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# Deed of Guarantee & Indemnity

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*Between*

Foley's Earthmoving Pty Ltd ACN 123 627 056 as trustee for the  
Foley's Earthmoving Discretionary Family Trust

*And*

Contractor/Hirer

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*Solicitors*

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***"The Law Firm of Choice"***

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## Deed of Guarantee & Indemnity

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This Deed is made the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_ .

Between **Foley's Earthmoving Pty Ltd ACN 123 627 056 as trustee for the Foley's Earthmoving Family Discretionary Trust** of 184-192 Sharon Drive North Maclean in the State of Queensland ("Foley")

And **The Guarantor**

**In consideration** of Foley at the request of the party or parties named in Item 1 of the Schedule hereto ("the Guarantor") entering into agreements from time to time with the party named in Item 2 of the Schedule hereto ("the Contractor/Hirer"), the Guarantor unconditionally and irrevocably, covenants and agrees with Foley as follows:

1. The Guarantor unconditionally guarantees to Foley the due and punctual performance and observance by the Contractor/Hirer of all and any of the covenants, terms, conditions, and obligations to be performed and observed by the Contractor/Hirer under any agreement and any Assignment performed pursuant to this agreement, including without limitation, the payment of all moneys due, owing and payable to Foley by the Contractor/Hirer (and GST payable thereon, if any) at the time or times and in the manner provided for in the agreement.
2. The Guarantor unconditionally indemnifies and will keep Foley indemnified in respect of any loss or damage which Foley may suffer by reason of or as a result of the breach by the Contractor of the agreement.
3. This Guarantee shall be a continuing security irrespective of any amounts which may be paid to Foley by or on behalf of or for the credit of the Contractor/Hirer at any time.
4. The provisions of clause 5 shall apply only to a Guarantor who is a natural person and not to a corporate Guarantor.
5. As further and better security for the repayment of all money from time to time owing by the Contractor/Hirer to Foley the Guarantor mortgages and charges to and in favour of Foley all right, title, estate and interest which the Guarantor now holds or may hereafter acquire and hold in any real or personal property in Australia. The Guarantor shall, at the request of Foley, sign, execute and deliver in favour of Foley such mortgage or charge over the Guarantor's real or personal property in registrable form as Foley may require, such document or documents incorporating the usual terms, conditions and covenants to protect the interests of Foley hereunder, within ten (10) days of Foley requesting the same of the Guarantor.
6. For the purpose of giving full effect to this Guarantee and the powers hereby conferred, whilst any moneys now or from time to time hereafter remain owing by the Contractor/Hirer or the Guarantor to Foley, the Guarantor appoints Foley and any of its authorised officers, jointly and each of them severally, the true and lawful attorney

and attorneys of the Guarantor, to do anything in the name of the Guarantor or Foley which the Guarantor should do or should have done hereunder and to do all such acts, matters and things (including the execution of any deed, mortgage, bill of sale, charge, share transfer, consent to caveat(s), transfer(s) of land and other documents whatsoever) as such attorney or attorneys may deem expedient for carrying out, or in connection with the exercise of, all or any of the rights or powers herein contained or implied to give effect to this Guarantee or for the enforcement thereof and this power of attorney is deemed irrevocable and given by way of security.

7. In the event of the liquidation or bankruptcy of the Contractor/Hirer, the Guarantor will not prove in such liquidation or bankruptcy in competition with Foley and the Guarantor authorises Foley to prove for all money which is payable under this Guarantee and to carry a suspense account until Foley has been paid 100 cents in the dollar in respect of the Contractor/Hirer's indebtedness to it. In the event of any liquidation or bankruptcy of the Contractor/Hirer, the Guarantor shall hold on trust for Foley any moneys, debts, rights or securities owing on any account whatsoever by the Contractor/Hirer to the Guarantor and the Guarantor undertakes to execute and deliver to Foley all such documents or assignments of any of the said debts, rights or securities as Foley may require.
8. This Guarantee and the right to receive moneys payable hereunder shall be free from any equity, set-off or cross-claim which, but for this provision, the Guarantor or the Contractor/Hirer may be entitled to set up against Foley.
9. Foley may at any time, without notice, refuse or limit further credit or suspend or terminate the supply of goods or services, or the granting of any rights, by Foley to the Contractor/Hirer, or may grant time or any other indulgence to the Contractor/Hirer without discharging the Guarantor from liability under this Guarantee.
10. Upon giving six (6) months notice in writing to Foley the Guarantor may request a release from this Guarantee in relation to credit transactions entered into between the Contractor/Hirer and Foley after the expiry of such notice, which notice may be accepted or declined at the absolute discretion of Foley.
11. This Guarantee shall not be affected in any way by the compromise, release or variation of any rights of Foley against the Contractor/Hirer or any Guarantor of the Contractor/Hirer (whether hereunder or otherwise) or any neglect or omission to exercise any of those rights, by the insolvency or supervening contractual incapacity of the Contractor/Hirer or a Guarantor of the Contractor/Hirer or by any neglect, omission or default by Foley whereby the whole or any part of the liability of the Guarantor to Foley would, but for this provision, have been affected or discharged or by the release, discharge, abandonment or transfer in whole or in part and with or without consideration of any security now or hereafter held by Foley from the Contractor/Hirer or from any other person.
12. A demand on the Guarantor hereunder shall be deemed to have been duly made if it is in writing signed on behalf of Foley by its authorised officer or solicitor and has been given to the Guarantor or left at or posted to the address of the Guarantor shown below or such last known address as the Guarantor may have notified in writing.

13. A certificate by an authorised officer of Foley as to the account balance between Foley and the Contractor/Hirer or between the Contractor/Hirer and the Guarantor at the date set out in the certificate shall for all purposes be prima facie evidence of the facts stated therein and shall be binding upon the Guarantor in a Court of law.
14. This Guarantee shall not be affected by any action taken or notice issued in relation to any other securities. Foley shall be under no obligation to marshal in favour of the Guarantor any security whatsoever held by Foley.
15. The Guarantor irrevocably authorises Foley to disclose to, or obtain from, a credit reporting agency, such personal information as is permitted to be disclosed or obtained pursuant to the Privacy Act 1988 (Cth) and to use such information in any manner and for any purposes permitted under the Privacy Act.
16. The Guarantor acknowledges that Foley has given the Guarantor full and unrestricted opportunity to seek independent legal advice as to the Guarantor's obligations hereunder prior to the signing of this Guarantee.
17. The Guarantor acknowledges that it has made independent inquiries of the Contractor/Hirer regarding the Contractor/Hirer's past and prospective financial dealings with Foley and has satisfied itself as to the extent of its obligations arising hereunder and the Guarantor acknowledges that Foley is under no obligation to notify the Guarantor of any changes to its Credit Trading Terms or dealings with the Contractor/Hirer.
18. The laws of the State of Queensland shall apply to this Guarantee and legal proceedings in respect of any cause of action arising hereunder shall, at the option of Foley be instituted, heard and determined in a Court of competent jurisdiction at the capital city of the State, as nominated by Foley, and such Court shall possess non-exclusive jurisdiction to hear and determine such proceedings.
19. If any provision of this Guarantee or the application thereof to any person is or becomes unenforceable or invalid by operation of law or otherwise then the remaining provisions of this Guarantee shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.
20. The Guarantor shall on demand pay to Foley all stamp duties payable in respect of this Guarantee and all costs incurred by Foley (on a solicitor and own client basis or on a full indemnity basis, whichever is the greater) of and incidental to the enforcement or attempted enforcement of any of Foley's rights under this Guarantee.
21. This Guarantee shall bind each of the signatories hereto and the personal representatives of every natural person who is a Guarantor and the successors and assigns of every corporation which is a Guarantor, notwithstanding that one or more of the parties named herein as Guarantor may never execute this Guarantee.

- 22. In this Guarantee, words incorporating the singular or the plural shall include the plural and singular respectively and words importing the masculine gender shall include the feminine and neuter genders and where more than one party is included as Guarantor, this Guarantee shall bind all of them jointly and each of them severally.

**SCHEDULE**

**ITEM**

- 1. **NAMES AND RESIDENTIAL ADDRESSES OF GUARANTOR:**

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- 2. **NAME AND ADDRESS OF CONTRACTOR/HIRER:**

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**EXECUTED AS A DEED**

**DATED:-** \_\_\_\_\_

**SIGNED, SEALED AND DELIVERED** by \_\_\_\_\_ )  
as Guarantor in the presence of: \_\_\_\_\_ ) X

\_\_\_\_\_

Witness

**SIGNED, SEALED AND DELIVERED** by \_\_\_\_\_ )  
\_\_\_\_\_ as Guarantor in the presence of: \_\_\_\_\_ ) X

\_\_\_\_\_

Witness