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**DEED OF GUARANTEE AND INDEMNITY  
OF A LOAN**

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DATED THE \_\_\_\_\_ DAY OF \_\_\_\_\_ 20\_\_\_\_

**BETWEEN**

Company Pty Ltd ACN 111 222 333  
(the “Lender”)

**AND**

(the “Guarantors”).

# DEED OF GUARANTEE AND INDEMNITY OF A LOAN

This Deed is made on \_\_\_\_\_ 20\_\_\_\_\_.

## PARTIES

**BETWEEN:** **Company Pty Ltd ACN 111 222 333** a company incorporated and registered in the State/Territory of New South Wales and having its registered office at 1 Sydney Street Sydney 2000 (**the “Lender”**)

**AND:** The parties named and described in Part A of the Schedule as the Guarantors (**the “Guarantors”**).

## RECITALS

- A. The Lender has at the request of the Guarantors lent or agreed to lend the sum of \$10 000 which together with all other sums which the Lender may lend to the Debtor or which may become owing on any account by the Debtor to the Lender, including Interest, constitute the Debt (**the “Debt”**) and the Lender may make further loans or give further financial accommodation in the future to Other Company Pty Ltd ACN 333 222 111 (**“Debtor”**) on the terms of the loan agreement and other documents described in Part B of the Schedule to this Deed (collectively called the **“Loan Agreements”**).
- B. In agreeing to lend and give the financial accommodation to the Debtor, the Lender has relied upon the Guarantors’ guarantees, indemnities and all the other undertakings and promises made in this Deed.
- C. The Guarantors agree to give to the Lender the guarantees and indemnities set out in this Deed.
- D. The Guarantors have each provided the Lender with a statement of their respective assets and liabilities as at the date of this Deed.

## THE PARTIES AGREE AS FOLLOWS:

### 1. Definitions and Interpretation

1.1. Except as otherwise specified in this Deed, any definitions of words or phrases and any interpretation of any words and phrases contained in the Loan Agreements apply to this Deed as if the same were included in this Deed.

1.2. In this Deed, these words and phrases have the following meanings:

**“Debt”** means the sum of \$10 000 together with all other sums which the Lender may lend to the Debtor or which may become owing on any account by the Debtor to the Lender, including Interest.

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**“Debtor”** means the company named and described in the Recitals to this Deed as the Debtor.

**“Default”** means any of the following:

- (i) a default by the Debtor in failing to pay the Debt or any part of the Debt when due under the Loan Agreements; or
- (ii) any failure by the Debtor to perform any of the obligations on the Debtor as contained in the Loan Agreements, or
- (iii) any breach by the Guarantors of his, her or their obligations under this Deed.

**“Deed”** means this Deed of Guarantee and Indemnity.

**“Guarantee”** means all of and each of the guarantees given by the Guarantors to the Lender in this Deed.

**“Indemnity”** means all of and each of the indemnities given by the Guarantors to the Lender in this Deed.

**“Interest”** means all interest from time to time payable to the Lender by the Debtor.

**“Loan Agreements”** means collectively all of the agreements described in Part B of the Schedule and where applicable, each of them separately, together with any amendment made at any time before or after the date of this Deed.

**“Party”** means a party to this Deed and includes where applicable that party’s lawful successors in title, assignors and legal personal representatives.

## **2. Guarantee and Indemnity**

### **2.1. The Guarantors:**

2.1.1. guarantee to the Lender the due and punctual payment of the Debt together with all other monies which may at any time become payable by the Debtor to the Lender pursuant to the Loan Agreements; and

2.1.2. guarantee to the Lender the due and punctual performance by the Debtor of every obligation to be performed by the Debtor under the Loan Agreements, and

2.1.3. promise and undertake to indemnify the Lender against any expense, loss or damage which the Lender incurs as a direct or indirect consequence of any failure by the Debtor to duly and punctually perform the obligations or make the payments as required under the Loan Agreements.

### **2.2. This Guarantee:**

2.2.1. is a continuing security and is irrevocable while any of the Debtor’s

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- obligations under the Loan Agreements remain unfulfilled; and
- 2.2.2. is a primary security and the Lender may call on the Guarantors for payment under this Deed even though no demand has been made on the Debtor, the Lender may proceed against the Guarantors as though the Guarantors are the parties principally liable under the Loan Agreement; and
- 2.2.3. applies to any amendment or variation of the Loan Agreements or any of them without the need for obtaining the Guarantors' specific consents to that variation or amendment; and
- 2.2.4. does not affect any other security which the Lender may from time to time hold in connection with the Debtor's obligations under the Loan Agreements or any of them;
- 2.2.5. does not require the Lender to marshal or otherwise realise in favour or for the benefit of the Guarantors any security held by the Lender in respect of the Loan Agreements or otherwise require the Lender to defer any of the Lender's rights under this Deed or any other security, and
- 2.2.6. is not affected by any assignment, transfer, subletting or parting with possession of any property by the Debtor whether with or without the Lender's consent.
- 2.3. Despite anything expressed or implied in this Deed, to the extent that for any reason whatsoever any of the Debtor's obligations in any of the Loan Agreements is void, voidable or unenforceable, the Guarantors indemnify the Lender against non-payment of any money and non-performance or non-observance of any of the Debtor's obligations as if those obligations had been wholly valid and enforceable.
- 2.4. The Guarantors' obligations under this Deed are absolute and unconditional and are not subject to limitation, termination or other impairment by way of set-off, counterclaim or otherwise.
- 2.5. Where there is more than one Loan Agreement, then the Guarantors acknowledge that a Default under any of the Loan Agreements is a Default under all of the Loan Agreements.
- 2.6. Each of the Guarantors represent to the Lender that the statement of assets and liabilities provided by each of them to the Lender is true, complete and correct and not misleading in any material respect.

### **3. Demand on Guarantors**

- 3.1. Where there has been a Default then the Lender may on demand require the Guarantors or any of them to immediately or at such time as may be specified in the demand:
- 3.1.1. pay the Lender the Debt or any part thereof as set out in the demand or any other money owing by the Debtor under the Loan Agreement, whether or not that money is then due for payment by the Debtor; or
  - 3.1.2. perform any obligation not performed by the Debtor under the Loan Agreement.
- 3.2. The Guarantors must comply with the demand under subclause 3.1 immediately or within any period specified in the demand.
- 3.3. A demand issued under subclause 3.1 is prima facie evidence of the information contained in it, particularly that:
- 3.3.1. the Debtor has committed a Default, and
  - 3.3.2. the Debtor owes the Lender the amount of money set out in the demand as payable.
- 3.4. If the Guarantors do not pay any amount claimed in the demand within the time specified in the demand for such payment then the Guarantors must pay to the Lender interest on all money which the Lender demands to be paid to it under subclause 3.1. This interest will be calculated:
- 3.4.1. at the higher of the highest rate of interest payable by the Debtor to the Lender under the Loan Agreements; and
  - 3.4.2. on the daily amount remaining unpaid commencing on the date on which the Guarantors receive the demand, and
  - 3.4.3. will be added to the amount unpaid on the first business day after the end of each calendar month.

The Guarantors' obligations to pay Interest under this clause is separate from any obligation of the Debtor to pay Interest under the Loan Agreements.

### **4. Guarantee not Affected by Various Matters**

- 4.1. Neither the Guarantors' Guarantees nor the rights and powers of the Lender under this Deed are affected if:
- 4.1.1. the Lender is negligent in exercising or not exercising any of the Lender's rights or powers under the Loan Agreements; or

- 4.1.2. the Lender delays exercising any of its rights or powers under the Loan Agreements; or
- 4.1.3. the Lender gives any person time to do anything which the Lender requires to be done under the Loan Agreements, or
- 4.1.4. the Lender compromises, waives, releases, or otherwise deals with any of the Lender's rights or powers against any person or any property.
- 4.2. This Deed binds the Guarantors even though:
- 4.2.1. any other proposed guarantor does not give a similar guarantee or sign this Deed as a guarantor or enter into a similar deed of guarantee; or
- 4.2.2. any proposed provider of security does not provide that security; or
- 4.2.3. the Deed is not executed by the Lender; or
- 4.2.4. the Deed is not executed by any person described as one of the Guarantors.
- 4.3. This Deed binds each party who executes it even though all parties giving the Guarantee do not execute this Deed.
- 4.4. The Guarantees are not discharged and continue to be fully binding on all the Guarantors even though one or more of the Guarantors, being an individual, dies or is declared bankrupt or enters into any scheme of arrangement with its creditors or, where one or more of the Guarantors are companies and those companies or any of them go into liquidation, have voluntary administrators appointed to them under the *Corporations Act 2001*, or enter into any form of external administration under the *Corporations Act 2001*.

## **5. Guarantors' Warranties and Declarations**

- 5.1. The Guarantors warrant to the Lender that:
- 5.1.1. this Deed constitutes a legally valid and binding obligation upon the Guarantors enforceable in accordance with its terms; and
- 5.1.2. the financial information in the statement of assets and liabilities relating to the Guarantors provided by the Guarantors to the Lender is true and correct in every material respect.
- 5.2. The Guarantors declare that the Guarantors receive or potentially receive a commercial benefit as a result of entering into this Deed because of the Guarantors' connections with the Debtor.

## **6. Trust Provisions**

- 6.1. If the Guarantors or any of them execute this Deed as trustee of any trust fund (the

“Trust”) then this clause 6 applies to that Guarantor or Guarantors.

6.2. The Guarantors declare that:

6.2.1. the Guarantors have full power and authority under the terms of the Trust to enter into and perform this Deed and that the terms of this Trust have been complied with in respect of this Deed and that all consents of the beneficiaries or other persons required under the terms of the Trust have been obtained and not revoked; and

6.2.2. the Guarantors are the only trustees of the Trust; and

6.2.3. the Guarantors are entitled to be fully indemnified out of the assets of the Trust in respect of all liabilities incurred by the Guarantors under or in connection with this Deed and the Guarantors have not waived, released or in any way diminished or limited those rights of indemnity.

6.3. The Guarantors promise that during the continuance of this Deed:

6.3.1. the Guarantors will not waive, release or in any way diminish or limit any of the Guarantors’ right of indemnity as trustees of the Trust against the assets of the Trust or the beneficiaries of the Trust and charges all such rights of indemnity with the due performance of this Deed; and

6.3.2. the Guarantors will not retire as trustees of the Trust nor do any act or thing whereby the Guarantors may be removed as trustees of the Trust; and

6.3.3. the Guarantors will not consent to the appointment of any new or additional trustee of the Trust without prior written approval of the Lender and will give written notice to the Lender in the event that any new or additional trustee is to be appointed; and

6.3.4. neither the Guarantors nor any other person will exercise any of the following powers relating to the Trust without the Lender’s prior written consent. The Lender will not unreasonably withhold such consent to any of the following:

(b) any power to change the trustee or trustees of the Trust whether by resignation appointment or otherwise; and

(c) any power to vary the terms of the Trust; and

(d) any power to resettle the Trust property; and

(e) any power to distribute any income or capital of the Trust unless there has been a Default,

if in the opinion of the Lender the above proposed action will not adversely affect the security or the rights of the Lender.

- 6.4. The Guarantors acknowledge that even though the Guarantors have entered into this Deed as trustees of the Trust, in addition, the Guarantors are personally liable for all money payable to the Lender pursuant to this Deed and for the due performance and compliance with all of the Guarantors' obligations under this Deed.

## **7. Notices**

- 7.1. Any notice or other document given in connection with this Deed:

7.1.1. may be signed:

- (a) in the case of a company, by a director or secretary;
- (b) in any case by a solicitor for the relevant party or by an authorised officer or agent for the relevant party;

7.1.2. must be in writing; and

7.1.3. will be sufficiently served if delivered to, left at or sent by prepaid post or facsimile to the address for that party set out in this document or as subsequently notified for the purposes of this clause.

- 7.2. A notice or document will be deemed to have been received:

7.2.1. if delivered personally – on delivery;

7.2.2. if left at an address – at the time it is left;

7.2.3. if sent by prepaid ordinary post – on the second delivery day after sending;

7.2.4. if sent by facsimile – on production of the transmission report by the sending machine which indicates that the facsimile was sent in its entirety to the facsimile number to which it was required to be sent;

7.2.5. if sent by email to the email address of the recipient.

- 7.3. Any notice served by facsimile shall be deemed signed if there is a facsimile of the signature of the sender or where the sender is a company, a facsimile of the signature of an officer of the company. A notice served by facsimile shall be deemed served on the day after it is faxed. A record of such facsimile being sent shall be conclusive evidence that the facsimile was sent on that day and at that time.

- 7.4. Any notice served by email shall be deemed signed if the email has the name of the sender on it. A notice served by email shall be deemed served on the day after it is sent by email. A record of such email being sent shall be conclusive evidence that the email was sent on that day and at that time.

**8. Execution under Power of Attorney**

8.1. Each person who executes this instrument under a power of attorney declares that he or she:

8.1.1. has the authority to execute this instrument under the power of attorney without the need for approval or ratification; and

8.1.2. has no knowledge of any revocation of the power of attorney.

**9. Signing by the Lender**

9.1. Any document given or required to be given by the Lender may be signed or executed by any person authorised by the Lender for that purpose.

**10. Only written matters bind the Lender**

10.1. The Lender is only bound by matters set out in writing.

**11. Governing Law**

11.1. This document is to be governed by and construed according to the law in force in New South Wales and the parties submit to the jurisdiction of the courts of that State.

**12. Independent Legal Advice**

12.1. The Guarantors represent to the Lender and the Lender relies on this representation in entering into this Guarantee and in entering into the Loan Agreements, that the Guarantors have sought separate and independent legal advice about the terms of this Deed and the Guarantors' obligations and contingent obligations to the Lender under the terms of this Deed.

**13. Joint and Several Liability**

13.1. Each of the Guarantors is jointly and severally liable under this Guarantee to the Lender. The Lender is not obliged to make demand on all Guarantors and can separately make demand on any Guarantor. The liability of any Guarantor under this Guarantee is not extinguished until the whole of the Debt and all other monies owing to the Lender by the Debtor and/or the Guarantors on whatsoever account (including any interest due from any Guarantor after a demand has been made) have been paid in full.

13.2. All warranties given, promises given and representations made by the Guarantors are made by each of the jointly and separately to the Lender.

13.3. Where a demand has been made by the Lender under this Deed on the Guarantors or any of them, then no Guarantor shall claim any contribution or make any demand on any other Guarantor for contribution or the payment of any sum until after the whole

of the Debt and all other monies due to the Lender have been paid in full by the Guarantors or by the Debtor.

## **THE SCHEDULE**

### **Part A - The Guarantors**

Andrew Smith of 23 Grays road Rosebury

### **Part B - Loan Agreements**

- **PARTIES:** John Smtih  
**LOAN AGREEMENT DATE:** 19/06/2010

**SAMPLE ONLY**  
YOUR DOCUMENT WILL VARY DEPENDING ON THE ANSWERS YOU  
PROVIDE THROUGH THE BUILDING PROCESS

**This document is executed by the parties as a Deed on the day and year first mentioned.**

<b>SIGNED</b> as a Deed by <b>Company Pty Ltd</b> ) ACN 111 222 333 pursuant to ) Section 127 of the <i>Corporations Act</i> 2001 ) in the presence of: _____	_____ Director Print Name:
_____ Signature of Witness Print Name:	_____ Director/Secretary Print Name:

**SAMPLE ONLY**  
YOUR DOCUMENT WILL VARY DEPENDING ON THE ANSWERS YOU  
PROVIDE THROUGH THE BUILDING PROCESS

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