IN CONSIDERATION of HAMA Global Pty Ltd and its successors and assigns (“the Seller”) at the request of the Guarantor (as is now acknowledged) supplying and continuing to supply goods and/or services to

(“the Customer”) [***Insert Company Name In Box Provided]***

## I/WE (also referred to as the “Guarantor/s”) UNCONDITIONALLY AND IRREVOCABLY:

1. **GUARANTEE** the due and punctual payment to the Seller of all monies which are now owing to the Seller by the Customer and all further sums of money from time to time owing to the Seller by the Customer in respect of goods and services supplied or to be supplied by the Seller to the Customer or any other liability of the Customer to the Seller, and the due observance and performance by the Customer of all its obligations contained or implied in any contract or agreement with the Seller, including but not limited to the Terms & Conditions of Trade signed by the Customer and annexed to this Guarantee and Indemnity. If for any reason the Customer does not pay any amount owing to the Seller, the Guarantor will immediately on demand pay the relevant amount to the Seller. In consideration of the Seller agreeing to supply the goods and/or services to the Customer, the Guarantor charges all of its right, title and interest (joint or several) in any land, realty or other assets capable of being charged, owned by the Guarantor now or in the future, to secure the performance by the Guarantor of its obligations under this Guarantee and Indemnity (including, but not limited to, the payment of any money) and the Guarantor acknowledges that this personal guarantee and indemnity constitutes a security agreement for the purposes of the Personal Property Securities Act 2009 (“PPSA”) and unequivocally consents to the Seller registering any interest so charged. Furthermore, it is agreed by both parties that where the Guarantor is acting in the capacity as a trustee for a trust, then the Guarantor agrees to charge all its right title and interest in any land realty, or other assets capable of being charged in its own capacity and in its capacity as trustee and shall be subject to the PPSA Registration as stated above. The Guarantor irrevocably appoints the Seller and each director of the Seller as the Guarantor’s true and lawful attorney/s to perform all necessary acts to give effect to this clause including, but not limited to, signing any document on the Guarantor’s behalf which the Seller may reasonably require to:
   1. register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register.
   2. register any other document required to be registered by the PPSA or any other law; or
   3. correct a defect in a statement referred to in clause 1(a) or 1(b).
2. **HOLD HARMLESS AND INDEMNIFY** the Seller on demand as a separate obligation against any liability (including but not limited to damages, costs, losses, and legal fees calculated on a solicitor and own Customer basis) incurred by, or assessed against, the Seller in connection with:
   1. the supply of goods and/or services to the Customer; or
   2. the recovery of monies owing to the Seller by the Customer including the enforcement of this Guarantee and Indemnity, and including but not limited to the Seller’s nominees contract default fee and legal costs; or
   3. monies paid by the Seller with the Customer’s consent in settlement of a dispute that arises or results from a dispute between the Seller, the Customer, and a third party or any combination thereof, over the supply of goods and/or services by the Seller to the Customer.

# I/WE FURTHER ACKNOWLEDGE AND AGREE THAT

## I/We have received, read, and understood the Seller’s Terms and Conditions prior to entering into this Guarantee and Indemnity and agree to be bound by those Terms and Conditions.

1. This Guarantee and Indemnity shall constitute an unconditional and continuing Guarantee and Indemnity and accordingly shall be irrevocable and remain in full force and effect until all monies owing to the Seller by the Customer and all obligations herein have been fully paid, satisfied and performed.
2. No granting of credit, extension of further credit, or granting of time and no waiver, indulgence, or neglect to sue on the Seller’s part (whether in respect of the Customer or any one or more of any other Guarantor(s) or otherwise) and no failure by any named Guarantor to properly execute this Guarantee and Indemnity shall impair or limit the liability under this Guarantee and Indemnity of any Guarantor. Without affecting the Customer’s obligations to the Seller, each Guarantor shall be a principal debtor and liable to the Seller accordingly.
3. The liability under this Guarantee and Indemnity shall not be discharged, abrogated, prejudiced, or affected by:
   1. any alteration, modification, variation or addition to any contract or agreement in respect of the supply of goods and/or services.
4. the liquidation, receivership, administration, bankruptcy, dissolution, compromise or scheme of arrangement in respect of the Customer.
5. any other act, omission, or event which, but for this provision, might operate to discharge, impair, or otherwise affect any obligations under this Guarantee and Indemnity of any of the rights, powers or remedies conferred by this Guarantee and Indemnity or by law.
6. The term “Guarantor” whenever used in this Guarantee and Indemnity shall, if there is more than one person named as Guarantor, mean, and refer to each of them individually and all of them together unless the context otherwise requires, the obligations and agreements on the part of the Guarantor, shall include the Guarantor’s executors, administrators, successors and permitted assignments (where applicable) contained in this Guarantee and Indemnity shall bind them jointly and severally.

## I/We have been advised to obtain independent legal advice before executing this Guarantee and Indemnity. I/we understand that I/we am/are liable for all amounts owing (both now and in the future) by the Customer to the Seller.

1. I/we irrevocably authorise the Seller to obtain from any person or company any information which the Seller may require for credit reference purposes. I/We further irrevocably authorise the Seller to provide to any third party, in response to credit references and enquiries about me/us or by way of information exchange with credit reference agencies, details of this Guarantee and Indemnity and any subsequent dealings that I/we may have with the Seller as a result of this Guarantee and Indemnity being actioned by the Seller.
2. The above information is to be used by the Seller for all purposes in connection with the Seller considering this Guarantee and Indemnity and subsequent of the same
3. Note: 1. If the Customer is a proprietary limited company, the Guarantor(s) must be the director(s) of the company.
4. If the Customer is a limited partnership, the Guarantor(s) must be the general partners
5. If the Customer is a sole trader or partnership the Guarantor(s) should be some other suitable person(s).
6. If the Customer is a club or incorporated society the Guarantor(s) should be the president and secretary or another committee member

**WARNING: THIS IS AN IMPORTANT DOCUMENT. YOU SHOULD SEE YOUR OWN LAWYER OR ADVISOR BEFORE SIGNING IT**

1. **Definitions**
   1. “Customer” means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting the Seller to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
      1. if there is more than one Customer, is a reference to each Customer jointly and severally; and
      2. if the Customer is a partnership, it shall bind each partner jointly and severally; and
      3. if the Customer is a part of a trust, shall be bound in their capacity as a trustee; and
   2. Upon assenting these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods that have previously been supplied and that will be supplied in the future by the Seller to the Customer, and the proceeds from such Goods.
   3. The Customer undertakes to:
      1. promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up to date in all respects) which the Seller may reasonably require to;
         1. register a financing statement or financing change statement in

### If the Customer consents to the Seller’s use of cookies on the Seller’s website and later wishes to withdraw that consent, the Customer may manage and control the Seller’s privacy controls via the Customer’s web browser, including removing cookies by deleting them from the browser history when exiting the site.

8.3 The Customer agrees for the Seller to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, driver’s license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) about the Customer in relation to credit provided by the Seller.

* + 1. includes the Customer’s executors, administrators, successors and permitted relation to a security interest on the Personal Property Securities 8.4 The Customer agrees that the Seller may exchange information about the Customer

assigns.

* 1. "Confidential Information” means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party’s intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, Customer information (including but not limited to, “**Personal Information**” such as: name, address, D.O.B, occupation, driver’s license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit

Register.

* + - 1. register any other document required to be registered by the PPSA; or
      2. correct a defect in a statement referred to in clause [5.](#_bookmark1)[2](#_bookmark0)[(](#_bookmark1)[a](#_bookmark0)[)](#_bookmark3)[(](#_bookmark0)[i)](#_bookmark3) or [5.](#_bookmark1)[2](#_bookmark0)[(](#_bookmark1)[a](#_bookmark0)[)](#_bookmark4)[(](#_bookmark0)[ii).](#_bookmark4)
    1. indemnify, and upon demand reimburse, the Seller for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;

with those credit providers and with related body corporates for the following purposes:

1. to assess an application by the Customer; and/or
2. to notify other credit providers of a default by the Customer; and/or
3. to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
4. to assess the creditworthiness of the Customer including the Customer’s repayment history in the preceding two years.

history) and pricing details. (c) not register a financing change statement in respect of a security interest 8.5 The Customer consents to the Seller being given a consumer credit report to

* 1. “Contract” means the terms and conditions contained herein, together with

any quotation, order, invoice or other document or amendments expressed to

without the prior written consent of the Seller;

1. not register, or permit to be registered, a financing statement or a financing

collect personal credit information relating to any overdue payment on commercial credit.

be supplemental to this Contract. change statement in relation to the Goods or the proceeds of such Goods 8.6 The Customer agrees that personal credit information provided may be used and

* 1. “Goods” means all Goods or Services supplied by the Seller to the Customer at the Customer’s request from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other).
  2. “GST” means Goods and Services Tax as defined within the “A New Tax System (Goods and Services Tax) Act 1999” (Cth).
  3. “Price” means the Price payable (plus any GST where applicable) for the

in favor of a third party without the prior written consent of the Seller;

1. immediately advise the Seller of any material change in its business practices of selling Goods which would result in a change in the nature of proceeds derived from such sales.
   1. The Seller and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.

retained by the Seller for the following purposes (and for other agreed purposes or required by):

* + 1. the provision of Goods; and/or
    2. analysing, verifying and/or checking the Customer’s credit, payment and/or

status in relation to the provision of Goods; and/or

* + 1. processing of any payment instructions, direct debit facilities and/or credit

Goods as agreed between the Seller and the Customer in accordance with clause 5.5 The Customer waives their rights to receive notices under sections 95, 118, facilities requested by the Customer; and/or

[2](#_bookmark6) below.

121(4), 130, 132(3)(d) and 132(4) of the PPSA.

* + 1. enabling the collection of amounts outstanding in relation to the Goods.
  1. “Seller” means Kathmandu Trading Pty Ltd, its successors and assigns or any 5.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 8.7 The Seller may give information about the Customer to a CRB for the following

person acting on behalf of and with the authority of Kathmandu Trading Pty Ltd.

### Price and Payment

and 143 of the PPSA.

* 1. Unless otherwise agreed to in writing by the Seller, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.

purposes:

* + 1. to obtain a consumer credit report.
    2. allow the CRB to create or maintain a credit information file about the Customer including credit history.
  1. The Price shall be as indicated on invoices provided by the Seller to the Customer 5.8 The Customer must unconditionally ratify any actions taken by the Seller under 8.8 The information given to the CRB may include:

in respect of the Goods supplied.

clauses [5.2](#_bookmark1) to [5.5.](#_bookmark5)

* + 1. Personal Information as outlined in [8.3](#_bookmark2) above.
  1. Time for payment for the Goods shall be of the essence and will be stated on 5.9 Subject to any express provisions to the contrary nothing in these terms and (b) name of the credit provider and that the Seller is a current credit provider

the invoice, quotation, or any other order forms. If no time is stated, then payment will be due seven (7) days following the date of the invoice.

* 1. The Customer shall not be entitled to set off against, or deduct from the Price, any

conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

to the Customer.

* + 1. whether the credit provider is a licensee.
    2. type of consumer credit.

sums owed or claimed to be owed to the Customer by the Seller nor to withhold **6. Security and Charge**

payment of any invoice because part of that invoice is in dispute. Once in 6.1 In consideration of the Seller agreeing to supply the Goods, the Customer charges

* + 1. details concerning the Customer’s application for credit or commercial credit

(e.g. date of commencement/termination of the credit account and the

receipt of an invoice for payment, if any part of the invoice is in dispute, then the Customer must notify the Seller in writing within three (3) business days, the invoice shall remain due and payable for the full amount, until such time as the Seller investigates the dispute claim, no credit shall be passed for refund until the review is completed. Failure to make payment may result in the Seller placing the Customer’s account into default and subject to default interest in accordance with clause [7.1.](#_bookmark8)

all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, and the Customer grants a security interest in all of its present and after-acquired property for the purposes of, including but not limited to registering the Seller’s security interest over the Customer on the PPSA, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).

amount requested);

* + 1. advice of consumer credit defaults (provided the Seller is a member of an approved OAIC External Disputes Resolution Scheme), overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Customer no longer has any overdue accounts and the
  1. Unless otherwise stated the Price does not include GST. In addition to the 6.2 The Customer indemnifies the Seller from and against all the Seller’s costs and Seller has been paid or otherwise discharged and all details surrounding

Price the Customer must pay to the Seller an amount equal to any GST the Seller must pay for any supply by the Seller under this or any other agreement for

disbursements including legal costs on a solicitor and own Customer basis

incurred in exercising the Seller’s rights under this clause.

that discharge (e.g. dates of payments);

* + 1. information that, in the opinion of the Seller, the Customer has committed a

the sale of the Goods. The Customer must pay GST, without deduction or set off 6.3 The Customer irrevocably appoints the Seller and each director of the Seller as serious credit infringement.

of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

### Risk

* 1. Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.

the Customer’s true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause [6](#_bookmark7) including, but not limited to, signing any document on the Customer’s behalf.

### Default and Consequences of Default

* 1. Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Seller’s sole discretion such interest
     1. advice that the amount of the Customer’s overdue payment is equal to or more

than one hundred and fifty dollars ($150).

8.9 The Customer shall have the right to request (by e-mail) from the Seller:

1. a copy of the Personal Information about the Customer retained by the Seller and the right to request that the Seller correct any incorrect Personal Information; and
2. that the Seller does not disclose any Personal Information about the Customer for the purpose of direct marketing.
   1. If any of the Goods are damaged or destroyed following delivery but prior to shall compound monthly at such a rate) after as well as before any judgment. 8.10 The Seller will destroy Personal Information upon the Customer’s request (by e-

ownership passing to the Customer, the Seller is entitled to receive all insurance 7.2 If the Customer owes the Seller any money, the Customer shall indemnify the Seller mail) or if it is no longer required unless it is required in order to fulfil the

proceeds payable for the Goods. The production of these terms and conditions by the Seller is sufficient evidence of the Seller’s rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.

### Title to Goods (including any incidental items supplied as part of any Services)

* 1. The Seller and the Customer agree that ownership of the Goods shall not pass until:

from and against all costs and disbursements:

* + 1. incurred; and/or
    2. which would be incurred and/or
    3. for which by the Customer would be liable.

regarding legal costs on a solicitor and own Customer basis, internal administration fees, the Seller’s contract fees owing for breach of these terms and conditions’, including, but not limited to, contract default fees and/or recovery costs (if applicable), as well as bank dishonor fees.

7.3 Further to any other rights or remedies the Seller may have under this

obligations of this Contract or is required to be maintained and/or stored in accordance with the law.

8.11 The Customer can make a privacy complaint by contacting the Seller via e-mail. The Seller will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at [www.oaic.gov.au.](http://www.oaic.gov.au/)

1. the Customer has paid the Seller all amounts owing to the Seller; and
2. the Customer has met all of its other obligations to the Seller.

Contract, if a customer has made payment to the Seller, and the transaction is **9. General**

subsequently reversed, the Customer shall be liable for the amount of the 9.1 The failure by either party to enforce any provision of these terms and

* 1. Receipt by the Seller of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honored, cleared or recognised.
  2. It is further agreed that:
     1. until ownership of the Goods passes to the Customer in accordance with

reversed transaction, in addition to any further costs incurred by the Seller under this clause [7](#_bookmark9) where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer’s obligations under this Contract.

conditions shall not be treated as a waiver of that provision, nor shall it affect that party’s right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

clause [4.1](#_bookmark10) that the Customer is only a bailee of the Goods and must return **8. Privacy Policy** 9.2 These terms and conditions and any contract to which they apply shall be

the Goods to the Seller on request;

* + 1. the Customer holds the benefit of the Customer’s insurance of the Goods on trust for the Seller and must pay to the Seller the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;

8.1 All emails, documents, images or other recorded information held or used by the Seller is Personal Information, as defined and referred to in clause [8.3,](#_bookmark2) and therefore considered Confidential Information. The Seller acknowledges its obligation in relation to the handling, use, disclosure and processing of

governed by the laws of New South Wales and are subject to the jurisdiction of the courts in that state. These terms prevail over all terms and conditions of the Customer (even if they form part of the Customer's purchase order).

* + 1. the Customer must not sell, dispose, or otherwise part with possession of the Personal Information pursuant to the Privacy Act 1988 (“the Act”) including 9.3 Where applicable nothing in this Contract is intended to have the effect of

Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for the Seller and must pay or deliver the proceeds to the Seller on demand;

* + 1. the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting

the Part IIIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area (“EEA”), under the EU Data Privacy Laws (including the General Data Protection Regulation “GDPR”) (collectively, “EU Data Privacy Laws”). The Seller acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customer’s Personal Information, held by

contracting out of the Competition and Consumer Act 2010 (CCA). The Seller shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Seller of these terms and conditions (alternatively the Seller’s liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).

product on trust for the benefit of the Seller and must sell, dispose of or the Seller that may result in serious harm to the Customer, the Seller will notify 9.4 Neither party shall be liable for any default due to any act of God, war,

return the resulting product to the Seller as it so directs.

* + 1. the Customer irrevocably authorises the Seller to enter any premises where the Seller believes the Goods are kept and recover possession of the Goods;

the Customer in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Customer by written consent, unless subject to an operation of law.

terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide

* + 1. the Seller may recover possession of any Goods in transit whether or not 8.2 Notwithstanding clause [8.1,](#_bookmark11) privacy limitations will extend to the Seller in destination ports), etc., (“Force Majeure”) or other event beyond the

delivery has occurred;

respect of cookies where the Customer utilises the Seller’s website to make

reasonable control of either party.

* + 1. the Customer shall not charge or grant an encumbrance over the Goods nor enquiries. The Seller agrees to display reference to such cookies and/or 9.5 Both parties warrant that they have the power to enter into this Contract and

grant nor otherwise give away any interest in the Goods while they remain the property of the Seller; and

* + 1. the Seller may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

### Personal Property Securities Act 2009 (“PPSA”)

* 1. In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.

similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Customer’s:

1. IP address, browser, email Customer type and other similar details;
2. tracking website usage and traffic; and
3. reports are available to the Seller when the Seller sends an email to the Customer, so the Seller may collect and review that information (“collectively Personal Information”)

have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.

9.6 The rights and obligations of the parties will not merge on completion of any transaction under this Contract, and they will survive the execution and delivery of any assignment or other document entered, for the purpose of, implementing any transaction under this Contract.