

File ref: [objective no]

[XX 2020]

[Name]

[Position Title]

[Name of Organisation]

[Address]

[Address]

[City]

Tēnā koe [name]

Private Training Establishment Targeted Assistance Fund

The Minister of Education announced the International Education Strategic Recovery Plan on 27 July 2020. As part of that plan, the Private Training Establishment Targeted Assistance Fund (PTE TAF) is established to provide financial assistance to eligible providers experiencing financial difficulties due to the impact of COVID-19.

The Minister has delegated TEC the power to allocate and distribute this funding to relevant private training establishments (PTEs). The fund does not fall within the statutory framework for Funding allocated under sections 425 or 428 of the Education and Training Act 2020.

We are writing to inform you that we are proposing to allocate and pay some of this funding to your organisation.

This letter sets out:

- the **period** for which the TEC will provide funding from the Fund;
- the **amount** of funding that your organisation will receive;
- the **conditions** that apply to the funding; and
- any **other provisions** relevant to your organisation's receipt of this funding.

What actions do you need to take now?

1. Review the documents, including the funding conditions in Appendix 2.
2. Confirm that you wish to accept all, part, or none of the funding allocated.
3. Sign the declaration form in Appendix 1 included in this agreement.
4. Email a PDF copy of the declaration form to customerservice@tec.govt.nz by [DATE] with the following subject line: **[EDUMIS #] – PTE ESOL Funding Confirmation – [DATE]**.
5. Return the general security agreement attached as Appendix 3.

Once we have received your signed agreement, we will make the first payment to you within 10 working days of receipt.

Tertiary Education
Commission
Te Amorangi Mātauranga Matua



Level 9, 44 The Terrace
PO Box 27048
Wellington, New Zealand 6141
P +64 4 462 5200
www.tec.govt.nz

Commented [A1]: TEC will determine whether the organisation is required to submit a general security agreement.

 We ensure New Zealand's future success.

If you accept all or part of the funding, you will need to include the completed declaration form that is provided in Appendix 1. The declaration requires you to state how much of the allocation you accept.

If we have declined your application for funding, or approved your application in part, and you would like your application for funding to be reconsidered, please notify us within **10 working days** after the date of this letter.

By accepting the Tertiary Education Commission Funding you are confirming you acknowledge, and will comply with, the conditions attached as Appendix 2 to this letter. The funding may be recovered if we consider that it has been used incorrectly, or it has not been used by 30 June 2021.

If you have any questions or require support to complete your actions, please contact us on 0800 601 301 or customerservice@tec.govt.nz.

Naku noa, nā

Niki Penberthy
Manager, Customer Contact Group



We ensure New Zealand's future success.

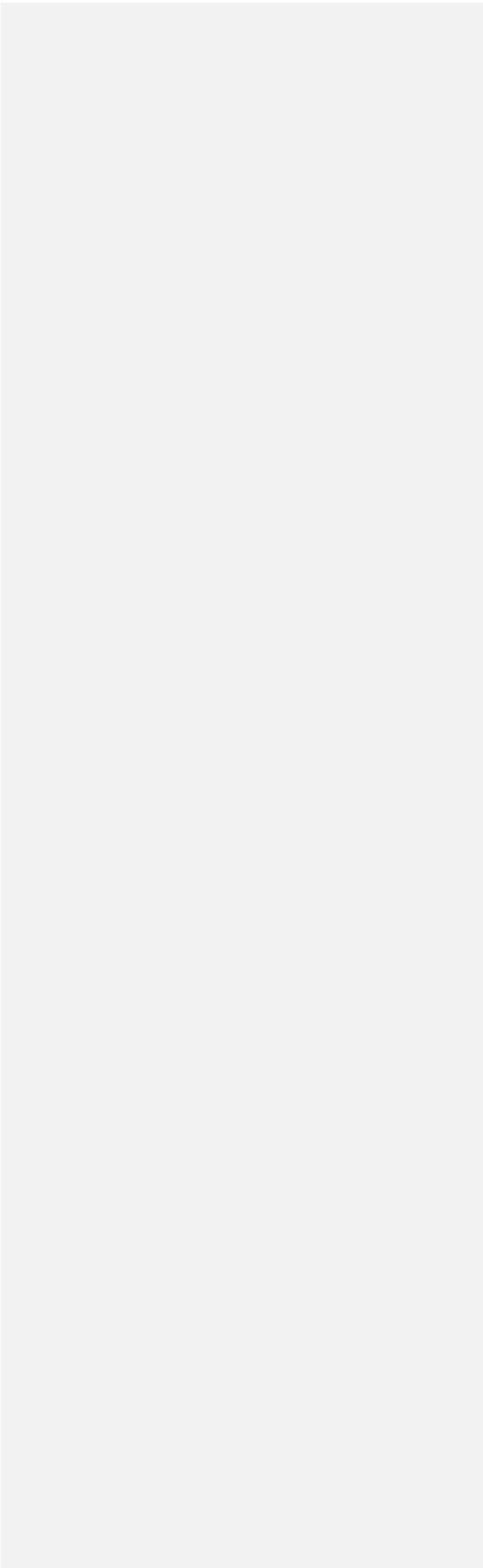


Appendix 1: Funds, Funding and Funding Periods

Edumis: [xxxx]
 [PTE Name]

The funding allocation contained in this letter is GST exclusive. The funding will be paid in two equal instalments on [DATE] and [DATE], or as otherwise agreed between the TEC and the PTE.

Fund Funding period for this agreement: [TBC] – [TBC]	2020 Funding (ex GST)	2021 Funding (ex GST)
Private Training Establishment Targeted Assistance Fund	[\$xxxxxx]	[\$xxxxxx]



DECLARATION

I
(Please insert name)

of
(Please insert address)

as Job Title

of Organisation declare that:

1. Organisation accepts \$ of Private Training Establishments Targeted Assistance Fund funding;
2. Organisation will comply with all the conditions of Funding for which Funding was allocated by the Tertiary Education Commission pursuant to the conditions attached as Appendix 2; and
3. Organisation will provide accurate data in its reports.

Signed:

Name:

Date: [TBC] 2020

Role:

Please complete and return this form to customerservice@tec.govt.nz.

Appendix 2: Conditions on Funding

Purpose of Fund

The purpose of the Private Training Establishment Targeted Assistance Fund (PTE TAF) is to provide financial assistance to Private Training Establishments (PTEs) experiencing financial difficulty due to the impact of COVID-19. The funding aims to support the stability of providers that contribute to regional significance or skill development needs, so that these providers can in turn support their regions when international students return.

The power to allocate and distribute this Funding to relevant PTEs has been delegated by the Minister to the TEC, and does not fall within the statutory framework for funding received under sections 425 or 428 of the Education and Training Act 2020.

In consideration for receiving this Funding, you agree to the conditions set out below.

Private Training Establishment Targeted Assistance Fund Funding Conditions

The following Conditions apply to any PTE TAF Funding you receive from **X** October 2020 to 30 June 2021 (Funding Period):

- (a) the conditions set out below;
- (b) Base Funding Conditions set out in the Funding Conditions Catalogue available on the TEC [website](#);
- (c) the specific Conditions of any Funding you receive from any other Fund or the conditions of any grant you receive under section 321 of the Education Act 1989 / section 556 of the Education and Training Act 2020, whichever is relevant; and
- (d) the Conditions in the Education and Training Act 2020 (unless otherwise stated in the following Conditions).

1. ORGANISATION ELIGIBILITY

1.1 You must be a PTE that:

- (a) is a private training establishment as defined in section 10(1) of the Education and Training Act 2020; and
- (b) has, and for the duration of the Funding Period, continues to hold, a Category 1 or Category 2 External Evaluation and Review rating from the New Zealand Qualifications Authority; and
- (c) has experienced at least 40% decline in actual revenue from 1 March 2020 to 31 December 2020 (actual and projected) compared with the same period in 2019. The decline in actual revenue must be related to COVID-19, and be auditable; and
- (d) had at least 50% of your enrolments in 2019 as international students, measured in equivalent full time students (EFTS).

1.2 You must, for the duration of the Funding Period, continue to meet the organisation eligibility conditions of the Relevant Fund(s).

2. USE OF FUNDING

2.1 You must only use the PTE TAF Funding to enable the continued operation of the PTE at a minimum viable level determined by the TEC.

2.2 For the purpose of condition 2.1, PTE TAF Funding for “continued operation” may be used for operational costs and capital costs.

(a) Operational costs are the costs attributed to the provision of NZQA accredited programmes to existing and future learners, including pastoral care for learners. Operational costs may include any potential business costs incurred during hibernation¹, and cost of business re-opening post-hibernation.

(b) Capital costs may include, but are not limited to, implementing new methods of programme delivery for learners.

2.3 You must not use the PTE TAF Funding to increase pay-outs to shareholders.

3. YOUR RESPONSIBILITIES

3.1 Access to and supply of information

(a) You must provide us with access to your premises, employees and information for the purposes of:

(i) inspecting the records that you keep; and

(ii) monitoring your compliance with these Funding Conditions.

(b) You must supply to us, from time to time as required by us, and in a form specified by us, any financial, statistical, or other information that we require you to supply.

4. TEC'S RESPONSIBILITIES

4.1 We are responsible for publishing and regularly updating a list of all PTEs that have received PTE TAF Funding. By receiving PTE TAF Funding, you consent to the following information being published:

(a) the name of your PTE; and

(b) the total amount of PTE TAF Funding that you have received.

5. REPORTS

5.1 You must submit two Reports to us:

(a) the first report must be submitted on or before 12 February 2021;

¹ Private Training Establishments (PTEs) may seek to become inactive, while remaining registered, for an initial period of 12 months and up to a maximum period of 18 months in a process called “hibernation”. PTEs may make a request to New Zealand Qualifications Authority (NZQA) to become inactive.

(b) the second report must be submitted on or before 31 July.

6. RECORDS

6.1 You must keep accurate and up-to-date records:

(a) that demonstrate compliance with these Funding Conditions; and

(b) of the following information:

- i. the total amount of your PTE TAF allocation that has been spent; and
- ii. what your PTE TAF Funding allocation has been used for.

6.2 You must retain all records of your use of PTE TAF Funding (including invoices and receipts) for a minimum of seven years.

7. REPAYMENT OF SUPPORT FOR PRIVATE TRAINING ESTABLISHMENT TARGETED ASSISTANCE FUND FUNDING

7.1 If you receive PTE TAF Funding that you were not entitled to receive, or that remains unspent at the end of the Funding Period, you must treat the amount of the over-funding as a debt due to the Crown that:

(a) is repayable on demand; and

(b) may be set-off against all or any funding, or any sum of money payable by us to you.

7.2 For the purpose of clause 7.1, you will be deemed to have been “not entitled to receive” funding if we are satisfied on reasonable grounds that you have breached these Funding Conditions, and you have failed to remedy the breach within 10 working days of us notifying you of the breach.

7.3 If you receive PTE TAF Funding and you cease trading as a PTE, or are put into liquidation or receivership during the Funding Period, you must treat the full amount of the funding received from the PTE TAF Fund as a debt due to the Crown that:

(a) is repayable on demand; and

(b) may be set-off against all or any funding, or any sum of money payable by us to you.

7.4 If you receive PTE TAF Funding and you intend to make distributions to your shareholders that exceed the distributions to shareholders in the previous financial year, you must treat the full amount of the funding received from the PTE TAF Fund as a debt due to the Crown that:

(a) is repayable on demand; and

(b) may be set-off against all or any funding, or any sum of money payable by us to you.

7.5 Within 10 working days after signing this agreement, you must provide us with security, in the form set out as Appendix 3, to secure repayment of the amount of PTE TAF Fund funding, in the event that you become insolvent or cease trading as a PTE during the Funding Period. If you cannot provide us with security, you must provide us with an explanation as to why you cannot grant security, to our satisfaction. If you do not agree to provide us with security, we may decline to provide you funding from the PTE TAF Fund.

Commented [A2]: TEC will determine whether the organisation is required to submit a general security agreement.

8. SUSPENSION AND REVOCATION OF PRIVATE TRAINING ESTABLISHMENTS TARGETED ASSISTANCE FUND FUNDING

8.1 We may suspend or revoke some or all of the PTE TAF Funding given to you if we are satisfied on reasonable grounds that you have not complied, or are not complying, with these Funding Conditions.

Definitions

Unless otherwise defined in these Funding Conditions, capitalised terms used in these Funding Conditions have the meaning given to them in the Funding Conditions Catalogue.

- (a) “Final Report” means a report, in the manner and form prescribed by us that includes information to be advised by us;
- (b) “Report” means a management report that includes the following information:
 - (i) the total amount of your PTE TAF allocation that has been spent to date;
 - (ii) a summary of what your PTE TAF Funding allocation has been used for;
 - (iii) a summary of your financial position;
 - (1) a financial statement between the period funded and the date of submission of report and a financial forecast until the end of funding period in June 2021.
 - (iv) submissions on why you continue to be a regionally significant PTE; and
 - (v) submissions on how you support the development of expertise that contributes to New Zealand by:
 - (1) providing education in skills that have been identified by us as contributing to an industry priority;
 - (2) providing pathways for students that support other organisations, providers or businesses in the same sector in New Zealand, and support the wider international education sector through recruiting from a variety of international markets; and/or
 - (3) supporting learners (international or domestic) into employment or tertiary education at higher levels.

This information will be required in all Reports.

- (c) “Relevant Fund(s)” means any other Fund(s) under which the PTE receives Funding.

Appendix 3: General Security Agreement

Commented [A3]: TEC will determine whether the organisation is required to submit a general security agreement.

Dated

2020

GENERAL SECURITY DEED

Obligor

[Name of PTE to be inserted]

Secured Party

**THE TERTIARY EDUCATION COMMISSION
TE AMORANGI MĀTAURANGA MATUA**

CONTENTS

1. INTERPRETATION 11

2. SECURITY INTEREST 15

3. ATTACHMENT NOT DELAYED 16

4. COVENANT TO PAY AND PERFORM 16

5. REPRESENTATIONS AND WARRANTIES 16

6. PROTECTION OF SECURITY 17

7. COVENANTS 17

8. REPORTING 18

9. DEFAULT 19

10. APPOINTMENT OF RECEIVER 20

11. APPLICATION OF PROCEEDS 20

12. PROTECTION OF SECURED PARTY AND RECEIVER 20

13. NATURE OF SECURITY 21

14. RIGHTS OF THE SECURED PARTY 22

15. PROTECTION OF THIRD PARTIES 22

16. RELEASES 22

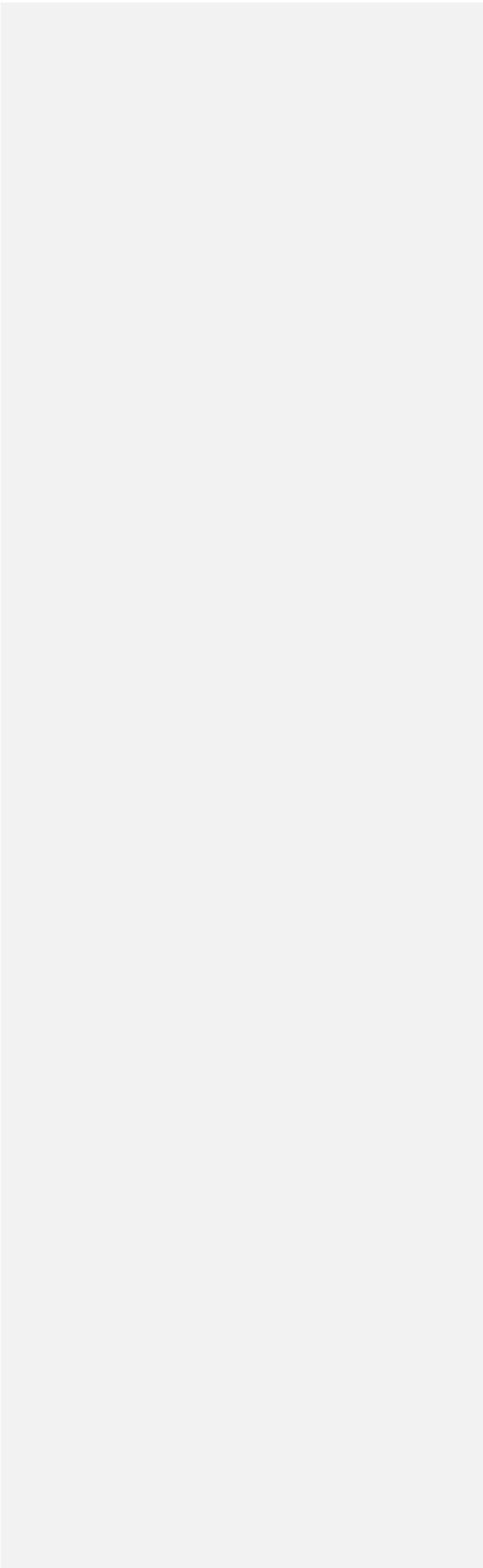
17. PAYMENTS 22

18. INDEMNITIES 23

19. NOTICES 23

20. GENERAL 24

EXECUTION 26



BY

1. **[Name of PTE to be inserted]** (the "Obligor");

IN FAVOUR OF

2. **THE TERTIARY EDUCATION COMMISSION TE AMORANGI MĀTAURANGA MATUA** a body corporate established under section 159C of the Education Act 1989 (the "Secured Party").

BACKGROUND

- A. In consideration of the allocation of funding to the Obligor by the Secured Party under the Fund, the Obligor has agreed to enter into this Deed.
- B. The directors of the Obligor are satisfied that the entering into of this Deed is in the best interests and for the benefit of the Obligor.

IT IS AGREED:

1. INTERPRETATION

- 1.1 **Definitions:** Except to the extent the context requires otherwise, in this Deed:

"**Accounts**" means the financial statements of the Obligor, together with the statements of accounting policies, reports and notes, including auditor's report attached to or intended to be read with any of those statements (as applicable);

"**Business Day**" means any day other than:

- (a) Saturday, a Sunday, a public holiday (as defined in the Holidays Act 2003) in Wellington and Auckland; and
- (b) any day in the period 25 December to 2 January (inclusive);

"**Confirmation of Funding**" means the conditions imposed by the Secured Party from time to time on funding allocated to the Obligor by the Secured Party from the Fund, and communicated in writing by the Secured Party to the Obligor;

"**Deed**" means this Deed and includes any schedules;

"**Education Act**" means the Education and Training Act 2020;

"**Event of Default**" means any one or more of the events referred to in clause 9;

"**Financial Year**" means a financial year of the Obligor;

"**Fund**" means the Private Training Establishments Targeted Assistance Fund;

"**Insolvency Event**" means, in relation to the Obligor, where:

- (a) an encumbrancer takes possession, or a trustee, receiver, receiver and manager, administrator, liquidator, provisional liquidator, statutory manager or similar official is appointed in respect of the Obligor or the whole or any material part of its assets;
- (b) steps are taken or threatened with a view to any such appointment, or dissolution of the Obligor;

- (c) the Obligor convenes a meeting for the purpose of making, or proposes to enter into, any general assignment, arrangement, compromise or composition with or for the benefit of any of its creditors with a view to avoiding insolvency or a notice of intention to remove it from the register is given;
- (d) the Obligor suspends or stops or threatens to suspend or stop payments generally or a moratorium is agreed or declared in respect of or affecting all or any material part of its indebtedness;
- (e) the Obligor seeks or obtains protection from its creditors under any statute or any other law; or
- (f) the Obligor is declared or becomes insolvent, is unable to pay its debts when they fall due, or is presumed unable to pay its debts in accordance with any applicable legislation;

"NZ GAAP" means generally accepted accounting practice as defined in section 8 of the Financial Reporting Act 2013;

"Obligations" means all covenants, conditions, stipulations, representations, warranties, guarantees, undertakings, assurances, agreements and other obligations of any nature (whether present or future, express or implied, actual or contingent, secured or unsecured and whether incurred alone, jointly, severally, or jointly and severally, as principal, surety or otherwise) of the Obligor to or for the benefit of the Secured Party on any account whatever;

"Permitted Disposal" means a disposal by the Obligor of an asset:

- (a) made in the ordinary course of trading of the Obligor;
- (b) that is obsolete or worn-out;
- (c) in exchange for other assets comparable or superior as to type, value or quality; or
- (d) with the prior written consent of the Secured Party.

"Permitted Financial Accommodation" means financial accommodation provided by the Obligor:

- (a) which is normal trade credit provided in the ordinary course of its trading and on arm's length commercial terms;
- (b) which is a deposit of money in New Zealand with a registered bank in the ordinary course of the Obligor's trading; or
- (c) with the prior written consent of the Secured Party.

"Permitted Security Interest" means any Security Interest:

- (a) granted in favour of the Secured Party;
- (b) which is a right of set-off, netting or combination arising by operation of law or practice and in the ordinary course of a the Obligor's banking arrangements over money deposited with a registered bank in New Zealand or its equivalent in any other jurisdiction;
- (c) which is a lien arising solely by operation of law and in the ordinary course of trading of the Obligor provided the debt it secures is paid when due;

- (d) taken in collateral by a seller to the extent that it secures the obligation to pay all or part of the purchase price of that collateral (which may extend to the proceeds of that collateral), where that collateral is purchased in the ordinary course of business of the buyer and the purchase price is paid for within 90 days of supply;
- (e) which is a deemed Security Interest under section 17(1)(b) of the PPSA that does not secure payment or performance of an obligation; or
- (f) consented to by the Secured Party in writing.

"PPSA" means the Personal Property Securities Act 1999;

"Receiver" means any receiver or receiver and manager appointed under this Deed and includes any officer, employee or agent of any of them;

"Regulations" means the Personal Property Securities Regulations 2001;

"Related Company" has the meaning given in section 2(3) of the Companies Act 1993 except that "company" shall mean a company wherever incorporated;

"Related Person" means:

- (a) any Related Company of the Obligor; and
- (b) any person which is treated as an associated person of the Obligor;

"Secured Indebtedness" means all indebtedness (of whatever nature and whether on account of principal moneys, interest, fees or charges, tax or otherwise, and, to avoid doubt, including indebtedness assigned to the Secured Party by a third party) due, owing, payable or remaining unpaid by the Obligor to the Secured Party on any account whatever (including any amounts contemplated by section 87 of the Property Law Act 2007 and all amounts (including damages) from time to time payable by the Obligor under or in connection with any Conditions of Funding or the Education Act), and includes any part of it;

"Secured Obligations" means all obligations for the payment or repayment of the Secured Indebtedness and the performance and observance of all other Obligations of the Obligor (including the due, punctual and proper performance and observance by the Obligor of its other obligations and liabilities under any Conditions of Funding and the Education Act), and includes any part of them;

"Secured Property" means all present and after-acquired property (including real property) of the Obligor, and all personal property in which the Obligor has rights, whether now or in the future, and includes any part of it; and

"Security Interest" has the meaning given to it by section 17 of the PPSA except in respect of any property or any interest in property to which the PPSA does not apply in which case "Security Interest" means a fixed charge.

- 1.2 **PPSA Terms:** In this Deed, unless the context requires otherwise, "**accession**", "**account receivable**", "**advance**", "**aircraft**", "**after-acquired property**", "**at risk**", "**attach**", "**equipment**", "**financing statement**", "**goods**", "**inventory**", "**money**", "**motor vehicle**", "**personal property**", "**proceeds**", "**purchase money security interest**", "**transfer**", "**value**", "**verification statement**" and

"**working day**" have the meaning given to them in the PPSA or the Regulations, as the case may be.

1.3 **Interpretation:** Except to the extent that the context requires otherwise:

- (a) an **associated person** has the meaning given to that term in the Corporations (Investigation and Management) Act 1989;
- (b) the expression **at any time** shall also mean from time to time;
- (c) references to **clauses** or **schedules** are to clauses of and schedules to this Deed;
- (d) references to an Event of Default **continuing** are references to that Event of Default having occurred and not having been waived by the Secured Party or remedied to the Secured Party's satisfaction;
- (e) **derivatives** of any defined word or term shall have a corresponding meaning;
- (f) to **dispose** of any property includes to sell, assign, lend, lease, discount, factor, subordinate, give, transfer or otherwise in any way part or deal with, or grant an option in respect of or any right or interest (legal or equitable) in, that property (other than the creation of security);
- (g) the **dissolution** of a person includes the winding-up, liquidation, removal from the register or bankruptcy of that person or an equivalent or analogous procedure under the law of any relevant jurisdiction;
- (h) a "**distribution**" has the meaning given to that term in section 2 of the Companies Act 1993 (and as if "company" includes any person);
- (i) a **document** or **agreement** (however described and including this Deed) includes that document or agreement as amended, extended, modified, novated, supplemented, varied, restated or replaced from time to time;
- (j) **governmental agency** includes any state or government and any governmental, semi-governmental, judicial, statutory, monetary, accounting or regulatory entity, authority, body or agency, or any other person, in each case charged with the administration of any law or directive;
- (k) **guarantee** includes any guarantee, indemnity, letter of credit, suretyship, bond, third party security interest or any other obligation of any person to pay, purchase, provide funds (whether by the advance of money, the purchase of or subscription for shares or other securities, the purchase of assets, rights or services or otherwise), underwrite, or otherwise be responsible or assume liability for, the debts or other obligations of any person;
- (l) something having a "**material adverse effect**" is a reference to, in the reasonable opinion of the Secured Party, it having a material adverse effect on:
 - (i) the business, operation, property, condition (financial or otherwise) of the Obligor; or
 - (ii) the ability of the Obligor to perform and comply with the Secured Obligations including without limitation its obligations under this Deed; or

- (iii) the effectiveness or priority of any Security Interest granted by the Obligor under this Deed; or
 - (iv) the Secured Party's ability to recover the Secured Indebtedness or any other amount payable by the Obligor to the Secured Party or to enforce performance of Secured Obligations by the Obligor; or
 - (v) the validity, enforceability or priority of the whole or any part of this Deed, any Conditions of Funding or any rights or remedies of the Lender in respect of any part of the Secured Obligations.
- (m) the **headings** to clauses are inserted for convenience only and shall be ignored in construing this Deed;
 - (n) the word **including** and other similar words do not imply any limitation;
 - (o) **on demand** means on the receipt by the Obligor in accordance with the notice provisions of this Deed of any demand in writing that has been signed by a representative of the Secured Party;
 - (p) any **party** to this Deed (or any other document) includes its successors, permitted assignees, transferees, substitutes and executors and administrators;
 - (q) a **person** includes any individual, company, corporation, firm, club, partnership, limited partnership, joint venture, association of persons (corporate or not), organisation, trust, state or governmental agency (in each case, whether or not having separate legal personality);
 - (r) the **plural** includes the **singular** and vice versa and a word indicating a **gender** includes each other gender;
 - (s) a **statute** or a provision of a **statute** includes that statute or provision as amended, modified, substituted or re-enacted from time to time and any regulations, orders in council and other instruments issued or made under that statute from time to time; and
 - (t) **tax(es)** includes any present or future tax, levy, impost, duty, charge, fee, deduction or withholding of any nature and whatever called (including any interest, penalties, fines and charges in respect of taxes) imposed, levied, collected, withheld or assessed by any governmental agency, on whomsoever imposed, levied, collected, withheld or assessed.

2. SECURITY INTEREST

- 2.1 **Security:** As continuing security for compliance with the Secured Obligations, the Obligor grants the Secured Party a Security Interest in the Obligor's Secured Property.
- 2.2 **Transfer of Accounts Receivable:** Any Security Interest in an account receivable created by this Deed shall take effect as a transfer. In the case of any such account receivable that is proceeds of any of the Obligor's goods that the Secured Party permits the Obligor to deal with under clause 7.1(c), the Obligor's transfer of that account receivable to the Secured Party is in consideration for the Secured Party permitting the dealing that gave rise to that account

receivable, which the Secured Party does on an ongoing basis provided no Event of Default has occurred and is continuing.

3. ATTACHMENT NOT DELAYED

3.1 The Security Interest created by this Deed in any property to which the PPSA applies shall attach, in the case of:

- (a) any present Secured Property, from when the Obligor first signs or assents to this Deed in one of the ways specified in section 36(1)(b) of the PPSA; or
- (b) any after-acquired Secured Property, from when the Obligor acquires any rights in that property.

4. COVENANT TO PAY AND PERFORM

4.1 The Obligor agrees that it will pay the Secured Indebtedness as and when due (or if the terms do not provide a time for payment, within five Business days of demand) and perform and comply with the Obligations.

5. REPRESENTATIONS AND WARRANTIES

5.1 **Security Interest:** The Obligor represents and warrants that:

- (a) **Rights:** it has sufficient rights in its Secured Property to grant the Secured Party a Security Interest in that Secured Property free from all security interests other than any Permitted Security Interest;
- (b) **Effective Security:** the Security Interest created by this Deed is effective security over its Secured Property.

5.2 **General:** The Obligor represents and warrants that:

- (a) **Duly Formed:** it is duly incorporated and validly existing under the laws of New Zealand with indefinite corporate existence, capable of suing and being sued and has the power and authority to own its assets and to carry on its business as presently conducted;
- (b) **Binding Obligations:** its obligations under this Deed are legal, valid and binding and enforceable against it;
- (c) **Consents:** all actions, conditions and things (including the obtaining of consents and other requirements) required to be taken, fulfilled, done or obtained to ensure:
 - (i) that it is able to lawfully enter into, exercise its rights and perform its obligations under, this Deed;
 - (ii) that those obligations are legal, valid, binding and enforceable against it; and
 - (iii) that this Deed is admissible in evidence in the courts of New Zealandhave been taken, fulfilled, done and obtained and all consents or other requirements remain in full force and effect; and

(d) **No Event of Default:** no Event of Default has occurred and is continuing or will occur as a result of it entering into this Deed.

5.3 **Repetition:** The representations and warranties contained in clauses 5.1 and 5.2 will be deemed to be repeated by the Obligor at all times for so long as any of the Secured Obligations remain outstanding by reference to the facts and circumstances then existing.

5.4 **Reliance:** The Obligor acknowledges and agrees that the Secured Party has relied on the representations and warranties set out in clauses 5.1 and 5.2 in agreeing to accept this Deed.

6. PROTECTION OF SECURITY

6.1 **Further Assurance:** The Obligor shall, at its own expense and promptly at the request of the Secured Party, complete, execute and deliver all such agreements (in form and substance acceptable to the Secured Party) and do all such things (or ensure the same are done) as necessary or desirable for perfecting or protecting any Security Interest intended to be created by or pursuant to this Deed or for facilitating the enforcement or realisation thereof or for the protection of all or any of its rights and interests under or pursuant to this Deed.

7. COVENANTS

7.1 **Secured Property:** The Obligor agrees that so long as any Secured Obligation remains outstanding, unless the Secured Party consents otherwise in writing:

(a) **Maintenance of assets:** it will maintain its Secured Property in the manner that would be expected by a prudent person carrying on the business of the Obligor (fair wear and tear excepted);

(b) **Pay Outgoings:** it will pay and discharge all taxes, rates, fees, assessments and governmental or local governmental charges payable by it or in respect of its Secured Property on or before the date for payment of those taxes, rates, fees, assessments or charges (inclusive of any applicable grace periods);

(c) **Disposal:** it will not dispose of any Secured Property other than a Permitted Disposal;

(d) **Removal:** it will not remove or permit to be removed any of its Secured Property to any place outside New Zealand;

(e) **Negative Pledge:** it will not create, allow to be created or permit to exist, any security over its Secured Property, except a Permitted Security Interest; and

(f) **Serial-Numbered Goods:**

(i) within 15 business days following the date of this Deed, if the Secured Property at the date of this Deed includes serial numbered goods (including motor vehicles or aircraft), which are not inventory and are not motor vehicles subject to an operating lease to the Obligor, the Obligor shall provide the Secured Party with such information and documents as the Secured Party requires to register a financing statement in respect of each Security Interest in all those serial numbered goods in accordance with the PPSA and the Regulations; and

- (ii) it will deliver to the Secured Party immediately notice of acquisition of any motor vehicle or aircraft which is not inventory (including where the Obligor ceases to hold such goods as inventory), and provide the Secured Party with such information and documents as the Secured Party requires to register a financing statement in respect of each Security Interest in those serial numbered goods in accordance with the PPSA and the Regulations.

7.2 **Insurance:** The Obligor will, unless the Secured Party has otherwise consented in writing, insure and keep insured (with insurers acceptable to the Secured Party) its insurable Secured Property against risks normally insured against in the business of the Obligor and other insurable risks which should prudently be insured against in accordance with usual commercial and industry practice.

7.3 **General:** The Obligor covenants with the Secured Party that, so long as any Secured Obligations remain outstanding, it will:

- (a) **Default:** notify the Secured Party of the occurrence of any Event of Default promptly upon becoming aware of it;
- (b) **Comply with all Laws:** duly and promptly comply in all respects with all laws applicable to it;
- (c) **Make Loans etc:** not make any loan or other financial accommodation to, guarantee the liabilities of or otherwise assume any indebtedness of any person other than Permitted Financial Accommodation;
- (d) **Transactions with Related Persons:** not enter into any transaction with, or for the benefit of a Related Person other than a bona fide transaction for fair value on arm's-length commercial terms; and
- (e) **Distributions:** not pay or make, or allow to be paid or made, any distribution.

7.4 **Information:** Promptly on request by the Secured Party, the Obligor shall deliver to the Secured Party such information relating to the business, affairs, financial condition, operations or assets of the Obligor as the Secured Party may reasonably request.

8. REPORTING

8.1 **Accounts:** In addition to the obligations under clause 7.4, the Obligor shall deliver to the Secured Party as soon as they become available, and in any event within:

- (a) 90 days of the end of each Financial Year, annual audited Accounts as at the end of and for that Financial Year;
- (b) 90 days of the end of the first six months of each Financial Year, half yearly un-audited interim Accounts as at the end of and for that first six months of that Financial Year.

8.2 **Preparation of Financial Information:** The Obligor shall ensure that all Accounts delivered to the Secured Party under clause 8.1:

- (a) **NZ GAAP:** are prepared in accordance with NZ GAAP consistently applied (except to the extent agreed in writing by the Secured Party); and

- (b) **Fair View:** give a true and fair view in accordance with NZ GAAP of the financial position of the Obligor and the results of the operations of the Obligor as at the end of and for the period for which those Accounts are prepared.

8.3 **No derogation of Education Act:** The Obligor agrees and acknowledges that nothing in this Deed shall amend, waive or derogate from the rights and powers of the Secured Party under the Education Act or any applicable Conditions of Funding, including without limitation in respect of Obligor financial reporting and requiring provision of information in respect of the Obligor.

9. DEFAULT

9.1 **Events of Default:** The following events (whether or not the happening of an event is in the Obligor's control) are Events of Default, namely if:

- (a) **Non-Payment:** the Obligor fails to pay any Secured Indebtedness on the due date except if such failure is of a technical or administrative nature and is remedied within two Business Days of such failure;
- (b) **Breaches:** the Obligor breaches or fails to comply with:
 - (i) any of the obligations imposed on or in respect of it under clause 7; or
 - (ii) any other obligation under this Deed, and such breach or failure to comply (if capable of remedy) continues for 10 Business Days from the earlier of the Obligor first becoming aware of that breach or failure or the Secured Party having given notice of the breach or failure to the Obligor;
- (c) **Misrepresentation:** any representation or warranty given or repeated by the Obligor under clause 5 is not correct in any material respect provided that no Event of Default will occur in relation to a representation deemed to be made under clause 5 after the date of this Deed if it is capable of remedy and is remedied within 10 Business Days of the Obligor first becoming aware of the misrepresentation or the Secured Party having given notice of the misrepresentation to the Obligor;
- (d) **Insolvency Event:** an Insolvency Event occurs; or
- (e) **Material Adverse Effect:** so long as any Secured Obligations remain outstanding, any event or series of events, whether related or not, occurs, or any circumstances arise or exist, which has a material adverse effect.

9.2 **Consequences of Event of Default:** If an Event of Default occurs and is continuing:

- (a) **Secured Indebtedness:** the Secured Indebtedness shall immediately become payable; and
- (b) **Enforcement:** in addition to the exercise of any other rights the Secured Party may have at law, the Secured Party may:
 - (i) in the Obligor's name or in its own name, do any thing and exercise any right which the Obligor or its directors could do or exercise in relation to the Secured Property; and
 - (ii) appoint any person or persons to be a Receiver of all or any of the Secured Property.

9.3 **Contracting Out:** On the enforcement of those Security Interests created by this Deed to which the PPSA applies, sections 114(1)(a), 133 and 134 of the PPSA shall not apply. The Obligor and the Secured Party also contract out of any rights the Obligor may have under sections 116, 120(2), 121, 125, 129 and 131 of the PPSA on such enforcement.

10. APPOINTMENT OF RECEIVER

10.1 **Appoint Receiver:** If an Event of Default occurs and is continuing, the Secured Party may in writing appoint any person or persons to be a Receiver of all or any part of the Secured Property on such terms as are considered necessary or expedient by the Secured Party and may at any time by notice in writing remove any such Receiver and appoint another or others in the Receiver's place. If more than one Receiver is appointed pursuant to this clause 10.1, any such Receiver may act jointly with and/or severally from any other Receiver.

10.2 **Agent of Obligor:** Every Receiver appointed pursuant to clause 10.1 is deemed to be the agent of the Obligor and the Obligor will be solely responsible for the Receiver's acts or omissions.

10.3 **Rights of Receiver:** Any Receiver will (in addition to any statutory powers vested at any time in the Receiver or in receivers and/or managers generally) during the Receiver's appointment, have all the rights which the Obligor itself may have in relation to the Secured Property.

10.4 **Entry into Possession:** If the Secured Party or a Receiver enters into possession of the Secured Property it may at any time give up possession of the Secured Property.

11. APPLICATION OF PROCEEDS

11.1 Subject to any statute that overrides this clause 11, the net profits (if any) of carrying on the business of the Obligor and the net proceeds of any sale or realisation of the Secured Property on enforcement received by any Receiver or the Secured Party will be applied:

First in discharging all costs and expenses of whatever nature (including payment of the remuneration of the Receiver) of and incidental to the appointment of the Receiver and the exercise of all or any of the Receiver's rights under this Deed or at law;

Secondly in discharging all costs and expenses of whatever nature of and incidental to the exercise of all or any of the Secured Party's rights under this Deed or at law;

Thirdly in or towards payment of all claims ranking in priority to the Secured Indebtedness;

Fourthly in or towards payment to the Secured Party to satisfy the Secured Obligations; and

Fifthly (subject to the prior rights of any other person, whether by virtue of section 117 of the PPSA, any other statute or otherwise at law) in payment of any surplus to the Obligor.

12. PROTECTION OF SECURED PARTY AND RECEIVER

12.1 **No Obligation:** Except to the extent otherwise provided by any rule of law (and then only if such rule of law is incapable of being excluded by contractual agreement), neither the Secured Party nor any Receiver is:

- (a) **No Obligation:** obliged to enforce any of the Secured Obligations (or take any action or proceedings for enforcement) or make any enquiry as to the nature or sufficiency of any payment owing to the Obligor by any person;
- (b) **No Liability:** liable in respect of any loss or damage which results from, or is contributed to by, the exercise or attempted or purported exercise or the non-exercise by the Secured Party or a Receiver of its rights under this Deed or conferred by law; or
- (c) **Account:** (in the case of the Secured Party) liable to account as a mortgagee in possession in respect of any Secured Property.

12.2 **Recovery:** In applying the proceeds of any sale or realisation of the whole or any part of the Secured Property, the Secured Party and any Receiver are obliged to account to the Obligor only in respect of so much of those proceeds as shall have been actually received in cleared funds as at the date of actual receipt of the same.

12.3 **Exclusion of Legislation:** All legislation which, directly or indirectly, lessens or varies or otherwise affects an obligation under any this Deed in favour of the Obligor or delays or otherwise prevents or prejudicially affects the exercise of any rights by the Secured Party, any Receiver or any attorney is, to the fullest extent permitted by law, deemed to be negated and excluded in its application to this Deed.

13. NATURE OF SECURITY

13.1 **Liability Not Affected:** This Deed, each Security Interest created by this Deed and the obligations of the Obligor under this Deed are principal obligations and will not be affected by any thing which but for this clause 13.1 would have affected the Obligor's obligations or operated to release or discharge any such Security Interest, or would have otherwise provided a defence to the Obligor (other than a release of the Obligor's obligations under and in accordance with this Deed).

13.2 **Continuing and Independent Security:** This Deed:

- (a) will remain in full force and effect by way of continuing security until a release of this Deed has been signed by the Secured Party and delivered to the Obligor;
- (b) will not be considered to be wholly or partially satisfied, discharged or affected by any intermediate payment, settlement of account, or other matter or thing whatsoever; and
- (c) is in addition to, independent of, not in substitution for, and will not merge with, prejudicially affect, or be prejudicially affected by, any other guarantee, security interest or right which the Secured Party may have at any time.

13.3 **No Marshalling:** The Secured Party is not required to marshal, enforce or apply under, or appropriate, recover or exercise, any guarantee, security interest or other right held by it at any time or any moneys or property which it holds or is entitled to receive at any time, before this Deed is enforced.

14. RIGHTS OF THE SECURED PARTY

14.1 Any of the rights which are conferred by this Deed (either expressly or impliedly) may be exercised after the Deed becomes enforceable by the Secured Party irrespective of whether the Secured Party shall have taken possession of the Secured Property.

15. PROTECTION OF THIRD PARTIES

15.1 No person dealing with the Secured Party or any Receiver or any person acting on behalf of the Secured Party or any Receiver shall be concerned to enquire whether any Event of Default has occurred or any event has happened upon which any of the rights conferred by or pursuant to this Deed are or may be exercisable, or otherwise as to the propriety or regularity of acts purporting or intended to be in exercise of any such rights nor will such person be affected by any notice that such dealing or action is unnecessary or improper.

16. RELEASES

16.1 The Secured Party will, at the request in writing of the Obligor, execute a complete discharge of this Deed on a without recourse or warranty basis if it is satisfied that:

- (a) the whole of the Secured Indebtedness has been paid and the Secured Obligations have been complied with; and
- (b) no payment received or to be received by the Secured Party may be avoided, or required to be repaid by the Secured Party, whether under any law relating to insolvency or otherwise.

16.2 If the Obligor makes a Permitted Disposal of Secured Property, that Secured Property shall be automatically released from the security created under this Deed with effect immediately prior to such disposal, and the Secured Party shall do all such acts as are reasonably requested by the Obligor to release the Secured Property from the Security Interests created under this Deed.

17. PAYMENTS

17.1 **Payments:** All amounts payable by the Obligor under or pursuant to this Deed shall be paid:

- (a) in immediately available funds;
- (b) free and clear of any restriction or condition; and
- (c) free and clear of and (except to the extent required by law) without any set-off, deduction or withholding including on account of any tax.

17.2 **Currency:** Payment of an amount by the Obligor in a currency other than the due currency does not discharge that amount except to the extent of the amount of the due currency actually obtained on conversion of the amount received into the due currency.

17.3 **Tax Gross-up:** If any withholding or deduction for or on account of any tax (a "**deduction**") is required by law to be made in respect of any payment under this Deed, the amount of the payment due from the Obligor shall be increased by an amount which (after making any deduction) leaves an amount equal to the payment which would have been due if no deduction had been required.

17.4 **Reinstatement:** If any payment to the Secured Party of the Secured Indebtedness is or is likely to be avoided, whether by law or otherwise, or required to be repaid to a liquidator or similar official then, notwithstanding that the Secured Party may have signed a release of this Deed, to the fullest extent permitted by law:

- (a) the Obligor's obligation to have made such payment will be deemed not to have been affected or discharged;
- (b) the Obligor will indemnify the Secured Party on demand against all costs which the Secured Party may sustain or incur directly or indirectly as a result of or in connection with it or any other person on its behalf being required for any reason to refund all or part of any amount received or recovered by it in respect of such payment and shall pay to the Secured Party on demand the amount so refunded by it or any other person on its behalf; and
- (c) the Secured Party and the Obligor will be deemed to be restored to the position in which each would have been, and will be entitled to exercise the rights they respectively would have had, if that payment had not been made.

18. INDEMNITIES

18.1 **General Indemnity:** The Obligor will indemnify the Secured Party and each Receiver on demand against any cost which the Secured Party or Receiver may sustain or incur directly or indirectly as a result of or in connection with the occurrence or continuation of an Event of Default or the Obligor not complying with its obligations under this Deed.

18.2 **Independent Obligations:** Each of the indemnities contained in this Deed constitutes a separate and independent obligation from the other obligations in this Deed giving rise to an independent cause of action irrespective of any time, credit or other indulgence on the part of the Secured Party or any other matter.

19. NOTICES

19.1 **Writing:** Each notice under this Deed (each a "notice") shall be in writing and delivered personally or sent by post, email or facsimile.

19.2 **Addresses:** Each notice shall be sent to the address of the relevant party set out below or to any other address from time to time designated for that purpose by at least five Business Days' prior notice to the other party. The initial address details of the parties are:

Secured Party: The Tertiary Education Commission

Delivery address

Level 10, 44, The Terrace, Wellington

Postal address

PO Box 27048, Wellington

Email: [REDACTED]

Attention: [REDACTED]

The Obligor: [Name of PTE to be inserted]

Delivery address

[]

Postal address

[]

Email: []

Attention: []

19.3 **Receipt:** A notice under this Deed is deemed to be received if:

- (a) **Delivery:** delivered personally, when delivered;
 - (b) **Post:** posted, three Business Days after the date of posting;
 - (c) **Email:** sent by email, when actually received in readable form by the recipient,
- provided that any notice deemed received after 5pm or on a non-Business Day shall be deemed to have been received on the next Business Day.

20. GENERAL

20.1 **Time of Essence:** Time is of the essence in respect of all dates and times for performance by the Obligor of its obligations under this Deed.

20.2 **Costs:** The Obligor will pay to the Secured Party on demand all costs (and any taxes thereon) reasonably incurred by the Secured Party in or in connection with:

- (a) the preservation and/or enforcement or attempted enforcement of any of the Secured Party's rights under this Deed; and
- (b) the compliance with any demand given under section 162 of the PPSA or any application for, or the obtaining of, a court order to maintain any registration relating to any Security Interest created by this Deed and the serving of any such court order on any person;

All costs, taxes and other amounts payable under this clause 20.2, including all remuneration payable to any Receiver, shall be payable by the Obligor on demand and shall in the meantime form part of the Secured Obligations and be secured by the Security Interests created by this Deed.

20.3 **Amendments, Waivers and Consents:** Any provision of this Deed may be amended or supplemented only by agreement in writing between the Obligor and the Secured Party. Any waiver may be given at any time but only if the Secured Party agrees in writing. Any consent under any provision of this Deed must also be in writing. Any such waiver or consent may be given subject to any conditions thought fit by the person giving it and shall only be effective in the instance and for the purpose for which it was given.

20.4 **Assignment:** The Obligor may not assign or transfer any of part of this Deed without the written consent of the Secured Party. Change in the effective control of a party is deemed to be an assignment.

- 20.5 **No Implied Waivers:** No failure on the part of the Secured Party to exercise, and no delay on its part in exercising, any right, power or remedy under this Deed will operate as a waiver thereof, nor will any single or partial exercise of any right, power or remedy preclude any other or further exercise of such right, power or remedy, or the exercise of any other right, power or remedy.
- 20.6 **Rights Cumulative:** The rights, powers and remedies provided in this Deed are cumulative and not exclusive of any rights, powers or remedies provided under any other agreement or by law.
- 20.7 **Partial Invalidity:**
- (a) The illegality, invalidity or unenforceability at any time of any provision of this Deed under any law will not affect the legality, validity or enforceability of the remaining provisions of this Deed nor the legality, validity or enforceability of that provision under any other law.
 - (b) If any illegal, invalid or unenforceable provision would be legal, valid and enforceable if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.
- 20.8 **Survival of Covenants:** The payment and indemnity obligations of the Obligor will survive the termination of this Deed and payment of the Secured Indebtedness.
- 20.9 **Privity:** The Obligor acknowledges that, in terms of Part 2, Subpart 1 of the Contract and Commercial Law Act 2017, this Deed is made for the benefit of, and is intended to be enforceable by, the Secured Party. This Deed is also made for the benefit of, and is intended to be enforceable by, each Receiver, each of whom is entitled to enforce against the Obligor each provision of this Deed which confers a benefit upon it. However, no consent of any Receiver is required for any amendment made to this Deed.
- 20.10 **Copy of Deed and Financing Statement:** The Obligor acknowledges receipt of a copy of this Deed and waives any right it may have to receive a copy of any financing statement or verification statement that is registered, issued or received at any time in relation to this Deed.
- 20.11 **Governing law and jurisdiction:** This Deed is governed by New Zealand law and the parties irrevocably submit to the non-exclusive jurisdiction of the New Zealand courts in any proceedings relating to it.
- 20.12 **Counterparts:** This Deed may be executed in any number of counterparts (including facsimile or scanned PDF counterpart), all of which when taken together shall constitute one and the same instrument, and any of the parties hereto may execute this Deed by signing any such counterpart.
- 20.13 **Delivery:** Without limiting any other mode of delivery this Deed will be delivered by the Obligor on the earlier of:
- (a) **Physical Delivery:** physical delivery of an original of this Deed, executed by the Obligor, into the custody of the Secured Party or its solicitors; or
 - (b) **Transmission:** transmission by the Obligor, its solicitors or any other person authorised in writing by the Obligor of a facsimile, photocopied or scanned copy of an original of this Deed, executed by the Obligor, to the Secured Party or its solicitors.

EXECUTION

THE OBLIGOR

EXECUTED as a DEED for and on behalf)
of **[Name of PTE to be inserted]**)
)

Director

Director

EXECUTED as a DEED for and on behalf)
of **[Name of PTE to be inserted]**)

by its Director / Authorised Signatory /)
Attorney)

Signature

[Print Name] in the presence of

Witness signature

Full name

Address

Occupation

