

ESPERANCE ORGANISED PRIMARY PRODUCERS CO-OPERATIVE LIMITED

(ABN 20 992 642 274)

DEED OF GUARANTEE AND INDEMNITY

THIS DEED OF GUARANTEE and INDEMNITY ("this Guarantee") is granted on the _____ day of _____ 20_____ by the party or parties named and described in Item 1 of the Schedule ("the Guarantor") in favour of Esperance Organised Primary Producers Co-operative Limited (ABN 20 992 642 274) of Lot 46 Norseman Rd, ESPERANCE, WA 6450 ("EOPP").

IN THE FOLLOWING CIRCUMSTANCES:

EOPP has at the request of the Guarantor agreed to accept the Debtor's application to trade as an Authorised Purchaser and has granted or agreed to grant certain trade credit to the party named and described in Item 2 of the Schedule ("the Debtor") and may hereafter grant further trade credit to the Debtor in the conduct of their respective businesses.

NOW BY THIS GUARANTEE:

- 1 In consideration of EOPP at the request and direction of the Guarantor accepting the Debtor as an Authorised Purchaser and/or granting the Debtor trade credit from time to time the Guarantor hereby guarantees to EOPP the due and punctual payment by the Debtor of:
 - 1.1 all monies now or hereafter to become owing or payable by the Debtor to EOPP whether by way of trade credit allowed to the Debtor or from the supply of goods or services under any supply agreement or payment of interest or of fees, costs, charges or expenses or otherwise; and
 - 1.2 all other monies now or hereafter to become owing or payable to EOPP by the Debtor either alone or jointly with any other person on any account whatsoever including (but without limitation) all monies which EOPP pays or becomes actually or contingently liable to pay to, for, on behalf of the Debtor either alone or jointly with any other person whether such payment is made or liability arises under or by virtue of any agreement or obligation entered into or to be entered into by the Debtor with EOPP in relation to the provision of trade credit, the supply of goods and services under any supplier agreements, or any other monies due and payable of any kind, or liability that arises under or by virtue of this Guarantee or from circumstances or transactions in connection herewith or by reason of EOPP having already or hereafter becoming a party to any negotiable instrument or entering into any bond indemnity or guarantee;all of which monies and liabilities mentioned in paragraphs 1.1 and 1.2 hereof are hereinafter referred to as "the monies hereby secured". If the Debtor fails to make due and punctual payment of all or any part of the monies hereby secured, the Guarantor agrees to pay EOPP on demand in writing a sum equal to such amounts.
- 2 It is hereby agreed and declared as follows:
 - 2.1 This Guarantee shall be a continuing guarantee and shall not be considered as wholly or partially discharged by the payment at any time hereafter of any of the monies hereby secured or by any settlement of account or by any other matter or thing whatsoever and shall apply to the present and any future balance of the monies hereby secured.
 - 2.2 This Guarantee shall be enforceable notwithstanding that any negotiable or other instrument, security, or contract shall be still in circulation or outstanding.
 - 2.3 The Guarantor agrees that this Guarantee secures payment of the debtors obligations on account to EOPP and that EOPP may register this Guarantee as a security interest on the Personal Properties Security Register.
- 3 This Guarantee and the liability of the Guarantor hereunder shall not be affected:
 - 3.1 by the granting to the Debtor or to any co-surety or to any other person any time to pay the monies hereby secured or any part thereof or any other indulgence or consideration;
 - 3.2 by reason of any transaction or arrangement that may take place between EOPP and the Debtor or any co-surety or any other person;
 - 3.3 by reason of EOPP becoming a party to, or bound by, any compromise assignment of property or scheme of arrangement or composition of debts or scheme of reconstruction by or relating to the Debtor or any co-surety or any other person;
 - 3.4 by any act, neglect, omission or default of EOPP whereby the whole or part of the liability of the Guarantor or any co-surety to EOPP as surety would but for this provision have been affected or discharged;
 - 3.5 by EOPP failing or neglecting to recover by the realisation of any collateral or other security or otherwise any of the monies hereby secured;
 - 3.6 by any other laches, defaults, acts or omissions on the part of EOPP whereby any liability of the Guarantor to EOPP would or might but for this provision be affected or discharged; or
 - 3.7 by the release, discharge, abandonment or transfer either in whole or in part and either with or without consideration of any security now or hereafter held by EOPP from the Debtor or from any co-surety or from any other person;
 - 3.8 by reason of any unauthorised use of the Debtor's personalised member number or any other purchaser order code which may be recommended for use by EOPP from time to time;and EOPP shall be under no obligation to marshal in favour of the Guarantor or any co-surety any security whatever held by EOPP or any of the funds or assets that EOPP may be entitled to receive or have a claim upon and EOPP may at its absolute discretion vary, exchange, renew, modify, release, refuse to complete, or to enforce or to assign any judgements, special ties, guarantees or other securities or instruments negotiable or otherwise held by it whether satisfied by payment or not without affecting or discharging the liability of the Guarantor under this Guarantee.
- 4 This Guarantee shall be deemed to be a principal obligation and shall not be treated as ancillary to any other obligation howsoever created or arising and in particular shall be independent of and in no way affected by any other security which EOPP now holds or obtains or hereafter may obtain or hold for any indebtedness or liability (whether present or future direct or contingent, joint or

- several) of the Debtor or of the Guarantor or of any co-surety or any other person to EOPP with the intent that this Guarantee shall be enforceable unless the same shall have been satisfied according to the terms hereof notwithstanding that any other obligation whatever arising under any other security shall be in whole or in part extinguished or unenforceable whether by reason of any statute (including any Statute of Limitation) rule of law or equity or for any other reason whatsoever.
- 5 All monies received by EOPP in reduction of or on account of the monies hereby secured from or on account of the Debtor (including any distribution upon the liquidation or bankruptcy of the Debtor) or from the Guarantor or from any other person shall be deemed to be payments in gross and until EOPP shall have received all monies now or hereafter to become owing or payable to EOPP by the Debtor either alone or jointly with any other person and whether under this Guarantee or otherwise the Guarantor shall not be entitled on any grounds whatsoever:
- 5.1 to claim the benefit of any security now or hereafter held by EOPP for the payment of the monies hereby secured of any part thereof;
- 5.2 either directly or indirectly to claim or receive the benefit of any distribution dividend or payment arising out of or relating to the liquidation, death or bankruptcy of the Debtor or of any co-surety or of any person liable jointly or severally with the Debtor to EOPP or liable under any security negotiable or otherwise now or hereafter held by EOPP as security for any monies owing or to become owing by the Debtor to EOPP; or
- 5.3 in the event of the liquidation, death or bankruptcy of the Debtor, or any co-surety or any such other person whomsoever to prove or claim in competition with EOPP so as to diminish any distribution dividend or payment which but for such proof EOPP would be entitled to receive arising out of or relating to such liquidation, death or bankruptcy;
- and the receipt of any distribution dividend or other payment which EOPP may receive arising out of or relating to such liquidation, death or bankruptcy shall not prejudice the right of EOPP to recover from the Guarantor the monies hereby secured.
- 6 In the event of a claim that any transaction during the currency of this Guarantee affecting in any way the monies hereby secured is void or voidable under any law relating to liquidation, bankruptcy or the protection of creditors being upheld, conceded or compromised:
- 6.1 EOPP shall forthwith upon such claims being upheld, conceded or compromised become entitled against the Guarantor to all such rights in respect of the monies hereby secured as EOPP would have had if the transaction (or so much thereof as is held or conceded to be void or voidable or as is foregone on compromise) had not taken place;
- 6.2 the Guarantor shall upon such claim being upheld conceded or compromised take all such steps and sign all such documents as may be necessary or convenient to restore to EOPP any securities held by EOPP from the Guarantor immediately prior to such transaction; and
- 6.3 in any such case notwithstanding anything hereinbefore contained in addition to the other monies recoverable by EOPP from the Guarantor hereunder EOPP shall be entitled to recover from the Guarantor all costs and expenses whatsoever (including legal costs and expenses on a solicitor/client basis) incurred by EOPP in or in connection with any negotiations or proceeding relating to any such claim as aforesaid.
- 7 EOPP may, subject to applicable laws, from time to time at the request or with the consent (whether actual or implied) of the Debtor increase or otherwise vary the amount of credit or other financial accommodation granted or agreed to be granted to the Debtor or otherwise amend or vary or agree to any amendment or variation of any contracts, trade agreements, or other arrangements now or from time to time hereafter in force between EOPP and the Debtor and EOPP may transact any business with for or on account of the Debtor at EOPP's absolute discretion and without any consent by the Guarantor being necessary with the intent that this Guarantee shall extend to cover all credit granted and all contracts and arrangements from time to time in force between EOPP and the Debtor.
- 8 Notwithstanding anything contained in this Guarantee and notwithstanding that the whole or any part of the monies hereby secured are or may be irrecoverable from the Debtor by EOPP (whether by reason of any legal limitation, disability or incapacity of or affecting the Debtor or by reason of any other fact or circumstance whatsoever and whether the transactions or any of them relating to such monies have been void ab initio or have been subsequently avoided and whether or not any of the matters or facts relating thereto have been or ought to have been within the knowledge of the Co-operative) whereby such monies or any part thereof are not recoverable from the Guarantor as surety, by EOPP, then and in any such case the Guarantor hereby as a separate and additional liability under this instrument indemnifies the Co-operative in respect of all such monies and as a principal debtor agrees with EOPP to pay to EOPP on demand, in writing, a sum equal to the amount of all such monies and the terms of this instrument shall mutatis mutandis apply as far as possible to this indemnity and the sum of money covered by the indemnity shall be deemed to be part of the monies hereby secured.
- 9 The Guarantor hereby acknowledges that the Guarantor does not execute this instrument as a result of or by reason of any promise, representation, statement or information of any nature or kind whatsoever given or offered to the Guarantor by or on behalf of EOPP whether in answer to any enquiry by or on behalf of the Guarantor or not and that EOPP except as provided in this Guarantee was not prior to its execution by the Guarantor and is not thereafter under any duty to the Guarantor to do or execute any matter or thing relating to the affairs of the Debtor or its transactions with EOPP.
- 10 This Guarantee is security for all and every part of the monies hereby secured and EOPP may proceed against any Guarantor alone without proceeding against any co-surety or against any one or more co-surety and without affecting the liability of any other Guarantor or the validity of this security.
- 11 A certificate, notice or demand signed by EOPP or any of its duly appointed officers or its solicitors and agents for the time being stating the amount of the monies hereby secured at the date of, or mentioned in any such certificate, notice or demand shall be conclusive evidence against the Guarantor that the amount so stated is the amount of the monies payable by the Guarantor under the terms of this Guarantee at the date mentioned in the certificate, notice or demand and is the amount of the monies hereby secured as at that date.
- 12 This Guarantee shall be in addition to and not in substitution for any other guarantee or security now or hereafter given by any co-

surety to EOPP and relating to the monies hereby secured or any part thereof.

- 13 The party or parties (if any) named in item 3 (i) of the Schedule has or have executed this Guarantee as trustee of the trust or as trustees of the respective trusts named in Item 3 (ii) of the Schedule created by a deed or deeds described in Item 3 (iii) of the Schedule and such party or parties shall be liable under the covenants and obligations contained in this Guarantee both personally and as such trustee or trustees with the intent that all of the assets from time to time both present and future of the trust or respective trusts whether by reason of original settlement or accretion thereto or of purchase, gift or other transfer or acquisition however occurring shall be available to satisfy its or their liabilities hereunder and the party or parties warrant that all of the powers and discretions conferred by the deed or respective deeds of trust are at the date hereof capable of being validly exercised by the trustee thereof and that the same have not been varied or revoked.
- 14 The Guarantor will on demand pay all costs hereof and all stamp duty payable hereon.
- 15 15.1 Except to the extent that such interpretation shall be excluded by or be repugnant to the context whenever the same is used in this Guarantee.
- 15.1.1 the expressions "the Debtor", "EOPP", and "the Guarantor" respectively mean each of them and their assigns transferees, successors and personal representatives and if more than one then each of them and their and each of their personal representatives transferees and assigns;
- 15.1.2 "EOPP" shall extend to and include EOPP's successors in business and any other company which is deemed pursuant to Section 50 of the Corporations Law to be related to it;
- 15.1.3 the word person includes a company or corporation;
- 15.1.4 words importing the singular number or plural number include the plural number and singular number respectively;
- 15.1.5 words importing any gender include every other gender;
- 15.1.6 the word "co-surety" includes any other person not being the Guarantor or the Debtor liable whether as principal or surety jointly, severally, or jointly and severally for the payment to EOPP of the monies hereby secured or any part thereof.
- 15.2 If there is more than one party named in the Schedule as "Guarantor" than all the parties so named shall be liable under this Guarantee and indemnity jointly and severally.
- 15.3 This Guarantee shall be governed by the laws of the State of Western Australia.

Collection Statement

The personal information collected by Esperance Organised Primary Producers Co-operative Limited is only stored, used or disclosed to enable the delivery of services and entitlements to Esperance Organised Primary Producers Co-operative Limited members. For further information in relation to our privacy policy please contact this office.

Executed as a Deed on the day and year first hereinbefore written.

THE SCHEDULE

Item 1 - GUARANTOR

1. _____
(Surname) (First Name) (Second Name)
Address _____
_____ P/Code _____
Telephone Number () _____
Occupation _____

2. _____
(Surname) (First Name) (Second Name)
Address _____
_____ P/Code _____
Telephone Number () _____
Occupation _____

3. _____
(Surname) (First Name) (Second Name)
Address _____
_____ P/Code _____
Telephone Number () _____
Occupation _____

4. _____
(Surname) (First Name) (Second Name)
Address _____
_____ P/Code _____
Telephone Number () _____
Occupation _____

Item 2 - DEBTOR: _____

Item 3 - (i) THE TRUSTEE: _____

(ii) **THE NAME OF THE TRUST:** _____

(iii) **THE DATE OF THE TRUST DEED:** _____

1. SIGNED by: _____
In the presence of:
Witness Signature _____
Witness Full Name _____
(Please Print)

2. SIGNED by: _____
In the presence of:
Witness Signature _____
Witness Full Name _____
(Please Print)

Address: _____
3. SIGNED by: _____
In the presence of:
Witness Signature _____
Witness Full Name _____
(Please Print)

Address: _____
4. SIGNED by: _____
In the presence of:
Witness Signature _____
Witness Full Name _____
(Please Print)

Address: _____

Address: _____