facilities, available to the Borrower on the condition (amongst other things) that the Guarantor enters into this Deed.

Guarantee

1. Definitions

- 1.1. 'Guarantee' refers to the contractual obligations of the Guarantor under this Deed and the provisions described therein.
- 1.2. 'Guaranteed Indebtedness' means all indebtedness whether present or future of the Borrower to the Lender.
- 1.3. 'Guaranteed Obligations' means all obligations (whether present or future but other than obligations to pay money) of the Borrower to the Lender.
- 1.4. 'Guarantor' refers to each person signing this document as guarantor. Where more than one person signs as Guarantor they are, in the absence of express agreement to the contrary, jointly and severally liable.
- 1.5. 'Lender' means Fifo Capital New Zealand Ltd trading as New Zealand Childcare Finance.
- 1.6. 'Terms and Conditions' refers to the Terms and Conditions set out in this Deed or any variation thereto.

2. Guarantee

- 2.1. In consideration of the Lender providing the sum comprising the Guaranteed Indebtedness to the Borrower at the request of the Guarantor, the Guarantor unconditionally and irrevocably guarantees to the Lender the due payment by the Borrower of the Guaranteed Indebtedness and the due performance of the Guaranteed Obligations.

- 2.2. If the Borrower fails to pay all or any part of its Guaranteed Indebtedness to the Lender or perform all or any of its Guaranteed Obligations when due the Guarantor shall pay that Guaranteed Indebtedness to the Lender or perform the Guaranteed Obligations, whether or not demand for payment or performance has been made of the Borrower or any other person.
- 2.3. As a separate continuing primary obligation, the Guarantor undertakes to indemnify the Lender on demand against each loss, claim and expense incurred by the Lender should any of the Guaranteed Indebtedness not be recoverable from the Borrower, the Guarantor or any other person for any reason whatsoever including (but not limited to) the Terms and Conditions being or becoming void, voidable, unenforceable or otherwise invalid or illegal in any respect, whether or not that reason is known to the Lender and for any other loss, claim or expense incurred by the Lender for any reason whatsoever in connection with the transactions between the Lender and the Borrower and/or the Guarantor. In this paragraph, the expression "Guaranteed Indebtedness" includes any indebtedness which would have been included in that expression but for anything referred to in this paragraph.
- 2.4. When the Guarantor signs this Guarantee the Guarantor undertakes to the Lender that the Guarantor will remain fully informed of the Borrower's financial condition.
- 2.5. This Guarantee will apply and remain in effect notwithstanding any change of name, restructure, or change of personnel of the Borrower's business or any other change whatsoever; and the Guarantors obligations will continue until such time as the Borrower has fulfilled its obligations under the Terms and Conditions of any facility provided by the Lender.

3. Nature of Guarantee and Indemnity Obligations

3.1. As between the Guarantor and the Lender the Guarantor is liable under this Guarantee as a sole and principal debtor and not as a surety. The Guarantor's liability will not be discharged or impaired by:

- 3.1.1. the granting of any time, indulgence or waiver to the Borrower or another person; or
- 3.1.2. any amendment to the Terms and Conditions or any security or other agreement (whether or not that amendment increases the liability of the Guarantor); or
- 3.1.3. the existence or validity of, or the enforcement of or failure to enforce, or the release of any person from, or the failure of a person to execute or otherwise be bound by the Terms and Conditions or another guarantee, or other agreement; or a further security; or
- 3.1.4. any variation of the terms of the Guaranteed Indebtedness or Guaranteed Obligations; or
- 3.1.5. any other matter or thing whatsoever, which could operate to impair or discharge the Guarantor's liability.

3.2. The Guarantor's obligations under this Guarantee are by way of continuing security, and are in addition to any other security or guarantee held at any time by any person and may be enforced without the Lender having first to take any steps against the Borrower, any other person or any security. the Lender may (without the Guarantor's consent and without affecting this Guarantee or the liability of the Guarantor under this Deed):

- 3.2.1. vary the terms of any Guaranteed Indebtedness or Guaranteed Obligation;
- 3.2.2. compound with or grant time or other indulgences to the Borrower or to any other person; or
- 3.2.3. deal with, exchange, release, modify, or not perfect or enforce any encumbrance, security or right which the Borrower now has or may in the future have against the Lender or any other person.

4. Foregoing of Notice and Proceedings Against the Borrower

4.1. In signing this Deed the Guarantor acknowledges and accepts that the Lender may, at its discretion enforce this Guarantee without taking any other steps with the Borrower or any other party to remedy any default in terms of payment of monies owed to the Lender or in relation to any collateral or security in which the Lender may have an interest under the Terms and Conditions. Under no circumstance will the Lender be obligated to provide any form of financing or any other financial accommodation to the Borrower.

5. Reinstatement

5.1. If any payment made to the Lender or to any other person on behalf of the Lender is avoided by law or

required to be repaid or an amount in respect thereto is paid to any person:

- 5.1.1. That payment will be deemed not to have discharged or affected the obligation of the Guarantor under this Guarantee or any security given by the Guarantor in favour of the Lender; and
- 5.1.2. The Lender and the Guarantor will be restored to the position in which each would have been, and the Lender will be entitled to exercise all the rights which it would have had, if that payment had not been made.

6. Assignment of The Borrower's Debts

6.1. In signing this Deed the Guarantor agrees that the Borrower's obligations to the Lender will take precedence over any debt or liability the Borrower may owe to the Guarantor. On this basis the Guarantor will, without delay and in full transfer any payment that it receives from the Borrower to the Lender until such time as the Borrower's obligations to the Lender are fully satisfied. To the extent the Guarantor receives any payment from the Borrower, the Guarantor holds that payment as bare trustee for the Lender until it is so transferred. The Guarantor agrees that in the event that the Borrower becomes insolvent or an Event of Default occurs under the Terms and Conditions the Guarantor will assign to the Lender any debts and liabilities that the Borrower owes to the Guarantor.

7. Security Interest

7.1. As security for all the Borrower obligations to the Lender (including the Borrower obligation to pay money) the Guarantor grants to the Lender a security interest in all the Guarantors present and after acquired property, including any interest in land owned by the Guarantor. The Guarantor agrees that in respect of any interest in land this includes an agreement to mortgage, with the right for the Lender to lodge a caveat, and the Guarantor agrees to do all things reasonably required to enable the Lender to perfect and register these securities. The Guarantor waives the right to receive any verification statements in respect of the financing statement or financing change statement in relation to the security interest created by this Deed. To the extent permitted by law, the Guarantor and the Lender contract out of sections 114(1)(a), 133, 134, 120(2), 121, 125, 129 and 131 of the PPSA. The Guarantor agrees that in addition to any other rights at law available to the holder of a security interest or mortgage over land ("**Mortgage**"), THE LENDER may, in the event of default by the Guarantor under any of the Guaranteed Obligations appoint a receiver who will have all the powers set out in the Receiverships Act 1993, and in particular will have the right to take possession of any secured property and may lease or sell it.

8. Additional Provisions

8.1. This Guarantee, which shall be governed by the laws of New Zealand and which will come under the sole jurisdiction of the New Zealand Courts, constitutes and comprises the entire understanding between the parties with respect to its subject matter. It cannot be

amended or terminated orally and shall bind the Guarantor, its heirs, administrators, executors, successors and assigns, and each obligation contained in this Deed shall be joint and several. In the event that any term or provision contained in this Deed shall be held to be invalid, illegal, or unenforceable, this Deed shall be interpreted as if such term or provision did not exist. In signing this Guarantee, the Guarantor agrees to pay all costs and expenses including legal fees that the Lender incur in enforcing the provisions of this Deed and its related documents.

- 8.2. Each Guarantor irrevocably appoints the Lender, and every director, officer or duly appointed agent for the time being of the Lender severally, their lawful attorney in their name and on their behalf at any time from time to time and in such manner as the Lender in its absolute discretion shall think fit: to take all steps and proceedings and to do all acts, matters and things as the Lender shall think proper to remedy any default or breach of the terms and provisions herein and in any loan agreement or security documents, to exercise any of the rights, powers and remedies of the Lender contained in this Deed; to execute, on behalf of each Guarantor and register the Mortgage, any deed, instrument or document necessary for the Lender to perfect its security interest.
- 8.3. For the avoidance of doubt, this power extends to the execution of any memoranda of priority of mortgage; and the execution of any other instrument or document that may be necessary or desirable to further assure to the Lender the security conferred by this Deed.
- 8.4. The Lender as attorney shall have power from time to time to appoint a substitute or substitutes and to remove that substitute or those substitutes as it may require.
- 8.5. Each Guarantor agrees to ratify and confirm whatever the Lender or its substitutes may lawfully do or cause to be done by virtue of this clause.
- 8.6. Each Guarantor hereby instruct their solicitors to deliver, to the Lender or the Lender's solicitors, all documentation required to register the Mortgage referred to in clause 7.1 of this Deed on demand by the Lender or the Lender's solicitors.
- 8.7. Each Guarantor agrees that the production of this document by the Lender to Land Information New Zealand and any other relevant person (as applicable) shall be sufficient evidence of the power of attorney conferred by this clause 8.2.
- 8.8. Each Guarantor acknowledges the power of attorney conferred on the Lender in this clause 8.2 is given for valuable consideration (the Lender agreeing to make financial facilities available to the Borrower, and at the request of the Guarantor/s) and cannot be withdrawn by the Borrower or the Guarantor until all of the Guaranteed Indebtedness is paid and all of the Guaranteed Obligations are performed.
- 8.9. The Lender and any receiver appointed under clause 7.1 will have all powers expressed in or implied by any law concerning the rights of security holders or receivers

including the Property Law Act 2007, the PPSA and the Receiverships Act 1993.

8.10. Indemnities

The Guarantors each indemnify, and agree to save harmless, the Lender from and against all losses, claims, demands, liabilities, payments, charges and expenses which may be made against or incurred by the Lender arising from or relating to any loan facility agreement and security documents. This includes legal fees (costs on a solicitor/Borrower basis). This clause shall survive the termination of these agreements.

8.11. Disputes

Each party undertakes to use all reasonable efforts in good faith to resolve any dispute which may arise in connection with this Deed before commencing legal proceedings except an application for urgent interlocutory relief but the Lender may commence legal action at any time.

8.12. Waiver of Independent Legal Advice

The Guarantor acknowledges that the Guarantor has had independent legal advice prior to signing this Deed or, The Guarantor acknowledges that the Lender has strongly recommended that the Guarantor take independent legal advice but notwithstanding this recommendation, the Guarantor does not wish to take independent legal advice and waives the Guarantor's rights to do so. Furthermore, the Guarantor understands that by signing this Deed the Guarantor is waiving valuable rights which the Guarantor would otherwise have and that to do so may not be in the Guarantor's best interests. The Guarantor signs this Deed in reliance on the Guarantor's own judgment.

8.13. Business/Investment Purpose Declaration

The Guarantor acknowledges that to the best of their knowledge the credit to be provided to the Borrower by the Lender is to be applied wholly for business purposes and/or investment purposes, and not for investment in residential property or for consumer purposes.

8.14. Execution and Privacy

In signing this Deed, the Guarantor acknowledges that it has read and understood the contents hereof. The Guarantor hereby irrevocably authorise the Lender to contact the following people or organisations to verify information provided by the Guarantor in respect of this Deed:

8.14.1. other finance providers;

8.14.2. Government Agencies;

8.14.3. past or present employers;

8.14.4. credit reporting agencies;

8.14.5. relatives and referees, or other entities details provided to the Lender relevant to this Deed.

- 8.15. The Guarantor understands and agrees that the information provided to the Lender may be exchanged with other credit providers or other third parties. The Guarantor agrees that the Lender may produce this

authority to such parties for the purpose of collecting such information.

8.16. The Guarantor confirms that any and all information that it has given the Lender or might give the Lender in the future in relation to the Guarantors financial circumstances or otherwise, is accurate and that the Guarantor will immediately advise the Lender of any material change in those circumstances.

9. Counterparts

9.1. This deed may be executed in two or more counterparts all of which will together be deemed to constitute one and the same deed. A party may enter into this deed by signing a counterpart copy and sending it to the other party or parties, including by facsimile or email.

Executed as a Deed

Guarantor signature:
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Guarantor name:
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Witness signature:
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Witness name:
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Witness occupation:
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Witness address:
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Guarantor signature:
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Guarantor name:
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Witness signature:
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Witness name:
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Witness occupation:
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Witness address:
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