



# Important information about your home loan

Bank of New Zealand Home Loan  
Facility Master Agreement

17 June 2024



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This document includes certain key information that is required to be set out in a Disclosure Statement by the Credit Contracts and Consumer Finance Act 2003.

## 1. Definitions

### 1.1 In this agreement:

**agreed annual interest rate** means, in relation to a *facility*, the annual interest rate or rates that apply to that *facility* from time to time. The *agreed annual interest rate* is made up of a *base interest rate* plus or minus a *customer margin* (if any). The relevant *letter of advice* sets out the *agreed annual interest rate* or *rates* and/or how we calculate them.

**agreed date** means a date for making payments of principal, interest or both (as applicable). The *agreed dates* as at the date of the relevant *letter of advice* are set out in the *letter of advice*.

**agreement** means this Home Loan Facility Master Agreement.

**amount outstanding** means, on any day, all the money owing under a *facility* (including interest, fees, charges and costs). When the *amount outstanding* is to be calculated for the end of a day, it includes all debits and credits allocated to that day.

**average balance** has the meaning set out in the relevant *letter of advice*.

**base interest rate** means the percentage rate per annum set out and/or described in the relevant *letter of advice*.

**BNZ group** means Bank of New Zealand and/or any of its *related companies*.

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

**confirmation** means any written confirmation from us to you of some or all of the terms of a *facility*.

**costs** includes costs, charges and expenses, including in connection with legal and other advisers.

**credit limit** means the maximum amount of money that you may from time to time borrow under a Rapid Repay home loan, Premium Rapid Repay home loan or Mortgage One *facility*. The *credit limit* is set out in the relevant *letter of advice*. We sometimes refer to the *credit limit* as the 'safety limit'.

**customer margin** means the percentage rate per annum set out in the relevant *letter of advice*. We will add or subtract the *customer margin* (if any) from the relevant *base interest rate* in order to calculate the *agreed annual interest rate*.

**default** means, in relation to any *facility* (including an 'on demand' *facility*), any event or circumstance listed in **clauses 10.2** or **10.3**. In the case of an 'on demand' *facility*, *default* also means you failing to pay any amount to us immediately after we demand repayment of the *amount outstanding* (or any part of it) and/or cancel or reduce your *credit limit*.

**early repayment charge** is the charge that *you* may need to pay *us* if *you* repay any of the *amount outstanding* early during a *fixed rate period*. We calculate the *early repayment charge* using the formula set out in **clause 9.9**.

**end date** means, as applicable, the last day of the *term* of a *facility* or the last day that we make a *facility* available to *you*.

**expected end date**, if applicable to a *facility*, means, on any date, the date by which *you* will repay the *amount outstanding* in full, assuming that *you* make the *minimum payments* on the *agreed dates*. The *expected end date* may change from time to time but can never go beyond the last day of the *term* of a *facility*. Rapid Repay home loan, Premium Rapid Repay home loan and Mortgage One *facilities* do not have an *expected end date*.

**facility** means a loan facility we provide to *you* as set out in the relevant *letter of advice*.

**facility document** means the documents referred to in **clause 2.1**, any *security*, and any other document specified by *us* as a '*facility document*'.

**fees brochure** means the Personal Account, Service and Facility Fees brochure.

**fixed rate period** means the period set out in the relevant *letter of advice* during which the *agreed annual interest rate* is fixed.

**guarantee** means a promise given to *us* by a person to meet *your* obligations to *us* under a *facility* or to make good a *loss* we incur under or in relation to a *facility*.

**guarantor** means any person who has given a *guarantee*.

**insolvent** includes insolvent, bankrupt, in voluntary administration, in liquidation, in receivership, in statutory management, wound up, dissolved, removed from the companies register, subject to any arrangement or composition with creditors or unable to pay debts as they fall due.

**letter of advice** means a letter from *us* to *you* that sets out details of a *facility* we are prepared to make available to *you*, and includes any *confirmation*.

**loan amount** means, under a Housing Term loan *facility*, the maximum amount of money we agree to lend *you*, as set out in the relevant *letter of advice*. Where we refer to the '*loan amount outstanding*', we mean the outstanding principal amount.

**loss** includes any direct or indirect loss of profit, business or opportunity and any related expense or liability.

**minimum payment** means, in relation to a *facility*, the amount of principal, interest or both (as applicable) payable. The *minimum payments* may change from time to time.

**overdue amount** includes, where the law allows, the *amount outstanding* (or any part of it), if that amount has become due and payable.

**personal information** means *your* personal information (information that identifies *you*), confidential information, tax related information, transaction information and any related information, and that of *your related persons*.

**reduction amount**, in relation to a Rapid Repay home loan *facility* or Premium Rapid Repay home loan *facility*, means, for any month, the amount by which we will reduce *your credit limit* on the last *business day* of that month. We calculate *your reduction amount* by working out how much you would have to pay us on the last *business day* of the month if *your facility* was a table loan:

- a. with a *loan amount* that is the same as *your credit limit* (and assuming you had borrowed the full *loan amount*); but
- b. with other terms that are the same as *your Rapid Repay home loan facility* (for example, the same *agreed annual interest rate* and *end date*).

The amount you would have to pay us under this ‘notional’ table loan is the *reduction amount* under *your Rapid Repay home loan facility* for that month. Under a table loan, the *loan amount* is paid off over the *term* of the loan through regular payments of principal and interest, where the interest portion of the payments generally reduces over time.

If you do not understand how we calculate the *reduction amount*, please talk to us and we can explain it to you.

**related company** has the same meaning as set out in section 2(3) of the Companies Act 1993, except that references in that section to ‘company’ mean a company or corporation whether incorporated or established in New Zealand or elsewhere.

**related person** has the meaning set out in **clause 21.3**.

**repayment period**, if applicable to a *facility*, means, for the purposes of calculating interest, the period from (and including) one *agreed date* to (but excluding) the next *agreed date* (and in the case of the first *minimum payment*, the period from (and including) the date the *term* starts to (but excluding) the first *agreed date*).

**security** means:

- a. any agreement under which you give us a *security interest*;
- b. any *guarantee*, and any agreement under which a *security interest* is given to us by a *guarantor*,

and includes each agreement described in the ‘*Security*’ section of the relevant *letter of advice*.

**security interest** means any mortgage, charge, trust, encumbrance, lien or other security interest (however described) and includes any ‘security interest’ under the Personal Property Securities Act 1999. Under a *security interest*, we receive rights in relation to property you or a *guarantor* owns, which secure the performance of *your* or a *guarantor’s* obligations to us, including, for example, our right to sell *your* or their property.

**specified account** means the account identified as the ‘specified account’ in the relevant *letter of advice*.

**term**, if applicable to a *facility*, means the maximum period of time we are prepared to make the *facility* available to you (subject to the terms of this *agreement*), as set out in the relevant *letter of advice*. Not all types of *facilities* have a *term*.

**you** or **your** means the person or persons named in the relevant *letter of advice* as the customer. If more than one person is named as the ‘customer’ in the relevant *letter of advice*, *you* means each of those persons alone and all of them together.

**we**, **us** or **our** means Bank of New Zealand.

- 1.2 Under any *facility document* a day ends at:
  - a. for the purposes of calculating interest, 12.00 midnight on any day;
  - b. for other transaction purposes (such as a debit or credit to or from *your* account), 7.00pm on any *business day*; and
  - c. for all other purposes, 4.30pm on any *business day*.
- 1.3 Headings do not affect the meaning of any clause.
- 1.4 References to a ‘person’ include individuals, companies, corporations, trusts, partnerships and other entities, and to that person’s executors, administrators, successors, permitted assignees and permitted transferees.
- 1.5 A reference to any legislation includes reference to that legislation as amended, re-enacted or substituted and any regulations under that legislation.
- 1.6 A reference to any document includes that document as amended, varied, replaced or substituted from time to time.
- 1.7 The singular includes the plural, and the plural includes the singular.
- 1.8 Examples do not limit what else may be included.

## 2. Introduction

- 2.1 The terms of a *facility* are set out in:
  - a. any *confirmation* we may send *you* after the date of the relevant *letter of advice*;
  - b. the relevant *letter of advice*;
  - c. this *agreement*; and
  - d. the sections of the *fees brochure* that we refer to in the relevant *letter of advice*.

The terms of any *facility*, the terms and conditions of *your specified account* (if that account is with us) and any other agreements between *you* and us are separate contracts unless we specify otherwise.

- 2.2 Sometimes, the terms of the documents that set out the terms of a *facility* may be inconsistent. In that case, they will apply in the order listed in **clause 2.1**. For example, if a term of a *letter of advice* is inconsistent with a term of this *agreement*, the term in that *letter of advice* will apply, and the term of this *agreement* will not. This is because the *letter of advice* is listed before this *agreement* in **clause 2.1**.

- 2.3** This *agreement* contains some terms which apply to all *facilities*, and some special conditions (set out in **clauses 14 to 19**) which apply only to certain types of *facilities* we offer, being:
- Housing Term loan;
  - BNZ Advantage;
  - Rapid Repay home loan;
  - Premium Rapid Repay home loan; and
  - Mortgage One.

The relevant *letter of advice* sets out which type of *facility* you have.

- 2.4** This *agreement* does not set out all the terms of a *facility* or all the key information we are required to give you by law (including the Credit Contracts and Consumer Finance Act 2003). Additional terms and key information are contained in the other documents listed in **clause 2.1**.
- 2.5** Some compulsory laws apply to a *facility*, including some which restrict how we can exercise our rights under the *facility documents*. We must comply with those laws. They prevail over the terms of the *facility documents*.
- 2.6** If you borrow money under a *facility* for the purposes of a business, nothing in the Consumer Guarantees Act 1993 will apply to us providing the *facility* (and associated services) to you.

### 3. Agreeing a facility

- 3.1** We are always happy to discuss your financing needs and options with you. If you are thinking about applying for a *facility*, some of the things we may need to discuss with you include:
- the type of *facility* you want;
  - the amount of money you want to borrow;
  - how long you want to borrow the money or have a *facility* available for; and
  - how you want to repay us.
- 3.2** We may offer to provide you with a *facility* after those discussions. If we do, we will give you a copy of the documents listed in **clause 2.1**. A *letter of advice* is an offer by us to provide you with the *facility* set out in that *letter of advice*.

### 4. Changes to facilities

- 4.1** If you and we agree to change the terms that apply to a *facility* after the date of a *letter of advice*, we will give you a *confirmation*. You and we will be bound by the change from the effective date set out in the *confirmation*.
- 4.2** We may also change the terms that apply to a *facility* (for example, by changing the terms of this *agreement* or a *letter of advice*) without having to get your further agreement. We will give you notice of the change (by *confirmation* or in any other way we are allowed to by law). Notice may be given to you before, on or after the day the relevant change takes effect.

- 4.3** We will give *you* notice of any change in any interest rate, fee, rebate, charge or premium payable under the terms of a *facility* (including how any new fee or charge applies to a *facility*). We will give *you* this notice by displaying it in *our* branches, advertising it in major daily newspapers, and posting it on *our* website, or in any other way we are allowed to by law. Depending on the change, notice will be given to *you* on or before the day the relevant change takes effect.
- 4.4** If *you* are no longer eligible for a type of *facility*, or that type of *facility* is no longer available, we can choose to transfer *you* to any other type of *facility*. We will tell *you* of *our* intention to transfer *you*, and will give *you* information about the nature and cost of the new *facility*. *You* will be given the opportunity to select a different type of *facility* or *you* can choose to repay the *amount outstanding* under *your* current *facility*. If we do not hear from *you* within the timeframe set out in the relevant notification, *you* agree to us transferring *you* to the type of *facility* we have selected. If *you* choose to repay the *amount outstanding* under *your* current *facility*, *you* may have to pay us an *early repayment charge* (see **clause 9**).

## 5. Pre-conditions

- 5.1** We are not required to do anything under a *facility* if *you* or (if applicable) a *guarantor* has not:
- given us the *securities* in a form acceptable to us;
  - met any conditions we have set out in the relevant *letter of advice*; or
  - complied with any other term of a *facility document*.

## 6. Other conditions for borrowing

- 6.1** *You* may not borrow any money under a *facility* if that would mean that the *amount outstanding* under the *facility* would be more than *your credit limit* or the *loan amount*.
- 6.2** Unless otherwise set out in this *agreement* or the relevant *letter of advice*, *you* may borrow money under a *facility* on the dates and in the amounts *you* request, up to *your credit limit* or *loan amount*, if:
- the *amount outstanding* is not more than *your credit limit* or the *loan amount*; and
  - a *default* has not occurred or, in the case of an ‘on demand’ *facility*, we have not made demand for repayment.

## 7. Interest and credit limit

- 7.1** Interest will accrue daily on the *amount outstanding* under a *facility* at the *agreed annual interest rate*. If *you* have a Housing Term loan *facility*, please read **clause 14.10**.
- 7.2** The *agreed annual interest rate* may change in the ways set out in the relevant *letter of advice*.

- 7.3** Unless otherwise set out in this *agreement* or in the relevant *letter of advice*, interest will be debited from the *specified account* on the *agreed dates* for payment of interest.
- 7.4** If the *agreed annual interest rate* is variable, we may change that interest rate at any time. We sometimes refer to ‘variable’ interest rates as ‘floating’ interest rates (including on *our website*). We will give *you* notice on or before the date any interest rate change takes effect. We will give *you* this notice by displaying it in *our branches*, advertising it in major daily newspapers, and posting it on *our website*, or in any other way we are allowed to by law.
- 7.5** Unless the relevant *letter of advice* says otherwise, we can make any changes to a *customer margin* at any time. We will give *you* notice of any change to a *customer margin* before, on or after the day the change takes effect.
- 7.6** If the amount of interest *you* must pay cannot be calculated because a rate which is used to calculate that amount no longer exists or for any other reason, we (or any person appointed by us for this purpose) may then determine an alternative rate for the purpose of calculating the amount of interest *you* must pay.
- 7.7** If *you* fail to pay any amount to us when it is due, we may charge *you* interest at the default interest rate (if one is set out in the relevant *letter of advice*) on a daily basis on the *overdue amount*. If we decide to charge *you* default interest, we will calculate the default interest from the date the *overdue amount* became due until the date it is actually paid. The default interest amount will be immediately due and payable.
- 7.8** We may also from time to time (at *our discretion*) add any interest that is due but unpaid to the principal amount. We sometimes refer to this as ‘capitalising’ interest.
- 7.9** The *amount outstanding* under a *facility* at any time (including as a result of interest being capitalised) must not be more than *your credit limit* or the *loan amount*.

## 8. Method of payment and repayment

- 8.1** You must make the *minimum payments* on the *agreed dates* from the *specified account* (or in any other way acceptable to us). You must make the first *minimum payment* on the first *agreed date*.
- 8.2** You may pay more than the *minimum payment* (by lump sum or by increasing the *minimum payments*) at any time, as long as that greater payment is made in a way that complies with this *agreement*. If *you* have a Housing Term loan and *you* want to pay more than the *minimum payment* during a *fixed rate period*, please read **clause 9** and **clause 14.6**.
- 8.3** Whenever *you* owe us money *you* must pay the full amount due to us. If a law requires *you* to make a deduction or withholding, *you* must increase the amount *you* pay to us so that the net amount we receive, after any deduction or withholding, is equal to the full amount we would have received if no deduction or withholding had been made.

- 8.4** We will credit any payments to the *facility* as soon as practicable after we receive them. This is not necessarily the same day as *you* pay. We may adjust debits and credits later to accurately reflect *your* and *our* legal obligations (for example, because of an error, or because a payment is dishonoured). If we do this, we may need to make other changes (including to interest charges).
- 8.5** Where a *letter of advice* provides that scheduled payments are to be made in relation to the *facility*, we may credit a payment as if it was made as required by the *letter of advice*, even if the payment was received by us before the due date for payment. If we do this, interest will continue to accrue as if the payment had not been made until the due date for that payment.
- 8.6** All payments *you* make will go towards:
- a. first, payment of outstanding fees payable:
    - i. under the terms of any *facility*; and
    - ii. under the terms and conditions of any *specified account*, if the payment is credited to that *specified account*;
  - b. second, payment of interest; and then
  - c. repayment of the remainder of the *amount outstanding* (including the principal).
- 8.7** You may not argue that any money we might owe to *you* (for example money in any account *you* have with us) can be or has been used to make a payment to us or that any set-off has occurred. You waive any rights of set-off you might have. For example, a right of set-off may arise if *you* hold money in a bank account with us at the same time as owing us money (for example, the *amount outstanding*). In the example, because *you* have waived your rights of set-off, *you* are not entitled to claim that the money *you* hold in a bank account with us reduces the amount *you* owe us under the *facility* or any other agreement *you* have with us.
- 8.8** If *you* owe us money, we can exercise rights of set-off and take money from any account *you* have with us and use that to pay the money *you* owe us.

## 9. Early repayment

Clause 9 sets out important information about what you may have to pay us if you repay early.

Please talk to us if you do not understand this section and we can explain it to you.

### 9.1 Early repayment allowed

You can repay the *amount outstanding* under a *facility*, or any part of it, at any time.

### 9.2 Early repayment charge

If *you* repay early during a *fixed rate period*, we may charge *you* an *early repayment charge*. We will not charge *you* an *early repayment charge* if *you* repay early and the *agreed annual interest rate* of the *facility* is variable.

If *you* are thinking about making an early repayment, *you* should speak to us and find out what *your early repayment charge* may be.

### **9.3 Increased payments during a fixed rate period are also early repayments**

For the purposes of **clause 9**, early repayments also include any increase in the *minimum payments* during a *fixed rate period*. This includes:

- a. where you have decreased the *minimum payments* during a *fixed rate period* and then increased them again during that *fixed rate period*; and
- b. where a change to the *agreed dates* under **clause 14.7** results in an increase in the *minimum payments*.

In this case, the date of *your* early repayment will be the date we give effect to the increase.

### **9.4 Changes to interest rates**

You do not have the right to change the *agreed annual interest rate* during a *fixed rate period*. However, if, during a *fixed rate period*, you request and we agree to change the *agreed annual interest rate* from:

- a. a fixed interest rate to a variable interest rate; or
- b. a fixed interest rate to another fixed interest rate,

you may need to repay the *amount outstanding* and re-borrow under the *facility* at the new *agreed annual interest rate*. You may need to pay an *early repayment charge* if you do this.

In this case, the date of *your* early repayment will be the day you repay the *amount outstanding* (or any part of it) and re-borrow at the new *agreed annual interest rate*.

### **9.5 Repayment during a fixed rate period after a default is also an early repayment**

For the purposes of **clause 9**, we will also treat you as having made an early repayment where:

- a. the *amount outstanding* (or any part of it) becomes immediately due and payable under **clause 10.2** (unless you have an ‘on demand’ *facility*) or we demand repayment of the *amount outstanding* (or any part of it) under **clause 10.3**; and
- b. we receive the *amount outstanding* (or any part of it) during a *fixed rate period* (including, for example, where we sell property that was subject to a *security*).

In this case, the date of *your* early repayment will be the date we receive the *amount outstanding* (or any part of it).

### **9.6 Why an early repayment charge may be payable**

We borrow money from third parties to lend to our customers. In **clause 9**, we refer to these contracts under which we borrow money as ‘BNZ borrowing contracts’. We pay interest under our BNZ borrowing contracts.

We charge you an *early repayment charge* because, when we give fixed rate loans to our customers, we also enter into ‘wholesale hedging contracts’ with other banks and large institutions. These wholesale hedging contracts are meant to protect us if the interest we receive from our customers under fixed rate loans is less than the interest we have to pay under our BNZ borrowing contracts. This protection is known as ‘hedging’.

The price of our wholesale hedging contracts depends, in part, on ‘wholesale interest rates’. We refer to these wholesale interest rates as ‘wholesale hedging rates’ in **clause 9**.

When you repay all or part of your loan early, we still need to meet our obligations under our BNZ borrowing contracts. We may also need to adjust our wholesale hedging contracts. In doing so, we will incur a loss if the relevant wholesale hedging rate at the start of your fixed rate period is higher than the relevant wholesale hedging rate that applies to the remainder of your fixed rate period on the date of your early repayment.

Although we enter into our BNZ borrowing contracts and wholesale hedging contracts in relation to the total of all our fixed rate loans rather than on a loan-by-loan basis, a reasonable way for us to estimate our loss, if any, arising from your early repayment is by calculating the early repayment charge as if we had hedged your individual loan.

#### **9.7 Reasonable estimate of loss**

The early repayment charge represents a reasonable estimate of our loss arising from your early repayment. The way we calculate the early repayment charge is set out at **clause 9.9**. We do not use the calculation procedure set out in the Credit Contracts and Consumer Finance Regulations 2004.

#### **9.8 5% threshold**

Unless a letter of advice says otherwise, we will not charge you an early repayment charge if the effect of all early repayments you make in any consecutive 12 month period within a fixed rate period is less than or equal to the '5% threshold'. The first 12 month period starts on the first day of the fixed rate period.

In addition, the early repayment charge is only payable to the extent that the effect of the early repayments is more than the 5% threshold.

We calculate the 5% threshold on the loan amount outstanding at the start of the fixed rate period.

#### **9.9 Calculation**

We calculate the early repayment charge as follows:

**Step 1:** We determine a. to d. below as at each agreed date occurring from the date of your early repayment until, and including, the end of the fixed rate period:

- a. The difference between what your opening loan amount outstanding would have been on the agreed date if you had not made the early repayment ('scheduled loan amount outstanding') and what the opening loan amount outstanding will be on the agreed date after you have made your early repayment ('revised scheduled loan amount outstanding');
- b. The amount by which the relevant wholesale hedging rate at the start of the fixed rate period ('original wholesale hedging rate') is higher than the wholesale hedging rate that applies to the remainder of the fixed rate period on the date of your early repayment ('amended wholesale hedging rate'). If the original wholesale hedging rate is lower than the amended wholesale hedging rate, b. will be zero;
- c. The number of days since the previous agreed date (or the date of your early repayment where this is not an agreed date) ('calculation period') divided by 365 (days per year); and

- d. A factor to reduce the *early repayment charge* that would otherwise be payable, which factor reflects the value to *us* of receiving *your early repayment charge* now, rather than the *minimum payments* when they were due in the future ('discount factor'). We select the discount factor based on market rates at the time of *your* early repayment.

**Step 2:** We multiply a, b, c and d. together for each *agreed date*.

The formula that we use for Steps 1 and 2 is:

$$\text{Loss at each } \textit{agreed date} = (\text{scheduled loan amount outstanding} \\ - \text{revised scheduled loan amount outstanding}) \times (\text{original wholesale} \\ \text{hedging rate} - \text{amended wholesale hedging rate}) \times (\text{calculation period} / \\ 365) \times \text{discount factor}$$

**Step 3:** We add up the results of Steps 1 and 2 for each *agreed date* occurring from the date of *your* early repayment until, and including, the end of the *fixed rate period*.

We will not charge *you* an *early repayment charge* if the result of Steps 1 to 3 is zero or negative.

**Step 4:** If the result is positive, we take into account the 5% threshold referred to in **clause 9.8**, to determine the *early repayment charge*.

Where we refer to '*agreed dates*' in this **clause 9.9**, we mean *agreed dates* for payment of principal, or principal and interest (as applicable), not *agreed dates* for payments of interest.

#### **9.10 Payment date**

Any *early repayment charge* we charge *you* is payable on the date *you* make *your* early repayment.

#### **9.11 Charges available on request**

*You* should contact *us* if *you* plan to make an early repayment of part or all of the *amount outstanding* under a *facility* or increase the *minimum payments*, or change from a fixed interest rate to a variable interest rate or another fixed interest rate during a *fixed rate period*. We will give *you* an indication of any *early repayment charge* that *you* may have to pay. If *you* then decide to make an early repayment, we can, before *you* make the early repayment, give *you* a full calculation of the *early repayment charge* on request. If *you* decide to repay the *amount outstanding* in full, *you* can also ask *us* to give *you* a full settlement statement.

## 10. Early repayment and reduction in credit limit at our option or after a default

### At our option

**10.1** If you have an 'on demand' facility, we can, at any time for any reason:

- a. cancel or reduce *your credit limit*; and/or
- b. demand repayment of the *amount outstanding* (or any part of it).

You must pay us the *amount outstanding* (or the part of it we demand repayment of) when we demand repayment. A Mortgage One facility is an 'on demand' facility.

### Automatically after a default

**10.2** Whether or not you have an 'on demand' facility:

- a. any *credit limit* or *loan amount* will be cancelled, without us giving any notice; and
- b. the full *amount outstanding* will be immediately due and payable by you to us following the expiry of any notice we are required to give you by law, without us making any further demand for payment, if:
  - c. you fail to pay any amount to us when it is due under the documents set out in **clause 2.1**. These are the documents that set out the terms of the *facility*;
  - d. you or any other person has acted fraudulently in connection with a *facility document* or any other agreement you have with us; or
  - e. a property which is subject to a *security* becomes subject to:
    - i. a restraining order or a forfeiture order under the Criminal Proceeds (Recovery) Act 2009; or
    - ii. a freezing or a charging order issued by a New Zealand Court.

### On demand after a default

**10.3** If you do not have an 'on demand' facility, we can:

- a. cancel or reduce *your credit limit* or cancel *your loan amount*; and/or
- b. demand repayment of the *amount outstanding* (or any part of it), if:
  - c. you or any *guarantor* breaches any term of a *facility document*, any *specified account* (if that account is with us) or any other agreement you or any *guarantor* has with us;
  - d. you fail to pay any amount to us when it is due under any agreement you have with us (other than the documents set out in **clause 2.1**);
  - e. you or any *guarantor* is or becomes *insolvent*;

- f. we reasonably believe that the value of any property that is subject to a security has significantly reduced;
- g. *you* or any *guarantor's* circumstances have changed in a way we reasonably believe justifies us demanding repayment of the *amount outstanding* (or any part of it), the cancellation or reduction of *your credit limit*, and/or the cancellation of *your loan amount*;
- h. subject to **clause 21.10**, *you* do not give us information we ask for from *you* or *you* do not consent (or withdraw *your* consent) to us collecting, holding, using or sharing *your personal information* as set out in **clause 21**; or
- i. we reasonably believe that *our* ability to continue making the *facility* available to *you* has been negatively affected.

### Consequences

- 10.4** If we demand repayment of any of the *amount outstanding* under **clauses 10.1** or **10.3** or any of the *amount outstanding* becomes immediately due and payable under **clause 10.2**, then *you* must pay us all money *you* owe to us, and all money that *you* will owe us in the future under the terms of the *facility*, including:
- a. all principal and interest;
  - b. any fees, charges and premiums that are payable under the terms of the *facility*. This may include an *early repayment charge* if any part of the *amount outstanding* is paid to us during a *fixed rate period* as set out in **clause 9.5**;
  - c. any *costs you* owe us under **clause 11.5**;
  - d. a fee to compensate us for a reasonable estimate of any *loss* we incur because of a *default*; and
  - e. interest at the *agreed annual interest rate* on the *amount outstanding*, and (if applicable) at the default interest rate on any *overdue amount* as set out in **clause 7**, until *you* pay us that amount.

## 11. Fees, charges and costs

- 11.1** *You* must pay us the fees, charges and premiums referred to in the relevant *letter of advice* on demand from us (or when the terms of the *facility* say that *you* have to). Charges for keeping accounts (including but not limited to activity fees and base fees) may be payable under the terms and conditions of any *specified account* (if that account is with us). The terms and conditions of any *specified account* (if that account is with us) can be obtained from *your* nearest BNZ branch, by phoning 0800 275 269 or +64 4 931 8209 from overseas (international toll charges apply) and **bnz.co.nz**
- 11.2** *You* may be eligible for fee rebates. If *you* are, this will be set out in the relevant *letter of advice* and/or the relevant *fees brochure*.
- 11.3** We may increase, decrease or change the terms of payment of any rebate, fee, charge or premium payable under the terms of a *facility* by giving *you* notice at least 14 days before the change takes effect.

- 11.4** We may also apply new fees, charges or premiums to a *facility* by giving you notice at least 14 days before the date of their introduction. Rebates, fees, charges or premiums payable under the terms and conditions of any *specified account* (if that account is with us) may be increased, decreased or changed in accordance with those terms and conditions.
- 11.5** You must pay and reimburse us for all costs (for example, legal costs, insurance premiums we pay to maintain insurance over *your* property, valuer's costs, real estate agent's costs and *our* staff costs) we pay or incur in relation to the attempted enforcement and enforcement of *our* rights under any *facility document*. You must pay us these costs on demand.

## 12. Security

- 12.1** Any *security* listed in the 'Security' section of the relevant *letter of advice* will secure *your* obligations to us under the *facility*. Any existing *security* you have given us as at the date of the relevant *letter of advice* that is not listed in the 'Security' section of that *letter of advice* will not secure *your* obligations to us under the *facility*.
- 12.2** If you give us new *security* in the future, that new *security* will also secure *your* obligations to us under the *facility*.

## 13. Lender's mortgage insurance

- 13.1** When a *facility* was made available to *you*, we may have, or we may have required *you* to have, taken out lender's mortgage insurance. Lender's mortgage insurance is insurance against the risk that *you* will not be able to repay the *amount outstanding*. If *you* have lender's mortgage insurance, any benefit from that insurance is *ours*. You must pay any premium on that insurance. The insurance policy may require *you* to pay any of the *amount outstanding* under the relevant *facility* to the insurer if we make a claim under that policy.
- 13.2** We may incur a loss if:
- a *default* occurs;
  - we sell the property we hold a *security interest* over; and
  - the sale proceeds are less than the amount required to fully repay the *amount outstanding* under the *facility*.

We can recover this *loss* under the lender's mortgage insurance. If we make a claim under the lender's mortgage insurance policy, *you* are legally responsible for repaying to the insurer any of the *amount outstanding* under the *facility* or any *security* because *you* are not protected by the insurance. This means that the only advantage *you* receive from paying the premium is the ability to borrow more money than we would have allowed *you* to if we or *you* (as the case may be) did not have that insurance.

## 14. Housing Term loan: special conditions

### Borrowing

**14.1** We will either:

- a. credit *your specified account* with the full *loan amount* in one lump sum on the date *you* request. However, that date must not be later than 90 days after the date of the relevant *letter of advice*, or any later date we have confirmed to *you*; or
- b. if the relevant *letter of advice* allows *you* to borrow in multiple instalments, credit *your specified account* with the instalments on the dates and in the amounts *you* request (up to the *loan amount*). However:
  - i. the first date on which *you* borrow under the *facility* must not be later than 90 days after the date of the relevant *letter of advice*, or any later date we have confirmed to *you*; and
  - ii. *you* may not borrow any amount more than 12 months after the date on which *you* first borrow money under the *facility*.

### Payments and agreed dates

**14.2** Where we refer to ‘*agreed dates*’ and ‘*minimum payments*’ in **clauses 14.3** to **14.6**, we mean *agreed dates* and *minimum payments* of principal, or principal and interest (as applicable), not *agreed dates* or *minimum payments* of interest.

**Clauses 14.3** to **14.7** apply except as otherwise set out in this *agreement* or the relevant *letter of advice*.

**14.3** There are two payment schedule options available under a *facility*:

- a. Under the ‘**keeping the expected end date the same**’ payment schedule option, the *facility* is set up so that *you* will repay the *amount outstanding* within a set period of time. This means that the *minimum payments* will change from time to time but the *expected end date* will stay the same. For example, the *minimum payments* may change if:
  - i. the *agreed annual interest rate* changes;
  - ii. *you* and *we* agree an interest only period after the date *you* first borrow money under the *facility*;
  - iii. *you* make an early repayment under **clause 9.1**; or
  - iv. *you* change the *agreed dates* under **clause 14.7**.
- b. Under the ‘**keeping the minimum payments the same**’ payment schedule option, the *facility* is set up so that the *minimum payments* stay the same wherever possible. This means that the *expected end date* will change from time to time but the *minimum payments* will generally stay the same. For example, the *expected end date* may change if:
  - i. the *agreed annual interest rate* changes;
  - ii. *you* and *we* agree an interest only period after the date *you* first borrow money under the *facility*;
  - iii. *you* make an early repayment under **clause 9.1**;

- iv. *you* change the *agreed dates* under **clause 14.7**; or
- v. *you* have a TotalMoney Housing Term loan and *you* receive the benefit of an offset, as set out in the relevant *letter of advice*.

However, under this payment schedule option, if the *minimum payments* will not be sufficient to ensure that the *amount outstanding* is still repaid on or before the *end date*, the *minimum payments* will increase.

- 14.4** *You* can change the payment schedule option between ‘keeping the *expected end date* the same’ and ‘keeping the *minimum payments* the same’ if:
- a. a *default* has not occurred (or, where a *default* has occurred, it has been remedied to *our* satisfaction); and
  - b. *you* tell us that *you* intend to change the payment schedule option at least one *business day* before the next *agreed date*.

Please talk to us at any time if *you* would like to know *your* current payment schedule option.

**If *you* change the payment schedule option and *you* also make certain other changes to a *facility* at the same time, *you* may have to pay us an *early repayment charge* (see clause 9).** For example, this may occur if *you* also increase the *minimum payments* under **clause 14.6** during a *fixed rate period*.

- 14.5** *You* can decrease the *minimum payments* if:
- a. the new *minimum payments* will ensure that the *amount outstanding* is still repaid on or before the *end date*;
  - b. a *default* has not occurred (or, where a *default* has occurred, it has been remedied to *our* satisfaction); and
  - c. *you* tell us that *you* intend to decrease the *minimum payments* at least one *business day* before the next *agreed date*.

Please talk to us at any time if *you* would like to know the amount to which *you* can decrease the *minimum payments*.

- 14.6** *You* can increase the *minimum payments* if *you* tell us that *you* intend to do so at least one *business day* before the next *agreed date*. We will give effect to the increase to the *minimum payments* on that *agreed date*.

If *you* tell us that *you* intend to increase the *minimum payments* after this time, we may decline to accept the part prepayment on that *agreed date*. If we do so, we will give effect to the increase to the *minimum payments* on the next *agreed date*.

**If *you* increase the *minimum payments* during a *fixed rate period*, *you* may have to pay us an *early repayment charge* (see clause 9).**

- 14.7** *You* can change the *agreed dates* if:
- a. the new *agreed dates* occur on one of *our* standard payment frequencies for the *facility* (for example, fortnightly or monthly). Please talk to us at any time if *you* would like to know *our* current standard payment frequencies;
  - b. the *amount outstanding* is still repaid on or before the *end date*;
  - c. a *default* has not occurred (or, where a *default* has occurred, it has been

- remedied to *our* satisfaction);
- d. where the *agreed dates* relate to:
    - i. *minimum payments* of principal, *you* have made a *minimum payment* of principal within the last three months;
    - ii. *minimum payments* of interest, *you* have made a *minimum payment* of interest within the last three months; and
    - iii. *minimum payments* of principal and interest, *you* have made a *minimum payment* of principal and interest within the last three months; and
  - e. *you* tell us that *you* intend to change the *agreed dates* at least one *business day* before the next relevant *agreed date*.

If *you* change the *agreed dates*:

- f. the *minimum payments* may change. **If this change means that the *minimum payments* increase during a *fixed rate period*, *you* may have to pay us an early repayment charge (see clause 9);**
- g. the *expected end date* may change; and/or
- h. the method of charging interest may change, as set out in the relevant *letter of advice*.

## Interest

**14.8** The *agreed annual interest rate* for a Housing Term loan *facility* may be variable or fixed for a *fixed rate period*, and it may include a *customer margin*.

**14.9** If a Housing Term loan *facility* has a *fixed rate period*, this means that the *agreed annual interest rate* will not change during the *fixed rate period*. It also means that *you* will not receive the benefit of any decrease in variable interest rates during the *fixed rate period*. *You* do not have the right to change the *agreed annual interest rate* during a *fixed rate period*. However, if, during a *fixed rate period*, *you* request and *we* agree to change the *agreed annual interest rate* from:

- a. a fixed interest rate to a variable interest rate; or
- b. a fixed interest rate to another fixed interest rate,

*you* may need to repay the *amount outstanding* and re-borrow under the *facility* at the new *agreed annual interest rate*. *We* may charge *you* an early repayment charge under **clause 9**.

**14.10** Except as otherwise set out in the relevant *letter of advice*, there are two methods of charging interest that may apply under a *facility*:

- a. Under the ‘**daily interest charges**’ method of charging interest, interest charges are calculated by multiplying the *amount outstanding* at the end of each day by the daily interest rate. *We* calculate the daily interest rate by dividing the *agreed annual interest rate* that applies at that time by 365.
- b. Under the ‘**periodic interest charges**’ method of charging interest, where possible *we* ‘smooth’ *your* interest charges so that, for example, *you* pay the same amount of interest regardless of the number of days in a month.

Interest charges are calculated by multiplying:

- i. the average *amount outstanding* at the end of each day in the part of the *repayment period* to which the *agreed annual interest rate* applies; by
- ii. the proportion of the *repayment period* to which the *agreed annual interest rate* applies; and
- iii. a monthly, quarterly or half-yearly interest rate (as applicable).

In this **clause 14.10(b)**, we calculate:

- iv. the proportion of the *repayment period* by dividing the number of days in the *repayment period* to which an *agreed annual interest rate* applies by the total number of days in that *repayment period*; and
- v. the monthly, quarterly, or half-yearly interest rate by dividing the *agreed annual interest rate* that applies to the relevant part of the *repayment period* by 12 (for a monthly *repayment period*), 4 (for a quarterly *repayment period*) or 2 (for a half-yearly *repayment period*).

However, if, at any time, a *repayment period* does not correspond to the payment frequency set out in the relevant *letter of advice*, the method of charging interest under **clause 14.10(a)** will apply to the interest charge for that *repayment period*. For example, this may happen if you change the *agreed dates* under **clause 14.7**.

## Repayment

**14.11** You must pay us the *amount outstanding* on the *expected end date*.

## 15. BNZ Advantage: special conditions

**15.1** BNZ Advantage is only available to customers who already have a BNZ Advantage *facility*.

## 16. Flybuys

**16.1** There is no ability to earn Flybuys on any Housing Term loan *facility*.

## 17. Rapid Repay home loan: special conditions

**17.1** The *agreed annual interest rate* for a Rapid Repay home loan *facility* is variable, and may include a *customer margin*.

**17.2** You must make sufficient payments to make sure that the *amount outstanding* under the *facility* is not more than *your credit limit*.

**17.3** You must pay us the *amount outstanding* on the *end date*.

## Credit limit

- 17.4** We will reduce *your credit limit* by the relevant *reduction amount* on the last *business day* of each month. We will make the first reduction in the month after the month we make the *facility* available to you.
- 17.5** Unless you ask us not to, we will give you at least 14 days' notice of our estimate of the next *reduction amount* and our estimate of *your* corresponding reduced *credit limit*. We can only give you estimates for these amounts because the *agreed annual interest rate* may change between the date we give you notice and the last *business day* of the month.
- 17.6** You can reduce the *credit limit* by telling us at least one *business day* before you want the reduction to take effect. You can then either:
- continue to have *your credit limit* reduced monthly by the relevant *reduction amount* as though no extra reduction had been made, so that the *end date* will occur sooner; or
  - change the relevant *reduction amount* to take account of the extra reduction, so that the *end date* will stay the same.

## YouMoney Account

- 17.7** Once the *term* of a Rapid Repay home loan *facility* has expired and the *amount outstanding* has been repaid in full, *your specified account* will change to a YouMoney account. Only our Standard Terms and Conditions will then apply to *your specified account* and this *agreement* will no longer apply.

## 18. Premium Rapid Repay home loan: special conditions

- 18.1** A Premium Rapid Repay home loan *facility* has the same special conditions as a Rapid Repay home loan *facility*. These conditions are set out in **clauses 17.1 to 17.7**. In addition, and despite what is said in the terms and conditions of *your specified account*, if the balance of *your specified account* is \$5,000 or more, credit interest will accrue daily on that balance at the rate we advise from time to time.

## 19. Mortgage One: special conditions

- 19.1** A Mortgage One *facility* is an 'on demand' *facility*. We can demand repayment of the *amount outstanding* (or any part of it) at any time for any reason. You must pay us the *amount outstanding* (or the part of it we demand repayment of) when we demand repayment. We can also cancel or reduce *your credit limit* at any time for any reason.
- 19.2** The *agreed annual interest rate* for a Mortgage One *facility* is variable, and may include a *customer margin*.
- 19.3** You must make sufficient payments to make sure that the *amount outstanding* under the *facility* is not more than *your credit limit*.
- 19.4** You can reduce the *credit limit* by telling us at least one *business day* before you want the reduction to take effect.

- 19.5** We can review the *facility* when, and how, we think appropriate. We can decide the scope of a review when we carry out that review. We may make changes to the *facility* following a review.

## **20. Instructing us and communicating with you**

- 20.1** We can, in *our* discretion, accept instructions from *you* (or someone acting on *your* behalf) by:
- post;
  - telephone;
  - facsimile;
  - email;
  - secure messaging through BNZ internet banking; or
  - any other means.
- 20.2** You acknowledge that we will rely on those instructions and authorise *us* to act on them. We accept communications in electronic form and by means of electronic communication for this purpose.
- 20.3** We can decline to act on *your* instructions where we consider that we have a good reason to do so (for example, where acting on *your* instructions might result in a breach of the law, *your* instructions are unclear or contradictory, or we suspect that the instructions are unauthorised, forged or fraudulent).
- 20.4** We are not required to ask about or confirm any instructions with *you*, but we might choose to do so.
- 20.5** A power of attorney gives someone the right to sign documents or enter into agreements for *you*. We do not have to agree to let a person with a power of attorney enter into *facility documents* or give *us* instructions in relation to a *facility* on *your* behalf. If a power of attorney is used, *you* or *your* attorney will need to provide *us* with a copy of the power of attorney and a certificate of non-revocation, and we might ask *you* to confirm any instructions *your* attorney gives.
- 20.6** We will not be liable for any *loss you* incur if:
- we* act in accordance with *your* instructions;
  - we* act on instructions that are unauthorised, forged or fraudulent, where we could not reasonably have detected that from the instructions; or
  - we* do not act on instructions we consider to be unclear, illegible or contradictory.
- 20.7** We can deliver demands and notices to *you* by letter or email to the address *you* have provided to *us*. *You* will be deemed to receive letters from *us* on the third *business day* after we post them and emails at the time they leave *our* information system.
- 20.8** If *you* ask *us* for any consent or approval under a *facility* and we agree to that, *our* consent or approval will only be effective if it is in writing. An email is 'in writing' for this purpose and all other purposes. If we tell *you* we agree to something over the telephone or in person, it will not be effective until we confirm it in writing.

## 21. Information about you

*In this section we obtain your consent to the way we use and share your personal information*

- 21.1** In this **clause 21**, ‘we’, ‘us’ or ‘our’ is a reference to Bank of New Zealand and *our related companies* (including each of *our* successors or assignees).
- 21.2** We take *your* privacy seriously and comply with all relevant privacy laws. This clause explains how we use *your personal information* (and that of *your related persons*, as defined in **clause 21.3**). By accepting *our* offer to provide you with a *facility*, you are permitting us to collect, hold, use and share *your personal information* as set out in this **clause 21**.
- 21.3** When you, or someone else on *your* behalf, gives us *personal information* that relates to other people or organisations (*‘related persons’*), and that *personal information* is relevant to *your* relationship with us, you confirm that the *related person* consents to us collecting, holding, using and sharing that *personal information* for the purposes set out in **clauses 21.6, 21.7, 21.15** and **21.16**, and any additional purposes for which you, or they, gave us the *personal information*. If we intend to collect, hold, use or share their *personal information* for other purposes we will obtain their consent first.
- 21.4** We can contact you and any *related persons* via email, text message, an online facility (without an online unsubscribe facility), telephone or post for the purposes described in this **clause 21** (and more specifically **clauses 21.6, 21.7, 21.15** and **21.16** for *related persons*).
- 21.5** We try to make sure that any *personal information* we hold is accurate. To help us do this, please let us know as soon as you can about any changes in *your* personal details (including *your* residential or email address, or telephone or facsimile numbers). The Privacy Act 1993 gives individuals a right to access and correct information, so you or *your related persons* can ask us to correct information (if you are individuals). Please call us on 0800 275 269 or +64 4 931 8209 from overseas (international toll charges apply) if you or they would like to access or correct information.

### **Our purposes for collecting, using and sharing your personal information**

- 21.6** *Your*, and *your related persons’*, *personal information* can be used to maintain our relationship with you, including identifying you or *related persons*, approving *your* applications for any BNZ product/service and managing and administering any BNZ product/service (including a *facility*) we provide to you. For example, we can use that *personal information* to:
- a. meet *our* internal operational requirements, such as credit and risk management, *our* funding requirements, system or product development and planning, insurance, audit and administrative purposes (for example, providing credit cards and statements or conducting credit checks on *guarantors*);
  - b. collect any money owed by you (for example, providing credit agencies with information about a *default*);

- c. enforce or defend *our* rights; or
  - d. as part of *our* investment services, provide *you* with custodial services or register investments in *your* own name with either a registry or fund manager if *you* choose to transfer *your* investments out of custody.
- 21.7** You agree to give us information we ask for to help us comply with laws, rules or regulations in New Zealand or overseas. We can use *your personal information* to:
- a. help us comply with laws, rules or regulations in New Zealand or overseas, or any New Zealand or overseas governmental or regulatory requests; or
  - b. monitor *your* accounts and any BNZ product/service (including the *facilities*) you use for the purpose of preventing misuse or unauthorised use of any BNZ product/service, detecting any fraud or crime, or preventing or detecting money laundering or the financing of terrorism in New Zealand or overseas.
- 21.8** We can:
- a. collect, hold, use and share *your personal information* where it is combined with other information and in a form that does not identify *you*, to conduct market research;
  - b. use and share *your* contact information to obtain *your* views of any BNZ product/service and to help us to identify how we might better address our customers' needs, both while *you* are a customer and for a reasonable time afterwards; and
  - c. use third party information and link it to *your personal information* to identify how we might better address our customers' needs.
- 21.9** We can use *your personal information* to contact *you* about, and offer *you*, any BNZ product/service that might be of interest to *you*, both while *you* are a customer and for a reasonable time afterwards. We can also use and share *your personal information* to enable information to be provided to *you* which we reasonably believe might be of interest to *you* about:
- a. events, fundraising or organisations that we support; or
  - b. third party offers, products and services from persons or organisations that we have partnered with (we only partner with organisations that meet our high standards).
- 21.10** You have a right to ask us not to use *your personal information* to conduct market research (**clause 21.8**) or contact *you* with marketing or promotional messages (whether related to any BNZ product/service or otherwise) (**clause 21.9**). Please call us on 0800 275 269 or +64 4 931 8209 from overseas (international toll charges apply). We will still need to contact *you* with messages relating to the management and maintenance of *your* relationship with us and any mandatory messages (for example, those required to be sent to *you* by law).
- 21.11** In respect of applications for and reviews of *facilities*, you authorise us to make credit reference checks and other enquiries within *our* normal procedures. For this purpose, we can seek information about *you* from any source.

- 21.12** You also authorise us to share all information relevant to *your facilities* with any credit reporting agency. Credit reporting agencies may use information disclosed by us to update their credit reporting database, and disclose any information that they hold about you to their own customers, as permitted under the Credit Reporting Privacy Code 2004. In addition, we may use any service provided by credit reporting agencies to receive updates of the information they hold about you.
- 21.13** If a *default* occurs, we can disclose *your personal information* to, and for the use by, credit reporting agencies, debt collection agencies and law firms.
- 21.14** We can monitor, record and retain any telephone calls with you, including to:
- make sure we have carried out *your* instructions correctly;
  - help improve *our* service;
  - make sure we comply with *our* regulatory obligations; and
  - help detect or prevent fraud or other crimes.
- 21.15** We can share *your*, and *your related persons'*, *personal information* with:
- any other *related companies*, their employees, agents and contractors;
  - any agents or third parties that provide services to or for us (whether in New Zealand or otherwise), including, banks, law firms, custodians, fund managers, debt collection agencies, credit reporting agencies or credit providers, credit rating agencies, credit card providers, loyalty schemes, market research firms and insurers, who have agreed with us to only collect, hold, use and share *your personal information* for the purposes for which it has been given to them;
  - the police, any governmental body or agency or regulator in New Zealand or overseas (including any tax authorities);
  - other banks (including overseas banks), agents, registrars, contractors or other entities assisting with transactions;
  - any previous or current employer (to verify *your* identity, employment status or income (as applicable)); and
  - any other person or organisation authorised by you.
- 21.16** We can also share *your*, and *your related persons'*, *personal information* with any person to whom we are considering assigning or transferring any of *our* rights or obligations under a *facility document*.
- 21.17** You accept, and you confirm that *your related persons* accept, that overseas governments, banks, agents, contractors or other entities will need to comply with overseas laws and those laws might require them to share *your*, or *your related persons'*, *personal information* for the purposes of complying with those laws.
- 21.18** Subject to **clause 21.10**, if you do not give us information we ask for or you do not consent (or withdraw your consent) to us collecting, holding, using or sharing *your personal information*, we might:
- be unable to provide new, or continue to provide all or part of, any BNZ product or service (including a *facility*) to you, demand repayment of the *amount outstanding* (or any part of it), cancel or reduce *your credit limit* and/or cancel *your loan amount* (see **clause 10.3.h**); and
  - take any actions we need to meet *our* legal or regulatory obligations.

- 21.19** *Your personal information* can be held physically or electronically, including in New Zealand or elsewhere, by *us* or by any third party contracted to store it for *us*. As required by the Privacy Act 1993, we will use reasonable security safeguards to protect *your personal information* against loss, access, modification, disclosure and other misuse.
- 21.20** We can provide a copy of all *facility documents*, and any information about *your* financial position that *we* hold, to any *guarantor*.

## 22. Liability for losses

- 22.1** We will not be liable to *you* for any *loss* *you* incur:
- arising as a result of *us* entering into or exercising *our* rights under any *facility document*; or
  - caused by circumstances outside of *our* control.

## 23. If more than one person is the customer

- 23.1** If more than one person is named as the ‘customer’ in a *letter of advice*:
- each person is responsible to *us* alone and together. We may ask any of *you* to pay any or all the *amount outstanding*. We do not need to ask all of *you* to pay or contribute to any or all the *amount outstanding*;
  - any one of *you* can give *us* instructions about the *facility*. Instructions can relate to important changes to the *facility*, including changes to the *agreed annual interest rate*, the type of *facility*, the payment schedule options, and the *minimum payments*. If any one of *you* gives *us* instructions about the *facility*, *you* must have obtained the agreement of each other person named as the ‘customer’ in the *letter of advice* before doing so. By instructing *us*, *you* represent to *us* that *you* have obtained that agreement. We may act on those instructions. We do not need to confirm whether *you* obtained the agreement of each other person named as the ‘customer’ in the *letter of advice* before we do so. We will not be liable for any *loss* any person incurs because *you* did not obtain their agreement, or because we did not confirm *you* had their agreement before we acted on *your* instructions;
  - unless the law says otherwise, if we send a notice to one of *you*, it will count as a notice to all of *you*;
  - we can give information about the *facility* to any one of *you* and can act on any information about any one of *you* that any other of *you* gives *us* (for example, where *you* die or become bankrupt); and
  - if a dispute occurs between any of *you* in connection with the *facility*, *you* must tell *us* as soon as *you* can.

## 24. If you are a trustee

- 24.1** If you are party to the *facility documents* as a trustee of a trust:
- a. you must comply with the trust deed in connection with the *facility*. We are not required to check that anything you do in connection with the *facility* is in accordance with the trust deed;
  - b. you must not, without our prior written consent:
    - i. resign as a trustee; or
    - ii. appoint any new trustee, or allow or agree to any new trustee being appointed;
  - c. you must use your best endeavours to make sure that, on the appointment of any new trustee, you and the new trustee enter into any new *facility documents* we require; and
  - d. if there is more than one trustee of the trust, **clause 23** (except for **clause 23.1.b**) applies.
- 24.2** If a *letter of advice* specifies that you are party to the *facility documents* as an independent trustee of a trust and have no interest in the assets of the trust (other than your interest as trustee), you will only be personally liable under the *facility documents* to the extent of the assets of the trust that are available from time to time to meet your liability, plus:
- a. any amount by which the value of those assets has been reduced by any breach of trust caused by your wilful default or dishonesty; and
  - b. any amount we cannot recover due to your having acted in breach of trust and/or having lost your right of reimbursement out of the trust assets.
- 24.3** Even if a *letter of advice* specifies that you are acting independently, you will not be treated as acting as an independent trustee if you are, at any time, a beneficiary, discretionary beneficiary or appointor of or under the trust document.
- 24.4** We can determine the order in which we recover the *amount outstanding* from you in your capacity as trustee of a trust. We can choose in our sole discretion to recover out of the trust assets or (if available to us) your personal assets.

## 25. If you are a partnership

- 25.1** If you are party to the *facility documents* as a partner:
- a. references to 'you' are to each partner alone and each of the partners together;
  - b. each partner is responsible to us alone and together. We may ask any of the partners to pay any or all the *amount outstanding*. We do not need to ask all of the partners to pay or contribute to any or all the *amount outstanding*;
  - c. any partner can give us instructions about the *facility*. Instructions can relate to important changes to the *facility*, including changes to the *agreed annual interest rate*, the type of *facility*, the payment schedule options, and the *minimum payments*. We may act on those instructions;
  - d. unless the law says otherwise, if we send a notice to one partner, it will count as a notice to all partners;

- e. we can give information about the *facility* to any partner and can act on any information about any partner that any other partner gives us (for example, where a partner dies or becomes bankrupt);
- f. if a dispute occurs between any of the partners in connection with the *facility*, you must tell us as soon as you can;
- g. you must comply with your partnership agreement in connection with the *facility*. We are not required to check that anything you do in connection with the *facility* is in accordance with your partnership agreement;
- h. you must tell as soon as possible of any change in the partnership;
- i. a *facility document* will continue to bind you despite any changes which may from time to time take place in the partnership, whether by death, incapacity, or retirement of any partner or the admission of any new partner or otherwise; and
- j. a *facility document* will continue to bind you despite the fact that the partnership no longer carries on business.

## 26. Our certificates are conclusive

- 26.1** Our certificate as to any amount or fact relating to any of the *facilities* will be conclusive evidence of that amount or fact (unless there is an obvious error or you prove that the certificate is incorrect). If we make an error in a certificate:
- a. we will notify you; and
  - b. that error will not restrict our right to recover the *amount outstanding*.

## 27. Transfer of rights

- 27.1** You may not assign or transfer any of your rights or obligations under a *facility document* to any other person.
- 27.2** We can at any time assign or transfer all or any part of our rights or obligations under a *facility document* to another person. We do not need your consent to do this. If we do so, the person we assign or transfer our rights or obligations to will be able to exercise those rights instead of us. If we assign or transfer our rights under a *facility document*, all references in that *facility document* to 'we', 'us' or 'our' will mean:
- a. in relation to the rights and obligations not assigned or transferred by us, Bank of New Zealand;
  - b. in relation to the rights and obligations assigned or transferred by us, the person we have assigned or transferred those rights to.

## 28. General

- 28.1** We can, at any time, debit any of the *amount outstanding* from a *specified account*, or any other account you have with us.
- 28.2** If for any reason there is not enough money in *your specified account* to make the payments due under a *facility*, debits may be made, or not made, from the *specified account* at our discretion.
- 28.3** You confirm that all the information, including financial information, given by *you*, or any other person on *your* behalf, to us in connection with the *facility documents* is true, complete and accurate in all material respects. You confirm that *you* are not aware of any material facts or circumstances which have not been disclosed to us and which could affect our decision to provide a *facility* to *you*.
- 28.4** You confirm that *you* have complied and will continue to comply with all laws and constitutional requirements that apply to *you*, *your* business or *your* property.
- 28.5** You must give us any assistance that we require to deal with alleged or possible misuse of, or unauthorised access to, a *facility*, or in relation to any other transaction we, the police or any other authority is investigating.
- 28.6** If any term of any *facility document* is illegal, invalid or unenforceable, this will not affect any other term of that (or any other) *facility document*.
- 28.7** We can choose if and when we exercise our rights under any *facility document* and at law. Any delay by us does not affect our right to choose when or if we exercise any of our rights. Our rights and remedies under each *facility document* are additional to any of the rights and remedies we have at law or under any other agreement with *you*.
- 28.8** Each *facility document* is governed by New Zealand law.

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