

## GUARANTEE – EXPLANATORY NOTES

### 1. **Guarantee**

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You have been approached to provide a guarantee by someone intending to take out a loan with the Jewish Mutual Loan Company ("JMLC").

This document aims to answer some of the basic questions you may have about what a guarantee is and how it works. If you have any concerns you should see a lawyer.

### 2. **What is a guarantee?**

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A Guarantee is a promise by a third party (the Guarantor) that another person's obligations will be met.

For example, if your brother has an obligation to pay rent, a Guarantee is a promise by a third party, such as you, to your brother's landlord that rent will be paid. If your brother fails to pay his rent, you will be required to pay. This is how you guarantee that another person's obligations will be met.

Similarly, if someone you know, let's say your friend, chooses to take a loan from the JMLC your friend is entering an agreement to receive money in exchange for an obligation to repay the loan. In this situation your friend is the ("**Borrower**") and JMLC is the ("**Lender**"). Where your friend cannot offer security that the loan will be repaid, such as a mortgage which can be called in if your friend fails to meet his obligations to repay the loan, then JMLC requires instead multiple guarantees that the loan will be repaid be provided; these guarantees works in the same way as in the example above. You have been approached to provide a ("**Guarantee**") and act as ("**Guarantor**").

### 3. **How does a guarantee work?**

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A Guarantee is a legal document containing a promise to JMLC that if the Borrower fails to repay the Loan owing to JMLC, then the Guarantor or Guarantors will repay the loan.

### 4. **How much does a Guarantor have to pay if the Borrower fails to meet their obligation?**

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A Guarantor is only required to pay if the Borrower fails to meet their obligation to repay the loan, and only needs to pay the amount still owing under the loan.

The Guarantor or Guarantors have to pay all money owing by the Borrower to the Lender. This may include the amount of the loan, any interest outstanding (if any), and any cost including legal costs which the Lender has had to pay because of the Borrower's failure.

**5. What if there is more than one Guarantor?**

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If there is more than one Guarantor, the guarantee document will state that the Guarantors are either: 'joint and several' OR 'proportionate'.

If the Guarantors are 'joint and several' all Guarantors are responsible for the entire amount outstanding. If one of the Guarantors pays the amount outstanding, all are released from their obligations. In this way 'joint and several' Guarantors share the responsibility of the guarantee, but not necessarily equally.

If the Guarantors are 'proportionate' each Guarantor is responsible for an agreed percentage of the entire amount outstanding. If one Guarantor pays their percentage of the amount outstanding, no other Guarantor is released until they pay their respective proportionate share.

**6. What happens in the case of death or any other incapacity of the Borrower?**

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The death or other incapacity of the Borrower will make no difference to the Guarantee which will remain in force. If a failure of the Borrower to make payment is due to the Borrower's death or incapacity, the Guarantor will still be responsible to make such payment if the Borrower estate fails to do so.

**7. What happens if Guarantor's situation renders him/her unfit or unable to pay?**

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The Guarantor will remain responsible to the Lender even if his or her situation is such that he or she would be unable to pay.

**8. Is the Guarantee affected by any other security which might apply to the same loan?**

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Sometimes more than one form of security is given to a Lender in respect of a loan. Even if this is the situation, it will not affect the Guarantee which remains in force.

**9. Can the Lender extend the payment period and release any security?**

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Yes, the Lender has a discretion to offer extended terms of payment or release any security that is given to it. Whilst any money remains outstanding in respect of the loan, the Lender cannot be compelled to grant payment terms or release any security and these matters are entirely in the discretion of the Lender.

**10. How long does the Guarantee remain in force?**

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The Guarantee will remain in force while any money is owing by the Borrower to the Lender unless:

- (a) there is any change to the law which might affect the Guarantee; or
- (b) the Lender agrees to release the Guarantor.

I ..... of .....  
(name)

.....  
(address)

have read the Explanatory Notes and fully understand the implication of signing the formal Guarantee and is prepared to be a guarantor for a loan to

..... of .....  
(name)

.....  
(address)

My present occupation is

.....  
(occupation and name of company or business name)

.....  
(address of company or business)

My private phone number is .....

My business phone number is .....

My mobile phone number is .....

My email address is .....

Signature ..... Date .....

**JEWISH CARE (VICTORIA) INC**  
Org No: 099 404 092  
trading as  
**JEWISH MUTUAL LOAN COMPANY**  
(a firm registered no: B1743158Y)  
619 St Kilda Road, Melbourne, Victoria, 3004  
("Lender")

**GUARANTEE and INDEMNITY**  
**(Joint and Several)**

This **Guarantee and Indemnity** is made by and between the Lender and the Guarantor described in the Reference Table on the date specified on the Execution Page in consideration of the Lender, at the Guarantor's request, granting financial accommodation to the Borrower whereby

THE PARTIES AGREE:

1. The Guarantor (and if more than one – whether by this instrument or any other document or documents having similar intent or effect - jointly and each of them severally) irrevocably and unconditionally guarantees to the Lender:
  - (a) that the Borrower will pay the Guaranteed Money to the Lender on time; and
  - (b) that the Borrower will observe and perform its obligations under each Relevant Agreement on time.
2. If the Borrower does not pay the Guaranteed Money or any part of the Guaranteed Money on time or commits or suffers any other default under any Relevant Agreement and the Lender makes a demand on the Guarantor, the Guarantor shall immediately pay the Guaranteed Money (or the balance then remaining unpaid as demanded) to the Lender, whether or not:
  - (a) the Lender has made a demand on the Borrower; or
  - (b) the Guaranteed Money (or the part of the Guaranteed Money demanded) is immediately payable by the Borrower.
3. To the extent (if any) to which the guarantee set out in clauses 1 and 2 above may be void or unenforceable, the Guarantor irrevocably and unconditionally indemnifies the Lender against loss the Lender suffers because:
  - (a) the Borrower does not pay the Guaranteed Money on time or observe or perform its obligations under any Relevant Agreement on time; or
  - (b) of the winding-up or bankruptcy or incapacity of the Borrower; or
  - (c) the Guaranteed Money (or money which would be Guaranteed Money if it were recoverable) is not recoverable from the Borrower; or
  - (d) a liability to pay the Guaranteed Money is not enforceable against the Borrower for any reason, whether or not the Lender knew or ought to have known anything about it.
4. The Guarantor must pay the amount of the loss referred to in clause 3 on demand.
5. This is a continuing guarantee and indemnity which:
  - (a) is not wholly or partially discharged by the payment of any of the Guaranteed Money, the settlement of an account or any other matter (other than an unconditional written release by the Lender); and
  - (b) applies to the present and future balance of the Guaranteed Money.

6. The liability of the Guarantor is not adversely affected by anything which would otherwise reduce or discharge such liability under the law relating to sureties, guarantees and indemnities. In particular, such liability is not adversely affected by:
- (a) the Lender granting time or any other indulgence or concession to a Guarantor or the Borrower; or
  - (b) the Lender increasing the amount, or otherwise varying the type or terms, of financial dealings with the Borrower; or
  - (c) any transaction or agreement (or variation of a transaction or agreement) between the lender and the Borrower or any other person (even though the relevant transaction, agreement or variation may adversely affect the Guarantor); or
  - (d) the insolvency or incapacity of any person, or the Lender becoming a party to or bound by any winding up, bankruptcy or incapacity; or
  - (e) any judgment or order against the Borrower, a Guarantor or any other person; or
  - (f) an obligation of the Guarantor or of the Borrower or a Relevant Agreement or any provision of a Relevant Agreement being void, voidable, unenforceable, defective, released, waived, impaired, transferred, enforced, or impossible or illegal to perform; or
  - (g) the Guaranteed Money not being recoverable or the liability of the Borrower to the Lender ceasing (including, without limitation, as a result of a release or discharge by the Lender); or
  - (h) the Lender failing to enforce this document; or
  - (i) property secured under any security collateral with this document or Relevant Agreement being destroyed, forfeited, extinguished, surrendered or resumed; or
  - (j) any default, misrepresentation, negligence, misconduct, acquiescence, delay, mistake or other action or inaction of any kind by or on behalf of the Lender or any other person; or
  - (k) Any change to a partnership or in the membership of any partnership, joint venture or association.
7. The Lender need not resort to any collateral security or other security interest before exercising a power under this document and the Lender may demand payment of the Guaranteed Money or exercise any other right under this document without first:
- (a) claiming payment from or proceeding against the Borrower or any other person; or
  - (b) enforcing any other right, power, remedy or security,

and the Guarantor waives any right the Guarantor may have to require the Lender to do so.

8. The Guarantor indemnifies the Lender against, and must pay on demand to the Lender, all duties, taxes (other than tax on overall income), costs and expenses (including, but not limited to, legal costs and expenses on a full indemnity basis) which the Lender pays or is liable to pay in connection with:
- (a) negotiating, preparing, completing, registering or stamping any document relating to the Guaranteed Money; or
  - (b) obtaining or attempting to obtain payment of the Guaranteed Money from any person; or
  - (c) protecting, enforcing or exercising any of rights, powers or remedies of the Lender; or
  - (d) any default by the Guarantor or Borrower under this document or a Relevant Agreement; or
  - (e) obtaining advice (including, but not limited to, legal advice) from a professional person or consultant about any matter of concern to the Lender in connection with this document; or
  - (f) a receipt or payment of money under, or a transaction contemplated by a Relevant Agreement.
9. Where the Guarantor comprises more than one person, the Lender:
- (a) may in its absolute discretion;
    - (i) demand payment of the Guaranteed Money from all or any of them; and
    - (ii) proceed against all or any of them; and
  - (b) is not obliged to exercise any of the Lender's rights under this document against:
    - (i) all of the persons comprising the Guarantor; or
    - (ii) any of those persons (even if the Lender has exercised rights against another); or
    - (iii) two or more of them at the same time.
10. This document is enforceable against a signatory even if:
- (a) one or more of the persons named as a Guarantor does not execute this document; or
  - (b) this document is not enforceable against a person named as a Guarantor (other than the signatory); or
- (b) the Lender does not execute this document.

11. Additionally:
- (a) the fact that the Lender does not exercise, or delays the exercise of, any right, power or remedy does not affect any of its other rights, powers or remedies.
  - (b) the fact that the Lender delays the exercise of any right, power or remedy does not constitute a waiver of that right, power or remedy.
  - (c) the fact that the Lender exercises a right, power or remedy does not prevent the Lender from exercising that right, power or remedy again. In particular, demand under this document or a payment or settlement of account does not prevent the Lender from making any further demands.
12. A notice from or demand by the Lender to or on the Guarantor may be signed by an authorised officer of the Lender or by a solicitor acting for the Lender. This signature may be handwritten or printed or reproduced by other means and:
- (a) In addition to any method of service provided for by statute, a notice from or demand by the Lender is given to or made on the Guarantor if:
    - (i) sent by facsimile to the facsimile number last known to the Lender for the Guarantor or, if more than one facsimile number is known to the Lender, to any of those facsimile numbers; or
    - (ii) sent by email to the Guarantor at any email address notified by the Guarantor to the Lender at any time; or
    - (iii) left for the Guarantor or sent by prepaid mail (and by airmail if to an address outside Australia) to the Guarantor at:
      - (A) the Guarantor's address set out in this document; or
      - (B) The Guarantor's usual residence or place of business last known to the Lender; or
      - (C) premises owned or occupied by the Guarantor.
  - (b) A notice or demand is validly given even if:
    - (i) the Guarantor is absent from the place the notice or demand is left at, or delivered or sent to; or
    - (ii) the notice or demand is returned unclaimed.
  - (c) A notice or demand is taken to have been received:
    - (i) if delivered personally, on the same day; and
    - (ii) if posted to an address in Australia, on the second working day after it was posted; and
    - (iii) if posted to an address outside Australia, on the fourth working day after it was posted; and



- (iv) if sent by facsimile, when a transmission report is produced by the sender's facsimile machine indicating that the notice or demand has been sent to the relevant number; and
- (v) if sent by email, immediately upon sending as evidenced by the appropriate listing in your "sent items" folder.

13. This document is governed by the law of Victoria and the Guarantor submits to the non-exclusive jurisdiction of the courts of Victoria.

14. In this document:

**"Guaranteed Money"** means all money that the Borrower is liable to pay to the Lender in Australia or in any other place at or after the date of this document on any account and in any way whatever including (without limitation) the amount (if any) set out as "Initial Loan Principal" in the Reference Schedule, and whether:

- (a) the Borrower is liable alone or together with another person; or
- (b) the Borrower is liable as principal debtor, surety, partner, trustee, beneficiary or otherwise; or
- (c) the relevant liability:
  - (i) is actual or contingent, ascertained or unascertained, fixed or fluctuating; or
  - (ii) is in respect of principal, interest, Guarantee obligations, purchase obligations, fees or damages; or
  - (iii) is in dollars, another currency or a combination of currencies,

or is of any other character; and

**"Relevant Agreement"** means:

- (a) this document; and
- (b) an agreement between:
  - (i) the Lender and the Guarantor; or
  - (ii) the Lender and the Borrower; or
  - (iii) the Lender and any combination of the Guarantor and one or more Borrowers; and
- (c) a document (including a letter):
  - (i) that relates to the Guaranteed Money or another Relevant Agreement (other than a letter from the Guarantor or a Borrower); or
  - (ii) containing terms on which the Guaranteed Money remains outstanding; or
  - (iii) that the Guarantor and the Lender agree is a Relevant Agreement.

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**Reference Table**

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<b>Borrower:</b>	Name:  Address:
<b>Initial Loan Principal:</b>	\$
<b>Guarantor:</b>	Name:  Address:  Relationship to Borrower:
	Name:  Address:  Relationship to Borrower:
	Name:  Address:  Relationship to Borrower:
	Name:  Address:  Relationship to Borrower:

**EXECUTION PAGE:**

Dated this                      day of                      2017

**SIGNED, SEALED AND DELIVERED by**

**Name of Guarantor**.....

**Signature of Guarantor**.....

in the presence of

.....  
**Name of Witness**

.....  
**Address of Witness**

**Signature of Witness**.....

**SIGNED, SEALED AND DELIVERED by**

**Name of Guarantor** .....

**Signature of Guarantor** .....

in the presence of

.....  
**Name of Witness**

.....  
**Address of Witness**

**Signature of Witness**.....

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**Name of Guarantor** .....

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in the presence of

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**Signature of Witness**.....