**Deed of Guarantee**

between

**[name of Guarantor]**

and

His Majesty the King in right of the Government of New Zealand acting by and through the General Manager of Energy & Resource Markets, a branch of the Ministry of Business, Innovation & Employment

**DEED OF GUARANTEE**

**THIS DEED** is made on the day of 2023

**BETWEEN**

**[GUARANTOR COMPANY]**
a duly incorporated company having its registered office at **[address]**

**AND**

**HIS MAJESTY THE KING IN RIGHT OF THE GOVERNMENT OF NEW ZEALAND ACTING BY AND THROUGH THE GENERAL MANAGER OF ENERGY & RESOURCE MARKETS, A BRANCH OF** **THE MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT**
having its place of business at 15 Stout Street, Wellington 6140, New Zealand

**BACKGROUND**

1. The Permit Participant is a subsidiary of the Guarantor.
2. The Permit Participant wishes to hold an interest in a petroleum exploration permit(s) in New Zealand.
3. In order to hold the permit interest(s), the Ministry requires the Guarantor to guarantee the performance of the Permit Participant’s obligations under the permit(s).

**NOW THIS DEED WITNESSES** as follows:

# DEFINITIONS

## Unless otherwise required by the context or subject matter, in this Deed and the Background to this Deed:

## *Act* means theCrown Minerals Act 1991.

## *Crown* means His Majesty the King in right of the Government of New Zealand.

## *General Manager* means theGeneral Manager of Energy & Resource Markets, a branch of the Ministry.

*Deed* means this Deed, and shall include any variations to it made in accordance with this Deed.

*Guarantor* means [**insert entity**].

*Minister* means the Minister of the Crown who, under the authority of a warrant or with the authority of the Prime Minister, is responsible for the administration of the Act.

*Ministry* means the Ministry of Business, Innovation & Employment or any body which replaces it or which substantially succeeds to its powers or functions.

*New Zealand registered company* means a company incorporated under the Companies Act 1993 or registered as an overseas company under Part XVIII of the Companies Act 1993.

*Notice* means a notice given in accordance with clause 13.

*Permit* means [**insert permit numbers of the relevant permit(s)**] and any Subsequent Permit(s).

*Permit* *Participant* means [**insert entity**].

*Process Agent* has the meaning given to it in clause 13.4.

*Subsequent Permit* means a permit granted in accordance with section 32 of the Act.

# INTERPRETATION

## The headings in this Deed are inserted for convenience only and should not be taken into account in construing this Deed.

## Unless otherwise required by the context or subject matter:

### the singular shall also include the plural and vice versa;

### a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;

### a reference to “includes” or “including” shall be deemed to be followed by the words “without limitation”; and

(d) references to sections, clauses and schedules are references to clauses of this Deed unless specifically stated otherwise.

2.3 The Background to this Deed shall form part of this Deed.

# Guarantee

## The Guarantor unconditionally and irrevocably guarantees to the Crown that the Permit Participant will perform its obligations and meet its liabilities under the Permit and the Act, on the terms set out in this Deed.

# Performance

## If for any reason the Permit Participant defaults in the performance of its obligations or in meeting its liabilities under the Permit or the Act then, upon written notice by the Ministry, the Guarantor may be required to, and must then, perform the Permit Participant’s obligations or meet the Permit Participant’s liabilities under the Permit or the Act (as applicable).

# enforcement

## The Crown is not required to commence proceedings, take any other action or enforce any other right against the Permit Participant or against any other person before claiming under this Deed.

# continuing OBLIGATION

## This Deed creates a continuing obligation and is not wholly or partially discharged by any one payment or any one act on the part of the Guarantor.

# guarantee Not affected

## The liabilities of the Guarantor under this Deed and the rights of the Crown under this Deed are not affected by anything that might otherwise affect them at law or in equity including, but not limited to, one or more of the following:

### the Ministry granting time or other indulgence to, compounding or compromising with or releasing the Permit Participant;

### acquiescence, delay, acts, omissions or mistakes on the part of the Ministry;

### any variation of the Permit(s) or amendment to the Act;

### the invalidity or unenforceability of an obligation or liability of a person other than the Guarantor;

### any other security, indemnity or other agreement in respect of the guaranteed obligations not having been provided or being amended, released or discharged (in whole or in part);

### any change in the status, constitution or control or shareholding of the Permit Participant or the Guarantor (except where the Minister has given notice in accordance with clause 12(b)); or

### any increase, reduction or modification of the obligations and liabilities guaranteed pursuant to this Deed.

# NO DeFENCES without consent

## The Guarantor may not, without the consent of the Crown claim to be entitled by way of contribution, indemnity, or otherwise to the benefit of any security or guarantee held by the Ministry in connection with the Permit.

# Reinstatement of Guarantee

## If a claim made by a creditor, that a payment or transfer to the Ministry in connection with the Permit, the Act or this Deed is void or voidable, is upheld, conceded or compromised, then the Crown is entitled immediately, as against the Guarantor, to the rights to which it would have been entitled under this Deed if the payment or transfer had not occurred.

# Application of money

## Money paid to the Ministry by the Guarantor may be applied by the Ministry first against payment of costs, charges and expenses under clause 14, then against other obligations under this Deed.

# Interest

## The Guarantor must pay interest on any amount payable by the Guarantor under this Deed from when the amount becomes due for payment until it is paid in full. The interest will be calculated in accordance with section 99J of the Act.

# TERMINATION OF GUARANTOR’S LIABILITY

## The liability of the Guarantor under this Deed in relation to the Permit(s), except a liability which has arisen or accrued before the date referred to in clause 12.1(a) or (c) below, will terminate on the date when:

### the Minister consents to a transfer of the whole of the Permit Participant’s undivided percentage interest in the Permit to another person;

### the Ministry has provided written notice to the Guarantor:

### of its acceptance of a replacement deed of guarantee of the Permit Participant’s interest in the Permit(s); or

#### of its satisfaction that the Permit Participant can perform its obligations and meet its liabilities under the Permit(s); or

#### that it no longer requires the Guarantee;

### the Permit expires, is revoked, or is surrendered in full under the Act.

# NOTICES

## Any Notice or other document required to be given under this Deed must be in writing and signed by or on behalf of the party giving the Notice or document by an officer having the authority to sign on behalf of that party.

## All Notices or documents shall either be delivered personally to an officer of the party or sent by courier addressed as follows:

## In the case of the Ministry:

**New Zealand Petroleum & Minerals
Ministry of Business, Innovation & Employment
15 Stout Street
Wellington 6140, New Zealand
Attention: General Manager**

## In the case of the Guarantor:

**[Insert address details
Attention: Insert name]**

## Any party may change its address at any time by giving Notice of such change to the other party in accordance with this clause 13.

## Where the Guarantor is not a New Zealand registered company, it must appoint a process agent for service to receive any document in an action commenced in New Zealand in connection with this Deed.

## The Guarantor appoints:

## **[Insert Agent address details Attention: Insert name]**

## as its agent for service to receive any document in an action commenced in New Zealand in connection with this Deed (‘Agent’).

## If for any reason the Agent ceases to be able to act as agent, the Guarantor must promptly appoint another person in New Zealand as agent.

## The Guarantor agrees that the service of documents on the Agent or any other person appointed under this clause 13 will be sufficient service on it.

# Costs

## The Guarantor must pay or reimburse the Ministry on demand for:

### the Ministry’s reasonable costs, charges and expenses in enforcing and doing anything in connection with the preservation and/or enforcement of the Ministry’s rights under this Deed including, but not limited to, legal costs and expenses on a full indemnity basis; and

### all duties, fees, taxes and charges which are payable in connection with this Deed or a payment, receipt or other transaction contemplated by it.

# SEVERABILITY

## If at any time it is held by a competent authority that any provision of the Deed is illegal or unenforceable for any reason and that finding is not overturned or reversed in any appeal process, those provisions shall be deemed to be deleted from this Deed, or shall be modified in accordance with the ruling of any competent authority, and thereafter this Deed shall continue in full force and effect subject to such deletion or modification.

# Variations

## This Deed may be varied by written agreement signed by the Guarantor and the Ministry.

# Counterparts

## The Deed may consist of a number of copies of this Deed, each signed by one or more parties to this Deed. When taken together, the signed copies are treated as making up the one document.

# governing law and jurisdiction

## This Deed is governed by the law of New Zealand.

## Each party submits to the non-exclusive jurisdiction of the courts of New Zealand. Each party waives any right it has to object to a proceeding brought in those courts including, without limitation, by claiming that the proceeding has been brought in an inconvenient forum or that those courts do not have any jurisdiction.

**EXECUTED AS A DEED**

**SIGNED** for and on behalf of
**[GUARANTOR COMPANY]**
by:

Name of authorised person Signature of [name]
[Office held]

Name of authorised person Signature of [name]
[Office held]

Name of witness Signature of witness

Address

Occupation

**SIGNED** for and on behalf of
**HIS MAJESTY THE KING IN RIGHT OF THE GOVERNMENT OF NEW ZEALAND ACTING BY, AND THROUGH THE GENERAL MANAGER OF ENERGY & RESOURCE MARKETS, A BRANCH OF** **THE MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT**

Name of General Manager Signature of General Manager

Name of witness Signature of witness

Address

Occupation