# SCHEDULE 2 – BANK GUARANTEE

**FORM OF BANK GUARANTEE**

**TO: EMSTRADEPOINT LIMITED** (**emsTradepoint**)

**FOR: [ ]** (**Participant**)

## **1.** [ ] (**Bank**) refers to each and every obligation of the Participant under, or in connection with, the Participant Agreement dated [ ] between the Participant and emsTradepoint (**Agreement**) to pay amounts the Participant, now or at any time, owes to emsTradepoint (whether as principal or agent) (**Obligations**).

## **2.** The Bank hereby unconditionally guarantees the due and punctual payment to emsTradepoint of the Obligations and undertakes that it shall, on demand, pay to emsTradepoint an amount specified in each such demand, provided that:

### the aggregate liability of the Bank under this guarantee shall not exceed NZ$ **[** **]** (**Aggregate Amount**);

### emsTradepoint's demand is made in writing and is purported to be signed by an authorised signatory; and

### a certificate purported to be signed by emsTradepoint's authorised signatory and certifying that the Participant has failed, in whole or in part, to fulfil the Obligations accompanies emsTradepoint's demand, which certificate will be conclusive proof of such failure.

## **3.** The Bank will pay the Aggregate Amount or any parts of it to emsTradepoint on demand without reference to the Participant and even if the Participant has given the Bank notice not to pay the Aggregate Amount or any parts of it and without regard to the performance or non‑performance of the Participant or emsTradepoint under the terms of the Agreement.

## **4.** This Guarantee will not be affected, discharged or diminished by any act or omission which would, but for this provision, have exonerated a guarantor but would not have affected or discharged the Bank's liability had it been a principal debtor.

## **5.** This Guarantee remains in force until one of the following events occurs:

### emsTradepoint notifies the Bank in writing that this Guarantee is no longer required; or

### the Bank has paid the Aggregate Amount to emsTradepoint.

### **6.** Notwithstanding anything else in this guarantee, the Bank may cancel this guarantee as to liability in respect of Obligations arising after a date (**cancellation date**) by giving notice in writing to emsTradepoint (at least 90 days' prior to the proposed cancellation date) at emsTradepoint Limited, Waikoukou, 22 Boulcott Street, Wellington 6011, New Zealand (notices to be marked for the attention of: Manager, emsTradepoint); however, the Bank will remain liable with respect to the Obligations which arise prior to the cancellation date (including, for the avoidance of doubt, any Obligations which may have been satisfied but in respect of which any relevant payments or transactions are subsequently, whether before or after the cancellation date, claimed to be void or voidable under any law and such claim is upheld, conceded or compromised).

## **7.** This Guarantee may not be assigned by emsTradepoint without the Bank's prior written consent. This Guarantee will bind the successors and assigns of the Bank as well as any entity with which the Bank may amalgamate.

## **8.** This Guarantee is governed by the laws of New Zealand. The parties submit to the non‑exclusive jurisdiction of the New Zealand courts in respect of all matters relating to this Guarantee.

**EXECUTED AND DELIVERED AS A DEED**

Dated at this day of

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| --- | --- | --- |
| **[SIGNED** on behalf of **[INSERT full nAme]** as Bank by its authorised attorney: |  |  Signature of attorney |
| Witness: Signature of witness |  |  Name of attorney |
|  Full name of witness |  |  |
|  Occupation of witness |
|  Address of witness**]** |
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