



Business Asset Finance

General Terms

Effective 27 May 2023

1 Facility

- 1.1 Under this Agreement, we agree to make the Loan available to you on the Date of Loan, provided that each of the following Conditions Precedent has been met in a form and substance satisfactory to us:
- (a) you have delivered to us the following documents:
 - (i) a copy of this Agreement, and each other Relevant Document, duly executed;
 - (ii) a certificate from each Borrower and each Guarantor, if any, in the applicable form required by us;
 - (iii) evidence that a direct debit authority has been accepted by your nominated trading bank in respect of the Payment Account as required by us;
 - (iv) to the extent any Borrower or Guarantor is the trustee of a Trust (the “Trust”), a true and complete copy of the trust deed of that Trust (the “Trust Deed”);
 - (v) to the extent any Borrower or Guarantor is a partnership (including a limited partnership) a true and complete copy of the partnership agreement of that partnership;
 - (vi) Asset Ownership Documentation relating to the Secured Property;
 - (vii) evidence that the Secured Property has been insured by you in accordance with our requirements;
 - (viii) evidence that we hold (or will hold on or before the Loan is made available) a perfected security interest in the Secured Property which ranks in priority to any other security interests in the Secured Property;
 - (ix) evidence that the representations and warranties made by you under this Agreement and each other Relevant Document remain true and correct, by reference to the facts and circumstances then existing;
 - (x) evidence that no Event of Default has occurred or is continuing or would occur as a result of you (or any Guarantor) entering into and performing your (or their) obligations under this Agreement or any Collateral Security; and
 - (xi) any other document or information that we may request from you; and
 - (b) any fees or other amounts payable in relation to this Agreement or any other Relevant Document, have been paid.
- 1.2 You agree to use the proceeds of the Loan for the Purpose specified in the Commercial Terms. Where the Loan is made available to you in order for you to purchase the Secured Asset(s) from a third party, we may (at our option) make the payment available to that third party instead of making it available to you directly.
- 1.3 If there is any conflict between the terms of the Relevant Documents, we shall reasonably determine which provisions shall prevail.
- 1.4 If you have not drawn down the Loan within 3 months from the date of this Agreement, this Agreement shall be deemed to be terminated and of no further effect.
- 1.5 You acknowledge and agree that:
- (a) we may pay commission to any person who has assisted us, or acted on our behalf, in connection with the origination or arranging of the Loan; and
 - (b) you have not relied on any such person to act as your agent in connection with the Loan and your obligations in relation to the Loan are owed solely to us.

2. Repayment

- 2.1 In consideration for us making the Loan available to you, you agree to:
- (a) pay to us the Instalments (comprising part interest and part principal) on the dates and in the amounts specified in the Repayment Schedule;
 - (b) pay to us all fees and other amounts comprising the Amount Outstanding on the dates and in the amounts specified in this Agreement or any other Relevant Document; and
 - (c) without limiting the above, repay the Amount Outstanding in full on the Maturity Date.
- 2.2 You agree that each payment under a Relevant Document will, to the extent permitted by law, be made without set-off, deduction or counter-claim and free of any restriction or condition. Each payment under a Relevant Document must be made in immediately available cleared funds and to the bank account nominated by us from time to time. If any payment under a Relevant Document is due to be made on a day which is not a Business Day, the payment shall be made on the next succeeding Business Day. All payments must be made by 3.00 pm on the due date or such later time as agreed with us in advance.
- 2.3 You must nominate a trading bank account and issue to your banker an authority to accept direct debits from that account by us. You undertake not to cancel such authority during the term of this Facility. If your Payment Account is with us, a direct debit authority is not required.

3. Early repayment

- 3.1 You may make a full repayment of the Amount Outstanding at any time. In addition, we may at our sole discretion accept a partial prepayment of the Amount Outstanding. If you prepay in full, or as a condition of our acceptance of any partial prepayment, we may, in addition to any other charges payable by you, charge you an Early Repayment Fee and an administration fee comprising our administrative costs resulting from the early repayment.
- 3.2 In relation to fixed rate facilities, the Early Repayment Fee will be the amount reasonably determined by us to equal the aggregate of the Discharge Fee plus any expenses we have incurred or may incur, in relation to the prepayment or the reinvestment of the amount of the prepayment including the cost of entering into or terminating any interest rate swap, foreign exchange contract or any derivative instrument. In determining this amount, we will consider (among other things) the complexity of the facility structure and the likelihood that the amount of the prepayment can be re-lent or reinvested, with reference to prevailing market conditions.
- 3.3 In relation to variable rate facilities, the Early Repayment Fee will be the amount determined by us to equal the Discharge Fee.
- 3.4 Although we have a different calculation for Early Repayment Costs for each product, we apply those calculations consistently between customers. You can ask us to calculate your Early Repayment Costs at any time, without charge.
- 3.5 Where you make a partial prepayment under this clause the amount of the Instalments will change. We may apply a partial prepayment against the outstanding Instalments in such order as we determine in our discretion. We will provide notice to you in writing of the new Instalment amounts.

4. Interest and fees

4.1 Fixed Rate Facilities

If your Loan is subject to a fixed interest rate, that interest rate will apply for the full term of the Loan. Depending upon which fixed rate option you have selected, the following provisions will also apply:

(a) Absolute Rate

Where an Absolute Rate has been selected, the Interest Rate applicable to the Loan shall be the Absolute Rate. The Absolute Rate set out in the Financial Summary is only available if the Loan is advanced on or prior to the Cut-Off Date specified in the Financial Summary. If you do not draw down the Loan by the Cut-Off Date, you must notify us that you still wish to draw down the Loan. Upon receipt of your advice, we will provide you with a revised Absolute Rate and Cut-Off Date. The revised Absolute Rate will only be available until the revised Cut-Off Date.

You may exercise the right to seek a revised Interest Rate on multiple occasions. This clause operates subject to clause 1.4.

(b) Forward Rate Option

Where a Forward Rate Option has been selected, the Interest Rate applicable to the Loan will be determined by us on the date of this Agreement and will remain available to you provided you drawdown the Loan by no later than the Forward Rate Option Expiry Date.

(c) Base Rate plus Margin

Where a Base Rate plus Margin rate has been selected, the Interest Rate applicable to the Loan will be determined by us on the day prior to the Date of Loan as the aggregate of the Base Rate on that day plus the Margin.

4.2 Variable Rate Facilities

If your Loan is subject to a variable interest rate, the following provisions apply:

(a) Absolute Rate

Where an Absolute Rate has been selected, the Interest Rate applicable to the Loan for the initial Interest Rate Period shall be the Absolute Rate. The Absolute Rate set out in the Financial Summary is only available if the Loan is advanced on or prior to the Cut-Off Date specified in the Financial Summary. If you do not draw down the Loan by the Cut-Off Date, you must notify us that you still wish to draw down the Loan. Upon receipt of your advice, we will provide you with a revised Absolute Rate and Cut-Off Date. The revised Absolute Rate will only be available until the revised Cut-Off Date.

You may exercise the right to seek a revised Interest Rate on multiple occasions. This clause operates subject to clause 1.4.

The Interest Rate Period applicable to the Loan shall be three months or such other period as notified by us to you.

The Absolute Rate for the Loan will be reviewed by us at the end of each Interest Rate Period (an “**Interest Rate Review**”). Each time an Interest Rate Review is conducted and where there is a consequent change to the Interest Rate, we will provide notice to you in writing of the change (including the consequential changes to your Instalments) and you will pay to us the revised Instalments as from the date of the Interest Rate Review or any later date specified by us.

(b) Base Rate plus Margin

Where a Base Rate plus Margin rate has been selected:

- (i) The Interest Rate applicable to the Loan for the initial Interest Rate Period will be determined by us on the day prior to the Date of Loan as the aggregate of the Base Rate on that day plus the Margin.
- (ii) The Interest Rate Period applicable to the Loan shall be three months or such other period as notified by us to you.

- (iii) The Base Rate and the Margin for the Loan will be reviewed by us at the end of each Interest Rate Period (an “**Interest Rate Review**”). Each time an Interest Rate Review is conducted and where there is a consequent change to the Interest Rate, we will provide notice to you in writing of the change (including the consequential changes to your Instalments) and you will pay to us the revised Instalments as from the date of the Interest Rate Review or any later date specified by us.
 - (iv) We may also at any time by giving you at least 14 days’ prior written notice, amend the Margin, in which case the new Margin shall apply for the next Interest Rate Period.
 - (c) We will only increase the Interest Rate or the Margin under this clause where it is reasonable to do so, and only to the extent reasonably necessary to protect our legitimate business interests. For example, we may make a change in response to increased costs, a law change, or following a Review Event. If you do not agree with a change you may repay the Amount Outstanding at any time in the manner set out in Clause 3. If you do so, Early Repayment Fees may be payable (where they ordinarily apply).
- 4.3 We calculate interest by applying the Interest Rate to the principal amount outstanding and (unless otherwise notified by us to you) interest is calculated on the basis of the number of days elapsed and a 365 day year. Interest accrues on a daily basis and is payable in arrears on the dates specified in the Repayment Schedule.
- 4.4 You agree to pay to us any fees which become payable at any time under, or in connection with, this Agreement. The fees which are payable will be set out on our website (bnz.co.nz) by searching for “*business service charges*”. You acknowledge and agree that those fees are subject to change at any time and additional fees may be added at any time. We will give you at least 14 days’ prior notice of any such change that we make.

5. Default interest

- 5.1 If you fail to pay any amount owing to us as required under a Relevant Document, interest will accrue (both before and after judgment and without the need for notice or demand) on such amounts at the Default Rate (compounded monthly) until payment is received by us.

6. Security

- 6.1 You grant to us a security interest in the Secured Property in order to secure the payment of the Amount Outstanding and the performance of your obligations under the Relevant Documents. If you fail to meet your commitments under the Relevant Documents, we may (acting reasonably) repossess or sell the Secured Property and exercise our rights under the Collateral Securities and each other Relevant Document.
- 6.2 This Agreement and each security interest created under this Agreement, the Collateral Securities and any other Relevant Document, is a continuing security, notwithstanding intermediate payments, settlement of accounts or anything else, is in addition to, and not to be merged in, any other security interest that we may have at any time, and will remain in full force and effect until all amounts payable under all of the Relevant Documents have been paid.
- 6.3 This Agreement and each security interest created under this Agreement, the Collateral Securities and any other Relevant Document, will not be discharged, nor will your obligations be affected by, any amendment to, release of any security interest under, or the validity or enforceability of, or failure to enforce, a Relevant Document, or anything else whatever that, but for this clause, may have discharged, or affected your obligations under, this Agreement (and any other Relevant Document). We are not liable to you in respect of any of these matters, even though your rights in subrogation or otherwise may be prejudiced as a result.
- 6.4 You agree to waive your right under section 148 of the PPSA to receive a copy of a verification statement in respect of any financing statement or financing change statement registered by us in respect of any Secured Property.

- 6.5 Nothing in this Agreement shall be construed as an agreement that a security interest under this Agreement attaches at a later time than the time specified in section 40(1) of the PPSA or an agreement to subordinate a security interest under this Agreement in favour of any person.

7. Guarantee

This clause 7 will only apply if a party executes this Agreement as a Guarantor.

- 7.1 In consideration for us making the Loan available to you, the Guarantor unconditionally and irrevocably guarantees to us due payment by you under, and performance by you of the terms of, this Agreement.
- 7.2 The Guarantor undertakes to us that if you do not pay to us when due any amount under this Agreement, the Guarantor will pay the relevant amount to us immediately on demand.
- 7.3 As a separate and continuing undertaking, the Guarantor unconditionally and irrevocably undertakes to us that, should any amount payable under this Agreement not be recoverable from you for any reason, the Guarantor will, as a sole and independent obligation, pay to us on demand the amount that we would otherwise have been able to recover (on a full indemnity basis).
- 7.4 The Guarantor is liable under this Agreement as a sole and principal debtor and not as a surety.
- 7.5 The Guarantor is not discharged, nor are its obligations affected, by any amendment to, or the validity or enforceability of, or failure to enforce, this Agreement or a Relevant Document, or anything else whatever that, but for this clause, may have discharged this Agreement or a Relevant Document or affected the Guarantor's obligations under this Agreement or a Relevant Document. We are not liable to you in respect of any of these matters, even though your rights in subrogation or otherwise may be prejudiced as a result.
- 7.6 Each of the Guarantor's obligations under this Agreement is to remain in full force and effect until execution by us of an unconditional discharge of the obligations of the Guarantor under this Agreement. Following repayment in full, either you or the Guarantor may request formal release of the relevant guarantee, and we will promptly consider such request (and grant it, if all relevant obligations have been satisfied).

8. Representations

- 8.1 You represent and warrant to us that:
- (a) you have full power and authority to enter into and comply with your obligations under this Agreement and each other Relevant Document to which you are a party and have obtained all consents to enable you to do so;
 - (b) your obligations under this Agreement and each other Relevant Document to which you are a party are legal, valid, binding and enforceable in accordance with their respective terms;
 - (c) neither you nor any Affiliate are subject to Sanctions;
 - (d) you are solvent and able to pay your indebtedness as it falls due;
 - (e) no Event of Default has occurred and is continuing and you are not in default under any other agreement relating to indebtedness;
 - (f) you are, or will be on the Date of Loan, the sole owner of the Secured Property;
 - (g) the Secured Property is, or will be on the Date of Loan, situated in New Zealand;
 - (h) except as disclosed to and accepted in writing by us, no security interest exists over or affects any Secured Property except as created or permitted by a Relevant Document;
 - (i) each of the representations above is true and correct in respect of each Guarantor, if any, and each other party to a Relevant Document (other than us) as if references in those representations to you were references to each such other party; and
 - (j) you and each Guarantor, if any, have received a copy of this Agreement.
- 8.2 The representations given above are deemed to be repeated continuously during the term of this Agreement by reference to the facts and circumstances then existing.

9. Undertakings

9.1 You agree to:

- (a) comply with all consents and obligations binding on you by law, contract or otherwise (including in relation to the use, operation, possession and location of the Secured Property);
- (b) not use, and ensure that no Affiliate uses, the Loan, the Secured Property, or their respective proceeds, in a manner that causes any person to breach Sanctions;
- (c) insure the Secured Property in accordance with our requirements;
- (d) keep the Secured Property properly serviced and in good order and condition;
- (e) comply with all the instructions and recommendations of the manufacturer of the Secured Property;
- (f) ensure that the Secured Property is used solely:
 - (i) in accordance with the manufacturer's instructions; and
 - (ii) for the purposes of and incidental to your business;
- (g) allow us and our agents access to the Secured Property (whether by granting a right of entry to the land where the Secured Property is located or otherwise) so that we may inspect the Secured Property and (at your expense) carry out any repairs to the Secured Property that we deem necessary;
- (h) promptly repair any Secured Property that has been damaged;
- (i) promptly replace any Secured Property that is destroyed or ceases to exist with other Secured Property of first class quality and of at least equal value and to ensure that no purchase money security interest exists in any such replacement Secured Property;
- (j) pay all taxes, registration, licence and other fees payable in connection with the Secured Property or its operation under any law;
- (k) pay any rents, rates, taxes, charges and impositions payable in respect of the premises where the Secured Property is situated and produce receipts for such payments to us upon demand;
- (l) on our request, produce for inspection:
 - (i) any certificate of registration;
 - (ii) any licence to operate and/or drive the Secured Property; and
 - (iii) the receipts for all rents, taxes, licences and fees paid in connection with the Secured Property;
- (m) notify us immediately in writing:
 - (i) if you intend to change your name (at least 5 Business Days before the change) with details of your new name;
 - (ii) of any change of your address;
 - (iii) if any Secured Property is removed, seized or taken out of your possession (in which case you agree to supply details of the address where the Secured Property is kept and the name and address of the person responsible for the seizure);
 - (iv) if there is any loss or damage to the Secured Property or if there are repairs required to the Secured Property (in which case you will also notify the relevant insurer); or
 - (v) if you become aware of any possible claim against you in respect of any damage to a person or property caused, or alleged to be caused, by the Secured Property or by any driver or operator of the Secured Property (in which case you will also notify the relevant insurer); and
- (n) provide us with other information relating to your business and operations, and/or procure that each Guarantor, if any, provides us with information relating to its business and operations, as we may reasonably require.

- 9.2 You agree that you will not:
- (a) part with possession of any of the Secured Property;
 - (b) remove the Secured Property (except in the ordinary course of use) from the address given in the Commercial Terms;
 - (c) dispose of any Secured Property or permit to exist any security interest over or affecting any Secured Property, except as created or permitted by a Relevant Document;
 - (d) pledge our credit for any repairs to the Secured Property or create or allow to arise a lien in respect of any such repairs;
 - (e) allow any Secured Property to become an accession to any property, except property which is Secured Property;
 - (f) allow any Secured Property to be affixed to any land, except with our prior written consent;
 - (g) place the Secured Property upon any premises where it may become liable to seizure;
 - (h) permit the Secured Property to be used in any circumstances which would entitle the insurer to disclaim liability under the insurance policy in respect of the Secured Property; or
 - (i) do, omit to do, or allow to occur, anything that might:
 - (i) render any Secured Property or a security interest created under a Relevant Document unenforceable or liable to forfeiture or cancellation;
 - (ii) cause or contribute to a deterioration in value of any Secured Property; or
 - (iii) otherwise adversely affect our security under a Relevant Document.
- 9.3 As further assurance, you agree that you will, at your own cost, promptly execute and deliver to us all documents, and do anything else that we deem appropriate, to:
- (a) obtain the priority that we require in respect of the Secured Property;
 - (b) perfect a security interest intended to be created under this Agreement or a Relevant Document, including registering, or allowing to be registered, a financing statement or financing change statement in respect of such security interest;
 - (c) obtain any waiver or acknowledgement from any person including any landlord, secured party or mortgagee in relation to our interest in the Secured Property;
 - (d) secure to us the full benefit of our rights under a Relevant Document;
 - (e) vest any Secured Property in us or in a purchaser; or
 - (f) assign absolutely to us any Secured Property (including in terms of section 50 of the PLA).
- 9.4 Without limiting the generality of any other provision in this Agreement, you may, subject to receiving our prior written consent, lease or hire the Secured Property if that forms part of your ordinary business and provided that at all times during the term of the lease or hire arrangement, you:
- (a) ensure that the lessee complies with each of the covenants set out in this clause 9 as if those covenants were expressed to be binding on the lessee;
 - (b) will upon request and at your cost, affix to the Secured Property and any substantial part of the Secured Property capable of being separated from the Secured Property as a whole, a plate in the form required by us drawing our interest in the Secured Property to the attention of other persons;
 - (c) ensure that the lessee identifies the Secured Property in its records as being your property; and
 - (d) register your interest on the Personal Property Securities Register to the extent the lease or hiring arrangement creates a deemed security interest (as such term is defined in section 17(1)(b) of the PPSA).

- 9.5 Without limiting the generality of any other provision in this Agreement, where any of the Secured Property is a motor vehicle you will:
- (a) not permit that motor vehicle to be driven by a person who is not licensed or fit to drive it;
 - (b) not permit that motor vehicle to be used in any circumstances that would entitle the insurer to disclaim liability under the insurance policy in respect of the motor vehicle;
 - (c) deliver to us at our request all documents relating to the registration and ownership of that motor vehicle;
 - (d) indemnify us against every claim by any person in relation to that motor vehicle or its use;
 - (e) comply with all provisions of the Transport Act 1962 and all other laws and regulations affecting the use of that motor vehicle;
 - (f) not permit any material alterations to be made to that motor vehicle without our consent;
 - (g) keep that motor vehicle duly registered and not change its registration number without giving us 5 Business Days' notice of what the new registration number will be and, if a vehicle identification number has not already been allocated to that motor vehicle, immediately notify us of any vehicle identification number that is allocated;
 - (h) ensure that a current warrant of fitness is always displayed on that motor vehicle;
 - (i) pay all fines, taxes and other charges payable in respect of that motor vehicle; and
 - (j) whenever required, produce such certificates, or licences, or receipts or other documents necessary to demonstrate to our satisfaction that you have done all or any of the above.
- 9.6 Without limiting the generality of any other provision in this Agreement, where any of the Secured Property is an aircraft ("**Aircraft**") you will:
- (a) not permit that Aircraft to be flown by a person who may not lawfully do so under Parts 61 and 67 of the Civil Aviation Rules;
 - (b) not permit that Aircraft to be used in any manner or circumstances that would entitle the insurer to disclaim liability under the insurance policy in respect of the Aircraft;
 - (c) not permit that Aircraft to be operated except in accordance with Parts 91, 121, 125, 135 and 137 of the Civil Aviation Rules (as applicable), and all provisions of the Civil Aviation Act 1990, and all other laws, consents and directions relating to the registration, control, operation and use of aircraft in New Zealand;
 - (d) ensure a valid certificate of registration under Part 47 of the Civil Aviation Rules is always held for that Aircraft;
 - (e) ensure a current airworthiness certificate issued under Part 21 of the Civil Aviation Rules is always held for that Aircraft and airworthiness directives issued under Part 39 of the Civil Aviation Rules are always complied with in relation to that Aircraft;
 - (f) obtain and keep current an air operator certificate for any air operations for which that Aircraft is used;
 - (g) obtain and keep current an agricultural aircraft operator certificate for any commercial agricultural aircraft operations for which that Aircraft is used;
 - (h) ensure Parts 43 and 91 of the Civil Aviation Rules, and any maintenance schedules and mandatory operational modifications from time to time required by the manufacturers of that Aircraft and the United States Federal Aviation Administration, are always complied with for that Aircraft and that the Aircraft is maintained in an airworthy condition;
 - (i) not part with possession or control of that Aircraft and not permit that Aircraft to be chartered or leased without our prior written consent;
 - (j) pay all rents, landing and other fees, levies, taxes and charges payable in respect of that Aircraft or its operation;
 - (k) not permit any material alterations to be made to that Aircraft without our prior written consent;
 - (l) notify us of any damage to that Aircraft for which repair by a licensed aircraft maintenance engineer is required;

- (m) ensure that all other aviation documents and certificates necessary or desirable for the operation of that Aircraft are obtained, kept current and are not suspended;
 - (n) immediately provide us with a copy of any new or replacement certificate of registration issued by the Director of Civil Aviation for that Aircraft, certified by a solicitor as a true and correct copy, and immediately notify us of any change to the aircraft class, registration mark, nationality mark or serial number provided by the manufacturer of that Aircraft, as these marks and numbers appear in the certificate of registration for that Aircraft; and
 - (o) whenever required, produce such certificates, or licences, or receipts or other documents necessary to demonstrate to us that you have done all or any of the above .
- 9.7 Without limiting the generality of any other provision in this Agreement, where any of the Secured Property is a vessel, you will ensure that it is operated in accordance with the then current Guidelines for the Onboard Operational Use of Shipborne Automatic Identification Systems as published by the International Maritime Organisation.
- 9.8 You will not use the Secured Property to manufacture or transport any item on the then current New Zealand Strategic Goods List as published by the Ministry of Foreign Affairs and Trade.

10. Insurance

- 10.1 You agree to at all times and at your own expense keep the Secured Property insured to its full insurable value with an insurer approved by us. Such insurance must:
- (a) be for such amount or amounts and under a policy acceptable to us;
 - (b) be in your name jointly with us; and
 - (c) provide that all losses are payable to us.
- 10.2 If you do not effect or keep such insurance:
- (a) we may effect or keep such insurance in accordance with our requirements; and
 - (b) you must pay us on demand all moneys spent by us in effecting or keeping such insurance.
- 10.3 You must notify us and the insurer if something happens which the Secured Property is insured for.
- 10.4 You agree to deliver to us copies of the insurance policies referred to in clause 10.1 and, upon demand, to produce for us any receipts for premiums paid.
- 10.5 Any moneys receivable under insurance policies referred to in clause 10.1 must be paid to us. We may, in our sole discretion, apply these insurance moneys:
- (a) to replace or repair the Secured Property; or
 - (b) towards payment of the Amount Outstanding and other moneys payable to us under any Relevant Document, with any surplus insurance moneys being paid to you.
- 10.6 For the purposes of this Agreement, you appoint us as your attorney to recover and/or compromise any claim for loss or damage under the insurance or otherwise to give valid releases and receipts for such claims.
- 10.7 You shall be entitled to the benefit of any no-claim rebate or a rebate of a similar nature under any insurance policy for the Secured Property.

11. Default

- 11.1 An Event of Default occurs under this Agreement if:
- (a) you fail to pay any moneys payable under a Relevant Document on time;
 - (b) you fail to observe or perform any other material term of a Relevant Document;
 - (c) you make, or are deemed to have made, any material statement, representation or warranty in, or in connection with, any Relevant Document that is incorrect in any material respect;

- (d) you allow a judgment or order against you to remain unsatisfied for more than two days;
- (e) you make or agree to make an assignment to or compromise with creditors;
- (f) you become bankrupt or go into liquidation or a petition is lodged or an order is made or a resolution is passed for the winding up or liquidation or voluntary administration of you or a meeting is convened for the purpose of considering any such resolution or if, in our opinion, any of these are likely to occur;
- (g) you become or, in our reasonable opinion, are likely to become subject to the appointment of a Receiver;
- (h) you suffer or, in our reasonable opinion, you are likely to suffer any execution or distress against you or against the Secured Property;
- (i) you do or permit to be done anything that, in our reasonable opinion, is likely to endanger the safety or condition of the Secured Property or prejudice or make void any Relevant Document;
- (j) any material event of default or termination event (however described) occurs under any other Relevant Document;
- (k) in our opinion, a material adverse change occurs in relation to you (being something that, in our opinion, has or is likely to have a material adverse effect on your commercial or financial prospects including a deterioration in your ability to comply with your obligations under any Relevant Document or on our ability to recover any amount due under any Relevant Document or enforce performance of your obligations under any Relevant Document) and we reasonably believe, following discussion with you, that the risk to BNZ is increased;
- (l) you die or otherwise become physically or mentally incapacitated; or
- (m) any event specified in the preceding sub-clauses of this clause occurs with respect to any Guarantor or any other party to the Relevant Documents (other than us) as if references in those sub-clauses to you were references to such other party.

11.2 If an Event of Default occurs:

- (a) we can, subject to any applicable law, without prior notice take any or all of the following actions:
 - (i) call up and demand payment of the Amount Outstanding, even if not due; and/or
 - (ii) cancel this Agreement; and
- (b) each security interest created under the Relevant Documents will become immediately enforceable (without notice to, or the consent of, you or any other person) and for that purpose we can:
 - (i) in your name or otherwise, at any time do anything and exercise any right which you could do or exercise in relation to the Secured Property, including the right to take possession of all or any part of the Secured Property or sell or otherwise dispose of all the Secured Property or any part of it in such manner and on such terms as we may determine, and deduct from the sale proceeds the costs of the sale and any other unpaid charges or fees;
 - (ii) exercise all other rights conferred on us by law; and/or
 - (iii) appoint any person or persons to be a Receiver of all or any part of the Secured Property.

11.3 For the purposes of this clause 11, you authorise us to:

- (a) enter into and if necessary to break into any land, buildings, or premises occupied by you where any Secured Property may be;
- (b) as your agent, enter upon any other land, buildings or premises which you might enter upon and where any Secured Property may be; and
- (c) search for, remove and take possession of any Secured Property without being liable in any way to you or to anyone claiming under you for so doing.

11.4 If any Secured Property is repossessed:

- (a) all moneys payable by you under this Agreement and each other Relevant Document will, to the extent not already due and payable, immediately become due and payable together with all costs and expenses incurred in repossessing or attempting to repossess any Secured Property; and
- (b) all your rights under each Relevant Document to which you are a party will terminate absolutely.

- 11.5 You agree that you have no rights under, or by reference to sections 114(1)(a), 133 or 134 of the PPSA and that you waive your right to:
- (a) not have goods damaged if we remove an accession under section 125 of the PPSA;
 - (b) receive notice of the removal of an accession under section 129 of the PPSA;
 - (c) apply to the Court for an order concerning the removal of an accession under section 131 of the PPSA;
 - (d) receive a statement of account under section 116 of the PPSA;
 - (e) receive a notice of any proposal by us to retain collateral under section 120(2) of the PPSA; and
 - (f) object to any proposal by us to retain collateral under section 121 of the PPSA.

12. Receiver

- 12.1 Without affecting any other powers conferred on a Receiver (whether under the Receiverships Act 1993 or at law or otherwise), a Receiver appointed by us under this Agreement has and may exercise all of our powers under the Relevant Documents including, but not limited to, the power to sell any Secured Property, and has and may exercise such other powers as are necessary for the purposes of realisation of any Secured Property subject to the security interest created by a Relevant Document in such manner as the Receiver in his or her discretion deems necessary, and shall generally have all such powers that the Receiver might have if the Receiver was the absolute owner of such Secured Property.
- 12.2 Every Receiver appointed under or by virtue of this Agreement is deemed at all times and for all purposes to be your agent and you are solely responsible for payment of the Receiver's remuneration.

13. Power of attorney

- 13.1 You irrevocably appoint us and any of our officers severally as your attorney for the purpose of:
- (a) applying at any time for a new certificate of registration or executing any transfer or other agreement in connection with such registration or transfer of the Secured Property; or
 - (b) doing any other act, matter or thing that ought to be done by you under a Relevant Document.
- 13.2 You ratify and confirm to each person dealing with us or a Receiver anything that we do or the Receiver does in the exercise of any of the rights referred to in clause 13.1.

14. Costs

- 14.1 You agree that you will pay each cost reasonably incurred by us in connection with or incidental to:
- (a) the preparation, negotiation, entry into, registration and release of this Agreement and each other Relevant Document or any related financing statements;
 - (b) each amendment to, waiver in respect of, or discharge of, this Agreement and each other Relevant Document;
 - (c) the occurrence of an Event of Default and the exercise, protection or enforcement of our rights under this Agreement and each other Relevant Document;
 - (d) any repairs reasonably carried out by us to the Secured Property;
 - (e) any amount you owe us not being paid when due, for any reason;
 - (f) compliance with any demand given by you under section 162 of the PPSA, or any application for, or the obtaining of a court order to maintain any registration in respect of the security interest created by this Agreement and each other Relevant Document and the service of any such court order on you or the Registrar of Personal Property Securities; or

(g) any claim which may arise in respect of the Secured Property (including in respect of any distress, execution or seizure) or its use or operation by you or any other person, in each case on demand and on a full indemnity basis,

except to the extent such cost arises due to our fraud, negligence or wilful misconduct.

14.2 If either you or a Guarantor (the **Payer**) are required by law to make a deduction or withholding from any amount paid or payable under a Relevant Document or if we are required to make any payment for or on account of tax (other than tax on our overall net income) or otherwise on or in relation to any amount received or receivable by us under a Relevant Documents then the Payer agrees that it will:

(a) ensure that any such deduction or withholding does not exceed the legal minimum and shall pay the amount required to be deducted, withheld or paid to the relevant authority before the date any penalty begins to accrue; and

(b) increase the actual amount paid to us to the extent necessary to ensure that after any deduction, withholding or payment is made, we actually receive and retain on the due date (free from any liability in respect of any such deduction, withholding or payment, and ignoring any amount that we are deemed to have received by reason of any legislation) a net amount equal to the amount that would have been received and so retained has no such deduction, withholding or payment been required to be made.

14.3 To the extent you elect to take a Forward Rate Option in respect of the Loan, you agree to indemnify us for any costs or losses (including any indirect, economic or consequential losses) reasonably incurred by us due to:

(a) the Loan not being advanced in full; or

(b) the Loan not being advanced on the Date of Loan, including any costs associated with unwinding our commitment to provide the Interest Rate agreed pursuant to this Agreement and the costs of entering into any interest rate swap or derivative instrument,

except to the extent the cost of loss is caused by our fraud, negligence, or wilful misconduct.

14.4 The above indemnities are unconditional and irrevocable and are to survive both termination of this Agreement and payment of the Amount Outstanding.

15. Annual review

15.1 This Agreement shall be subject to annual review. Each annual review will be conducted in accordance with our internal criteria for a loan of this kind.

15.2 As part of the annual review process, you agree to provide us with detailed half yearly and full year financial statements in a form, and accompanied by certifications, satisfactory to us, promptly, upon request.

15.3 Following an annual review, if we consider the Bank's risk to have materially increased we may, in our sole discretion, vary any of the terms and conditions of this Agreement or any Relevant Document to mitigate that increased risk.

16. Variation

16.1 Except for:

(a) any amendment made by us pursuant to clause 15.3; or

(b) any amendment to the fees payable under this Agreement including the fees set out on our website at bnz.co.nz by searching for "*business service charges*" which will be effected by way of update to our website; or

(c) any amendment which is necessary or desirable to ensure this Agreement complies with all applicable laws, which may be effected by way of written notice from us to you; or

(d) as otherwise expressly provided in this Agreement,

no variation to this Agreement is effective unless it is in writing and signed by all the parties.

17. Assignment

- 17.1 You must not assign, grant a security interest over, or otherwise part with possession of the whole or any part of your rights, title, interest or obligations under this Agreement or any other Relevant Document. The Guarantor, if applicable, must not assign, grant a security interest over, or otherwise part with possession of the whole or any part of the Guarantor's rights, title, interest or obligations under this Agreement or any other Relevant Document.
- 17.2 We may assign in whole or in part any of our rights, title, interest and obligations in the Secured Property, this Agreement or any other Relevant Document without your consent or the consent of any Guarantor, provided that the assignee is reasonably capable of performing this Agreement. We will notify you promptly after any such change that we make.

18. Notices

- 18.1 No communication will be effective until received. Any communication under this Agreement which is required to be in writing may be made by way of email or other electronic communication. A communication to you or any Guarantor is, however, deemed to be received:
- (a) in the case of a letter, on the third Business Day after posting; or
 - (b) in the case of electronic communications, on completion of transmission to the relevant electronic address provided that if such communication is made at a time which is outside ordinary business hours, such communication shall be deemed received on the next Business Day.

19. Property law act

- 19.1 The covenants set out in clauses 3(2), 6(2) and 12 of Part 2 of Schedule 2 to the PLA are excluded from this Agreement.
- 19.2 In the event of any conflict between the provisions of a Relevant Document and the provisions of Part 1 or Part 2 of Schedule 2 to the PLA, the provisions of the Relevant Document shall apply.
- 19.3 For the purposes of section 9 of the PLA, and without limiting any other mode of delivery, this Agreement shall be delivered by you immediately on the earlier of:
- (a) physical delivery of an original of this Agreement, executed by you, into the custody of us or our solicitors; or
 - (b) transmission by you or your solicitors (or any other person authorised in writing by you) of a photocopied or scanned copy of an original of this Agreement, executed by you, to us or our solicitors.

20. Trusts

- 20.1 Where you enter into this Agreement or any other Relevant Document as the trustee of a Trust the following terms and conditions apply:
- (a) where any trustee of the Trust acts in an independent capacity and has no interest in the assets of the Trust other than as trustee (the "**Professional Trustee**"), then the Professional Trustee is liable under this Agreement and any other Relevant Document only to the extent of an amount equal to the value of the assets of the Trust available from time to time to meet the Professional Trustee's liability, to which shall be added the sum (if any) by which the value has been diminished by any breach of trust caused by the Professional Trustee's wilful default or dishonesty;

- (b) each trustee of the Trust represents and warrants that:
 - (i) they are entering into this Agreement and any other Relevant Document as trustee for and on behalf of the Trust and for the benefit of the beneficiaries of the Trust;
 - (ii) aside from any other trustee signing this Agreement, they are the only trustee of the Trust;
 - (iii) they were appointed as trustee of the Trust on the terms and conditions set out in the relevant Trust Deed provided to us;
 - (iv) they have the right to be fully indemnified out of the property held on trust by it under the Trust Deed (the “**Trust Fund**”) in respect of obligations incurred by it under this Agreement and that the Trust Fund is sufficient to satisfy that right of indemnity and all other obligations in respect of which they have a right to be indemnified out of the Trust Fund; and
 - (v) they have not resigned or received any notice or information of the revocation by any means whatsoever of his or her appointment as trustee; and
- (c) in addition, each trustee of the Trust represents and warrants that the Trust Deed has not been amended since it was first executed. If the Trust Deed has been amended since it was first executed then such amendment:
 - (i) was made in accordance with the terms and conditions of the Trust Deed;
 - (ii) was recorded in writing; and
 - (iii) has been provided in copy form to us or our solicitors together with a copy of the Trust Deed.

21. Partnerships

- 21.1 Where you enter into this Agreement or any other Relevant Document as a partner of a partnership (the “**Partnership**”) the following terms and conditions apply:
- (a) each partner represents and warrants that:
 - (i) the partners signing this Agreement constitute all of the partners of the Partnership;
 - (ii) no partner has given notice of their retirement from the Partnership; and
 - (iii) the partnership agreement (the “**Partnership Agreement**”) provided to us in connection with this Agreement is complete, correct and contains all alterations to date;
 - (b) you undertake to ensure that:
 - (i) the Partnership is not terminated or dissolved and that no event for the vesting or final distribution of the assets of the Partnership occurs;
 - (ii) no partner transfers their partnership interest other than to an existing partner; and
 - (iii) the Partnership Agreement is not amended in any material respect without our prior written consent (such consent not to be unreasonably withheld or delayed); and
 - (c) each partner acknowledges that they are jointly and severally liable for all the obligations of the Partnership and that, in recovering an amount owed to us, we may have recourse to a partner’s personal estate on an equal ranking basis with their other personal creditors.

22. Limited partnerships

- 22.1 Where you enter into this Agreement or any other Relevant Document as the general partner of a limited partnership (the “**Limited Partnership**”) the following terms and conditions apply:
- (a) each partner represents and warrants that:
 - (i) the partners signing this Agreement constitute all of the general partners of the Limited Partnership;
 - (ii) the limited partnership agreement (the “**Limited Partnership Agreement**”) provided to us in connection with this Agreement is complete, correct and contains all alterations to date;

- (iii) the general partner(s) of the Limited Partnership (the “**General Partner(s)**”) have the authority and power under the Limited Partnership Agreement and the Limited Partnerships Act 2008 to enter into this Agreement and the Relevant Documents and thereby bind the Limited Partnership;
 - (iv) no step has been taken to remove the General Partner(s) as general partner(s) of the Limited Partnership;
 - (v) the General Partner(s) are not in breach of the Limited Partnership Agreement; and
 - (vi) all of the assets of the Limited Partnership are under the management and control of the General Partner(s); and
- (b) you undertake to ensure that:
- (i) the Limited Partnership is not terminated or dissolved;
 - (ii) no partner transfers their partnership interest other than to an existing partner;
 - (iii) the Limited Partnership Agreement is not amended in any material respect without our prior written consent (such consent not to be unreasonably withheld or delayed);
 - (iv) the General Partner(s) remains a general partner of the Limited Partnership; and
 - (v) promptly after the occurrence of any event giving rise to a change in particulars of the Limited Partnership required to be recorded on the register for limited partnerships maintained under the Limited Partnerships Act 2008, provide all information required to the registrar of that register.

23. Miscellaneous

- 23.1 You authorise us to apply without notice any credit balance on any account you have with us in satisfaction of any sum then due and payable from you to us. Each Guarantor, if any, authorises us to apply without notice any credit balance on any account such Guarantor has with us in satisfaction of any sum then due and payable from that Guarantor to us. You agree not to set-off any amount we may owe you at any time against amounts payable under this Agreement. We will notify you promptly after any such change that we make.
- 23.2 We may pursue our remedies and exercise our powers under this Agreement and any other Relevant Document separately or concurrently.
- 23.3 Time is of the essence in all respects regarding each of your obligations and the obligations of each Guarantor, if any, under this Agreement and any other Relevant Document.
- 23.4 A certificate by us of any amount payable under this Agreement or any other Relevant Document is evidence for all purposes, including for any proceedings.
- 23.5 We are not required to marshal, enforce or apply under any security interest, guarantee or other entitlement held at any time by us or under any money or property that we at any time may hold or be entitled to receive.
- 23.6 You and each Guarantor, if any, acknowledge that this Agreement is executed by you and each Guarantor, if any, as a deed and is intended to take effect as a deed in relation to you and each Guarantor, if any, and for the purposes of the Contracts (Privity) Act 1982:
- (a) you acknowledge and accept that your obligations under the Relevant Documents shall be enforceable notwithstanding that we may not sign this Agreement (or if we sign other than in the form of a deed); and
 - (b) each Guarantor, if any, acknowledges and accepts that the Guarantor’s obligations under the Relevant Documents shall be enforceable notwithstanding that we may not sign this Agreement (or if we sign other than in the form of a deed).
- 23.7 Where there is more than one Borrower, the terms of this Agreement and any other Relevant Document bind the Borrower jointly and severally, and each reference to the Borrower, “you” or “your” is a reference to each Borrower separately and all Borrowers together. Where there is more than one Guarantor, the terms of this Agreement and any other Relevant Document bind the Guarantors jointly and severally, and each reference to the Guarantor is a reference to each Guarantor separately and all Guarantors together.
- 23.8 This Agreement is to be governed by, and construed in accordance with, New Zealand law.

24. Glossary

24.1 For the purposes of this Agreement:

“**Absolute Rate**” has the meaning given to that term in the Financial Summary.

“**Affiliate**” means each Guarantor and each other party to the Relevant Documents (other than you and us), and each of your and their respective directors, officers, employees, agents, subsidiaries, owners and controllers.

“**Agreement**” means this Asset Finance Agreement, including the Commercial Terms, the Financial Summary, the Repayment Schedule, any Green Loan Schedule, the Fees information available online at bnz.co.nz and the General Terms.

“**Amount Outstanding**” means, at any time, the aggregate principal amount of the Loan outstanding at that time, together with any accrued and unpaid interest, fees and all costs and other amounts then due and payable by you to us pursuant to the terms of this Agreement.

“**Asset Ownership Documentation**” means such of the following documents as we (in our complete discretion) require:

- (a) an invoice for the purchase of the Secured Property addressed to you;
- (b) an agreement for sale and purchase for the Secured Property under which you are the purchaser; and/or
- (c) a valuation of the Secured Property addressed to you.

“**Base Rate**”, if applicable, means the base rate for our standard Asset Finance Agreement product as determined by us for the relevant Interest Rate Period:

- (a) where the Forward Rate Option has not been selected, at or about 10.45 am on the day prior to the Date of Loan;
- (b) where the Forward Rate Option has been selected, at or about 10.45 am on the date of this Agreement; and
- (a) in respect of each Interest Rate Period other than the first Interest Rate Period for the Loan, in the same manner on the last day of the preceding Interest Rate Period, (or, where that day is not a Business Day, the previous Business Day). Our prevailing Asset Finance Agreement Base Rate is ascertainable by contacting your Business Manager.

“**Business Day**” means every day except Saturday, Sunday, and national public holidays (but includes provincial anniversary days).

“**Collateral Security**” means each guarantee and each security agreement entered into in favour of us in relation to the security interests referred to under the heading “Collateral Securities” in the Commercial Terms and “**Collateral Securities**” means all of them.

“**Commercial Terms**” means the terms set out under the heading “Commercial Terms” of this Agreement.

“**Conditions Precedent**” has the meaning given to that term in clause 1.1.

“**Cut-Off Date**” has the meaning set out in the Financial Summary.

“**Date of Loan**” means the date on which the Loan is, or is to be, advanced as specified in the Commercial Terms.

“**Default Rate**” means, at any time, the Interest Rate for the Loan then prevailing, plus the Default Margin.

“**Default Margin**” has the meaning given to that term in the Financial Summary.

“**Discharge Fee**” has the meaning given to that term in the Financial Summary.

“**Early Repayment Fee**” means the fee described in clause 3.

“**Event of Default**” means any of the events mentioned in clause 11.

“**Facility**” means the loan facility made available by us to you pursuant to this Agreement.

“**Finance Amount**” has the meaning given to that term in the Commercial Terms.

“**Financial Summary**” means the financial terms and conditions applicable to the Facility as set out in the section of this Agreement headed “Financial Summary”.

“**Forward Rate Option**” means the option to fix an Interest Rate which will apply in respect of the Loan, provided the Loan is drawn down prior to the Forward Rate Option Expiry Date.

“**Forward Rate Option Expiry Date**” has the meaning given to that term in the Financial Summary.

“**General Terms**” means the terms set out under the heading “General Terms” of this Agreement.

“**Green Loan Schedule**” means the green loan schedule set out in the Agreement or the most recent revised green loan schedule provided to you by us on or after the Date of Loan, setting out the terms which apply in relation to the green loan aspects of your Facility.

“**Guarantor**” means the person or persons named as such on the first page of this Agreement and, if a separate guarantee (or guarantees) is provided as a Collateral Security, then, for the purposes of clauses 1.1, 8.1, 9.1, 11.1 and 17.2 of this Agreement, the term “Guarantor” shall include each person named therein as a guarantor.

“**Instalment**” means each scheduled payment instalment in respect of the Amount Outstanding as stated in the Repayment Schedule or as varied in accordance with this Agreement.

“**Interest Rate**” means the rate set out in, or determined by reference to, the section headed Interest Rate Parameters in the Financial Summary or such other rate as determined by us to be the interest rate applicable to the Loan on the Date of Loan in accordance with the Interest Rate Parameters and this Agreement.

“**Interest Rate Period**” means each period by reference to which the Interest Rate applicable to the Loan is determined in accordance with this Agreement.

“**Loan**” means the advance of up to the Finance Amount made or to be made by us under clause 1 of this Agreement.

“**Margin**” means the applicable margin specified in the Financial Summary (if any).

“**Maturity Date**” has the meaning given to that term in the Commercial Terms.

“**Payment Account**” means the bank account advised by you to us for the purposes of clause 2.3 of this Agreement.

“**PLA**” means the Property Law Act 2007.

“**PPSA**” means the Personal Property Securities Act 1999.

“**Purpose**” has the meaning given to that term in the Commercial Terms.

“**Receiver**” means a person appointed as a receiver or a receiver and manager whether under a Relevant Document or otherwise.

“**Relevant Documents**” means this Agreement, each of the Collateral Securities and any letter of offer, guarantee, mortgage, general security agreement, specific security agreement or other documents required by us or which any person may enter into from time to time with or in favour of us which is related to this Agreement.

“**Repayment Schedule**” means the repayment schedule set out in the Financial Summary or, if we agree a later Date of Loan than the date specified in the Commercial Terms, or the applicable Interest Rate is amended pursuant to clause 4.2, the most recent revised repayment schedule provided to you by us on or after the Date of Loan, setting out details of the Instalments.

“**Sanctions**” means any sanctions program administered by a responsible government or inter-governmental body or their offices, including (for example) the governments of New Zealand, Australia, the United Kingdom and the United States of America, the United Nations Security Council, and the European Union.

“Secured Property” means:

- (a) the personal property described in the Commercial Terms under the headings “Secured Asset(s)” and “Additional Secured Asset(s)” together with any accessions, accessories, additions, improvements, replacements or proceeds to or of that property; and
- (b) when used in clauses 6.1, 8.1(f), 8.1(g), 9.3 and 11, also includes all goods described as collateral in a Relevant Document together with any accessions, accessories, additions, improvements, replacements or proceeds to or of that property.

24.2 Unless otherwise defined or unless the context otherwise requires, in this Agreement:

- (a) terms and expressions defined by the PPSA shall have the same meanings;
- (b) each reference to a party includes that person’s executors, administrators, successors, permitted assignees and transferees;
- (c) each reference to a document (however described) includes that document as modified or replaced from time to time;
- (d) a clause means a clause of this Agreement;
- (e) “indebtedness” includes any obligations (whether present or future, actual or contingent, secured or unsecured, as principal or surety or otherwise) for the payment or repayment of money;
- (f) “law” includes any law, treaty or directive of any agency or state or other regulatory monetary or accounting authority;
- (g) “person” includes any individual, company, corporation, firm, partnership, joint venture, association, organisation, trust, state or agency of a state (in each case, whether or not having a separate legal personality);
- (h) “tax(es)” includes any present or future tax, levy, impost, duty, charge, fee, deduction or withholding of any nature and whatever called, imposed by any government or any agency thereof or any municipal authority, on whomsoever imposed, levied, collected, withheld or assessed; and
- (i) any legislation, regulation or rule or any provision of any legislation, regulation or rule includes any modification or re-enactment of, or any provision substituted for, and all statutory instruments issued under, such legislation, regulation or rule or such provision and any analogous or equivalent legislation, regulation or rule or similar provision in any other applicable jurisdiction.

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